



A CRITICAL COMPARATIVE ANALYSIS OF ARBITRATION AND COURT PROCEEDINGS IN BUSINESS DISPUTE RESOLUTION IN POST-DIGITALIZATION INDONESIA: A STUDY OF LEGAL CERTAINTY AND TIME EFFICIENCY

Habibah Khoiriah^{1*}

Fakultas Hukum, Universitas Islam Indonesia

*email koresponden: 24912015@students.uii.ac.id

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Abstract

The rapid expansion of the digital economy in Indonesia has significantly transformed business practices and, consequently, the landscape of business dispute resolution. This study presents a critical comparative analysis of arbitration—particularly online arbitration—and conventional court litigation in resolving business disputes in post-digitalization Indonesia. The research focuses on two principal aspects: legal certainty and time efficiency. Using normative juridical analysis supported by relevant legal theories, including Progressive Legal Theory, Development Legal Theory, and Legal Convergence Theory, this study examines the adaptability of dispute resolution mechanisms within the framework of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution and related regulations governing electronic court administration. The findings indicate that arbitration, especially through Online Dispute Resolution (ODR), offers greater procedural flexibility, shorter resolution time, and cost efficiency compared to conventional litigation, which remains burdened by rigid procedural stages, administrative complexity, and case backlogs. Digitalization has further enhanced arbitration efficiency by enabling electronic submission of documents, virtual hearings, and digital evidence examination. However, challenges persist, including technological infrastructure limitations, data security concerns, and the need for regulatory harmonization to ensure enforceability and equal legal legitimacy with court decisions. This study concludes that while digital arbitration demonstrates superior time efficiency and practical advantages, regulatory reform and institutional strengthening are essential to guarantee optimal legal certainty in Indonesia's evolving digital business environment.

Keywords: Arbitration; Online Dispute Resolution (ODR); Court Litigation; Business Dispute; Legal Certainty; Time Efficiency; Digitalization; Indonesia.

1. INTRODUCTION

The digital economic era, characterized by the rapid growth of information and communication technology, has brought significant implications for business development in Indonesia. The core characteristics of the digital economy—particularly equality of opportunity and open market access—have empowered startups as well as micro, small, and medium enterprises (MSMEs). Technological advancements enable MSMEs and startups to optimize digital platforms in order to improve efficiency, expand market reach, and strengthen competitiveness at the global level.

In business practice, disputes frequently arise and may occur in large numbers on a daily basis. Business relationships do not always proceed smoothly; conflicts and disagreements are essentially undesirable because they may cause financial loss and disrupt contractual relationships between the parties. Business disputes may result from violations of statutory regulations, breach of contract (default), or conflicting interests between contracting parties. Consequently, the business sector requires dispute resolution mechanisms that are not only legally reliable but also efficient in terms of time and cost.



Arbitration proceedings are particularly suitable for resolving digital-related disputes due to the flexibility they offer. However, the implementation of arbitration largely depends on the agreement of the parties. In digital transactions, parties are typically bound by standard electronic contracts in the form of terms and conditions (T&C) provided by platform operators. Therefore, careful attention must be given to the dispute resolution forum stipulated in such contracts to avoid being bound to a forum that may be disadvantageous or difficult to access. A clear understanding of arbitration clauses from the outset ensures the protection of rights and interests of all parties involved.

Accordingly, this research aims to present a critical and comparative analysis between arbitration—especially online arbitration—and conventional court litigation in the post-digitalization era. The study focuses on two principal aspects: legal certainty and time efficiency. It is expected that this research will contribute to the development of regulatory frameworks and dispute resolution practices that are more responsive to the dynamics of the digital business environment in Indonesia.

Problem Formulation

How does time efficiency in resolving business disputes differ between arbitration and court litigation after digitalization?

Theoretical Framework

This theoretical framework serves as the foundation for analyzing the differences between arbitration and conventional court litigation in resolving business disputes in the post-digitalization era. Technological advancements have encouraged the emergence of online arbitration, which is generally more flexible and faster than formal judicial proceedings. The discussion focuses on the concepts of arbitration, litigation, legal certainty, and time efficiency as benchmarks for assessing legal adaptation in the digital era.

This study applies two principal legal theories:

1. Progressive Legal Theory and Development Legal Theory in Arbitration Law 4.0 in Indonesia

One of the greatest challenges posed by globalization to legal theory is the construction of a legal framework capable of transcending its own legal culture. In the nineteenth century, legal theory centered on analytical and historical jurisprudence, as reflected in the positivist approach of John Austin, who emphasized “principles, notions, and distinctions” within established legal systems.

In the context of globalization, legal theory must provide comprehensive explanations—descriptive, explanatory, normative, and analytical—of legal phenomena in the modern world. It must be adaptive and capable of transcending jurisdictional boundaries to address international legal dynamics. Legal theory functions not only as a conceptual foundation but also as an instrument for harmonizing diverse legal systems.

As the meta-theory of legal science, legal theory examines law in general rather than specific laws in a particular place and time. It addresses fundamental legal issues that are not directly resolved within positive law itself, such as theories of consent, risk allocation, binding force of contracts, and legal error. Within the framework of Arbitration Law 4.0, progressive and developmental legal perspectives emphasize the need for legal reform that integrates technological advancement while maintaining justice and certainty.

2. Legal Convergence Theory in Arbitration Law 4.0 in Indonesia

For law to effectively support economic development, it must ensure stability, predictability, and fairness. Stability enables law to balance and accommodate competing interests. Predictability allows parties to foresee the legal consequences of their actions—an essential requirement in modern economic transactions. Fairness ensures equal treatment and prevents excessive bureaucratic interference that could disrupt market mechanisms.



Arbitration Law 4.0, within the context of the Industrial Revolution 4.0 and global digital civilization, can theoretically be understood as follows:

1. It reflects universal and enduring principles rooted in natural law traditions associated with thinkers such as Thomas Aquinas, Dante Alighieri, and Hugo Grotius.
2. It embodies commands, obligations, and sanctions formulated within statutory regulations, consistent with legal positivism and legism, as developed by Hans Kelsen and John Austin.
3. It represents the spirit of a nation, evolving across time and place, and shaped by social interaction within modern and complex societies.
4. It aligns with the living law concept in sociological jurisprudence, as articulated by Roscoe Pound, Eugen Ehrlich, and Benjamin Cardozo.

Through this theoretical lens, Arbitration Law 4.0 in Indonesia is understood as a dynamic legal framework that integrates universal principles, statutory authority, societal values, and technological adaptation to ensure legal certainty and time efficiency in digital-era business dispute resolution.

2. RESEARCH METHOD

This research employs a normative juridical (doctrinal) approach, focusing on the analysis of legal norms governing arbitration and court litigation in Indonesia in the post-digitalization era. The study examines statutory regulations, legal principles, and doctrinal theories related to business dispute resolution, particularly in the context of digital transformation. The primary legal sources analyzed include Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016, and Supreme Court Regulation Number 1 of 2019 concerning electronic court administration.

The research applies a comparative and conceptual approach. The comparative approach is used to analyze differences in time efficiency and legal certainty between arbitration—particularly Online Dispute Resolution (ODR)—and conventional court litigation. The conceptual approach is utilized to examine relevant legal theories, including Progressive Legal Theory, Development Legal Theory, and Legal Convergence Theory, in assessing the adaptability of dispute resolution mechanisms in the digital era.

Legal materials consist of primary legal materials (statutory regulations), secondary legal materials (books, journal articles, and scholarly opinions), and tertiary legal materials (legal dictionaries and supporting references). Data collection is conducted through library research, and the analysis is carried out qualitatively by interpreting legal norms systematically and critically.

The study aims to provide a comprehensive legal analysis regarding the effectiveness, time efficiency, and level of legal certainty offered by arbitration and court litigation in resolving business disputes in Indonesia after digitalization.

3. RESULTS AND DISCUSSION

Differences in Time Efficiency in Resolving Business Disputes Between Arbitration and Court Litigation After Digitalization

Foreign investors frequently require arbitration clauses in their business agreements. Several reasons explain this preference. First, arbitration aligns more closely with their business principles, particularly confidentiality, flexibility, and efficiency. Second, foreign parties often have limited familiarity with the domestic legal system of the host country in which they invest. Third, general court litigation is perceived as time-consuming and procedurally rigid. Fourth, even after a final decision has been issued by the Supreme Court, practical obstacles may still arise in enforcing court judgments.

Historically, the legal foundation of arbitration in Indonesia can be traced back to Article 11 of the judicial provisions under the 1945 Constitution and the Reglement op de Rechtsvordering (Rv), which later formed the institutional basis for national arbitration prior to the enactment of Law Number 14 of 1970 on Basic Provisions of Judicial Power. In this statute, arbitration was recognized in the



explanation of Article 3 paragraph (1), affirming that dispute settlement outside the court through peaceful means before an arbitrator remained permissible.

In the context of digitalization, Supreme Court Regulation Number 1 of 2019 refers to Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016. These regulations provide a legal basis for electronic case administration services (e-court), accessible to registered advocates and individuals. The electronic administration system applies to administrative, military administrative, and civil cases, thereby reflecting the judiciary's adaptation to digital transformation.

Arbitration institutions determine whether dispute resolution proceedings will be conducted online, particularly in cases related to digital activities such as e-commerce breaches of contract, online copyright or patent violations, and defamation in cyberspace. When parties designate a specific arbitration institution, they implicitly agree to comply with the online procedures established by that institution. Pursuant to Article 34 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution:

1. Dispute settlement through arbitration may be conducted via national or international arbitration institutions based on the agreement of the parties.
2. The settlement process shall follow the rules and procedures of the chosen institution unless otherwise agreed by the parties.

In general, the role of arbitrators is to render decisions on all legal and factual issues submitted to them. Arbitrators may come from legal or non-legal professional backgrounds; however, in disputes involving complex legal principles, appointing a legal expert is advisable. With digitalization, arbitration has become increasingly efficient through Online Dispute Resolution (ODR). Digital technology allows parties to submit documents electronically, conduct virtual hearings, and examine evidence online, thereby reducing time and costs without diminishing the quality of legal reasoning or factual assessment. Additionally, digital systems facilitate rapid access to legal references, jurisprudence, and doctrine, enhancing the analytical capacity of arbitrators.

Although Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution functions as a *lex generalis*, it remains the primary reference for subordinate regulations. However, to ensure optimal legal certainty in the digital era, this law requires reform to accommodate evolving business practices, emerging dispute potentials, and technological developments.

Empirical studies published in constitutional law journals indicate that conventional litigation in Indonesia continues to face structural challenges, particularly prolonged proceedings and high litigation costs. These issues stem from rigid procedural stages, extensive administrative requirements, limited judicial resources, and case backlogs at various court levels. Such conditions often hinder business actors who require swift dispute resolution to maintain operational continuity and legal certainty.

Conversely, technological advancements have facilitated the development of digital-based Alternative Dispute Resolution (ADR), including online mediation, online negotiation, and electronic arbitration. These mechanisms offer shorter procedures, relatively lower costs, and greater flexibility in determining time and venue. Through e-ADR systems, parties may submit documents, participate in virtual hearings, and receive decisions without physical attendance, thereby overcoming geographical and logistical barriers. This innovation also enhances access to justice, particularly for small and medium-sized enterprises.

Nevertheless, the implementation of digital ADR in Indonesia has not yet reached its full potential. Challenges include limited technological infrastructure, varying levels of understanding among legal practitioners regarding electronic procedures, and critical concerns related to data security and the validity of digital evidence. Therefore, regulatory reform and clear integration between digital ADR mechanisms and procedural law are necessary to ensure that arbitral awards and digital ADR outcomes possess legitimacy equivalent to court judgments.



With such reforms, digital arbitration and ADR mechanisms can function not only as efficient alternatives but also as reliable dispute resolution forums capable of ensuring justice and legal certainty in the era of digitalization.

4. CONCLUSION

Foreign parties tend to require arbitration clauses in business agreements because arbitration is considered more consistent with their business principles, helps overcome limitations in understanding local law, avoids the lengthy process of general court litigation, and minimizes obstacles in the enforcement of judgments. The Indonesian legal framework—ranging from the 1945 Constitution, Law Number 14 of 1970 on Basic Provisions of Judicial Power, to Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution—has accommodated dispute resolution outside the courts through arbitration, including the implementation of Online Dispute Resolution (ODR). Digitalization has significantly enhanced the efficiency of arbitration by shortening procedural time, reducing costs, and expanding access to documents and legal references.

However, despite the numerous advantages of digital ADR, its implementation in Indonesia still faces several challenges, including limited technological infrastructure, differing levels of understanding regarding electronic procedures among legal practitioners, and concerns related to data security. To ensure the legitimacy of decisions and legal certainty equivalent to conventional litigation, regulatory reform and clear integration between digital ADR mechanisms and existing procedural law are required. Therefore, arbitration—particularly digital-based arbitration—has strong potential to serve as an effective, efficient, and adaptive dispute resolution forum in response to the evolving demands of modern business practices.

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