

The Commercial Court's Power to Rule on Bankruptcy Cases Where an Arbitration Clause Is Present



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Article Info

Received: 18 January 2023

Received: 21 June 2023

Revised: 19 July 2023

Accepted: 23 July 2023

Keywords:

Bankruptcy;
Clause;
Arbitration

Abstract

Social conflicts are common. Every aspect of life—business, family, politics, and the economy—can have issues. Conflicts, disagreements, and fear of damage often trigger these issues. Current dispute settlement solutions go beyond court. The parties can agree on a dispute resolution. All disputes can be settled outside of court. Arbitration resolves disputes. Arbitration is a technique to resolve a civil dispute outside of court based on a written arbitration agreement (Article 1 point 1 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution). This paper examines the Commercial Court's jurisdiction in bankruptcy cases with an arbitration provision. This solution applies legal norms to the situation. General legal and statutory theories are analyzed descriptively. According to the research, the Commercial Court's authority extends beyond bankruptcy cases and postponement of debt obligations and payments (PKPU). Article 303 of the KPKPU Law confirms that the court can examine and resolve parties' bankruptcy statements even if their debt agreement contains an arbitration clause. The arbitration provision does not preclude bankruptcy legislation. If Article 2 paragraph (1) jo. Article 8 paragraph (4) of the KPKPU Law is met, a bankruptcy application can be submitted.

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1. Introduction

Bankruptcy, as defined by the UUK and PKPU, entails the comprehensive seizure of all assets belonging to a debtor who has been declared bankrupt. The administration and resolution of the bankruptcy proceedings are overseen by a trustee, under the supervision of a Supervisory Judge, as stipulated in Article 1, paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK and PKPU).¹ The concept of General confiscation pertains to a situation where confiscation is not solely intended for the advantage of one or a few creditors, but rather for the collective benefit of all creditors. The objective is to prevent the execution of confiscation by a single

¹ Nicolae Stef, Sami Ben Jabeur, and Robert F. Scherer, 'Time to Resolve Insolvency and Political Elections', *International Review of Law and Economics*, 72.September (2022), 106104 <<https://doi.org/10.1016/j.irle.2022.106104>>.

[doi https://doi.org/10.33061/wh.v29i1.3443](https://doi.org/10.33061/wh.v29i1.3443)

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creditor.²

Meanwhile, according to UUK and PKPU, bankruptcy applies to people, private bodies, and legal entities, and the following are the parties that can be declared bankrupt: 1. Individuals or private bodies (Article 1 in conjunction with Article 2 UUK and PKPU). 2. Married debtors (Article 3 in conjunction with Article 4 UUK and PKPU). 3. Legal entities such as limited liability companies, state companies, cooperatives, associations with legal status such as foundations (Article 113 UUK and PKPU). 4. Inheritance property (Article 97 in conjunction with the ninth part of Articles 207 - 211 UUK and PKPU).³

According to M. Hadi Subhan, bankruptcy in its history in 1934 could only be reserved for merchants, but along with the times and developments in the economic field, bankruptcy was not only experienced by traders but also by those who had debts and were in a state of insolvency.⁴ The legal mechanism for bankruptcy, the concept of debt, is very decisive, because without debt, bankruptcy loses its essence as a legal institution to liquidate debtors' assets in order to pay their debts to their creditors. According to Amanda Maylaksita, debt is the main element that must be fulfilled to apply for bankruptcy as well as other conditions such as the existence of two or more creditors as stipulated in Article 2 paragraph (1) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter UUK and PKPU).⁵

The UUK and PKPU stipulate that those who can be petitioned for bankruptcy are not only legal entities such as Limited Liability Companies, but also individuals as referred to in Article 1 number 11 UUK and PKPU. One of the legal consequences of bankruptcy is that, from then on, the debtor loses his right or authority to administer (daden van behoreen) and to take ownership (daden van beschkking) of the assets included in bankruptcy.⁶ This is stated in Article 24 paragraph (1) UUK and PKPU that the Debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate as from the date the decision on the bankruptcy declaration was pronounced.⁷

Issues or conflicts frequently arise within the realm of social interactions. Issues or

² Lia Nopiharni Puspitasari and others, 'Problematika Eksekusi Harta Pailit Dalam Cross Border Insolvency', *Jurnal Usm Law Review*, 4.2 (2021), 743 <<https://doi.org/10.26623/julr.v4i2.4238>>.

³ Rian Saputra and Resti Dian Luthviati, 'Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts', *Journal of Morality and Legal Culture*, 1.2 (2020), 93-102 <<https://doi.org/10.20961/jmail.17i1.41087>>.

⁴ Iustika Puspita Sari and Ahyuni Yunus, 'Tanggung Jawab Perusahaan Terhadap Pemenuhan Upah Pekerja Dalam Proses Pemberesan Boedel Pailit', *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8.3 (2019), 403 <<https://doi.org/10.24843/jmhu.2019.v08.i03.p08>>.

⁵ Luthvi Febryka Nola, 'Implementasi Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Terkait Kedudukan Upah Pekerja Dalam Kepailitan (Implementation of Constitutional Court Decision Number 67/PUU-XI/2013 Related to the Position of Workers' Wages in Bankruptcy)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 10.2 (2020), 152.

⁶ Agustina Ni Made Ayu Darma Pratiwi and Putu Sekarwangi Saraswati, 'Tinjauan Yuridis Undang-Undang Nomor 34 Tahun 2004 Tentang Kepailitan Dan Pkpu Mengenai Pkpu Dalam Hal Debitur Pailit Dimasa Covid 19', *Media Keadilan: Jurnal Ilmu Hukum*, 12.1 (2021), 60 <<https://doi.org/10.31764/jmk.v12i1.4197>>.

⁷ Ronald Saija and Kadek Agus Sudiarawan, 'Perlindungan Hukum Bagi Perusahaan Debitur Pailit Dalam Menghadapi Pandemi Covid 19', *Batulis Civil Law Review*, 2.1 (2021), 66 <<https://doi.org/10.47268/ballrev.v2i1.474>>.

conflicts can arise in various domains of life, including but not limited to economics, business, family dynamics, politics, and other areas. These problems or disputes frequently arise due to divergent viewpoints, conflicting interests, and concerns about potential harm.⁸ The evolution of contemporary dispute resolution alternatives extends beyond the traditional litigation process conducted in courts.⁹ The parties involved in a legal dispute have the ability to select or establish the method of resolving their disagreement through a mutual agreement. Technological advancements have led to the emergence of various alternative dispute resolution methods, which have gained recognition, particularly following the implementation of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.¹⁰ The implementation of alternative dispute resolution (ADR) in problem-solving endeavors aims to mitigate the accumulation or congestion of cases within the traditional judicial system. The development of alternative dispute resolution (ADR) was motivated by the objective of alleviating congestion within the judicial system. The litigation process, commonly conducted in court, often gives rise to additional challenges due to its adversarial nature. Consequently, alternative methods of dispute resolution conducted outside of court are perceived as expedient and effective means of legal recourse.¹¹

In general, alternative out-of-court settlements can be utilized for various forms of dispute resolution.¹² Arbitration is a commonly employed method for resolving disputes. Arbitration is a mechanism utilized for the resolution of civil disputes that takes place outside the purview of public courts.¹³ This process is contingent upon the existence of a written arbitration agreement between the involved parties, as stipulated in Article 1, point 1 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. Arbitration is typically employed when both parties involved in the formation of a contract or agreement include an arbitration clause within the document, with the intention of resolving potential disputes arising from the prearranged contractual terms.¹⁴

⁸ Oksana MELENKO, 'Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis', *European Journal of Law and Public Administration*, 7.2 (2021), 46–63 <<https://doi.org/10.18662/eljpa/7.2/126>>.

⁹ Runarianu Rachmat and Suherman Suherman, 'Perlindungan Hukum Terhadap Kreditor Pemegang Jaminan Fidusia Terhadap Harta Debitur Yang Dinyatakan Pailit', *National Journal of Law*, 3.2 (2020), 336–52 <<https://doi.org/10.47313/njl.v3i2.921>>.

¹⁰ Mashudi Mashudi and Hamdi Aji, 'Pemutusan Hubungan Kerja Pada Perusahaan Pailit', *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik*, 9.2 (2020) <<https://doi.org/10.55129/jph.v9i2.1212>>.

¹¹ Siti Hapsah Isfardiyana, 'Sita Umum Kepailitan Mendahului Sita Pidana Dalam Pemberesan Harta Pailit', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 3.3 (2017), 628–50 <<https://doi.org/10.22304/pjih.v3.n3.a10>>.

¹² Vicki Wayne and Ping Xiong, 'The Relationship between Mediation and Judicial Proceedings in China', *Asian Journal of Comparative Law*, 6.1 (2011) <<https://doi.org/10.2202/1932-0205.1312>>.

¹³ Kim Gould, 'Small Defamation Claims in Small Claims Jurisdictions: Worth Considering for the Sake of Proportionality?', *University of New South Wales Law Journal*, 41.4 (2018), 1222–62 <<https://doi.org/10.53637/miat6116>>.

¹⁴ Nurul Ummah, Fifik Wiryani, and Mokhammad Najih, 'Mediasi Dalam Penyelesaian Sengketa Medik Dokter Dengan Pasien (Analisis Putusan Pn No. 38/Pdt.G/2016/Pn.Bna Dan Putusan Mahkamah Agung No. 1550 K/Pdt/2016)', *Legality: Jurnal Ilmiah Hukum*, 27.2 (2019), 205–21 <<https://doi.org/10.22219/ljih.v27i2.10158>>.

In certain instances, such as in the context of a debt agreement, it is customary for the parties involved, namely the creditor and debtor, to include an arbitration clause within their agreement. This provision serves as a means of alternative dispute resolution, to be utilized in the event that any issues arise in the future. The execution of debt and credit agreements may not always align with the mutually agreed terms between the involved parties.¹⁵ Instances may arise wherein the debtor is unable to fulfill its obligations, resulting in disputes. Creditors have the option to initiate legal action by filing a civil lawsuit in order to resolve debt disputes, and in some cases, they may even resort to filing a bankruptcy petition against the debtor. However, a complication arises in cases where the debt and credit agreement includes an arbitration clause, as the bankruptcy proceedings will then fall under the jurisdiction of either the Commercial Court or the designated arbitration institution.

2. Research Method

This research methodology employs normative legal research, which involves the systematic examination of legal rules, principles, and doctrines in order to address legal issues and generate novel arguments, theories, and concepts as a means of resolving the problem under consideration.¹⁶ This study employs a normative research approach, specifically by analyzing relevant legislation and regulations, as well as utilizing primary and secondary legal sources. Normative legal research refers to the systematic inquiry conducted with the objective of acquiring objective legal norms, or the principles and rules that govern legal systems.¹⁷ In order to conduct a comprehensive research analysis, various methodologies are employed, including the statutory approach, which involves scrutinizing the norms outlined in statutory provisions, and the conceptual approach, which entails examining legal concepts pertaining to the enforcement of bankruptcy law and the deferment of debt payment obligations. The sources utilized in this research consist of secondary data, specifically legal materials. The research data presented in this writing has been acquired through the process of conducting library research. One of the primary methods employed for data collection in academic research involves conducting literature studies.¹⁸ This technique encompasses various activities such as reading and reviewing laws and regulations, literature books, papers authored by legal experts, research journals, and other relevant sources. These literature studies are conducted to gather additional data that can complement and enhance existing

¹⁵ Rian Saputra, 'Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif', *Wacana Hukum*, 25.1 (2019), 10–18.

¹⁶ Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <<https://doi.org/10.53955/jhcls.v2i3.54>>.

¹⁷ Rian Saputra, M Zaid, and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61–118 <<https://doi.org/10.15294/lesrev.v7i1.64143>>.

¹⁸ Rian Saputra, Tiara Tiolinec, and others, 'Artificial Intelligence and Intellectual Property Protection in Indonesia and Japan', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 210–35 <<https://doi.org/10.53955/jhcls.v3i2.69>>.

datasets.¹⁹ This study employs a qualitative descriptive analysis approach, specifically focusing on the description and interpretation of data in accordance with established norms, theories, and doctrines pertaining to the research materials under investigation.

3. Results and Discussion

The jurisdiction of the Commercial Court in the adjudication of cases

The Commercial Court is a judicial entity operating within the framework of the General Court. Its primary responsibilities encompass the examination and adjudication of bankruptcy petitions, requests for the deferment of debt repayment obligations, and other pertinent matters falling within the purview of commercial law as stipulated by legislation. Notably, this includes the resolution of disputes pertaining to intellectual property rights. The responsibilities and jurisdiction of the Commercial Court in accordance with the Law of the Republic of Indonesia Number 4 of 1998 are stipulated in Article 280, whereas in the Law of the Republic of Indonesia Number 37 of 2004, they are regulated under Article 300.²⁰

The authority of the Commercial Court in relation to agreements containing arbitration clauses is also regulated by Law of the Republic of Indonesia Number 37 Year 2004. According to Article 303, the Court retains the authority to review and address bankruptcy petitions filed by parties who are obligated by agreements that include arbitration clauses. This is applicable provided that the debt on which the bankruptcy petition is founded satisfies the requirements outlined in Article 2, paragraph (1) pertaining to the conditions for bankruptcy. The purpose of the provisions outlined in the article is to establish the Court's continued authority to review and adjudicate bankruptcy petitions brought forth by the parties, despite the presence of an arbitration clause within their debt and credit agreement.²¹

The Commercial Court, established under Article 280 paragraph (1) of Perpu of the Republic of Indonesia No. 1 of 1998, possesses unique jurisdiction in the form of exclusive authority to handle bankruptcy cases. The exercise of exclusive substantive jurisdiction supersedes the absolute authority of Arbitration as a means of enforcing the *pacta sunt servanda* principle, as stated in Article 1338 of the Civil Code. This principle grants judicial recognition to the Arbitration clause, allowing for the resolution of disputes between parties according to their agreed terms. Despite the parties' agreement to resolve the dispute through arbitration, the Commercial Court retains jurisdiction to review and render a decision.²²

The jurisdiction of the Commercial Court encompasses both relative competence and absolute competence. Relative competence refers to the jurisdiction or legal authority to resolve disputes within the realm of Commercial Courts. At present, the number of Commercial Courts is limited to five. The Commercial Courts are located within the same jurisdiction as the District Court. The jurisdiction of the Commercial Courts is limited to the

¹⁹ Rian Saputra, Muhammad Khalif Ardi, and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), 437-82 <<https://doi.org/10.15294/jils.v6i2.51371>>.

²⁰ Ajrina Yuka ArdHIRA and Ghansham Anand, 'Itikad Baik Dalam Proses Mediasi Perkara Perdata Di Pengadilan', *Media Iuris*, 1.2 (2018), 200 <<https://doi.org/10.20473/mi.v1i2.8821>>.

²¹ Marten Bunga, 'MEKANISME PENYELESAIAN SENGKETA MELALUI GUGATAN SEDERHANA', *Gorontalo Law Review*, 5.1 (2022), 41-51.

²² Maria Alfons, 'Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum', *Legislasi Indonesia*, 14.03 (2017), 1-10.

examination and adjudication of cases within their respective authorized boundaries.²³ According to Article 3 of Law of the Republic of Indonesia Number 37 of 2004, the determination of bankruptcy declaration applications is the responsibility of the Commercial Court with jurisdiction over the Debtor's legal domicile. In cases where the debtor has departed from the territory of the Republic of Indonesia, the Court with jurisdiction over the Debtor's most recent legal domicile is authorized to make a decision regarding the bankruptcy declaration application. If the debtor is a limited liability company, the Court with jurisdiction over the legal domicile of the company is also empowered to make a decision.²⁴

Absolute competence refers to the jurisdictional power to examine and make decisions in legal matters involving different judicial bodies. The legislation known as Law of the Republic of Indonesia Number 4 Year 2004 on Judicial Power governs the establishment and jurisdiction of judicial institutions.²⁵ The Commercial Court is a distinct judicial body operating within the framework of the General Court. Its jurisdiction is specifically designated to encompass the examination and adjudication of petitions pertaining to bankruptcy declarations and the deferment of debt repayment obligations. Furthermore, as stipulated in Article 300, paragraph (1) of Law Number 37 of 2004 of the Republic of Indonesia, the Commercial Court possesses the jurisdiction to review and adjudicate upon additional cases within the realm of commerce as prescribed by legislation.²⁶ Additional examples of cases within the realm of commerce include patent cancellation lawsuits and trademark registration abolition lawsuits. Both of these subjects fall within the realm of commerce and are subject to regulation under Indonesian law, specifically the Law of the Republic of Indonesia Number 14 of 2001 on Patents and the Law of the Republic of Indonesia Number 15 of 2001 on Trademarks. The exclusive jurisdiction to examine and adjudicate these cases lies with the Commercial Court, given its unequivocal competence in this matter.

The Jurisdiction of the Commercial Court in Adjudicating Bankruptcy Cases Involving Arbitration Clauses

Traditionally, the resolution of disputes or cases is commonly achieved through the utilization of the litigation process, which involves the court system. Nevertheless, the utilization of litigation as a means of resolving disputes often yields outcomes that give rise to additional challenges. This is primarily due to the fact that the decisions rendered in this process typically adopt a win-lose framework, failing to adequately address the underlying issues faced by the parties involved. Moreover, the litigation process itself is time-consuming, necessitating progression through multiple stages.²⁷ Additionally, the public accessibility of

²³ ArdHIRA and Anand.

²⁴ Sri Wulan Hadjar, Oskar Sahim Matompo, and Irmawaty, 'Small Claim Court as a Refund State Losses Due to Corruption Crime By State Attorney', *Indonesian Research Journal in Legal Studies*, 01.01 (2022), 73–86.

²⁵ Erry Primadhany, 'Perlindungan Hukum Terhadap Konsumen Perumahan Graha Dewata Akibat Dipailitkannya Pt Dewata Abdi Nusa', *Arena Hukum*, 7.2 (2014), 172–94 <<https://doi.org/10.21776/ub.arenahukum.2014.00702.2>>.

²⁶ Adi Satrio, R. Kartikasari, and Pupung Faisal, 'Eksekusi Harta Debitor Pailit Yang Terdapat Di Luar Indonesia Dihubungkan Dengan Pemenuhan Hak-Hak Kreditor', *Ganesha Law Review*, 2.1 (2020), 96–108 <<https://doi.org/10.23887/glr.v2i1.126>>.

²⁷ Bruce Zucker and Monica Her, 'The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System', *University of San Francisco Law Review. University of San Francisco. School of Law*, 37.2 (2003), 2.

decision outcomes further compounds the drawbacks associated with this approach. In conjunction with the evolution of the legal sphere, Alternative Dispute Resolution (ADR) has emerged as a recognized means for parties to seek resolution for their cases without resorting to traditional litigation methods, thereby bypassing court proceedings.²⁸ The regulation of the Alternative Dispute Resolution (ADR) process in Indonesia is governed by the Reglement op de 4 Rechtsvordering (RV) and Het Herziene Indonesisch Reglement (HIR) or Rechts Reglement Bitengewesten (RBg). Initially, this was addressed in Articles 615 to 651 of the Reglemen Of De Rechtsvordering. The aforementioned provisions have become obsolete due to the implementation of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.²⁹ This legislation offers various alternatives for resolving disputes, including the option of arbitration.

Arbitration is a procedural mechanism wherein multiple parties engage in the submission of their dispute to one or more impartial individuals, commonly referred to as arbitrators, with the aim of attaining a conclusive and obligatory resolution. According to Mertokusumo (year), arbitration is a form of alternative dispute resolution that takes place outside of the traditional court system. It involves the voluntary agreement of parties involved in a dispute to present their case to a neutral third party, known as an arbitrator or referee. In this context, the term "umpire" is employed to refer to an impartial mediator responsible for resolving the conflict.³⁰ According to Article 1 point 1 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, arbitration is a method employed to settle civil disputes that takes place outside the jurisdiction of public courts. This process is initiated through a written arbitration agreement that is mutually agreed upon by the parties involved in the dispute.³¹ Based on the provided explanation, one can infer that the types of disputes eligible for arbitration are limited to civil disputes. In order to address any potential disputes arising from the agreed agreement, the parties are required to have reached a written agreement stipulating their commitment to resolve such disputes through arbitration, rather than pursuing litigation in a general court.³² The interpretation of Article 1 point 1 suggests that arbitration is founded upon a mutually agreed agreement between the involved parties, which is established in accordance with the principle of contractual freedom.³³ The aforementioned statement aligns with the stipulations outlined in Article 1338 of the Civil Code, which asserts that any agreements reached by the involved parties are legally binding.

Debt and credit agreements frequently incorporate arbitration clauses as a means for parties to resolve disputes in the settlement process. In the context of debt and credit, individuals who find themselves unable to fulfill their financial obligations frequently opt for the legal process of bankruptcy. Bankruptcy and debt are inherently interconnected, as they

²⁸ Peter A. Holland, 'The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases', *Journal of Business & Technology Law*, 6.2 (2011), 259-86.

²⁹ Karmawan, 'Mediation in The Religious Courts of Indonesia', *Ahkam: Jurnal Ilmu Syariah*, 20.1 (2020), 79-96 <<https://doi.org/10.15408/ajis.v20i1.13249>>.

³⁰ Amy J. Schmitz, 'Expanding Access to Remedies through E-Court Initiatives', *Buffalo Law Review*, 67.1 (2019), 89-163.

³¹ Deri Mulyadi and others, 'Medical Negligence Dispute Settlement in Indonesia', *Indian Journal of Forensic Medicine and Toxicology*, 14.4 (2020), 4229-33 <<https://doi.org/10.37506/ijfimt.v14i4.12304>>.

³² Primadhany.

³³ Tri Budiyono, 'Problematika Posisi Buruh Pada Perusahaan Pailit', *Masalah-Masalah Hukum (MMH)*, 42.7 (2010), 416-25.

represent two interdependent aspects of financial distress. The examination of a bankruptcy case necessitates the presence of debt, as the absence of indebtedness renders the consideration of bankruptcy unfeasible. Debt agreements may not always be executed in strict adherence to the terms agreed upon by the involved parties.³⁴

Instances may arise when the debtor is unable to fulfill its agreed-upon obligations, resulting in disputes. Creditors have the option to initiate legal action in the form of a civil lawsuit to address debt disputes, and in some cases, they may even resort to filing a bankruptcy petition against the debtor. This research examines the matter of resolving bankruptcy disputes when an arbitration clause is present in the preceding debt agreement between the involved parties. The inclusion of an arbitration clause in the debt agreement must adhere to the provisions outlined in the law (UU), as well as align with principles of morality, public order, decency, and custom, as stated in Article 1337 and Article 1339 of the Civil Code (KUHP). In all agreements and business contracts, including debt and credit agreements that are legally binding, the inclusion of an arbitration clause necessitates that in the event of a dispute, the parties involved must submit the matter to an arbitration institution, as stipulated in the debt and credit agreement.³⁵

Arbitration clauses are commonly incorporated into agreements with the primary objective of circumventing the judicial system as a means of resolving contractual disputes. The primary factors that lead parties to choose arbitration over litigation in a court of law are typically associated with considerations of time and cost.³⁶ Arbitration institutions are composed of members who possess diverse areas of expertise, including individuals with specialized knowledge in commerce, industry, banking, and law. The incorporation of an arbitration clause confers a distinct benefit upon the involved parties, as it affords them the ability to exercise discretion in determining the specific categories of disputes that may be resolved through arbitration.³⁷ Additionally, the inclusion of such a clause allows for the selection of arbitrators, establishment of an arbitration procedure, adherence to designated arbitration rules, determination of the arbitration venue, and application of substantive law to the dispute. These prerogatives are not attainable when resorting to a conventional court system.³⁸

The principle of *Lex Specialis Derogat Legi Generali* posits that laws of a more specific nature take precedence over laws of a more general nature. When comparing the Bankruptcy Law to Law Number 30 Year 1999 on Arbitration and APS, it becomes evident that the Bankruptcy Law is a more specialized legislation as it solely focuses on matters related to

³⁴ Jeferson Kameo and Teguh Prasetyo, 'Hakikat Hukum Ekonomi (Internasional) Dalam Perspektif Teori Keadilan Bermartabat', *Jurnal Hukum Ius Quia Iustum*, 27.2 (2020), 308-27 <<https://doi.org/10.20885/iustum.vol27.iss2.art5>>.

³⁵ Rahmi Yuniarti, 'Efisiensi Pemilihan Alternatif Penyelesaian Sengketa Dalam Penyelesaian Sengketa Waralaba', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 10.3 (2017), 551-68 <<https://doi.org/10.25041/fiatjustisia.v10no3.793>>.

³⁶ Khoirul Hidayah, Suhariningsih Suhariningsih, and Istislam Istislam, 'Mediation for Indonesian Tax Disputes: Is It Potential Alternative Strategy for Resolving Indonesian Tax Disputes?', *Indonesia Law Review*, 8.2 (2018) <<https://doi.org/10.15742/ilrev.v8n2.486>>.

³⁷ Bert Niemeijer and Machteld Pel, 'Court-Based Mediation in the Netherlands: Research, Evaluation and Future Expectations.', *Dickinson Law Review*, 110.2 (2005), 345-79.

³⁸ Jacqueline Nolan-Haley, 'Mediation: The New Arbitration', *Harvard Negotiation Law Review*, 17 (2012), 61-95.

bankruptcy. Conversely, Law Number 30 Year 1999 on Arbitration and APS encompasses a broader scope, not limited to bankruptcy matters, but also encompassing the comprehensive resolution of civil disputes outside the court. Consequently, this law can be categorized as a more general legislation (General Law).³⁹

However, complications arise due to the resolution of disputes that arise in agreements containing arbitration clauses, as it also serves as a demonstration of the principle of *pacta sunt servanda*.⁴⁰ This is because the legal implications of the agreement or arbitration clause grant the arbitration institution complete authority to address the matter, as the agreed-upon agreement functions as a binding law for those who have consented to it.⁴¹ The basis for the absolute authority of arbitration lies in the principle of *pacta sunt servanda*, which is regulated by Article 1338 of the Civil Code. In practical terms, the implementation of the law consistently upholds that the inclusion of an arbitration clause diminishes the jurisdiction of the district court. However, from a legal and jurisprudential standpoint, it seems that the effect of arbitration as an extrajudicial mechanism is to strip the district court of its authority as a typical state court.⁴² Nevertheless, it does not negate the role of the commercial court as the competent body to adjudicate bankruptcy cases in accordance with the law.

The legal framework provided by Law No. 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations includes provisions that have the potential to override the established legal principle of resolving disputes through arbitration institutions. According to Article 303 of the Bankruptcy Law, the court retains the authority to review and address bankruptcy petitions from parties who are bound by agreements that include arbitration clauses. This authority is applicable as long as the debt on which the bankruptcy petition is based satisfies the requirements outlined in Article 2, paragraph (1) of the same law. The aforementioned provision appears to lack specificity, as it fails to delineate the particular type of debt and credit agreement under consideration. Furthermore, it does not address the inclusion of foreign legal subjects and the application of foreign laws to said agreement. The explanation of Article 303 of the Bankruptcy Law asserts that its provisions serve the purpose of affirming the Court's jurisdiction to review and adjudicate bankruptcy petitions, even in cases where the debt and credit agreements of the parties involved include arbitration clauses. According to the norm outlined in Article 303, it is stated that the presence of an arbitration clause within a contractual agreement does not serve as a basis for excluding the relevance or applicability of bankruptcy legislation. A bankruptcy petition may be submitted provided that the criteria for bankruptcy, as outlined in Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of the KPKPU Law, are met.

³⁹ Holland.

⁴⁰ Frans Van Dijk, 'Improved Performance of the Netherlands Judiciary: Assessment of the Gains for Society', *International Journal for Court Administration*, 6.May (2014), 1-22 <<http://www.rechtspraak.nl/English/Publications/Documents/Improved-performance-of-the-Netherlands-judiciary.pdf>>.

⁴¹ Dadang Hartanto and others, 'Perceived Effectiveness of E-Governance as an Underlying Mechanism between Good Governance and Public Trust: A Case of Indonesia', *Digital Policy, Regulation and Governance*, 23.6 (2021), 598-616 <<https://doi.org/10.1108/DPRG-03-2021-0046>>.

⁴² Ronald W Staudt, 'All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice', *Loyola of Los Angeles Law Review*, 42 (2009), 101-29.

4. Conclusion

The jurisdiction of the Commercial Court extends beyond bankruptcy and postponement of debt obligations and payments (PKPU) cases. Nevertheless, the Commercial Court is vested with the authority to adjudicate commercial disputes as well. The Commercial Court possesses the authority to handle cases involving agreements that include arbitration clauses. The jurisdiction of the Commercial Court encompasses both relative competence and absolute competence. Relative competence refers to the jurisdiction or legal authority to resolve disputes within the context of Commercial Courts. Absolute competence refers to the jurisdiction and power to examine and make decisions in legal matters involving judicial bodies. The confirmation of the Court's authority to examine and resolve bankruptcy petitions, despite the presence of an arbitration clause in the debt and credit agreement, is stipulated in Article 303 of the KPKPU Law. The presence of an arbitration clause within the agreement does not preclude the relevance and enforceability of bankruptcy legislation. A bankruptcy petition may be submitted provided that the bankruptcy requirements outlined in Article 2, paragraph (1) in conjunction with Article 8, paragraph (4) of the KPKPU Law are met.

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