



## Alternatives Resolution of Copyright Infringement Dispute Through Arbitration

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### ABSTRACT

Copyright is an exclusive right that rewards its creators in the form of economic rights and moral rights. Moral rights are rights inherent in the creator person which is basically done to respect the creativity of the creator by including his name in the copyrighted work. A copyright infringement can occur if someone advertises or reproduces a work without permission from the creator or copyright holder. In this study, it is to find out the mechanism for resolving copyright infringement disputes through arbitration and the mechanism for canceling the decision to settle copyright infringement disputes through arbitration. The purpose of this article is to understand the processes involved in resolving copyright-related disputes through arbitration and to identify specific benefits of using arbitration as an alternative method for resolving copyright-related disputes.

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## **INTRODUCTION**

Arbitration is a form of dispute resolution outside of conventional court channels, where the parties involved in the dispute agree to submit the resolution of the dispute to one or more arbitrators. Arbitration is voluntary and based on the agreement of the parties, which may be contained in a separate contract or agreement. Arbitration involves private parties or individuals called arbitrators. This arbitrator acts as a judge who will listen to the arguments of the disputing parties and issue a decision. Arbitration is conducted based on the agreement of the parties which can be documented in the form of an arbitration agreement.

This arbitration agreement can be an arbitration clause inserted in the main contract or it can be a separate agreement that the parties make to resolve a particular dispute. Many business contracts contain arbitration clauses that specify that any disputes arising in the context of such contracts will be resolved through arbitration. In today's era of business development, we often encounter settlement procedures through arbitration institutions, many are also encountered and used by business actors in disputes about franchising, air flights, disputes in the field of international telecommunications, as well as cooperation businesses in the use of commercial space, and there are even found in the case of disputes and violations of environmental security.

This arbitration also has many advantages compared to dispute resolution through the courts. One of them is its more flexible and efficient nature, because the process is usually faster and the costs incurred are also more controlled. This is the main attraction for business people who want to get a practical and fast dispute resolution. In addition, the arbitration process is confidential, so parties can feel safer and more comfortable discussing their disputes without having to worry about the information being published. The award produced in arbitration is also final and binding, so it does not need to go through an appeal or cassation process like in court. This provides faster legal certainty for all parties involved.

Interestingly, the parties also have the opportunity to choose their own arbitrator who is considered an expert and understands the problems at hand, so that dispute resolution can be more targeted and fair. Arbitration is one of the alternatives that is increasingly used in various business sectors, from aviation, to telecommunications, because it is able to answer the needs of business actors in resolving disputes in a more efficient and professional way. Copyright is an important part of intellectual property rights that has a big role in encouraging creativity and innovation. However, it is not uncommon for copyright infringement to be detrimental to creators.

The process of resolving copyright disputes in Indonesia often takes a long time and costs a lot of money if done through the courts. Therefore, there is a need for a faster, more efficient, and still fair dispute resolution alternative, such as arbitration. Arbitration as an alternative form of dispute resolution offers a final and binding solution, so that the parties can avoid convoluted procedures in court. Arbitration emphasizes the principle of agreement of the parties, where they have the freedom to choose arbitrators who are deemed to have competence and a good understanding of the ongoing copyright dispute. This is an added

value for arbitration compared to litigation in court. Additionally, arbitration proceedings tend to be more confidential or not open to the public.

This is one of the reasons why creators or copyright holders choose arbitration, especially when the dispute that arises involves sensitive information and is commercial in nature. This more closed process provides a sense of security for the parties to resolve their disputes more peacefully. It is important to note that arbitration in copyright disputes is also regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law provides a strong legal basis for parties who wish to resolve disputes through arbitration. In addition, technological developments and market needs have also encouraged the birth of various arbitration institutions that can handle copyright disputes more professionally.

However, the use of arbitration in the resolution of copyright disputes still faces several challenges, such as the creators' lack of a deep understanding of the arbitration mechanism and obstacles in the enforcement of arbitral awards. Therefore, it is important to continue to socialize and educate creative industry players about the benefits and mechanisms of arbitration, so that copyright disputes can be resolved more effectively and efficiently. In practice, arbitration not only offers a quicker and more confidential settlement, but it also provides greater flexibility. The parties can determine the rules of the game that apply in the arbitration process, including the choice of language used, the place where the arbitration will take place, and the procedures to be followed.

This is certainly very helpful for creators and copyright holders who have special considerations in maintaining their reputation and business relationships. In addition, the development of globalization and information technology has provided opportunities for online arbitration as a modern solution in resolving copyright disputes. By using digital platforms, the parties can conduct meetings and arbitration examinations without having to be physically present. This not only saves time and costs, but is also a form of adaptation to the needs of the times that increasingly rely on technology. To support the effectiveness of resolving copyright disputes through arbitration, there is a need to improve the quality of national and international arbitration institutions. An arbitration institution that is professional, has high credibility, and has integrity can increase the trust of the parties to the dispute. That way, arbitration can be the main alternative in resolving copyright disputes, so that the protection of intellectual property rights in Indonesia is more optimal.

## **THEORETICAL OVERVIEW**

Annulment of the arbitration award is a legal route that can be used if one of the parties feels aggrieved due to the element of irregularities in the arbitration process. Based on Article 70 of Law No. 30 of 1999, the court can cancel the arbitration award if it finds elements of fraud, falsification of documents on which the award is based, or if the award covers matters that are not agreed. This mechanism is a form of limited supervision to ensure the fairness and integrity of the arbitral award, but its implementation must be limited so as not to undermine the principle of finality in arbitration.

In addition to the provisions in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, legal experts, such as Subekti, emphasized that the annulment of the arbitration award is an exception that should not be abused. This is because the basic principle of arbitration is final and binding, so cancellation should only be made if there is a very basic violation, such as fraud or the presence of false documents that affect the outcome of the award. As explained by M. Yahya Harahap, the annulment of the arbitration award is not an appeal legal remedy, but a very limited form of supervision.

Thus, the purpose of annulment is not to re-examine the subject matter, but rather to check whether the arbitration process is running according to the principles of justice and there are no serious irregularities. In addition, the theory of finality of the arbitration award becomes very important. This theory emphasizes that arbitral awards must be respected and recognized for their validity in order for the arbitration process to remain an effective alternative dispute resolution. If an arbitral award is easily overturned, then the value of practicality, efficiency, and legal certainty that is the main characteristic of arbitration will be lost.

For this reason, the Supreme Court has also emphasized in some of its jurisprudence that the annulment of an arbitral award must be based on very strong reasons, as stated in the law, not on subjective grounds. With these principles in mind, the annulment of an arbitral award is strictly regulated to maintain a balance between the protection of the aggrieved parties and maintaining the superiority of arbitration as an alternative to final, efficient, and reliable dispute resolution.

## **METHODOLOGY**

The type of research used is normative legal research. Normative research is defined as research that includes the science of rules and the science of understanding or what is commonly called the dogmatic science of law. Normative legal research is legal research where the object of research is copyright. The type of approach used is the legislative approach, which is an approach that is carried out by examining all laws and regulations related to the problem being researched and the conceptual approach, which is an approach that moves from the views and doctrines that develop in legal science. The source of the material is primary and secondary materials, the data collection technique is carried out in two stages, namely the exploration stage and the focused study stage. The exploration stage is carried out by collecting data or documents related to this research, the data can come from books, journal articles, websites and other sources.

While the study stage is focused, the researcher focuses on determining what will be studied in this study. In addition, the data analysis method used is qualitative analysis, which is an analysis that does not use numbers or statistics, but by examining and interpreting the content of the documents and data obtained. The purpose of this analysis is to gain a deep understanding of the problem being studied, by combining various sources and points of view. After

the data is collected, the data is then systematically compiled, compared, and studied to find the relevance and relationship between one concept and another. Thus, the results of this study will provide a comprehensive and logical understanding of the legal issues that are the focus of the research. This technique also supports research results that are descriptive and argumentative, in accordance with the nature of normative legal research that emphasizes more on logical and in-depth legal argumentation.

## **RESEARCH RESULT AND DISCUSSION**

The principle regarding the autonomy of the parties can also be found in Article 31, Article 34, and Article 56 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In this case, it can be clearly seen that the principle of autonomy of the parties is an advantage that arbitration has compared to the dispute resolution mechanism through the courts. In this autonomous principle, it includes the authority of the parties in containing arbitration agreements or clauses, if the parties agree in their clauses to use arbitration as a settlement mechanism, then the clause must be made. Looking at the understanding conveyed by the Author above, the agreement is the legal basis for the jurisdiction of the arbitration body to accept and resolve the dispute.

In the study of international law, the treaty is subject to the principles and rules of international treaty law (in the 1969 Vienna Convention on the Law of Treaties). Furthermore, related to the competence or jurisdiction of the arbitration where the arbitration body will function if there is an agreement and appointment from the parties. This agreement shall determine the competence or jurisdiction of the arbitral tribunal. As for the objectives, issues and disputes to be resolved or decided by the arbitration body will be determined by the parties. In problems that often occur that cause disputes for the parties, it will be provided or solutions will be sought in improving the problem. In the study of international cooperation disputes, in this case international trade, an alternative is also provided in the settlement of international disputes.

Alternative Dispute Resolution or Alternative Dispute Resolution is a foreign term that has various meanings in Indonesian such as dispute resolution options (PPS), alternative dispute resolution mechanisms (MAPS), out-of-court dispute resolution options, and cooperative dispute resolution mechanisms. ADR is a dispute resolution mechanism that is understood as an alternative or other option for the disputing parties to resolve their cases other than through the court. In theory, the ADR mechanisms include binding opinions, mediation, expert assessment, reconciliation, and arbitration. In international business dispute resolution, arbitration is a dispute resolution method that is often used. As a method of resolving commercial disputes, arbitration itself is essentially based on the agreement of the parties in the form of an arbitration clause or agreement to resolve their disputes finally and binding on arbitration.

Arbitration has advantages and disadvantages in its advantages international arbitration is an "employers' court" that exists to resolve disputes between the parties and according to their needs, there is no suspension of the

case, it does not take a long time, the judges are judges who specialize as arbitration judges, the decision is final, there are no appeals, it is not so formal and more flexible, the parties to the dispute are given the opportunity to choose the arbitrator they consider to be able to meet their expectations, the confidentiality of the litigation process and the decision issued, the absence of rigid and unpredetermined legal options, a compromise settlement is possible while in its weakness it is not easy to bring together the will of the two parties to the dispute to the arbitral body is not easy, the recognition and enforcement of foreign arbitral decisions.

The Indonesian National Arbitration Board (BANI) is an independent body that provides a wide range of services related to arbitration, mediation and other forms of out-of-court dispute resolution. Dispute resolution through BANI began to increase since the promulgation of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Dispute resolution through arbitration is an option because of the advantages that can be had by the parties. In addition to the characteristics of fast, efficient and thorough, arbitration adheres to the principle of win-win solution, and is not long-winded because there is no appellate and cassation body. Arbitrage fees are also more measurable, as the process is faster. Another advantage of arbitration is its immediate (final) and binding (final) award (binding) (in addition to its confidential nature), where the trial process and arbitration award are not published.

Arbitration dispute examination is closed. This closed examination deviates from the provisions of the ordinary civil trial in the District Court which is conducted in public view. If the principle of publicity applies in the Court, then in the arbitration proceeding the principle of non-publicity or confidential applies. This is one of the considerations for the parties, both *claimants* and *respondents*, to choose to resolve their disputes through arbitration. For example, regarding information that is confidential to companies or individuals, financial conditions and others are not for public consumption. The closed nature applies absolutely to all kinds of things without exception. In arbitration, there is no known legal precedent or attachment to the previous arbitral award. Therefore, in a settlement carried out through arbitration, the decision issued will depend entirely on the arbitrator in order to fulfill the wishes of the parties.

## CONCLUSIONS AND RECOMMENDATIONS

Based on a number of considerations, mediation is considered an effective approach in resolving copyright disputes, as it offers various advantages over litigation processes that tend to be expensive, complicated, and have the potential to damage business relationships. Some of the main reasons for choosing mediation include: cost efficiency, flexibility in sharing rights, potential to strengthen business networks, difficulty of proving in copyright cases, peaceful values in accordance with Pancasila, and mediation that is in line with Indonesia's legal culture.

Arbitration can be an option when the parties need a binding and final decision, without going through a lengthy process in court. Therefore, the

synergy between mediation and arbitration can be developed as two complementary approaches in resolving copyright disputes. For its effectiveness, a competent mediator is needed in handling conflicts and there needs to be harmonization between Perma Number 1 of 2016 and the provisions in the Copyright Law, especially related to the obligation of mediation in the Commercial Court. In addition, informal mediation creates a safe space for the parties to negotiate, while arbitration can be a middle ground if an agreement is not reached in the mediation but the parties still want to avoid the court.

### **ADVANCED RESEARCH**

In order to deepen the study of the settlement of copyright infringement disputes through arbitration, further research is recommended to explore comparative approaches between arbitration mechanisms and other dispute resolution pathways, such as litigation in court, mediation, and negotiation. This comparison can include aspects of the efficiency of the settlement time, the costs required, the success rate of the settlement, and the extent to which substantive justice can be realized for the parties. Further research can also highlight the extent of the application of arbitral awards in legal practice in Indonesia, especially regarding the challenges in their implementation and the factors that affect the parties' compliance with the arbitration results.

In addition, an in-depth study of the understanding and level of trust of creative industry players in the arbitration process is very important, given that this sector has a vital role in the development of the intellectual property-based economy. Furthermore, an analysis of existing regulations – both at the national and international levels – needs to be conducted to determine whether the applicable regulations are adequate in providing protection of copyright through arbitration. A study of the effectiveness of the available arbitration institutions and the capacity building of such institutions can also be a useful academic development space.

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## REFERENCES

- Ampuan Situmeang, Rita Kusmayanti, Legal Protection Against Creators or Copyright Holders of Songs in Royalty Payment, *Vol. 5 No. 1 (2020)*, DOI: <https://doi.org/10.37253/jlpt.v5i1.798>
- Anisa praises Rahayu, septi indrawati, ARBITRATION AS AN ALTERNATIVE TO TRADEMARK DISPUTE RESOLUTION
- Nadya Iswari Mannu Radha<sup>1</sup>, Aryo Fadlian<sup>2</sup>, Juridical Studies of Arbitration as an Alternative in Settlement of Business Disputes Outside the Court, DOI: <https://doi.org/10.5281/zenodo.7240848>
- Thessaloniki C. M. Hombokau, INTERNATIONAL ARBITRATION DISPUTE SETTLEMENT IN MARINA BAY SHIP DISPUTES, DOI: 10.24843/KP.2021.v43.i03.p04, doi: 10.24246/alethea.vol8.no1.p53-67 Open access at: <http://ejournal.uksw.edu/alethea>
- Cok Istri Dian Laksmi Dewi, DISPUTE RESOLUTION AGAINST MORAL VIOLATIONS WITHIN THE FRAMEWORK OF COPYRIGHT PROTECTION, DOI: <https://doi.org/10.62279/yustitia.v12i1.170>
- Chrisna Bagus Edhita Praja<sup>1</sup>, Budi Agus Riswandi<sup>2</sup>, Khudzaifah Dimiyati<sup>3</sup>, The Urgency of Mediation as an Alternative to Resolution Copyright Disputes, Vol. 43, No. 3, December 2021,
- Legal Protection of Copyright Holders against Infringement Through Telegram Application, <https://doi.org/10.47268/tatohi.v1i4.611>
- Dewi Sulistianingsih, Mumammad Shidqon Prabowo, PROBLEMATIC AND CHARACTERISTICS OF INTELLECTUAL PROPERTY DISPUTE RESOLUTION THROUGH THE INDONESIAN NATIONAL ARBITRATION BODY, QISTIE Scientific Journal of Law Vol. 10 No. 2 November 2019 <https://publikasiilmiah.unwahas.ac.id/QISTIE/article/view/3135/3025>
- Faizal riza, rachmad abduh, Alternative Dispute Resolution by Arbitration through the Utilization of Information Technology, <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/3171/0>, DOI: <https://doi.org/10.30596/dll.v4i1.3171>
- Fatma Mutia Kinanti, Garuda Wiko, Devina Puspita Sari, ARBITRATION AS AN ALTERNATIVE TO BUSINESS DISPUTE RESOLUTION IN THE CONTEXT OF DIGITAL ECONOMY, Legal Pulpit, 35, 104-126. DOI: <https://doi.org/10.22146/mh.v35i0.11398>
- Grace Henni, ARBITRATION IS A LEGAL REMEDY IN THE SETTLEMENT OF INTERNATIONAL TRADE DISPUTES,

<https://ejournal.unsrat.ac.id/v3/index.php/lexetsocietatis/issue/view/888> ,DOI: <https://doi.org/10.35796/les.v3i1.708>

Herlina Basri, Ibrohim, Arbitration as an Alternative to Out-of-Court Dispute Resolution Reviewed from the Arbitration Law, Volume 7 Issue 2, <https://doi.org/10.32493/palrev.v7i2.44822>

Happy Yulia Anggraeni<sup>1</sup>, Fitri Jihad Aminah<sup>2</sup>, Settlement of Intellectual Property Rights Disputes in the Virtual World through the Arbitration Body, DOI:<https://doi.org/10.24903/tahun.v15i2.2204>

I Dewa Ayu Krisma, PUSPITA SHARA, Made Cinthya. THE ADVANTAGES OF THE CHARACTERISTICS OF RESOLVING COPYRIGHT INFRINGEMENT DISPUTES THROUGH ARBITRATION. Kertha Semaya Journal, Vol. 12 No. 08 of 2024, pp. 1856-1866x,<https://doi.org/10.24843/KS.2024.v12.i08.p14>

I Made Dwi Dimas Mahendrayana, DISPUTE RESOLUTION MECHANISM COPYRIGHT INFRINGEMENT THROUGH ARBITRATION, Vol 05 No 01 April 2020, DOI :10.24843/AC.2020.v05.i01.p14

Muhammad Yasril Ananta Baharuddin, The Role of Arbitration Law in National Business Dispute Resolution, DOI: <https://doi.org/10.29303/risalahkenotariatan.v5i2.209>

Nia Kurniati, MEDIASI-ARBITRATION FOR LAND DISPUTE SETTLEMENT, SOCIOHUMANITIES, Volume 18 No. 3 November 2016 : 207 - 217, <https://doi.org/10.24198/sosiohumaniora.v18i3.10008>

Rini Eka Agustina, The Effectiveness of Arbitration as a Settlement of Disputes, Ethics and Law Journal: Business and Notary (ELJBN) Vol 2 No. 1 2024 ISSN 2988-1293 (online) <http://journals.ldpb.org/index.php/eljbn>

Rina wulandari ananto, ONLINE ARBITRATION AS A RESOLUTION OF COPYRIGHT DISPUTES, Vol. 10 No. 1 (2023), pp.199210, DOI:10.15408/sjsbs.v10i1.31167<http://journal.uinjkt.ac.id/index.php/salam/index>

Rita Kusmayanti<sup>1</sup>, COMPARISON OF PHOTOGRAPHY COPYRIGHT LAWS WITHOUT CREATOR'S LICENSE IN INDONESIA AND AMERICA, Vol.XX No.22018

Siti Amiati, Annulment of National Arbitration Awards by State Courts, DOI: [10.15408/jch.v1i2.1472](https://doi.org/10.15408/jch.v1i2.1472)

Sabilah Widyanti<sup>1</sup>, Desti Nur Fitriah Pasaribu<sup>2</sup>, Farida Maharani Nasution<sup>3</sup>, Annisa Divanny Nasution<sup>4</sup>, Misli Ihsana Darlian<sup>5</sup>, volume I, Number 2, September 2024 (132-138), <https://doi.org/10.70826/jcisnu.v1i2.251>

Tasya Putri Rachman<sup>1</sup>, Yunanto<sup>2</sup>, Legal Protection of Copyright Transfer According to Copyright Law No. 28 of 2014, DOI:<https://doi.org/10.31933/unesrev.v6i2>

Victor Agung Pratama<sup>1</sup>, Agri Chairunnisa Irshad<sup>2</sup>, Citizenship Journal

Vol. 6 No. 2 September 2022P-ISSN: 1978-0184 E-ISSN: 2723-2328, Normative Juridical Analysis of Copyright Infringers and Law Enforcement of Intellectual Property Rights (Case Study of the Polemic of the Existence of Warkopi)doi; <https://doi.org/10.15408/sjsbs.v10i1.31167>