Indonesia Law Review

Volume 12 | Number 2 Article 4

8-30-2022

THE NON-APPLICATIONS OF GOOD FAITH, TRUST, AND CONFIDENTIALITY IN ARBITRATION: A STUDY OF THE ANNULMENT CASES IN INDONESIA

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Indonesia Law Review (2022) 2: 1 - 17
ISSN: 2088-8430 | e-ISSN: 2356-2129

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Article Info

Received : 25 March 2022 | Received in revised form : 5 May 2022 | Accepted : 13 June 2022

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Abstract

Arbitration is a dispute resolution method that is chosen by the parties, mainly, to avoid weaknesses in resolving disputes through the general court. It has three principles, that strongly connect to one another, to hold: good faith, trust, and confidentiality. These principles determine whether a dispute resolution through arbitration will be successful. However, in many - if not all - cases, many disputing parties still do not maintain these principles. This reality can be observed in annulment cases. Although the annulment mechanism renders protection to the parties from the errors made by intention, this mechanism opens an opportunity for these people just to pause the execution of the arbitral awards, makes their cases open to the public, and even puts the final-and-binding status of the awards in question. On the other hand, there are still a few cases showing that such errors, made by the tribunals or the winning parties, occurred. From these cases, this paper is to question whether the existence of annulment is the key factor of the non-applications of these three principles or the tool to prevent the non-applications. First, a descriptive comprehension of these principles is elaborated. Afterward, the annulment mechanism, provided by Article 70 of Law 30 of 1999 on Arbitration and Alternative Dispute Resolutions, is comprehended to see its nature and practical implications. In the end, some annulment cases are dissected to answer the research question.

Keywords*: annulment, confidentiality, good faith, trust.*

Abstrak

Arbitrase adalah sebuah metode penyelesaian sengketa yang dipilih oleh para pebisnis untuk menghindari kekurangan-kekurangan penyelesaian sengketa melalui Peradilan Umum. Metode ini memiliki tiga asas yang berhubungan satu sama lain dan harus dipegang: iktikad baik, kepercayaan, dan kerahasiaan. Ketiga asas ini menjadi faktor penentu apakah sebuah penyelesaian sengketa melalui arbitrase akan berhasil dengan baik. Meskipun demikian, dalam banyak - jika tidak semua - kasus, para pihak yang bersengketa tidak memegang ketiga asas ini. Realitas demikian dapat diobservasi dalam kasus-kasus pembatalan. Walaupun mekanisme pembatalan menyediakan perlindungan bagi para pihak dari kecurangan-kecurangan, mekanisme ini membuka sebuah peluang bagi para pihak tersebut untuk menunda eksekusi putusan arbitrase atas kasus mereka, membuat persengketaan mereka menjadi terbuka untuk umum, dan bahkan menjadikan status putusan arbitrase yang serta merta (final) dan mengikat (binding) sebagai sebuah status yang tidak sesuai realitas. Di sisi lain, tetap terdapat beberapa kasus, tetapi tidak signifikan jumlahnya, yang menunjukkan adanya kekeliruan-kekeliruan yang dilakukan secara sengaja oleh para pihak lawan dan/atau majelis arbitrase. Dari kasus-kasus ini, tulisan ini berusaha menanyakan apakah eksistensi pembatalan merupakan faktor penentu dari tidak diterapkannya ketiga asas tadi atau justru mencegahnya. Pertama, pendalaman secara deskriptif mengenai ketiga prinsip tersebut. Selanjutnya, mekanisme pembatalan yang diatur dalam Pasal 70 Undang-Undang No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, didalami untuk melihat pengaturannya dan implikasi-implikasi praktisnya. Di akhir, beberapa kasus pembatalan akan dibedah sebagai tahap akhir untuk menjawab rumusan masalah.

Kata Kunci*: iktikad baik, kerahasiaan, kepercayaan, pembatalan.*

DOI : https://doi.org/10.15742/ilrev.v12n2.1

I. INTRODUCTION

Arbitration has been known as one of the dispute resolution mechanisms, specifically for commercial disputes, that required parties to keep the dispute private and secretive. Arbitration has a nature of flexibility in which it permits parties to organize the procedures based on their objectives and convenience. Arbitral hearings also uphold the confidentiality of the process, contrary to trial proceedings which usually are open to the public.[1] In essence, arbitration applies the principle of good faith, trust, and confidentiality in its process. The problem occurs when parties decide to ignore these principles, resulting in the annulment of many arbitration cases.

Arbitration, etymologically, is rooted in the Latin "*arbitrare*" referring to the power to settle a case by wisdom.[2] Subekti defines arbitration as the dispute settlement based on an agreement (arbitration clause) that the disputing parties will comply with the awards settling their disputes and made by an arbitrator or an arbitration tribunal they have selected.[3] This settlement method has some crucial advantages: (1) confidentiality; (2) faster process with relatively cheaper as well as transparent costs; and (3) final-and-binding award.[4]

In arbitration, there are important basic principles to be upheld which are good faith, trust, and confidentiality. In the context of trust, both arbitrators and disputing parties must keep this principle intact. Not only are arbitrators responsible to the parties, but also to the arbitration process in a term of leading the process with integrity and fairness. On the other hand, the parties have to demonstrate that they fully trust the tribunal they have selected and show that they are trustworthy by having good faith in resolving their disputes. With respect to maintaining confidentiality, both arbitrators and disputing parties also play crucial roles. Pursuant to Article 14 (2) of *Rules and Procedures of Arbitration* of BANI of 2022, circulating information about the case to non-relevant persons is prohibited for both of them.[5] The principles of confidentiality implies in the previously stated article show that the principles of trust and confidentiality are determined by whether the disputing parties have good faith. This paper needs to refer to BANI rules since it is an arbitration institution that assists to provide arbitrary dispute settlement.[6] There is also a growing number of people choosing BANI as their dispute settlement forum since its establishment.[7]

However, these principles are not always maintained consistently. Pursuant to Article 70 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions ("Law 30/1999"), there are three reasons that can be used as a basis to submit the annulment of an arbitration case; which are falsifying the document, hiding necessary

[1] American Bar Association, "Benefits of Arbitration for Commercial Disputes," accessed 28 June 2022, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwizrMumodD4AhUoFbcAHV3rAn8QFnoECBAQAw&url=https%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fadministrative%2Fdispute_resolution%2Fmaterials%2Faba-dr-arbitration-guide.pdf&usg=AOvVaw0z4-Zu5KYVdvbfHzsZJiEc.

[2] R. Subekti, *Arbitrase Perdagangan* (Bandung: Binacipta, 1992), 7.

[3] Subekti, *Arbitrase Perdagangan,* 7.

[4] Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), 12. Also, look at the explanatory part of Law 30/1999 regarding Arbitration and Alternative Dispute Resolution.

[5] Article 14 section (2) of *Rules and Procedure of Arbitration* of BANI of 2022.

[6] Anik Entriani, "Arbitrase dalam Sistem Hukum Indonesia," *An-Nisbah 3* (April 2017), pp. 286. https://doi.org/10.21274/an.2017.3.2.277-293.

[7] Badan Arbitrase Nasional Indonesia, "Data Kasus yang Ditangani oleh BANI dan Permohonan Pembatalan sampai 2020" [Cases Handled by BANI until the end of 2020]. Based on internal database owned by BANI.

document, and/or resorting to trickery. These reasons are concrete examples of the non-applications of the principles of good faith, trust, and confidentiality resulting in the annulment of the case.[8] On the other hand, there are annulment cases that have been rejected by the court. From the arbitration body's perspective, this may also indicate that there is a non-application of the principles done by the parties submitting the annulment. One thing that will happen once those failed annulments are submitted is that the submitted disputes become disclosed but, at the same time, accuse the other parties and even the arbitral tribunal that they have not maintained principles.

This paper has a research question that is whether the existence of annulment is the key factor of the non-applications of these principles or the tool to prevent the non-applications by the parties disputing. Most writers or researchers writing about the annulment do not discuss it critically by also considering its correlations with the non-applications of the three principles. This paper will directly contrast the principles to the annulment cases to define whether the annulment is a result of a non-application or it is a manifestation of a non-application of the principles. Firstly, this paper will elaborate on the principles of good faith, trust, and confidentiality. Afterward, the concept of the annulment will be described to clarify the basis of this paper. In the end, by observing some annulment cases, this paper will explain that the annulment of the cases is not a tool to prevent the non-applications of the principles of good faith, trust, and confidentiality. Instead, it will find that the annulment happens based on the non-applications of these principles. This paper will discuss the relevant laws and doctrines related to the principles of good faith, trust, and confidentiality, as well as the concept of annulment in Indonesia through normative research methods by studying primary and secondary legal documents.

II. UNDERSTANDING THE PRINCIPLES

A. Good Faith

In essence, in the context of arbitration, good faith is an intention to resolve a dispute based on these three grounds: (1) truth; (2) benefit; and (3) justice. Several implications arise directly from these grounds. First, the purpose/intent of submitting a case to an arbitration institution is to settle disputes, not merely to gain claims as much as possible. Second, this purpose implies the way the arbitration process is done; the disputing parties should not cherry-pick facts and arguments that are in their favor. To Priyatna, arbitration is a dispute settlement that bases its resolution on evidence provided by the parties, but with honesty and good faith.[9] The importance of good faith in arbitration is also emphasized in the 'Guidelines on Standards of Practice in International Arbitration' published by ICCA which provides a survey of professional standards, ethical rules, and civility guidelines under a variety of jurisdictions. The guidelines explained arbitral process will work effectively and fulfill its purpose according to participants' acts of good faith, treating each other with respect, courtesy, and civility, as well as adhering to the standards of integrity, honesty, and candor.[10]

[8] Article 70 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions.
[9] H. Priyatna Abdurrasyid, *Penyelesaian Sengketa Komersial Nasional dan Internasional) di luar Pengadilan*, Article, September 1996, 1.
[10] Audrey Sheppard, "The Lawyer's Duty to Arbitrate in Good Faith and with Civility," *Arbitration International* 37 (2021): 544. https://doi.org/10.1093/arbint/aiab021.

Based on Black's Law Dictionary, good faith is a mental state that consists of four elements. The first element is honesty in intent.[11] This means that the demonstrated intention is sincere to resolve the disputes. The second element is loyalty to duties or obligations.[12] The third element is compliance with the commercial standards in transactions.[13] Fourth, a person with good faith does not cheat on the system or seek personal gains, but does have the intention for the sake of collective goods.[14]

The next question is: why is good faith necessary in arbitration? The UNCITRAL Model Law on International Commercial Arbitration explains the uniform rules of a mediation process that aims to ensure the predictability and the certainty of the process. One of the principles is good faith according to Article 2A (1) of the Model Law. It is explained that the interpretation of this Model Law needs to promote uniformity and observe the existence of good faith as the international origin and general principles.[15] This proves that the principle of good faith has global importance in the practice of arbitration, as well as in its practice in Indonesia.

In Indonesia, the term "*iktikad baik*" (good faith) is also normatively mentioned 3 (three) times in Law 30/1999. According to these several provisions, good faith must be the basis of both making an arbitration clause and in the arbitration process.

1. The basis or foundation of dispute resolution outside the court through the alternative dispute resolutions – one of which is arbitration – is good faith. (Article 6 paragraph (1)). In this context, good faith is discussed at the stage that arbitration is being selected as a method of dispute resolution or the creation of an arbitration clause.
2. The arbitration clause is immediately binding on the parties to be implemented in good faith (Article 6 paragraph (7)). In this context, good faith is discussed in the stages of the arbitration process carried out by the disputing parties.
3. The arbitral tribunal that carries out all actions taken during the trial process to carry out its functions, based on good faith, cannot be subject to any legal responsibility (Article 21). In this context, good faith is discussed at the stage of the arbitration process carried out by arbitral tribunals.

Beside its normative importance, good faith, based on our observation, has a practical significance. The application of good faith by both parties makes the dispute resolution process the nuance of honesty, not adversarial. From the side of arbitral tribunals, this nuance will make it easier for the tribunals to grant fair awards. The disputing parties not having good faith will complicate the process by hiding or manipulating facts.

B. Trust

There are two important elements of trust: (1) willingness; and (2) expectations.[16] A person is willing to ask another person to do something due to rationalizations and careful considerations that provide a sense of "I will let you do this job because I

[11] Anita Dewi, *Asas Itikad Baik dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase* (Bandung: Alumni, 2013), 95.
[12] Dewi, *Asas Itikad Baik dalam Penyelesaian…,* 95.
[13] Dewi, *Asas Itikad Baik dalam Penyelesaian…,* 95.
[14] Dewi, *Asas Itikad Baik dalam Penyelesaian…,* 95.
[15] Article 2A of UNICTRAL Model Law on International Commercial Arbitration.
[16] Peter O. Mülbert and Alexander Sajnovits, "The Element of Trust in Financial Markets Law," *German Law Journal* 18 (March 2019): 4-5. https://doi.org/10.1017/S2071832200021854.

trust you will be able to do this". In parallel, this willingness implies the existence of an expectation or an end that is resulted from the activities carried out by the trusted person. With this construction, relationships based on trust are relationships of fulfilling rights and responsibilities to each other or a give-and-take activity.

In respect of willingness, rationalizations and considerations are based on: (1) the existence of abilities/skills that can be entrusted to solve a problem or more; and (2) the existence of integrity or morality in a narrow sense in solving that problem.[17] These two influence one another. A person will find it difficult to trust the other person having ability but lacks honesty and often commits fraud. Likewise, that person will also find it difficult to trust the other person that is honest but not able to solve the problem.

Meanwhile, with respect to expectation, it is the goal to which the will is directed. The form of expectation in arbitration is, normatively, the disputes being resolved on the basis of truth and justice. From the perspective of the disputing parties, this expectation, as well as willingness, does not only arise due to a factor commonly referred to as "relational trust" (trust based on the quality of the arbitrator). However, another aspect, which can also generate trust, is the concept of "procedural justice" (trust based on formal proceedings in arbitration). A study reveals the importance of fair settlement procedures to public trust in resolving disputes in court.[18] In essence, the community will still be satisfied with the results, even if they lose, if the court procedures they go through are carried out fairly and objectively.[19]

In arbitration, the disputing parties have the freedom to choose which arbitrator to sit in the tribunal (personal level) pursuant to art. 9(3) and the explanatory part of Law 30/1999. Based on the article, the disputing parties have the freedom to choose the arbitrators based on integrity, honesty, expertise, professionalism, and neutrality. In this context, the trust concept that becomes the basis is relational trust. Arbitrators who are considered problematic in terms of ability and/or integrity will certainly not be chosen.[20] In fact, an arbitrator chosen by the applicant party also needs to seek approval from the respondent party.[21] In the other words, the arbitrators chosen are actually the choice of both parties.

Besides, this trust is also concretized from the perspective of the arbitration institution. The body absolutely tends to make sure that it is trustworthy for disputing parties. These are some of the mechanisms to do that.

1. A strict process to be arbitrators of the body.[22] This strictness relatively exists in various law enforcement institutions, such as judges of the general court. The distinguishing factor is that the arbitration institution has an interest, like a company, to be chosen by the public in resolving disputes. One of the legit reasons is that its source of funding does come from disputing parties wanting to resolve their disputes through arbitration.

[17] Kyle J. Thomas, "Rationalizing Delinquency: Understanding the Person-situation Interaction through Item Response Theory," *Journal of Research in Crime and Delinquency* 56 (2019): 5-17. https://doi.org/10.1177/0022427818789752.

[18] Tom R. Tyler, *Psychology and the Design of Legal Institutions* (Nijmegen: Wolf Legal Publishers, 2007), 22.

[19] P. Colin Bolger and Glenn D. Walters, "The relationship between police procedural justice, police legitimacy, and people's willingness to cooperate with law enforcement: A meta-analysis," *Journal of Criminal Justice* (2019): 95. https://doi.org/10.1016/j.jcrimjus.2019.01.001.

[20] Diego M. Papayannis, "Independence, impartiality and neutrality in legal adjudication," *Revus* 28 (2016): 5-23. https://doi.org/10.4000/revus.3546.

[21] Article 11 of *Peraturan dan Prosedur Arbitrase Nasional Indonesia Tahun 2022.*

[22] *Ibid.,* Art. 10.

2. The mechanism to give sanctions to arbitrators does not maintain the principle of trust.[23] As background, one of the factors that influence trust in dispute resolution institutions is how there is a possibility of bribery happening in between the process. To overcome this issue, the parties will choose the most credible body to resolve disputes objectively, not institutions without integrity. To date, there have been no cases of corruption or bribery involving BANI's arbitrators resulting in the parties trusting BANI as their dispute resolution.
3. The right of denial (*hak ingkar*) is based on Arts. 22-26 of Law 30/1999 and Art. 12 of the BANI Indonesia Arbitration Rules and Procedures of 2022. One example is that after the parties determine arbitrators that will resolve their dispute, they are prohibited from meeting personally with the parties. If this is found, one of the parties can file a right of denial which will be assessed by the body to replace those arbitrators breaking that rule.

In practice, maintaining trust is crucial before, during, and after the arbitration process is carried out. Before the process begins, the basis of the arbitration clause has to be trusted. Otherwise, the dispute resolution process through arbitration becomes ineffective as both parties do not trust one another.-

The absence of the guarantee requires the existence of a trust that must be based on careful rationalizations. For example, John Gabarro of Harvard Business School suggests that the person will look at the track record of the other person he will trust, both in terms of ability and integrity.[24] At the same time, the comparison process - comparing that other person with another person as an additional option - will also take place to make sure his choice is right. In the other words, the relationship has to be mutualism, not parasitism (one loss, one gain) or commensalism (one neutral, one gain).

The reason why trust has always to be carried out is that in a legal process, there have been sacrifices from each party to another. If distrust arises, the quality of the legal process can be disrupted or even stopped. Distrust can arise due to the failure or imperfection occurring in the legal process. If an arbitrator does not comply with the code and ethics of arbitration, it will cause distrust. Thus, it will lead to the disruption of the arbitration process.

C. Confidentiality

We found that there are four elements of confidentiality: information; that information affects the interests of the parties; it contains interpersonal aspects in the form of trust in keeping the information confidential, and confidentiality is not always confidential as long as there is a context in which the interests of others will be disturbed if it is not disclosed. These elements of confidentiality were gathered from the explanation in the General Data Protection Regulation (GDPR) in which more than 120 countries are already exposed to international privacy laws for data protection to ensure the data security for their citizens. The disclosure of data or information that is confidential should follow the global privacy principles: notice—is to advise the parties to protect their personal information; choice and consent—to provide parties with choices and consent to the use, storage, management, and collection of

[23] Article 10 of *Code of Ethics and Code of Conduct for Arbitrators of the Indonesian National Arbitration Board.*

[24] Sabrina C. Salam, *Foster Trust through Competence and Integrity,* in Edwin A Locke, *The Blackwell Handbook of Principles of Organizational Behavior* (New Jersey: Blackwell Publishing, 2017).

personal information; access and participation—to ensure that the information from the parties is accessed by within the right security protocol; integrity and security—to ensure the information is secured from unauthorized access, and enforcement—to ensure the platform using the information is under regulation.[25]

In the context of confidentiality in arbitration, Reuben explains that confidentiality in arbitration is natural and the parties should already safeguard the sensitive information throughout the process.[26] This confidentiality of the information is limited in terms of its scope and generally recognized according to Article 25(a) UNCITRAL Rules, Article 21(3) ICC, and Article 19(4) of the LCIA. Only information that affects the interests or reputation of disputing parties can enter the universe of information that is being discussed. The consideration of whether or not a piece of information is confidential is determined by different parties in different jurisdictions. In England, there is only an implicit duty of confidentiality by requiring parties to cover all documents disclosed or generated in the arbitration process, including documents that contain trade secrets or market commercial sensitive information. While in Australia, the High Court of Australia determines confidentiality only in respect of documents under the order of the tribunal. But in other jurisdictions, there is no clear regulation to determine whether a piece of information is confidential or not and it relies upon the agreement between the parties to keep the documentation of arbitration confidential.[27]

Confidentiality contains an interpersonal aspect. For example, the disputing parties trust the other party – in this case, arbitral tribunals – to maintain the confidentiality of the information. The principle of confidentiality is regulated under Article 30 of LCIA Arbitration Rules in which confidentiality should be carried out in a well-defined manner.[28] This international regulation is adopted under Indonesian law through Article 1 section (7) of Law 30/1999 in which there is a selection before choosing an arbitrator as an implication of the confidentiality principle.[29] According to Emmanuel Gaillard and John Savage, one of the four arbitrators' obligations, to maintain that confidence, is that they must maintain the confidentiality of all matters relating to the arbitration cases they are settling.[30]

Last but not least, confidentiality is also contextual and can be open but very limited. In general, confidential information should be disclosed whenever the interests of other parties are compromised when the information is not disclosed. However, notifying such information must be based on careful rationalizations. First, the information will not be circulated to irrelevant parties. Second, the notification is done for a specific purpose, such as solving the cases.

Confidentiality in arbitration is contained in Article 27 of the law.[31] Pursuant to

[25] Thales, "Beyond GDPR: Data Protection Around The World," accessed 28 June 2022, https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/magazine/beyond-gdpr-data-protection-around-world.
[26] Richard C. Reuben. "Confidentiality in Arbitration: Beyond the Myth," *Kansas Law Review Vol. 54* (2005-2006): 1280.
[27] Simon Crookenden QC, "Who Should Decide Arbitration Confidentiality Issues?" *Arbitration International* 25 (December 2019): 605. https://doi.org/10.1093/arbitration/25.4.603.
[28] Article 30 of LCIA Rules.
[29] Article 1 section (7) of Law No. 30 of 1999.
[30] Emmanuel Gailard and John Savage, *Fouchard, Gailard, Goldman on International Commercial Arbitration* (The Hague: Kluwer Law International, 1999), 609-613.
[31] Pursuant to Article 27 of Law No. 30 of 1999, all of the process in dispute inspection by the arbitrators is done closely.

this article, all arbitration trials by an arbitrator or an arbitral tribunal, are closed and not opened to the public. These closed trials are different from the trial procedure in the general court that is open to the public. This article reflects the UNCITRAL Model Law in Article 34.5 which recognizes the principle of confidentiality by requiring the consent of both disputing parties to make the arbitration be made public.

In contrast to the provision in Law Number 48/2009 on Judicial Power in which it is stated that court decisions are only valid and have legal force if they are pronounced in a trial open to the public;[32] there is no such provision in Law 30/1999. This contradiction is further explained in the explanation part of Article 27 of the 30/1999 Law which stated that although a closed trial contradicts the usual process of civil law procedure, it is justified to emphasize confidentiality in the arbitration process as a dispute resolution.[33] Furthermore, in the Explanation Part of the law, confidentiality is one of the advantages of arbitration over other institutions. This assumes that there is a general understanding in arbitration procedures that confidentiality is a procedural entity that must be maintained in the entire implementation of dispute resolution through arbitration.

The normative basis for confidentiality is also found in the internal regulations for the arbitrators – in this case, the regulations issued by BANI. Pursuant to Article 14 paragraph (2) (Confidentiality Section) of the BANI Indonesia Arbitration Rules and Procedures of 2022:

All trials are closed to the public, and all matters relating to the appointment of arbitrators, including documents, reports/records of trials, witness testimonies, and decisions, must be kept confidential between the parties, the arbitrators, and BANI, except by laws and regulations it (that confidentiality) is not required or agreed upon by all disputing parties.

The article emphasized that there is a general understanding of confidentiality as an advantage of the arbitration process. This is also in line with Article 6 of the BANI Code of Ethics and Guidelines for Arbitrators' Conduct, in which it is stated in several paragraphs that: (1) the arbitrators are obliged to maintain confidentiality on all matters relating to the case, the course of the arbitration process, the results of the deliberation of the arbitral tribunals, and/or the awards, before and after the awards are read to the disputing parties; (2) the arbitrators are prohibited from discussing the cases they are settling outside the court proceedings; (3) the arbitrators are prohibited from using confidential information obtained during the arbitration process for their personal interests or the interests of others.

The importance of confidentiality can be observed in practice. First, it is to maintain the reputation of the concerned parties. Besides, from the side of arbitral tribunals, the confidentiality guarantee helps them settle the disputes.

Normally, parties are apt to settle their disputes in a format not open to the public. Rosan Perkasa Roeslani, the former Chairman of the Indonesian Chamber of Commerce and Industry (*Kadin*), provides testimony that such a format protects companies' reputations.[34] As written by Margarot Jacoby in Huffpost, not only does a lawsuit cost a company a lot of money, regardless it has been dismissed by the court,

[32] Article 13 section (1) of Law No. 48 of 2009. Also, look at Art. 52 section (1) that the courts have to make their decisions accessible to the public.
[33] Explanation of Article 27 of Law No. 30 of 1999.
[34] Badan Arbitrase Nasional Indonesia, *The Role of BANI in the Development of Arbitration* (Jakarta: BANI, 2020), 68.

but it also makes customers hesitant to do business with that company.[35] The reason is that the news spread cannot be filtered by the company; thus, customers play safe to stay out of trouble. In the other words, reputation becomes one of the main business assets responsible for sustained financial outcomes.[36]

Meanwhile, arbitral tribunals also have an interest in the existence of this principle. They need as much data as possible to be able to resolve disputes appropriately and fairly. Lack of and/or defects in information will affect the precision of the judgment they will make on cases they are resolving. One of the most significant methods is that they must provide assurances to the disputing parties that the information will not be circulated to irrelevant parties. This assurance is found in the arbitrator's code of ethics, where arbitrators are prohibited from discussing cases they are handling outside the trial.

III. THE ANNULMENT: A CAUSE OR A REMEDY FOR THE NON-APPLICATIONS OF THE PRINCIPLES?

1. The Concept of Annulment in Indonesia

An arbitral award is an ad-hoc arbitration forum decision on an arbitration process according to the contract or agreements of the final settlement submitted by the parties to the arbitration institution chosen. In Indonesia, there are two general arbitral awards which are the national award taken or issued by the state and the international award issued by a foreign country.[37] This award can be set aside or proposed for an annulment. There is no difference between the annulment procedure and setting aside arbitral awards in Indonesia. Generally, Indonesia does not have any jurisdiction to set aside foreign arbitral awards. But to set aside a national award, the procedure is the same as the concept of annulment according to Article 70 of Law No. 30/1999.

In global practice, the concept of annulment is known universally since it uses almost uniform grounds to challenge an arbitral award, leading to the annulment of the award. UNCITRAL Model Law set four grounds for an annulment: invalidity of the arbitration agreement; irregular composition of the arbitration tribunal; violation of due process; and decision beyond the scope of the submission to the tribunal.[38] Article 52 of the ICSID Convention also sets grounds to annul an arbitral award: the improper constitution of the Tribunal; manifest excess of powers by the Tribunal; corruption on the part of a Tribunal member; serious departure from a fundamental rule of procedure; and failure to state reasons.[39] Therefore, a universal annulment of an arbitral award relies on the integrity of both the arbitration institution as the Tribunal and the disputing parties to uphold the general principle of arbitration.

In Indonesia, arbitration as dispute resolution is much more preferred in

[35] Margarot Jacoby, "How Employment Lawsuits Can Ruin Your Small Business," accessed February 18, 2022, https://www.huffpost.com/entry/how-employment-lawsuits-c_b_7737362.

[36] Peter W. Roberts and Grahame R Dowling, "Corporate Reputation and Sustained Superior Financial Performance," *Strategic Management Journal* 23 (September 2002): 1077.

[37] Gunawan Widjaja and Ahmad Yani, *Hukum Arbitrase,* (Jakarta: PT Raja Grafindo Persada, 2003), 11-14.

[38] Vladimir Pavic, "Annulment of Arbitral Awards in International Commercial Arbitration," *Investment and Commercial Arbitration – Similarities and Divergences* (Netherlands: Eleven International Publishing, 2010), 135-136.

[39] Laura Zinnerman and Kabir Duggal, "Grounds of Annulment in ICSID Awards," accessed 28 June 2022, https://jusmundi.com/en/document/wiki/en-grounds-of-annulment-in-icsid-awards.

accordance with the Financial Services Authority Regulation No. 61/POJK.07/2020 and Circular Letter No. 15/SEOJK.07/2021 in regards to alternative dispute settlement institutions for the financial services sector. The regulation encourages the use of arbitration to solve a dispute in the financial sector. There are several mechanisms and grounds before using arbitration to solve a dispute. The use of arbitration can only be granted if it is agreed upon by the disputing parties in writing.[40] The appointment of arbitrators must fulfill certain conditions: have the ability to act under the law; be at least 35 years old; do not have any personal relationship with the disputing parties; do not have any financial or other interest in the arbitration award, and have 15 years of experience and knowledge in the area of the disputed matter.[41] Article 54 of Law 30/1999 also explains the requirements of an arbitration award. An arbitration award will be enforceable if the award fulfilled the conditions according to Article 1320 of the Civil Code regarding the validity of a contract. The default rule of arbitration is also explained in Article 8 of the law which stated that the disputing parties must agree that the dispute is to be settled through arbitration and if a dispute arises, there has to be a notification that the dispute is to be submitted to arbitration. The process of arbitration should be entirely closed and there are no local courts that can intervene in the arbitration proceedings. There is no right for the parties to challenge the award but parties can request the revocation to annul or set aside the award according to Article 70 of Law 30/1999. The petition to revoke must be filed in writing within 30 days of the registration of an arbitral award to the clerk of the respective district court. However, in regards to an appeal, the disputing parties can appeal to the Supreme Court of the Republic of Indonesia, as a party to the arbitral proceeding.

In the context of Indonesia's jurisdiction, pursuant to Article 70 of Law 30/1999, falsifying and hiding documents necessary for resolving the disputes and resorting to trickery are the reasons to annul an arbitral award.[42] These reasons are further demonstrated in the Putusan MA No. 220/B/Pdt.Sus-Arbt/2016 with the disputing parties PT Asuransi Purna Artanugraha as the Applicant; BANI, Salamander Energy (North Sumatra Limited); and PT Lekom Maras as the Defendant. In this case, Defendant was found to falsify and hide documents that are important for the decision-making in the agreement of both parties. The Applicant had just found out about this after the arbitration award had been issued. The court then conducted further research to prove this claim by considering how the Defendant's party had been hiding this document throughout the arbitration process. In this regard, MA in the Putusan MA 220 justifies the claim resulting in the annulment of the case based on Article 70 of Law 30/1999.

Based on the previous case, these three reasons focus more on the process or formal aspect instead of the substance errors or substantial aspect; although the aspect of substantial error could significantly influence the result of an annulment case. However, there is another perspective that does not limit the reasons for annulment only to these strict reasons. In the general explanation of the law, the word used to define the annulment reasons is "inter alia" which means that substance errors can also be reasons to annul an arbitral award.[43] Although, based on points 176 to 178 of

[40] Article 2 paragraph 1 and article 4 paragraph 11 of Law No. 30 of 1999.
[41] Article 12 of Law No. 30 of 1999.
[42] Article 12 of Law No. 30 of 1999.
[43] Ilhami Ginang Pratidina, "Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase dalam Pasal 70 UU No. 30/1999," *Jurnal Yuridika* 29, no. 3 (September-Desember 2014): 324. https://doi.org/10.20473/ydk.v29i3.374.

Annex I of Law Number 12 of 2011 on Legislation Process, elucidation of law is only to clarify the body part of the law; thus, if there is a contradiction between those two, the body part of the law is the valid one.[44] This principle is known as a limiting principle which only recognized the body part of the law as the basic legal standing.

In the context of this different perception, most annulment cases have also rejected annulment submissions not using the reasons mentioned in Article 70. One of the case is in the Putusan Pengadilan Jakarta Selatan No.270/Pdt.P/2009/Pn.Jkt.Sel between PT Cipta Kridatama as the Applicant against BANI and Bulk Trading, SA, as the Defendant. In this case, the court granted the annulment of the arbitration award by using Article 54 paragraph (1) of Law 30/1999 which explained an arbitrary award that does not attach the arbitrators' address, and Article 57 regarding the arbitration award that exceeds the time limit of 30 days after the examination of the case has been closed.

There are some legal consequences of this mechanism. If an annulment submission is granted, the arbitral award becomes null and void. But his consequences contradict Article 60 of Law 30/1999 clearly states that arbitral awards are final and binding. However, when this article encounters Article 70 of Law 30/1999, the more suitable status of arbitral awards is binding but not final. This is the common practice of the arbitration process in Indonesia to use Article 70 as a mechanism of annulment. Therefore, the status of binding but not final is legitimate based on normal legal practice. Although not many annulment submissions have been granted, some cases, such as *CETT v. YA*, show that such an oxymoron of arbitral award status can occur.[45] In fact, there is no maximum amount of time the submission takes until the final decision (cassation and re-review) is read. There are cases, some of which will be dissected later, that take more than two years and even three years.

Then, once the annulment procedure is in process, the dispute is no longer confidential but open for the public to access. Pursuant to Article 13 of Law 48/2009, every case including annulment cases has to be open to the public when they are being processed through the general court. Instead, the previous section of this paper has mentioned the importance of confidentiality to parties in resolving their disputes. This characteristic of arbitration is one of the main reasons that they choose arbitration over the other conventional settlement. However, by using the mechanism, there will be no dispute-related information that is confidential to the public.

2. The Problems in Most Cases: Questioning the Intention of the Annulment

An annulment seems to be becoming a trend. Many - if not all - cases have got into the annulment submission to the District Court. According to the data managed by BANI, until 2020, there were 137 annulment submissions.[46] However, not more than 15 (fifteen) applications were granted by the Supreme Court. It is interesting to note that not many submissions are able to convince the courts that either the winning parties or the arbitral tribunals have not maintained the principles. In this reality, there is a problem of intention in many cases why they submitted the annulment with risking most advantages of using arbitration as their dispute resolution. Kartasasmita explains that there are cases that indicate that the submitting parties used this

[44] Section 176-178 of Annex I of Law No. 12 of 2011.
[45] Putusan Pengadilan Negeri Jakarta Selatan No. 254/Pdt.P/2004/PN.Jat.Sel, 6 Januari 2005.
[46] Based on an internal database owned by BANI.

mechanism to postpone the execution or even to get away from their responsibilities.[47] This section observes cases that have been rejected at the end, but it does not get into their details. The rationalization behind the selection of the cases is by classifying the cases not using Article 70 of Law 30/1999 as the reason for an annulment or just filing for an annulment based on unconvincing circumstances.

The first case is *HK v. KBS* which takes three years and four months until the final decision. It is a construction agreement which later HK files its request for arbitration through BANI. The tribunal denies HK's claims fully.[48] Not accepting the award, HK submits the annulment mechanism to the district court. In a nutshell, HK argues that the tribunal has falsely assessed the facts provided to make an unfair and unjust award. Responding to this submission, the Serang District Court rejects it by considering that HK's reasons are out of the reasons limited by Article 70 of Law 30/1999.[49] Besides, all allegations being addressed to BS and the tribunal are not proven convincingly. This decision is also upheld by the Indonesian Supreme Court.[50]

Another construction case, *PPK v. BR JO.BA*, which takes a year has been decided with almost the same consideration but in a different scenario. BR JO.BA's request for arbitration through BANI is granted partially.[51] Afterward, PKK submits the annulment to the District Court by arguing that there is a hidden necessary document to make the tribunal in deviation in assessing the facts and making the award. However, both the district court and the supreme court rejected the submission fully because it is not supported by strong reasons and evidence.[52] Moreover, both courts reason that the arguments used in the submission are more or less the same as in the arbitration process.

Both the courts also reject the annulment submitted by CIP in *PI v. CIP*. It is a case related to the pharmacy industry. Due to the allegation of default, PI files its request for arbitration through BANI, and the tribunal grants the request partially.[53] Going to the South Jakarta district court, CIP submits the annulment on the basis of reasons out of the reasons mentioned in Article 70; CIP argues that the tribunal has made an insufficient judgment.[54] Both the district court and the supreme court rejected this reasoning.[55] The arbitral award that has been decided on 23 May 2012 gets its final and binding (*inkracht van gewijsde*) status on 5 April 2013 because of this annulment process.

The next case is *MM v. BPE*. Due to the allegation of default, MM files a request for arbitration, and the tribunal grants it partially. However, BPE does not accept the award and then submit the annulment to the district court on the basis outside the reasons mentioned in Article 70. In essence, BPE argues that there is a fallacy in the award. Both the district court and the supreme court rejected the submission because they reason that the tribunal has made the right award. This process takes 3 years to reach the end.

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[47] Agus Gurlaya Kartasasmita, *Kepastian Hukum dalam Proses Arbitrase* (Depok: Rajawali Press, 2021), 33.
[48] Putusan Arbitrase BANI No. 442/2012.
[49] Putusan PN Serang 18/Pdt.G/2013 PN.Srg on 11 June 2013.
[50] Putusan Mahkamah Agung No. 33 PK/2016.
[51] Putusan Arbitrase BANI No. 516/2013.
[52] Putusan PN Tegal Number 08/Pdt.G/2014/PN.Tegal on 28 May 2014 and Putusan MA No.530 B/Pdt. Sus-Arbt/2014.
[53] Putusan Arbitrase BANI No. 415/VII/ARB-BANI/2011 on 28 May 2012.
[54] Putusan PN Jaksel No. 424/Pdt.G/2012/PN.Jkt.Sel on 2 October 2012.
[55] *Ibid* and Putusan MA No. 893 K/Pdt.Sus/2012 on 5 April 2013.

There are also cases in which the district court grants the submissions but the supreme court denies them. The first example is *BMI v. SMG*. BMI files a request for arbitration by arguing that SMG has defaulted. The tribunal grants its request partially.[56] Then, SMG attempts to annul the award on the basis that there is a necessary document that is hidden by BMI. The District Court grants this submission.[57] However, BANI brings this decision to the Supreme Court to review. The Supreme Court decides that the South Jakarta District Court has made a wrong decision because to justify that there is a necessary document that is hidden, this claim has to be proven previously by the final and binding (*inkracht van gewijsde*) decision.[58] Thus, the award still stands but it takes 1 year and 8 months.

The last case to elaborate on is *NK v. TF*. NK files a request for arbitration to claim a certain amount of money as a result of the drowned steel bar. The tribunal grants it partially. However, TF does not accept the award on the basis of the necessary documents that have been hidden and trickery done by NK and the tribunal. Besides, TF also argues that the tribunal has made a false assessment of the facts and evidence provided. This submission is granted by the district court but later denied by the supreme court because the latter court reasons that the basis to annul arbitral awards cannot be just a claim but has to be decided by the general court. In the other words, the basis of the submission is not convincing. Besides, the Supreme Court further explains that the District Court should have not gotten into the substantial aspect of the case that has been settled before by the tribunal. It is the tribunal's absolute authority to decide on the material aspect.

Some of the cases are briefly described to show that most cases have been rejected for almost the same reasons. They are either using the reasons outside Article 70 or not justifying and proving their arguments convincingly. When settling cases through the conventional mechanism or the general court, both parties are aware that their disputes are going to be open to the public and there will be an appellate court as well as the supreme court; thus, once the district court has made a decision, this decision is not final and binding. This reality shows that, in essence, an arbitral award is final and binding if this particular award is issued by a district court—which still has a higher court above them; however, the decision is binding but not final because the party can still appeal to the Supreme Court that has higher jurisdiction than the district court.

Differently, when any disputing parties choose arbitration to resolve their disputes, the awareness is way different. Both parties are aware that they do not want their disputes to be open to the public, they want their disputes settled by people who are experts and professionals in the fields, and they want the decisions on their disputes to be final and binding. However, these realities do not happen. The parties who adamantly submit for the annulment are ready to lose all these advantages of arbitration for the awards are not in their favor. The question arises is why they choose arbitration in the first place.

By its origin, the annulment is a review mechanism. Almost the same as the other review mechanisms, it aims to protect any parties from being eluded in the process of arbitration. However, in the context of arbitration, the existence of an annulment creates an oxymoron in which it turns an arbitral award to be not final.

[56] Putusan Arbitrase BANI No. 378/I/ARB-BANI/2011 on 20 September 2011.
[57] Putusan PN Jaksel No. 564/Pdt.G/2011/PN.Jkt.Sel.
[58] Putusan MA Banding No. 293 K/Pdt.Sus/2012.

Even, instead of being a remedy for the non-application of the principles, the amount of annulment cases that have been granted indicates that the annulment causes the non-applications of the principles. The annulment decision results in the arbitral award not being final while, in essence, it should be final and binding. The parties submitting the annulment may use this opportunity as a way to pause the execution of the awards, at least in the jurisdiction of Indonesia based on the cases studied before. Instead of being the best alternative resolution to settle business disputes, the mechanism has caused contradictions leading to the ineffectiveness of the decision and even made arbitration not different from the conventional settlement.

Moreover, in almost every case settled at BANI, it leads to the annulment mechanism. Not only has this trend affected the relationship between the tribunals and the disputing parties, but it has also affected the relationship between the disputing parties. The most obvious implication is the postponed execution of the arbitral awards. Normally, it takes between 90 days (3 months) and 180 days (6 months) to settle a case through arbitration in BANI.[59] For parties, time is priceless. The faster they can get certainty from the dispute settlement process the faster they can fulfill their responsibilities to their workers and even run their business. On the other side, the parties submitting the annulment can get much more time not to execute the awards they are responsible for. Besides this implication, they have to accept that their cases are open to the public. Instead, this is not something that they wanted in the first place for the sake of protecting their reputation.

V. CONCLUSION

Arbitration has three crucial principles to hold: good faith, trust, and confidentiality. These principles strongly relate to the advantages of using arbitration as a dispute resolution mechanism. Every party choosing arbitration should be aware of the final-and-binding status of arbitral awards, the efficiency as well as the effectiveness and confidentiality of the process. However, these principles are not consistently maintained. One of the concrete and accurate ways to see this reality is through annulment cases. Through this paper, it can be concluded that, in many cases, the annulment potentially becomes the cause of the non-application of the principles. The parties submitting the annulment do not have convincing reasonings and even just use reasons out of the reasons mentioned in Article 70. It can be concluded that there is an exhaustive use of Article 70 to propose an annulment of an arbitral award, resulting in the ineffectiveness of the award that is supposed to be final and binding. Instead of ensuring the application of the three principles or upholding the general principles of arbitration, the existence of annulment through Article 70 hampers the essence of arbitration to be final and binding. Thus, the existence of annulment in the arbitration process should be questioned.

[59] BANI Arbitration Centre, *Arbitration - A Preferred Mechanism for Business Disputes* (Jakarta: BANI, 2017) in Agus Gurlaya Kartasasmita, *Kepastian Hukum dalam Proses Arbitrase* (Depok: Rajawali Press, 2021), 30.

BIBLIOGRAPHY

A. Books

Abdurrasyid, Priyatna. *Arbitrase & Alternatif Penyelesaian Sengketa Suatu Pengantar*. Jakarta: Fikahari Aneska, 2002.

Adi, Susanti. *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*. Jakarta: Kencana, 2017.

Badan Arbitrase Nasional Indonesia. *Kode Etik dan Pedoman Tingkah Laku Arbiter*.

----------. *Peraturan dan Prosedur Arbitrase Badan Arbitrase Nasional Indonesia Tahun 2021*.

----------. *The Role of BANI in the Development of Arbitration.* Jakarta: BANI, 2020.

Dewi, Anita. *Asas Itikad Baik dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase*. Bandung: Penerbit Alumni, 2013.

Kartasasmita, Agus Gurlaya. *Kepastian Hukum dalam Proses Arbitrase.* Depok: Rajawali Press, 2021.

Khoidin, M. *Hukum Arbitrase Bidang Perdata*. Yogyakarta: Aswaja Pressindo, 2003.

Oxford Learners Dictionary.

Pavic, Vladimir. *Investment and Commercial Arbitration—Similarities and Divergences*. Netherlands: Eleven International Publishing, 2010.

Margona, Suyud. *ADR & Arbitrase Proses Pelembagaan dan Aspek Hukum.* Bogor: Ghalia Indonesia, 2004.

Rahardjo, In Satjipto. *Ilmu Hukum.* Bandung: PT. Citra Aditya Bakti, 2014.

B. Journals

Bolger, P. Colin and Glenn D. Walters. "The relationship between police procedural justice, police legitimacy, and people's willingness to cooperate with law enforcement: A meta-analysis." *Journal of Criminal Justice* 60 (January 2019). https://doi.org/10.1016/j.jcrimjus.2019.01.001.

Gailard, Emmanuel and John Savage. *Fouchard, Gailard, Goldman on International Commercial Arbitration*. The Hague: Kluwer Law International, 1999.

Husseyn, M., dan A. Supriyani Kardono. *Hukum dan Lembaga Arbitrase di Indonesia*. Jakarta: Proyek Pengembangan Hukum Ekonomi dan Penyempurnaan Sistem Pengadaan, Kantor Menteri Negara Koordinator Bidang Ekonomi, Keuangan dan Pengawasan Pembangunan, 1995.

Mulbert, Peter O. and Alexander Sajnovits. "The Element of Trust in Financial Markets Law." *German Law Journal* 18, no. 1 (March 2018). https://doi.org/10.1017/S2071832200021854.

Papayannis, Diego M. "Independence, impartiality and neutrality in legal adjudication." *Revus* 28 (2016). https://doi.org/10.4000/revus.3546.

Pratidina, Ilhami Ginang. "Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase dalam Pasal 70 UU No. 30/1999." *Jurnal Yuridika* 29, no. 3 (September-Desember 2014).

QC, Simon Crookenden. "Who Should Decide Arbitration Confidentiality Issues?" *Arbitration International* 25 (December 2019). https://doi.org/10.1093/arbitration/25.4.603

Reuben, Richard C. "Confidentiality in Arbitration: Beyond the Myth." *Kansas Law Review* 54 (2005-2006).

Roberts, Peter W. and Grahame R Dowling. "Corporate Reputation and Sustained Superior Financial Performance." *Strategic Management Journal* 23 (September 2002).

C. Law and Regulations

Kitab Undang-Undang Hukum Perdata *[Burgerlijk Wetboek]*, diterjemahkan oleh R. Subekti dan R. Tjitrosudibio, cet. 41. Jakarta: Balai Pustaka, 2014.

Law No. 12 of 2011 on Legislation Making.

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions.

Law No. 30 of 2000 on Trade Secret.

Putusan Arbitrase BANI No. 378/I/ARB-BANI/2011.

Putusan Arbitrase BANI No. 415/VII/ARB-BANI/2011.

Putusan Arbitrase BANI No. 442/2012.

Putusan Arbitrase BANI No. 516/2013.

Putusan MA Banding No. 293 K/Pdt.Sus/2012.

Putusan MA No. 893 K/Pdt.Sus/2012.

Putusan MA No.530 B/Pdt.Sus-Arbt/2014.

Putusan Mahkamah Agung No. 33 PK/2016.

Putusan Pengadilan Negeri Jakarta Selatan No. 254/Pdt.P/2004/PN.Jat.Sel.

Putusan PN Jakbar 444/Pdt.Sus.Arbit/2021/PN Jkt.Brt.

Putusan PN Jakpus 327/Pdt.G/Arbitrase/2018/PN.Jkt.Pst.

Putusan PN Jakpus 350/Pdt.ARB/2021/PN Jkt.Pst.

Putusan PN Jaksel No. 424/Pdt.G/2012/PN.Jkt.Sel.

Putusan PN Jaksel No. 564/Pdt.G/2011/PN.Jkt.Sel.

Putusan PN Serang 18/Pdt.G/2013 PN.Srg.

Putusan PN Tegal Number 08/Pdt.G/2014/PN.Tegal.

The London Court of International Arbitration Rules.

D. Websites

American Bar Associations. "Benefits of Arbitration for Commercial Disputes." Accessed June 28, 2022. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwizrMumodD4AhUoFbcAHV3rAn8QFnoECBAQAw&url=https%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fadministrative%2Fdispute_resolution%2Fmaterials%2Faba-dr-arbitration-guide.pdf&usg=AOvVaw0z4-Zu5KYVdvbfHzsZJiEc.

Jacoby, Margarot. "How Employment Lawsuits Can Ruin Your Small Business." Accessed February 18, 2022. https://www.huffpost.com/entry/how-employment-lawsuits-c_b_7737362.

Kamus Besar Bahasa Indonesia. https://kbbi.kemdikbud.go.id/

Salam, Sabrina C. *Foster Trust through Competence and Integrity,* in Edwin A Locke, *The Blackwell Handbook of Principles of Organizational Behavior*. New Jersey: Blackwell Publishing, 2017.

Sheppard, Audrey. "The Lawyer's Duty to Arbitrate in Good Faith and with Civility." *Arbitration International* 37, no. 2 (2021).

Soemartono, Gatot. *Arbitrase dan Mediasi di Indonesia*. Jakarta: PT Gramedia Pustaka Utama, 2006.

Subekti. R. *Arbitrase Perdagangan.* Bandung: Bina Cipta, 1992.

Sutiarso, Cicut. *Pelaksanaan Putusan Arbitrase dalam Sengketa Bisnis*. Jakarta: Yayasan Pustaka Obor Indonesia, 2011.

Thales, "Beyond GDPR: Data Protection Around The World." Accessed June 28, 2022. https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/magazine/beyond-gdpr-data-protection-around-world.

Thomas, Kyle J. "Rationalizing Delinquency: Understanding the Person-situation Interaction through Item Response Theory." *Journal of Research in Crime and Delinquency* 56 (July 2019).

Tyler, Tom R. *Psychology and the Design of Legal Institutions*. Nijmegen: Wolf Legal Publishers, 2007.

UNCITRAL Model Law on International Commercial Arbitration.

Usman, Rachmadi. *Pilihan Penyelesaian Sengketa di luar Pengadilan*. Bandung: Citra Aditya Bakti, 2003.

Widjaja, Gunawan and Ahmad Yani. *Hukum Arbitrase*. Jakarta: PT Raja Grafindo Persada, 2003.

Yoestini, Diah. "Studi Mengenai Pengembangan Hubungan Jangka Panjang Perusahaan dan Pengencer." *Jurnal Sains dan Pemasaran* 2, no. 1 (Mei 2003).

Yudhistira, Naftali. *Reputasi Korporasi Bisnis Restoran - Aspek Emotional Appeal dan Product & Services*. Serang: CV. AA RIZKY, 2012.

Zinnerman, Laura and Kabir Duggal. "Grounds of Annulment in ICSID Awards." Accessed June 28, 2022. https://jusmundi.com/en/document/wiki/en-grounds-of-annulment-in-icsid-awards.