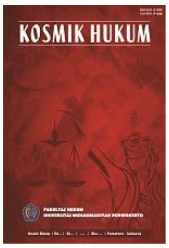

Kosmik Hukum

Fakultas Hukum
Universitas Muhammadiyah Purwokerto
Vol. 25 No. 2 (2025)

Legal Consequences of Violating Arbitration Agreement and Arbitrator Appointment Agreement under Indonesian Obligation Law Principles

Meydora Cahya Nugrahenti [1]✉, Ari Hernawan[2]

[1] Faculty of Law, Universitas Gadjah Mada and Faculty of Social Science and Political Science, Universitas Tidar, Indonesia

[2] Faculty of Law, Universitas Gadjah Mada, Indonesia

Corresponding: meydoracahyanugrahenti@mail.ugm.ac.id

Article Process

Submitted:
28-01-2025

Reviewed:
15-04-2025

Accepted:
15-05-2025

Published:
28-05-2025

Abstract

Subsequent to Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (AADR LAW), violations of arbitration agreements and arbitrator appointment agreements still persist in Indonesia. Parties bound by arbitration agreements have initiated court proceedings, while losing parties have sought to nullify arbitral awards on grounds not stipulated in Article 70 of the AADR LAW. Given the apparent ease of such actions without legal repercussions, this article examines the legal consequences of violating these agreements based on obligation law principles. This research uses a normative juridical approach, utilizing secondary data on arbitration, agreement law, and obligation law, including legislation, scholarly literature, and journal articles. This article finds that arbitration agreements and arbitrator appointment agreements constitute obligations from contractual arrangements. Both agreements fulfill the four elements of obligation: legal relationship, property, parties, and performance. Legally, a breach of these agreements constitutes a default, which may result in legal action against the defaulting party. The AADR Law does not comprehensively regulate this matter. Consequently, this article advocates for developing legal frameworks through additional regulations concerning default parameters in both agreements, along with their legal consequences in rights claims. This approach aligns with commutative justice principles, ensures contractual justice, and facilitates parties' adherence to arbitration and arbitrator appointment agreements.

Keywords: arbitration agreements, arbitrator appointment agreements, obligation.

I. Introduction

Humans engage in legal relationships during their interactions. One such relationship is in the field of wealth, where one party is entitled to an achievement's performance and the other is

Kosmik Hukum Vol. 25 No. 2 (2025): 409-427
E-ISSN: 2655-9242 | P-ISSN: 1411-9781
DOI: 10.30595/kosmikhukum.v20i2. 25778

obliged to fulfill it. This is referred to as an engagement (obligation).[1] In the business world, obligation is inseparable as business people regulate their legal relationships through agreements.[2] Most business activities are based on obligations originating from business agreements[3] that create rights and obligations for the involved actors. [4]

Business agreements are established with the expectation of proper execution; however, adverse outcomes remain. Disputes often arise due to divergent interpretations of the agreement's contents, breach of contract, or illegal acts (*onrechtmatigedaad*) related to the agreed-upon matters.[5] Given the inevitability of business disputes, Indonesia's role as *a rechtsstaat* was to provide an appropriate and expeditious dispute resolution mechanism. This is essential, as unresolved business disputes may result in a reduction in economic productivity. [6]

In Indonesia, dispute resolution mechanisms are available through two methods: litigation and non-litigation.[7] In recent decades, business disputes have often been resolved through non-litigation methods due to several factors. Judicial proceedings are time-consuming and costly; district courts favor more powerful parties; their decisions are ineffective in resolving issues and fail to provide tranquility for both parties; and district court judges are inadequately equipped to resolve complex disputes in various business sectors due to limited knowledge of developments in trade, science, technology, and globalization. In Indonesia, the legal framework for non-litigation dispute resolution is the AADR LAW. [8]

Non-litigious dispute resolution, particularly arbitration, is highly favored by business entities.[9] Business disputes require expeditious and cost-effective resolutions to preserve future relationships.[10] A key advantage of arbitration is confidentiality. Arbitration also offers autonomy, allowing parties to select arbitrators, laws, processes, and venues, thereby enabling flexible dispute resolution. Arbitration decisions are final, binding, and prioritize win-win solutions,[11] minimizing costs, time, and effort, as there are no provisions for appeal or cassation according to Article 60 of the AADR LAW. The final nature of arbitration decisions provides legal certainty by circumventing protracted dispute procedures. [12]

Achieving legal certainty regarding the enforcement of arbitration awards remains elusive. In some cases, these awards cannot be immediately enforced, because the losing party seeks to have them annulled by the district court, which goes against the provisions set forth in Article 70 of the AADR Law. This article allows domestic arbitral award annulment for three reasons: if documents submitted during hearing are later proven false, if decisive documents concealed

---

1 Mariam Darus Badrulzaman, *KUHPerdata: Hukum Perikatan Dengan Penjelasan* (Bandung: Alumni, 2011). 1.

2 Wilopo Cahyo Figur Satrio, Sukirno Sukirno, and Adya Paramita Prabandari, "Prinsip Timbulnya Perikatan Dalam Perjanjian Jual Beli Berbasis Syariah," *Notarius* 13, no. 1 (2020): 294–311, https://doi.org/10.14710/nts.v13i1.30390.

3 Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Bandung: Mandar Maju, 2012). V.

4 Satrio, Sukirno, and Prabandari, "Prinsip Timbulnya Perikatan Dalam Perjanjian Jual Beli Berbasis Syariah."

5 Muhammad Yasril Ananta Baharuddin, "Peran Hukum Arbitrase Dalam Penyelesaian Sengketa Bisnis Nasional," *Jurnal Risalah Kenotariatan* 5, no. 2 (2024): 310–20, https://doi.org/https://doi.org/10.29303/risalahkenotariatan.v5i2.209.

6 Yusna Zaidah, *Penyelesaian Sengketa Melalui Peradilan Dan Arbitrase Syariah Di Indonesia* (Yogyakarta: Aswaja Pressindo, 2015). 2.

7 Muhamad Kholid, "Kewenangan Pengadilan Negeri Dan Lembaga Arbitrase Dalam Penyelesaian Sengketa Bisnis," *'Adliya* 9, no. 1 (2015): 167–84, https://doi.org/https://doi.org/10.15575/adliya.v9i1.6162.

8 Ahmadi Miru, *Hukum Kontrak Dan Perancangan Kontrak* (Depok: Rajawali Press, 2018). 111-113

9 Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia* (Depok: PT. Rajagrafindo Persada, 2021). Xxxv.

10 Miru, *Hukum Kontrak Dan Perancangan Kontrak*. *Loc.Cit*.

11 Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia*. *Op.Cit*. 7-9.

12 Pujiyono Pujiyono, "Kewenangan Absolut Lembaga Arbitrase," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 2 (2018): 243–60, https://doi.org/10.33331/rechtsvinding.v7i2.241.

during hearing are discovered after the award, or if the award results from deceit by a party during the hearing, however, these provisions are frequently circumvented.[13] This opportunity provided by the AADR Law to protect parties from fraud is often exploited by losing parties to delay enforcement or seek favorable district court outcomes, avoiding arbitral award obligations.[14] The losing party typically applies for annulment using arguments that exploit legal loopholes, including: The arbitration panel erred in its decision-making or rendered a decision not based on justice and propriety; The phrase "among others" in the General Explanation of the AADR LAW means annulment can be requested on grounds beyond those in Article 70 of the AADR LAW; The Constitutional Court's annulment of the Explanation of Article 70 of the AADR LAW removes the "requirement that grounds for annulment of arbitration decisions must be proven by court decisions," allowing submission of arbitration decision annulments based on allegations without district court decision evidence; An alternative interpretation regarding absolute competence of arbitration is set aside by Article 118 HIR (This article states that courts have jurisdiction over civil cases against defendants domiciled within their jurisdiction, viewing arbitration as a dispute-resolution method. Arbitration is not considered mandatory, as it is not part of the judicial power under the Supreme Court.).[15]

Submitting a request for arbitration decision annulment on grounds beyond Article 70 of the AADR LAW contradicts parties' initial commitment to the arbitration agreement. Such a request for annulment appears to demonstrate parties' non-compliance with the arbitral award.[16] This approach creates legal uncertainty as district courts respond inconsistently to such requests. In Supreme Court Decision Number 03/Arb.Btl/2005 (PT. Comarindo Express Tama Tour and Travel versus Yemen Airways), judges interpreted the phrase "among others" in the General Explanation of AADR LAW as allowing annulment requests on grounds beyond Article 70. The panel deemed Article 70's grounds insufficient to address the fundamental issues.[17]

The attempt to annul an arbitration decision outside Article 70 of the AADR LAW by a party who agreed to the arbitration agreement contradicts the principle of *pacta sunt servanda* in Article 1338 paragraph (1) of the Civil Code. Parties entering into an agreement must adhere to it as law and execute what was agreed upon. [18] This also contravenes the obligation to accept the arbitration decision as per Article 17 paragraph (1) of the AADR LAW. When parties agree to appoint an arbitrator or arbitration panel and the appointment is accepted, an agreement (contract) is established. This agreement obligates the arbitrator or panel to render a decision honestly, fairly, and according to applicable provisions, whereas the disputing parties must accept the decision as final and binding.

Besides filing a petition to annul an arbitration award under Article 70 of the AADR LAW, there are alternative ways of challenging arbitration agreements. Many parties bound by arbitration agreements filed lawsuits in district courts when disputes arose. District courts'

---

[13] Tri Ariprabowo and R Nazriyah, "Pembatalan Putusan Arbitrase Oleh Pengadilan Dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014," *Jurnal Konstitusi* 14, no. 4 (2017): 701–27, https://doi.org/https://doi.org/10.31078/jk1441.

[14] Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia* (Depok: PT. Rajagrafindo Persada, 2021).

[15] Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia*. *Op.Cit*. 33-35.

[16] Heru Sugiyono, Heru Suyanto, and Rosalia Dika Agustanti, "The Law of Arbitration Rules That Are Final and Binding," *Indonesia Law Review* 10, no. 3 (2020): 360–73, https://doi.org/10.15742/ilrev.v10n3.655.

[17] Yeni Widowaty and Fadia Fitriyanti, "Inkonsistensi Putusan Mahkamah Agung Dalam Membatalkan Putusan Arbitrase," *Jurnal Media Hukum* 23, no. 2 (2016): 209–17, https://doi.org/https://doi.org/10.18196/jmh.2016.0081.209-217.

[18] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op.Cit*. 91.

responses to these lawsuits varied. In some cases, district courts claim jurisdiction over disputes between parties bound by arbitration agreements. A notable case is Supreme Court Decision No: 238 PK/PDT/2014, which upheld the Supreme Court Cassation Decision Number 862 K/PDT/2013 (PT. Cipta Televisi Pendidikan Indonesia (Sri Hardiyanti Rukmana et al.) vs. PT. Berkah Karya Bersama). The judges granted the lawsuit despite both parties being bound by an arbitration agreement, as they determined that the lawsuit's substance did not involve a dispute over rights based on the investment agreement that contained the arbitration clause. Thus, the court asserted its authority over adjudicating the case.[19] Similar to annulling an arbitration decision on grounds outside Article 70 of the AADR Law, filing a lawsuit in a district court over a dispute arising from an agreement with an arbitration clause is inconsistent with the parties' initial agreement to choose an arbitration for dispute resolution. Parties are legally obligated to adhere to the agreed-upon arbitration clause based on the principle of *pacta sunt servanda* in Article 1338, paragraph (1) of the Civil Code. Articles 3 and 11 of the AADR Law also regulate the existence of arbitration agreements, which supersede the district court's authority to examine and adjudicate disputes and negate the parties' rights to submit dispute resolutions to the district court. Therefore, parties should not file lawsuits in district courts if they have previously agreed to an arbitration agreement.

The repudiation of arbitration agreements and arbitrator appointment agreements engender legal uncertainty in arbitration implementation in Indonesia. The authors examine this issue due to the apparent ease with which these binding contracts between parties can be disregarded. District courts also demonstrate inconsistencies in respecting arbitration agreements as binding contracts, forming the fundamental basis of the arbitration process, as well as arbitrator appointment agreements as binding contracts constituting the basis for executing arbitration decisions. Consequently, the function of agreements in providing legal certainty and justice for parties fails to materialize in arbitration practices in Indonesia.

Based on a literature review, this article presents both novelty and originality. Previous articles in Indonesian journals have examined the legal consequences of arbitration clauses that give absolute authority to arbitration and supersede district courts in dispute resolution. Examples include "Akibat Pemilihan Forum dalam Kontrak yang Memuat Klausula Arbitrase" by Bambang Sutiyoso,[20] "Analisa Kekuatan Mengikat Klausula Arbitrase dalam Perjanjian Menurut Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase" by Ira Sumaya,[21] "Penyelesaian Sengketa Kompetensi Absolut antara Arbitrase dan Pengadilan" by Cut Memi,[22] and "Kewenangan Absolut Lembaga Arbitrase" by Pujiono.[23] None of these articles have investigated the legal consequences of violations of arbitration agreements or agreements for appointing arbitrators based on contract law principles.

The authors have identified several relevant articles in international journals. These include "Damages for the Breach of an Arbitration Agreement: Is It a Viable Remedy?" by Pablo

[19] Cut Memi, "Penyelesaian Sengketa Kompetensi Absolut Antara Arbitrase Dan Pengadilan," *Jurnal Yudisial* 10, no. 2 (2017): 115–34, https://doi.org/https://doi.org/10.29123/jy.v10i2.142.

[20] Bambang Sutiyoso, "Akibat Pemilihan Forum Dalam Kontrak Yang Memuat Klausa Arbitrase," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 24, no. 1 (2012): 159–74, https://doi.org/10.22146/jmh.16152.

[21] Ira Sumaya, "Analisa Kekuatan Mengikat Klausula Arbitrase Dalam Perjanjian Menurut Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase," *Jurnal Ilmiah Advokasi* 1, no. 2 (2013): 13–28, https://doi.org/https://doi.org/10.36987/jiad.v1i2.451.

[22] Memi, "Penyelesaian Sengketa Kompetensi Absolut Antara Arbitrase Dan Pengadilan."

[23] Pujiyono, "Kewenangan Absolut Lembaga Arbitrase."

Jaroslavsky,[24] "Breach of Arbitration Agreement and Its Costs Consequences" by David Kwok,[25] and "Damages for Breach of An Arbitration Agreement: An Available Remedy under Singapore Law?" by Elan Krishna and Yi Jun Kang.[26] The articles primarily asserted that filing a lawsuit in court breaches the arbitration agreement, enabling the non-breaching party to pursue compensation. They discussed the legal consequences of breaching an arbitration agreement without relying on their analyses of Indonesian contract law principles.

This research analyzes the legal status of arbitration agreements and arbitrator appointment agreements in Indonesia as binding contracts (obligations from contractual agreements) and the legal consequences for breaching them, based on Indonesian obligation law principles. This investigation is crucial because of the potential risk of repudiation of these agreements, given the absence of clear regulations regarding the consequences of breaches. The findings aim to mitigate the obstacles faced by business entities in the arbitration process and the enforcement of arbitral awards in Indonesia. This study aims to contribute to the ongoing discourse on the modernization of Indonesia's arbitration laws to better align with practical requirements. The objective is to facilitate the restoration of the arbitration's position as an efficient and effective alternative dispute resolution mechanism to judicial proceedings for resolving commercial conflicts.

II. Research Problems

The research questions examined in this article are as follows: What is the status of arbitration agreements and arbitrator appointment agreements within the Indonesian legal framework? Do these agreements constitute forms of obligation? What are the legal consequences of breaching these agreements based on the principle of obligation law?

III. Research Methods

This study is a normative juridical investigation examining the internal aspects of positive law addressing practices involving the repudiation of arbitration agreements and arbitrator appointment agreements. The analysis was based on applicable laws and regulations.[27] The authors collected secondary data including primary and secondary legal materials. Primary legal materials comprise the AADR Law as a source of arbitration law, the Indonesian Civil Code as a source of binding and agreement law, and court decisions related to repudiating arbitration agreements and arbitrator appointment agreements with a permanent legal force.[28] Secondary legal materials included books and journal articles on arbitration, agreement laws, and binding laws. The researcher employed statutory and conceptual approaches for data analysis.[29] The

[24] Pablo Jaroslavsky, "Damages for the Breach of an Arbitration Agreement: Is It a Viable Remedy?," *SSRN Electronic Journal*, 2015, https://doi.org/10.2139/ssrn.2676449.

[25] David Kwok, "Breach of Arbitration Agreement and Its Costs Consequences," *Arbitration International* 34, no. 1 (2018): 149–53, https://doi.org/10.1093/arbint/aiy001.

[26] Elan Krishna and Yi Jun Kang, "Damages for Breach of An Arbitration Agreement: An Available Remedy under Singapore Law?," *Singapore Academy of Law Journal* 33, no. 2 (2021): 786–809, https://doi.org/https://search.informit.org/doi/10.3316/informit.195920025216291.

[27] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33, https://doi.org/10.14710/gk.2020.7504.

[28] Ahmad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (2024): 46–58, https://doi.org/https://doi.org/10.31764/jlag.v2i1.21606.

[29] Benuf and Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer."

Kosmik Hukum Vol. 25 No. 2 (2025): 409-427
E-ISSN: 2655-9242 | P-ISSN: 1411-9781
DOI: 10.30595/kosmikhukum.v20i2. 25778

analysis examines positive legal norms on arbitration, binding, and agreements, followed by court decisions in related cases and refers to doctrines to formulate a conclusion.

IV. Result and Discussion

1. The Status of Arbitration Agreements and Arbitrator Appointment Agreements within The Indonesian Legal Framework

Arbitration is a widely used dispute resolution method in international business disputes.[30] In Indonesia's legal system, arbitration is an out-of-court method agreed upon by parties through a written agreement according to Article 1 paragraph (1) of the AADR Law. The process is led by one or more arbitrators (odd in number and forming a panel), resulting in a final, binding decision. Parties appoint arbitrators through written arbitrator appointment agreements. [31]

In the absence of an arbitration agreement, proceedings cannot be initiated. The agreement serves as the fundamental basis for the validity of the arbitration process, constituting an essential prerequisite for parties to submit their disputes to arbitration.[32] An arbitration agreement is a written, explicit, and unambiguous document that fulfills four critical functions: it delineates the procedure for resolving disputes; it establishes the process for selecting arbitrators to adjudicate the dispute and render an award; it precludes district court intervention in dispute resolution from the commencement of proceedings until the issuance of the award; and it establishes a structured sequence of events.[33]

Referring to Article 1 paragraph (3) of the AADR Law, an arbitration agreement can be established before or after a dispute emerges. An agreement made before a dispute is termed a *Pactum de Compromittendo*. It is typically executed in two ways: incorporating the arbitration clause within the primary agreement or drafting it as a separate deed. The arbitration clause generally stipulates arbitration as the dispute resolution method if a dispute arises from the primary agreement's implementation. The formulation is not always detailed, as parties cannot anticipate potential disputes. This clause typically states that future disputes related to the agreement's implementation will be resolved through arbitration. *A Pactum de Compromittendo*, when drafted as a separate deed, can be executed concurrently or subsequently. Through this, parties consent to two separate documents: the primary agreement in the business domain and the arbitration agreement, which references the primary agreement and contains provisions regarding arbitration as the dispute resolution method.[34]

Article 9 of the AADR Law stipulates provisions for arbitration agreements established after a dispute, known as *Acta Compromis*. This agreement is formulated when parties to a business contract encounter a dispute, as the underlying agreement does not specify arbitration for dispute resolution. In practice, *Acte Compromis* is less common than *Pactum de Compromittendo*, due to the difficulty in obtaining mutual agreement to arbitrate after a dispute has occurred.[35]

---

[30] Miftahul Huda, "Arbitrase Komersial Indonesia: Analisis Tentang Inkonsistensi Ketentuan-Ketentuan Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan Asas Party Autonomy Sebagai Dasar Eksistensi Dan Penyelenggaraan Arbitr" (Universitas Indonesia, 2010).

[31] Andika Dwi Yuliardi and Imam Budi Santoso, "Upaya Arbitrase Dalam Penyelesaian Perselisihan Hubungan Industrial Didasarkan Adanya Kesepakatan Para Pihak," *Perspektif Hukum* 22, no. 1 (2022): 139–65, https://doi.org/https://doi.org/10.30649/ph.v22i1.92.

[32] Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia. Op.Cit.* 10.

[33] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan). Op. Cit.* 382.

[34] Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya* (Jakarta: Kencana, 2015). 106-108

[35] Nugroho. 109.

An arbitration agreement constitutes a distinct agreement from the primary agreement, even as a *Pactum de Compromittendo*. An arbitration clause integrated into the primary agreement is, in principle, legally independent. The separability principle is stipulated in Article 10 letter (f) and (h) of the AADR Law, distinguishing the arbitration agreement from the underlying transaction. The arbitration agreement remains valid even if the underlying primary agreement is deemed void.[36] This principle is also recognized in Article 16 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 ("UNCITRAL Model Law") and substantiated in Number 25 of the Explanatory Note by the UNCITRAL Secretariat. An arbitration clause is enforced separately from the provisions of the business agreement. A ruling declaring a business agreement invalid does not invalidate the arbitration clause. The arbitration clause continues to apply to the parties that established it. It constitutes a supplementary agreement regarding arbitration as a means of dispute resolution for future disagreements. Legally, the presence or absence of an arbitration clause does not affect the implementation of the primary agreement. Parties can still fulfill their obligations under the primary agreement, unimpeded by the arbitration clause.[37]

In addition to the arbitration agreement, the arbitration process involves a supplementary agreement for arbitrator appointment, as the process is presided over by an arbitrator or arbitral tribunal appointed by the parties. This aligns with Article 1 paragraph (7) of the AADR Law. The appointment occurs through a civil agreement, where parties designate the arbitrator in writing, and the appointed arbitrator provides written consent. While the AADR Law doesn't explicitly define the arbitrator appointment agreement, it's implicit in Articles 16 and 17. Article 16 states that upon appointment, an arbitrator can accept or reject it in writing within fourteen days. Article 17 indicates that the written appointment and acceptance create a civil agreement between the arbitrator and the appointing party. The arbitrator must adjudicate the dispute honestly and fairly, per applicable provisions. The arbitrator is obligated to issue an award within a specified timeframe. Conversely, the appointing party must accept the award as final and binding as agreed upon.[38]

2. Arbitration Agreement and Arbitrator Appointment Agreement are Obligations Derived from Contractual Agreement

The source of obligation, as delineated in Article 1352 of the Civil Code, is categorized into two types: obligations arising from law and from human actions. The obligation originating from human actions is further subdivided into two categories: the obligation arising from a lawful cause (Article 1353 of the Civil Code) and from an unlawful relationship (Article 1365 of the Civil Code).

An agreement engenders an obligation. It constitutes a mutual consent established between parties. The parties concur to bind themselves to provide something, perform an action, or refrain from a particular action.[39] An agreement represents a legal relationship wherein one

---

[36] Huda, "Arbitrase Komersial Indonesia: Analisis Tentang Inkonsistensi Ketentuan-Ketentuan Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan Asas Party Autonomy Sebagai Dasar Eksistensi Dan Penyelenggaraan Arbitr."

[37] Sumaya, "Analisa Kekuatan Mengikat Klausula Arbitrase Dalam Perjanjian Menurut Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase."

[38] Dimas Noor Ibrahim, "Tanggung Jawab Hukum Arbiter Dan Badan Arbitrase Atas Putusan Arbitrase Yang Diajukan Pembatalan Di Pengadilan," *Jurnal Ilmiah Publika* 10, no. 1 (2022): 136, https://doi.org/https://doi.org/10.33603/.v10i1.7314.

[39] Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 1–20, https://doi.org/https://doi.org/10.35968/jh.v10i1.400.

Kosmik Hukum Vol. 25 No. 2 (2025): 409-427
E-ISSN: 2655-9242 | P-ISSN: 1411-9781
DOI: 10.30595/kosmikhukum.v20i2. 25778

party commits to a specific course, and the other party possesses the right to demand adherence to it.[40]

In an obligation, there are four elements: legal relationship, wealth, parties, and performance. The first element is a legal relationship, wherein the law confers rights upon one party and imposes obligations upon the other. For example, when A promises to sell a car to B and B promises to purchase it, a legal relationship is established. A is obligated to deliver the car and has the right to demand payment, while B is obliged to pay and has the right to demand delivery. The second element is wealth. Historically, obligations were defined by their ability to be valued monetarily. However, this criterion is no longer applicable, as some legal relationships in society cannot be valued monetarily but are still categorized as obligations. Legal relationships can be ascribed legal consequences if society or justice necessitates it. The third element is the parties. An obligation occurs between two or more individuals: the creditor (active party entitled to fulfillment) and the debtor (passive party obliged to fulfill). The final element is achievement. Article 1234 of the Civil Code stipulates that every obligation is to give something, do something, or not do something.[41]

The arbitration agreement constitutes an obligation, conferring rights upon one party that the other must fulfill. Each party can require the other's compliance with the agreement and choose arbitration as a dispute resolution method. The agreement satisfies the element of wealth, despite not being monetarily valued. The district court loses authority to examine a case if parties are bound by an arbitration agreement, ensuring equitable outcomes for those fulfilling their contractual obligations. This legal relationship aligns with principles of justice and global business preferences. The agreement involves a debtor and creditor party, both obligated to choose arbitration for dispute resolution, superseding the district court. Arbitration agreements include performance elements, requiring parties to submit disputes to arbitration and prohibiting district court proceedings. If a party fails to fulfill performance requirements, the law may enforce compliance with judicial assistance.

An arbitrator appointment agreement establishes a legal relationship where one party has rights to be fulfilled by the other. The former expects the latter to render an arbitration award honestly, fairly, and per applicable provisions, while the latter expects the former to accept the award as final and binding. The agreement satisfies wealth elements, despite not being monetarily quantifiable. Legal consequences include the arbitrator or tribunal's inability to resign before rendering an award, and disputing parties must implement it, ensuring justice for those adhering to the process in good faith. The legal relationship aligns with justice principles and global business community expectations. The agreement identifies parties as debtors and creditors. Disputing parties can demand the arbitrator or tribunal render its decision honestly, fairly, and per applicable provisions, while the arbitrator or tribunal can require parties to accept the award as final and binding. The agreement includes performance elements, both to execute and refrain from actions. Disputing parties must accept the arbitral award as final and binding, refraining from efforts outside laws to disobey it. The arbitrator or tribunal must provide an award honestly, fairly, and per applicable provisions, and cannot resign without appointing parties' consent before fulfilling this obligation.

Examined from the perspective of obligation law and Article 1233 of the Civil Code, which states, "An obligation is born by agreement or by law," the arbitration agreement and arbitrator

---

[40] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. 22.

[41] Badrulzaman, *KUHPerdata: Hukum Perikatan Dengan Penjelasan*. *Loc. Cit*.

appointment agreement are obligations arising from an agreement. Their reference bases are the AADR Law and Chapter III of the Civil Code. In an arbitration agreement, parties establish a legal relationship conferring the right and obligation to utilize arbitration for dispute resolution. In the arbitrator appointment agreement, the disputing parties and appointed arbitrator or tribunal establish a legal relationship with reciprocal rights and obligations: Parties have the right to require the arbitrator to render decisions impartially, equitably, and according to applicable provisions, and are obligated to accept the decision as final and binding. The arbitrator or tribunal has the right to require parties to accept the award as final and binding and is obligated to issue the award impartially, equitably, and according to applicable provisions.

3. The Legal Consequences of Breaching Arbitration Agreement and Arbitrator Appointment Agreement Based on the Obligation Law Principles

Based on the preceding chapters, an arbitration agreement is a contractual arrangement to resolve disputes through arbitration. The parties choose arbitration as the preferred dispute resolution method, excluding litigation in district court. It may be executed before or after a dispute arises from a business agreement. This agreement is the foundation for the authority of arbitration in resolving disputes. Without an arbitration agreement, arbitration cannot be implemented.[42] It obligates the parties to utilize arbitration for dispute resolution.

An arbitrator appointment agreement is a formal arrangement between disputing parties and an arbitrator or arbitral tribunal. It establishes the appointment of an arbitrator and their acceptance. The parties commit to appointing arbitrators and agreeing to abide by their award. The arbitrator or tribunal undertakes to render an impartial, equitable award in accordance with applicable provisions. This agreement forms the foundation for the arbitrator's authority to resolve the dispute through a binding award.[43] It establishes a mutual obligation between the arbitrator to render an award and the parties to accept it.

In an obligation (engagement), the law confers rights upon one party and imposes obligations on the other in relationships within society. If a party violates these provisions, the law compels the fulfillment or restoration of the relationship.[44] An obligation exists as long as the debtor is legally bound to perform an action enforceable by the creditor. If necessary, enforcement is executed with the assistance of a judicial authority.[45]

Agreements meeting all requisite conditions attain validity and legal efficacy. A valid arbitration agreement and arbitrator appointment agreement from mutual consent with legal consequences must fulfill the rights and obligations delineated therein. Non-fulfillment by one party may result in enforcement measures to compel execution of agreed terms. The validity of these agreements is contingent upon legal requirements in Article 1320 of the Civil Code,[46] and additional requirements in the AADR Law, namely that they be executed in writing, and for the *Acta Compromis*, be formalized as a notarial deed if parties cannot sign it, as stipulated in Article 1 paragraph (1), Article 1 paragraph (3), Article 9 paragraphs (1) and (2), Article 11, Article 16 paragraph (2), Article 17 paragraph (1), and Article 31 of the AADR Law.

Upon fulfillment of legal requirements for an arbitration agreement, whether as a *Pactum de Compromittendo* or *Acte Compromis*, it becomes legally binding and enforceable due to the

---

42 Agus Gurlaya Kartasasmita, *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia*. *Loc.Cit*.
43 Agus Gurlaya Kartasasmita. *Ibid*.
44 Badrulzaman, *KUHPerdata: Hukum Perikatan Dengan Penjelasan*. *Op. Cit*. 2.
45 Badrulzaman. 1.
46 Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*. *Op. Cit*. 98.

contractual obligation between parties. The legal implication is the establishment of arbitration jurisdiction for dispute resolution, superseding the district court's jurisdiction.[47] The court lacks authority to examine and adjudicate a dispute submitted by a party with an arbitration agreement. The absolute authority of arbitration is stipulated in Article 3 and Article 11 of the AADR Law.

When all conditions of the arbitration appointment agreement are fulfilled, it possesses legal validity. The primary effect is conferring authority upon the arbitrator or arbitral tribunal to examine the dispute and render an award impartially and equitably, according to applicable provisions. Consequently, the disputing parties are obligated to accept the arbitral award as final and binding, as stipulated in Article 17 paragraph (2) of the AADR Law.

The formation of an agreement must adhere to principles and elements established in contract law.[48] The legal implications of the arbitration agreement and arbitrator appointment agreement, as contractual obligations, arise from the principle of *pacta sunt servanda*, as stipulated in Article 1338 paragraph (1) of the Civil Code: "All agreements made in accordance with the law shall apply as law to those who make them." This principle of binding force of contracts obligates parties to fulfill all agreed-upon commitments as if they were law. Consequently, the obligations set forth in the agreement are enforceable.[49]

In accordance with *pacta sunt servanda*, the arbitration agreement obligates parties to use arbitration for dispute resolution. This agreement becomes binding law for the parties and may not be contravened except as permitted by law. Arbitration can be nullified only if parties mutually consent to terminate the established agreement. Unilateral withdrawal by one party without the other's consent cannot invalidate the arbitration agreement. Arbitration agreements confer exclusive jurisdiction for arbitration as the sole method of dispute resolution between the parties.[50]

In accordance with the arbitrator appointment agreement, the parties and appointed arbitrator must adhere to the terms as if statutory law, based on *pacta sunt servanda*. The disputing parties cannot act in bad faith to contravene the arbitral award rendered. Unsuccessful or dissatisfied parties must still comply with the agreement and accept the award as final and binding. *Vice versa*, the appointed arbitrator or tribunal cannot resign before rendering the arbitral award. An arbitrator's resignation may only be executed with the appointing parties' consent.

The principle of *pacta sunt servanda* is fundamental to the consequences of contractual agreements. Often called the principle of legal certainty, it prohibits judicial interference with arbitration agreement contents.[51] This principle applies to all obligations from agreements, including arbitration and arbitration appointment agreements. Courts are not allowed to intervene in these agreements' contents or make decisions that contravene them. The judiciary must respect parties who have fairly entered into arbitration and arbitration appointment agreements.

The principle of *pacta sunt servanda* applies when parties voluntarily enter an arbitration agreement and an arbitrator appointment agreement. This principle is based on consensuality, as stipulated in Article 1320 paragraph (1) of the Civil Code, which requires mutual consent of

---

47 Nugroho. 103.

48 Muhammad Noor, "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak," *Mazahib Jurnal Pemikiran Hukum Islam* 16, no. 1 (2015): 89–96, https://doi.org/https://doi.org/10.21093/mj.v14i1.338.

49 Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op. Cit*. 91.

50 Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*. *Op. Cit*. 159.

51 Noor, "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak."

contracting parties.[52] When parties mutually agree to establish these agreements, they are deemed validly formed and legally binding, thus acquiring the force of law.

In accordance with the principle of freedom of contract, parties are generally at liberty to formulate agreements and determine their contents. This principle affords parties autonomy to establish agreement terms. While parties have considerable latitude in regulating inclusions and exclusions within an agreement, this freedom is not absolute. This concept, referred to as "*partij otonomie*" or "freedom of contract," is codified in Article 1338 of the Civil Code and constrained by Article 1337 of the Civil Code. The latter stipulates that while parties may freely enter into agreements, these must not contravene the law, public order, or moral standards.[53] In arbitration agreements, parties have the discretion to designate arbitration as their preferred method of dispute resolution. In arbitration appointment agreements, parties retain the freedom to nominate arbitrators, and nominated arbitrators maintain the right to accept or decline the appointment. Consequently, the mutual consent in both types of agreements mitigates the likelihood of parties reneging on commitments or failing to adhere to legal obligations in the future.

In accordance with the contract law principle stipulated in Article 1338 paragraph (3) of the Civil Code, arbitration agreements and arbitrator appointment agreements established freely and based on mutual consent must be executed in good faith by the parties. This principle of good faith is not elucidated in detail regarding its meaning and criteria; however, the Kamus Besar Bahasa Indonesia defines good faith as trust, firm belief, good intentions, and will. In the context of contract, good faith represents the parties' attitude in implementing the agreement without violating propriety norms and justice values.[54] Good faith is categorized into two types: subjective and objective. Subjective good faith refers to an individual's honesty or the parties' genuine intentions, while objective good faith pertains to the implementation of an agreement that must adhere to propriety and decency norms.[55]

Therefore, parties entering into arbitration and arbitrator appointment agreements are obligated to execute them in good faith throughout the entire process. When establishing the agreement, parties must intend to adhere to all provisions until termination. In implementing these agreements, parties shall conduct themselves with integrity and comply with all specified provisions. They shall not attempt to evade obligations or negate the other party's rights as delineated in the agreements. Even after the arbitration award, disputing parties are bound to accept it as final and binding, efraining from attempts to invalidate it through unlawful means.

In the event a party to an arbitration agreement waives arbitration and initiates legal proceedings against the other party in district court, this action is considered a default. Similarly, if a party who consented to the arbitrator appointment agreement seeks to nullify the arbitration award for reasons beyond Article 70 of the AADR Law, this conduct is also categorized as a default. As elucidated, the debtor is obligated to fulfill the agreed-upon performance in the obligation from the agreement. In accordance with binding law principles, negligence or intentional failure to execute obligations and fulfill performance is termed default, wherein the debtor or party responsible for performance does not execute its obligations and fails to fulfill the specified performance. Default or breach of contract may manifest in the following circumstances: Failure to perform the obligation entirely; Performance of the obligation inadequately;

---

[52] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op. Cit*. 77.
[53] Syaifuddin. 81-89.
[54] Syaifuddin. 93.
[55] Noor, "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak."

Kosmik Hukum Vol. 25 No. 2 (2025): 409-427
E-ISSN: 2655-9242 | P-ISSN: 1411-9781
DOI: 10.30595/kosmikhukum.v20i2. 25778

Performance of the obligation in an untimely manner; or Performance of actions prohibited by the agreement.[56] Default occurs when the debtor is unable to demonstrate that the default was committed without personal fault or as a result of force majeure. [57]

Legal consequences for breaching contractual obligations are clearly defined. When a debtor fails to fulfill their promise or defaults, several outcomes occur: The debtor is obligated to provide compensation to the creditor or the party entitled to receive the performance.(Article 1243 of the Civil Code); The debtor must accept the repercussions of contract termination, including paying compensation (Article 1267 of the Civil Code); The debtor becomes responsible for any risks transferred from the moment of default (Article 1237 of the Civil Code); If the default case is brought before the district court, the debtor is liable for all associated legal expenses (Article 181 paragraph [1] HIR).[58] The compensation consists of three elements: costs, damages, and interest. "Costs" are financial expenditures that the injured party must incur due to default. "Damages" represent the reduction in creditor's asset value from default. "Interest" is the potential profit the creditor couldn't realize due to default.[59]

Conversely, referring to Articles 1267 and 1266 of the Civil Code, the creditor or party entitled to fulfillment of an obligation may file a law suit in district court against the debtor who fails to perform. Potential legal remedies include: Specific performance of the agreement; execution with compensatory damages; payment of damages; termination of the agreement; or termination with compensatory damages.[60] In contemporary practice, the termination of agreements due to default is frequently executed unilaterally rather than through judicial proceedings, although this remains a subject of debate.[61]

If a party bound by an arbitration agreement initiates litigation in the district court, such action constitutes a legal default and may result in potential legal ramifications, including claims for compensation from affected parties. A party acting in good faith in implementing the arbitration agreement may enforce it against the non-compliant party, claiming compensation for losses incurred due to the breach. Furthermore, the party acting in good faith may seek reimbursement for expenses incurred in addressing the litigation in the district court.

In the event a party in bad faith seeks annulment of an arbitral award on grounds outside Article 70 of the AADR Law, the party in good faith may assert the right to enforce the award based on the arbitration agreement and arbitrator appointment agreement. This assertion may include a claim for compensation for losses incurred due to the denial of the award. The party acting in good faith may also request reimbursement for expenses incurred in addressing the application for annulment in the district court.

It is not solely the parties involved who may be declared in default. Should the arbitrator or arbitral tribunal refuse to engage in the arbitral proceedings or resign from the proceedings

---

[56] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op. Cit*. 338.

[57] Alyani Mahfuzh, Kholis Roisah, and Adya Paramita Paramita Prabandari, "Wanprestasi Dalam Perjanjian Jual Beli Kios (Studi Kasus Putusan Pengadilan Negeri Kupang Nomor 18/PDT.G/2016/PN.KPG)," *Notarius* 14, no. 2 (2021): 681–93, https://doi.org/10.14710/nts.v14i2.43720.

[58] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. 343.

[59] Andreas Andrie Djatmiko, Fury Setyaningrum, and Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia," *Nomos : Jurnal Penelitian Ilmu Hukum* 2, no. 1 (2022): 1–10, https://doi.org/10.56393/nomos.v1i7.350.

[60] Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. 344

[61] Lex Patrimonium, "Pengesampingan Pasal 1266 Kuh Perdata Dalam Pengakhiran Perjanjian Karena Wanprestasi: Studi Putusan-Putusan Pengadilan," *Number 1 Lex Patrimonium* 2, no. 1 (2023), https://lbhpengayoman.unpar.ac.id/sanksi-.

without sufficient justification, resulting in a truncated tribunal, such actions may be deemed a default, potentially leading to the legal consequence of compensatory damages for the aggrieved disputing parties.[62] The criteria for determining insufficient arbitrator resignation are outlined in Article 14 of the UNCITRAL Model Law. Specifically, this occurs when the arbitrator fails to act without a suspension of the arbitral proceedings in accordance with the applicable provisions, resigns without mutual agreement from the parties, or resigns with the consent of only one party.[63]

The provisions regarding default of arbitration agreements and arbitrator appointment agreements and their associated claims above are not explicitly regulated in the AADR Law. There is no provision stipulating that non-performance of these agreements constitutes a form of default. Furthermore, there are no established rules concerning the legal consequences of claiming rights from an aggrieved party for non-performance of these agreements. The AADR Law merely stipulates that the parties' agreement to enter into these agreements is a civil agreement. This has led to the practice of disregarding arbitration agreements and arbitrator appointment agreements. Consequently, it is imperative to clearly regulate the parameters and consequences of default in arbitration agreements and arbitrator appointment agreements in future iterations of the AADR Law. These regulations should specify the circumstances under which a default occurs in these agreements, as well as the specific cases in which such defaults arise. This is necessary to provide a clear delineation of default in these agreements. This regulatory framework is crucial to prevent divergent interpretations in practice, which may create legal loopholes that could be exploited by parties acting in bad faith.

Agreements serve philosophical, juridical, and economic functions.[64] Arbitration is more effective when agreements are properly executed throughout the process. Defining criteria for default and asserting rights within the arbitration and appointment agreements enhance the functionality of both agreements for the parties involved.

The philosophical function of the agreement is to establish justice for parties entering into it and third parties with a legal interest. This function is fundamental and embodies the principle of justice within society's social and economic order. Agreements provide mechanisms to accommodate and regulate legal relationships with equitable rights and obligations.[65] Establishing criteria for default and asserting rights in arbitration agreements and arbitration appointment agreements will ensure justice for involved parties. Each party in both agreements will receive their rightful entitlements.

The juridical function of the agreement is to establish legal certainty for parties entering the agreement and third parties with a legitimate interest.[66] Aspects of legal certainty in the agreement encompass: Legal protection of the agreement's legal subjects (both natural persons and juridical entities) from arbitrary actions of other legal subjects; and, The legal subjects can evaluate the legal consequences of their actions or omissions, engendering legal certainty, which ensures that the agreement can be subject to legal liability for its implementation.[67]

---

62 Rozanna Sternad Fackel, "The Truncated Tribunal Doctrine: What Authority Do Truncated Tribunals Have to Proceed and Can They Render a Valid and Enforceable Award?" (Umea Universitet, 2019), https://www.diva-portal.org/smash/get/diva2:1420621/FULLTEXT01.pdf.

63 United Nations, "UNCITRAL Model Law on International Commercial Arbitration," *United Nations Document A/40/17, Annex I*, 1994, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf.

64 Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. 37.

65 Syaifuddin. 37-47.

66 Syaifuddin. 47.

67 Abdul Rasyid Sidharta and Ahmad Sofyan, *Aspek Hukum Ekonomi Dan Bisnis* (Jakarta: Prenadamedia, 2018). 48-49.

Kosmik Hukum Vol. 25 No. 2 (2025): 409-427
E-ISSN: 2655-9242 | P-ISSN: 1411-9781
DOI: 10.30595/kosmikhukum.v20i2. 25778

When an agreement is established, parties must have legal certainty regarding two aspects to ensure they can be compelled to execute the agreement and be held accountable for its legal consequences. This requires state involvement in regulating agreement implementation and determining sanctions for default.[68] Establishing parameters for default and claiming rights in arbitration agreements and arbitration appointment agreements will provide legal certainty for disputing parties, wherein the party acting in good faith will receive protection from the other party's breach of contract. The defaulting party may be held legally liable through performance of the agreement, payment of damages, and reimbursement of costs incurred due to the default.

The subsequent function of the agreement is the economic function. This function realizes the business purposes and objectives of establishing the agreement. It provides accommodation, facilities, and protection for sharing legal rights and obligations related to the ownership or utilization of goods or services of economic value, enabling parties to become wealthier legally and equitably.[69] The economic function of an agreement is to exchange interests of business actors by ensuring mutually agreed-upon expectations can be fulfilled, providing assurance that compensation can be demanded in the event of a breach, facilitating business transaction plans, mitigating adverse possibilities, determining standards of implementation and responsibility, allocating business risks appropriately, and providing means of dispute resolution.[70] Establishing criteria for default and claiming rights in arbitration agreements will ensure compensation to the party acting in good faith if the other party defaults. Allocation of business risks can be conducted appropriately, and business transactions can proceed smoothly because parties are protected from adverse possibilities.

In the formulation of regulations concerning the criteria for default and the assertion of rights within arbitration agreements and arbitrator appointment agreements, it is imperative to adhere to the principle of compensation as delineated in Article 1243 of the Civil Code. This article mandates that a party who breaches an agreement and thereby inflicts harm upon the other party is obligated to provide compensation commensurate with the damage incurred.[71] The aggrieved party is entitled to seek compensation for the breach of the agreement's terms, thereby upholding the principle of justice.[72]

In agreements, contractual justice stems from utilitarianism. It emphasizes ensuring individuals obtain benefits equitably. Beneficial justice is influenced by human autonomy to select and commit to obligations in agreements. Contractual agreements are legally permissible and must be established voluntarily and appropriately by parties.[73] To be deemed equitable, an agreement must fulfill all these principles.[74]

The regulation of default criteria and claims of rights in arbitration agreements and arbitrator appointment agreements will enhance fairness by incorporating principles of contract justice, including freedom of contract, consensualism, *pacta sunt servanda*, good faith, and compensation, realizing principles of legal certainty, justice, and benefit.[75] Commercial entities

---

68 Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op. Cit*. 48.

69 Syaifuddin. 56.

70 Syaifuddin. 51-52.

71 Dina Fazriah, "Tanggung Jawab Atas Terjadinya Wanprestasi Yang Dilakukan Oleh Debitur Pada Saat Pelaksanaan Perjanjian," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 2 (2023): 1–25, https://doi.org/10.11111/dassollen.xxxxxxx.

72 Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. 106-107.

73 R. H. Wiwoho, *Keadilan Berkontrak* (Jakarta: Penaku, 2017). 26-27.

74 Wiwoho. 28-29.

75 Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. *Op. Cit*. 40.

typically engage in contractual relationships based on explicit statements of other parties, as agreements delineate clear rights and obligations. This regulation will provide enhanced assurance to commercial entities that parties bound by these agreements will fulfill contractual obligations, given potential legal consequences for non-compliance. Consequently, the business environment may operate more efficiently, as transactions between commercial entities are less likely to be impeded by prolonged dispute resolution processes.

The authors' proposition aligns with the concept of compensatory damages for breach of an arbitration agreement, as discussed in some articles from international journals. According to Jaroslavsky, when a party to an arbitration agreement initiates litigation in court, whether due to a belief that the agreement is null and void, does not encompass the dispute, or for strategic reasons (delaying arbitration or obtaining a favorable decision), the aggrieved party should be entitled to claim damages before the arbitral tribunal. Such damages may be awarded as monetary compensation or injunctive relief against an award rendered in parallel ongoing litigation.[76]

David Kwok concurs with this perspective. Referencing two cases adjudicated by the Supreme Court of Western Australia (KNM Process Systems SDN BHD v. Mission Newenergy Ltd in 2014 and Pipeline Services WA Pty Ltd v. ATCO Gas Australia Pty Ltd in 2014), the court mandated that the party in breach of the arbitration agreement pay damages. Imposing financial penalties for actions that contravene an existing arbitration agreement by initiating litigation is deemed efficacious. This approach enables the aggrieved party to receive compensation through damages, while the court conveys a clear message that the arbitration agreement must be respected like any other contractual provision.[77] Similarly, Khrisna and Yin assert that if one party violates the arbitration agreement and pursues dispute resolution through the courts, one remedy available to the aggrieved party is to petition Singapore courts for an award of damages to cover incurred costs.[78]

The provision of compensation is intrinsically linked to the perception of justice by each involved party. The concept of compensation that requires regulation and implementation in the context of the breach of arbitration agreements and arbitration appointment agreements aligns with Aristotle's notion of commutative justice. Commutative justice is a framework that governs equitable interactions among individuals (between one citizen and another). This principle mandates that individuals must be able to provide, respect, and ensure what is rightfully due to others. Furthermore, the principle of commutative justice addresses the restoration of relationships that have been damaged, resulting in disharmony and imbalance (unfairness), due to the infringement of certain parties' rights by others. In the business context, commutative justice is also referred to or applied as exchange justice. In essence, commutative justice pertains to the fair exchange between the parties involved. [79]

In accordance with the principle of commutative justice, parties entering into an arbitration agreement are obligated to adhere to their commitment to resolve any disputes through arbitration. Should one party breach this agreement by seeking resolution through the court system, that party is obliged to provide equitable compensation to the party that has acted in

[76] Jaroslavsky, "Damages for the Breach of an Arbitration Agreement: Is It a Viable Remedy?"
[77] Kwok, "Breach of Arbitration Agreement and Its Costs Consequences."
[78] Krishna and Kang, "Damages for Breach of An Arbitration Agreement: An Available Remedy under Singapore Law?"
[79] Maya Yogiana Pramudita, "Prinsip Keadilan Dalam Pemberian Ganti Rugi Pada Perjanjian Baku Pengangkutan Barang," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 2, no. 01 (2016): 87–116, https://doi.org/https://doi.org/10.32699/syariati.v2i01.1123.

good faith by adhering to the arbitration agreement. This compensation serves as a just recompense for the losses incurred due to the initiation of legal proceedings in court.

The same principles apply to arbitration appointment agreements. According to the principle of commutative justice, the parties responsible for appointing the arbitrator (or arbitral tribunal) are obligated to adhere to the arbitral award issued. Conversely, the appointed arbitrator (or arbitral tribunal) is obligated to render a decision in the award based on applicable law or justice. Should a party seek annulment of an arbitral award on grounds not consistent with Article 70 of the AADR Law, it is required to compensate the party that has acted in good faith in enforcing the arbitral award and has incurred damages due to the non-enforcement of the award.

The concept of regulating default criteria and claims of rights in arbitration agreements, as proposed here, aligns with the theory of development law by Mochtar Kusuma-atmadja. According to this theory, law should not only maintain public order but guide change and development in an orderly manner, serving as a tool for development. Development legal theory advocates for national law advancement and legal reform, emphasizing the creation of laws based on urgent needs while remaining neutral to culture, religion, and social systems. Unlike sociological jurisprudence where judges act as change agents, in development law theory, legislators fulfill this role through the legislative process. The theory holds importance in ensuring orderly development progress, as society continuously undergoes changes indicative of development.[80]

The breaches of arbitration agreements and arbitrator appointment agreements in Indonesia highlight the need to advance arbitration law. The disregard for the sanctity of these agreements has hindered arbitration from serving as an efficient and effective means of dispute resolution. Furthermore, the integrity of arbitration as an extrajudicial mechanism for resolving business disputes has been compromised. The reform of arbitration law should involve the incorporation of provisions concerning the criteria for default and the assertion of rights within arbitration agreements and arbitrator appointment agreements, either through new arbitration regulations or amendments to the AADR Law. Such legal enhancements would serve as instruments for guiding business entities to adhere in good faith to the stipulated arbitration agreements and arbitrator appointment agreements. Consequently, the economic development agenda could proceed orderly, as business dispute resolution through arbitration would function more effectively.

In order to promote legal compliance, society grants the state the authority to impose sanctions, thereby ensuring the continuity of the law and fulfilling its intended purpose.[81] Clarifying the concept of legal sanctions for breaches of arbitration agreements and arbitrator appointment agreements within legislation will enhance the legal compliance of disputing business entities that opt for arbitration. Sanctions are legal repercussions for individuals who contravene legal norms. They function as a mechanism of coercion or assurance to ensure adherence to legal norms by all individuals. The incorporation of sanctions within the regulation of arbitration agreements and arbitrator appointment agreements is essential to achieving the state objectives outlined in the rules or norms of arbitration law. This approach ensures that arbitration serves as an effective and efficient alternative for dispute resolution.[82]

---

[80] M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdi Pada Pembangunan?," *Undang: Jurnal Hukum* 1, no. 2 (2018): 363–92, https://doi.org/10.22437/ujh.1.2.363-392.

[81] Suci Prasastiningsih et al., "Kewenangan Negara Untuk Memberikan Sanksi Guna Menumbuhkan Ketaatan Hukum," *Lex LATA* 2, no. 1 (2022): 392–408, https://doi.org/10.28946/lexl.v2i1.626.

[82] Ahmad Mathar, "Saksi Dalam Peraturan Perundang Undangan," *'Aainul Haq :Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 45–60, https://doi.org/https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/602.

Conclusion

Arbitration agreements and arbitrator appointment agreements constitute obligations from contractual arrangements, encompassing four elements: legal relations, assets, parties, and performance. The arbitration agreement is established on mutual consent, requiring both parties to resolve disputes through arbitration. A breach by initiating litigation in district court constitutes default. The non-breaching party may claim enforcement of the agreement and compensation for losses incurred from the lawsuit.

The arbitrator appointment agreement is similarly established through mutual consent between disputing parties and the appointed arbitrator or tribunal. The arbitrator must render an award honestly, fairly, and per applicable provisions, while parties must accept the decision as final and binding. A petition for annulment outside Article 70 of the AADR Law also constitutes default. The party acting in good faith may claim enforcement and compensation for losses due to the annulment request.

To address the issue of non-compliance with arbitration agreements and arbitrator appointment agreements, it is imperative to implement legal reforms by introducing regulations concerning the criteria for default and claims of rights within the new or revised AADR Law. This legal advancement is grounded in the principles of contractual fairness within the law of obligations, encompassing the principles of freedom of contract, consensualism, *pacta sunt servanda*, good faith, and compensation. The legal ramifications, particularly in the form of compensatory sanctions, are conceptualized based on commutative justice to enhance the adherence of parties to the arbitration and arbitrator appointment agreements. It is anticipated that the fundamental purpose of arbitration as an effective, efficient, fair, and legally certain alternative for business dispute resolution will be realized in the future.

References

Agus Gurlaya Kartasasmita. *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia*. Depok: PT. Rajagrafindo Persada, 2021.

Ariprabowo, Tri, and R Nazriyah. "Pembatalan Putusan Arbitrase Oleh Pengadilan Dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014." *Jurnal Konstitusi* 14, no. 4 (2017): 701–27. https://doi.org/https://doi.org/10.31078/jk1441.

Aulia, M. Zulfa. "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdi Pada Pembangunan?" *Undang: Jurnal Hukum* 1, no. 2 (2018): 363–92. https://doi.org/10.22437/ujh.1.2.363-392.

Badrulzaman, Mariam Darus. *KUHPerdata: Hukum Perikatan Dengan Penjelasan*. Bandung: Alumni, 2011.

Baharuddin, Muhammad Yasril Ananta. "Peran Hukum Arbitrase Dalam Penyelesaian Sengketa Bisnis Nasional." *Jurnal Risalah Kenotariatan* 5, no. 2 (2024): 310–20. https://doi.org/https://doi.org/10.29303/risalahkenotariatan.v5i2.209.

Benuf, Kornelius, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33. https://doi.org/10.14710/gk.2020.7504.

Djatmiko, Andreas Andrie, Fury Setyaningrum, and Rifana Zainudin. "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia." *Nomos : Jurnal Penelitian Ilmu Hukum* 2, no. 1 (2022): 1–10. https://doi.org/10.56393/nomos.v1i7.350.

Fackel, Rozanna Sternad. "The Truncated Tribunal Doctrine: What Authority Do Truncated Tribunals Have to Proceed and Can They Render a Valid and Enforceable Award?" Umea Universitet, 2019. https://www.diva-portal.org/smash/get/diva2:1420621/FULLTEXT01.pdf.

Fazriah, Dina. "Tanggung Jawab Atas Terjadinya Wanprestasi Yang Dilakukan Oleh Debitur Pada Saat Pelaksanaan Perjanjian." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 2 (2023): 1–25. https://doi.org/10.11111/dassollen.xxxxxxx.

Huda, Miftahul. "Arbitrase Komersial Indonesia: Analisis Tentang Inkonsistensi Ketentuan-Ketentuan Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan Asas Party Autonomy Sebagai Dasar Eksistensi Dan Penyelenggaraan Arbitr." Universitas Indonesia, 2010.

Ibrahim, Dimas Noor. "Tanggung Jawab Hukum Arbiter Dan Badan Arbitrase Atas Putusan Arbitrase Yang Diajukan Pembatalan Di Pengadilan." *Jurnal Ilmiah Publika* 10, no. 1 (2022): 136. https://doi.org/https://doi.org/10.33603/.v10i1.7314.

Jaroslavsky, Pablo. "Damages for the Breach of an Arbitration Agreement: Is It a Viable Remedy?" *SSRN Electronic Journal*, 2015. https://doi.org/10.2139/ssrn.2676449.

Kartasasmita, Agus Gurlaya. *Kepastian Hukum Dalam Proses Arbitrase Sebagai Forum Penyelesaian Sengketa Bisnis Di Indonesia*. Depok: PT. Rajagrafindo Persada, 2021.

Kholid, Muhamad. "Kewenangan Pengadilan Negeri Dan Lembaga Arbitrase Dalam Penyelesaian Sengketa Bisnis." *'Adliya* 9, no. 1 (2015): 167–84. https://doi.org/https://doi.org/10.15575/adliya.v9i1.6162.

Krishna, Elan, and Yi Jun Kang. "Damages for Breach of An Arbitration Agreement: An Available Remedy under Singapore Law?" *Singapore Academy of Law Journal* 33, no. 2 (2021): 786–809. https://doi.org/https://search.informit.org/doi/10.3316/informit.195920025216291.

Kwok, David. "Breach of Arbitration Agreement and Its Costs Consequences." *Arbitration International* 34, no. 1 (2018): 149–53. https://doi.org/10.1093/arbint/aiy001.

Mahfuzh, Alyani, Kholis Roisah, and Adya Paramita Paramita Prabandari. "Wanprestasi Dalam Perjanjian Jual Beli Kios (Studi Kasus Putusan Pengadilan Negeri Kupang Nomor 18/PDT.G/2016/PN.KPG)." *Notarius* 14, no. 2 (2021): 681–93. https://doi.org/10.14710/nts.v14i2.43720.

Mathar, Ahmad. "Saksi Dalam Peraturan Perundang Undangan." *'Aainul Haq :Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 45–60. https://doi.org/https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/602.

Memi, Cut. "Penyelesaian Sengketa Kompetensi Absolut Antara Arbitrase Dan Pengadilan." *Jurnal Yudisial* 10, no. 2 (2017): 115–34. https://doi.org/https://doi.org/10.29123/jy.v10i2.142.

Miru, Ahmadi. *Hukum Kontrak Dan Perancangan Kontrak*. Depok: Rajawali Press, 2018.

Nations, United. "UNCITRAL Model Law on International Commercial Arbitration." *United Nations Document A/40/17, Annex I*, 1994. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf.

Noor, Muhammad. "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak." *Mazahib Jurnal Pemikiran Hukum Islam* 16, no. 1 (2015): 89–96. https://doi.org/https://doi.org/10.21093/mj.v14i1.338.

Nugroho, Susanti Adi. *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*. Jakarta: Kencana, 2015.

Patrimonium, Lex. "Pengesampingan Pasal 1266 Kuh Perdata Dalam Pengakhiran Perjanjian Karena Wanprestasi: Studi Putusan-Putusan Pengadilan." *Number 1 Lex Patrimonium* 2, no. 1 (2023). https://lbhpengayoman.unpar.ac.id/sanksi-.

Pramudita, Maya Yogiana. "Prinsip Keadilan Dalam Pemberian Ganti Rugi Pada Perjanjian Baku Pengangkutan Barang." *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 2, no. 01 (2016): 87–116. https://doi.org/https://doi.org/10.32699/syariati.v2i01.1123.

Prasastiningsih, Suci, Elisa Kurniasari, Hakim Harismawan Mubarak, and Emmy Latifah. "Kewenangan Negara Untuk Memberikan Sanksi Guna Menumbuhkan Ketaatan Hukum." *Lex LATA* 2, no. 1 (2022): 392–408. https://doi.org/10.28946/lexl.v2i1.626.

Pujiyono, Pujiyono. "Kewenangan Absolut Lembaga Arbitrase." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 2 (2018): 243–60. https://doi.org/10.33331/rechtsvinding.v7i2.241.

Rosidi, Ahmad, M Zainuddin, and Ismi Arifiana. "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)." *Journal Law and Government* 2, no. 1 (2024): 46–58. https://doi.org/https://doi.org/10.31764/jlag.v2i1.21606.

Satrio, Wilopo Cahyo Figur, Sukirno Sukirno, and Adya Paramita Prabandari. "Prinsip Timbulnya Perikatan Dalam Perjanjian Jual Beli Berbasis Syariah." *Notarius* 13, no. 1 (2020): 294–311. https://doi.org/10.14710/nts.v13i1.30390.

Sidharta, Abdul Rasyid, and Ahmad Sofyan. *Aspek Hukum Ekonomi Dan Bisnis*. Jakarta: Prenadamedia, 2018.

Sinaga, Niru Anita. "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 1–20. https://doi.org/https://doi.org/10.35968/jh.v10i1.400.

Sugiyono, Heru, Heru Suyanto, and Rosalia Dika Agustanti. "The Law of Arbitration Rules That Are Final and Binding." *Indonesia Law Review* 10, no. 3 (2020): 360–73. https://doi.org/10.15742/ilrev.v10n3.655.

Sumaya, Ira. "Analisa Kekuatan Mengikat Klausula Arbitrase Dalam Perjanjian Menurut Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase." *Jurnal Ilmiah Advokasi* 1, no. 2 (2013): 13–28. https://doi.org/https://doi.org/10.36987/jiad.v1i2.451.

Sutiyoso, Bambang. "Akibat Pemilihan Forum Dalam Kontrak Yang Memuat Klausa Arbitrase." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 24, no. 1 (2012): 159–74. https://doi.org/10.22146/jmh.16152.

Syaifuddin, Muhammad. *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. Bandung: Mandar Maju, 2012.

Widowaty, Yeni, and Fadia Fitriyanti. "Inkonsistensi Putusan Mahkamah Agung Dalam Membatalkan Putusan Arbitrase." *Jurnal Media Hukum* 23, no. 2 (2016): 209–17. https://doi.org/https://doi.org/10.18196/jmh.2016.0081.209-217.

Wiwoho, R. H. *Keadilan Berkontrak*. Jakarta: Penaku, 2017.

Yuliardi, Andika Dwi, and Imam Budi Santoso. "Upaya Arbitrase Dalam Penyelesaian Perselisihan Hubungan Industrial Didasarkan Adanya Kesepakatan Para Pihak." *Perspektif Hukum* 22, no. 1 (2022): 139–65. https://doi.org/https://doi.org/10.30649/ph.v22i1.92.

Zaidah, Yusna. *Penyelesaian Sengketa Melalui Peradilan Dan Arbitrase Syariah Di Indonesia*. Yogyakarta: Aswaja Pressindo, 2015.