

## Article Info

**Submitted:** 29 Mei 2017 | **Reviewed:** 19 Juni 2017 | **Accepted:** 28 Juli 2017

# WHEN ARBITRATION AND BANKRUPTCY COLLIDE: REGULATION IN INDONESIA

Fatma Muthia Kinanti<sup>1</sup>

## Abstract

*The growing practice of business in Indonesia directly affects the complexity of business-related disputes. It also often leads to a cross-over between two different legal areas. Settlement of a dispute which have or at least intersect a public nature can become a tricky subject given the contractual nature of arbitration. One of the issues which will then become the basis for this article is the link between arbitration and bankruptcy. More specifically, what if one party in a civil dispute arises from a contract that contain an arbitration clause declared bankrupt? This issue has become so common in the practice, but the jurisprudence shows different views in these matters. The method used in this research is normative juridical research with conceptual approach. The regulations in another countries are also provided to give a comparative value. The conclusion found in this article is that the Core/Non-core Concept adopted in several countries can be applied in Indonesia as the regulation itself supported it.*

**Keywords:** *arbitration; bankruptcy; core/non-core concept; regulations*

## Abstrak

*Semakin berkembangnya praktek bisnis di Indonesia mempengaruhi kompleksitas sengketa yang berkaitan dengan bisnis bahkan dapat menyebabkan bertemunya dua wilayah hukum yang berbeda. penyelesaian sengketa yang memiliki atau setidaknya bersentuhan dengan sifat hukum publik akan menimbulkan permasalahan mengingat sifat privat dari arbitrase itu sendiri. Salah satu permasalahan, yang kemudian akan menjad basis dari tulisan ini adalah hubungan antara arbitrase dan kepailitan. Lebih spesifik lagi, bagaimana jika salah satu pihak dalam sengketa perdata yang muncul dari perjanjian yang mengandung perjanjian arbitrase dinyatakan pailit? Permasalahan ini seringkali terjadi dalam prakteknya, namun yurisprudensi pengadilan seringkali memiliki pandangan yang berbeda. Metode yang digunakan dalam tulisan ini adalah yuridis normatif dengan pendekatan konseptual. Regulasi di negara lain juga disajikan untuk memberikan komparasi. Kesimpulan yang dihasilkan dalam artikel ini adalah bahwa Konsep “Core/Non-Core” yang diadopsi oleh beberapa negara dapat diaplikasikan di Hukum Indonesia karena tidak kontradiksi dengan Hukum Indonesia.*

**Kata Kunci:** *arbitrase; kepailitan; konsep core/non-core; regulasi*

---

<sup>1</sup> Fakultas Hukum Universitas Tanjungpura, Jln. Prof. Hadari Nawawi, Pontianak, Kalimantan Barat, email: [fm.kinanti@gmail.com](mailto:fm.kinanti@gmail.com), Tel: 08121375020.

## I. Introduction

The use of arbitration forums to settle commercial disputes shows a significant increasing trend. BANI as a national arbitration institution that has been established since 1977 has settled 672 case in the periode of 2007-2016.<sup>2</sup> The Financial Services Authority reported, as of June 2016, received 47 dispute cases in the financial services sector from six alternative dispute settlement institutions (among others: BMAI, BAPMI, BMDP and LAPSPI).<sup>3</sup> The Indonesian business community seems beginning to recognize the advantages offered by arbitration in the settlement of business disputes such as a quick settlement, confidentiality and the freedom of the parties in determining the arbitration procedure.<sup>4</sup>

The settlement through arbitration mechanism is based solely on the agreement of the parties. Therefore, arbitration is often referred to as "creature of contract".<sup>5</sup> Arbitration agreement may

be set forth in the underlying contract but may also be agreed later after a dispute occurs. Disputes that can be resolved through arbitration are only the one that deals with private matters. Law No. 30 Year 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as Arbitration Law) regulates a limitation on which kind of cases can be resolved through arbitration namely disputes concerning trade and concerning rights which, by law and legislation, are fully possessed by the parties to the dispute.

The growing practice of business in Indonesia directly affects the complexity of business-related disputes. It also often leads to a cross-over or convergence between two different legal areas. Settlement of a dispute which have or at least intersect a public nature can become a tricky subject given the contractual nature of arbitration.<sup>6</sup> The question may arise, what if a civil dispute arising out of a

<sup>2</sup> Garuda Wiko. 2017. "Arbitration in Indonesia." Presented in Seminar titled *The Role and Development of Arbitration: Alternative Dispute Resolution on Construction Disputes*. Jakarta, 16 Mei 2017.

<sup>3</sup> [...]. 2016. *OJK Terima 47 Laporan Sengketa Jasa Keuangan*. Jakarta, 9 August. available from: <http://www.republika.co.id/berita/ekonomi/keuangan/16/08/09/obn7pm383-ojk-terima-47-laporan-sengketa-jasa-keuangan>. (Accessed on February 24, 2017).

<sup>4</sup> Priyatna Abdurrasyid. 2011. "Arbitrase dan Alternatif Penyelesaian Sengketa (APS): Suatu Pengantar". Jakarta: PT. Fikahati Aneska. pg. 61.

<sup>5</sup> "...To be sure, since arbitration is a creature of contract, a court must always inquire, when a party seeks to invoke its aid to force a reluctant

---

*party to the arbitration table, whether the parties have agreed to arbitrate the particular*", See: *Steelworkers v. American Mfg. Co.* 363 U.S. 564 (1960). "...The agreement to arbitrate is perceived primarily as a freedom of forum-selection clause, "... as long as there is no fraud involved in the parties determination of the arbitration forum and procedures, this intention regarding resolution of disputes will be recognized and arbitration enforced...", see also: J. Kirkland Grant. 1994. *Securities Arbitration for Brokers, Attorneys, and Investors*. Greenwood Publishing. Pg. 11. See also: Hiro N. Aragaki. 2016. *Arbitration: Creature of Contract: Pillar of Procedure*. *Arbitration Law Review*. (8).

<sup>6</sup> William W. Park. 2005. "Private Disputes and the Public Good: Explaining Arbitration Law." *American University International Law Review* 20, no. 5 : 903-906. See also: Richard M. Buxbaum. 2009. *Public Law, Ordre Public and Arbitration: A Procedural Scenario and a Suggestion*, in Peter Hay, et al (ed.). *Resolving International Conflicts*. New York: CEU Press.

treaty containing an arbitration clause dealt with matters of a public nature. More often than not, this becomes a debate in the practice of dispute settlement. One of the issues, which will then become the basis for this article, is the link between arbitration and bankruptcy. More specifically, what if one party in a civil dispute arises from a contract that contain an arbitration clause declared bankrupt? This issue has become so common in the practice, but the jurisprudence shows different views in these matters.<sup>7</sup> Several studies have analysed this issue,<sup>8</sup> however the author wish to offer a different perspective by providing reviews on regulation on this matter in different jurisdictions to give a comparison of the law in Indonesia.

The first part of the article will provide a general information as an introduction to understanding arbitration and bankruptcy in Indonesian Law. A brief

presentation of Indonesian Arbitration Law as well as Bankruptcy Law, as the main legal source governing arbitration and bankruptcy will be presented to give readers an understanding of the regulation of the two legal areas in Indonesia. The second part is related to the research method used by the author in writing the article and the third section of the article will provide an analysis based on the regulation related to bankruptcy and arbitration based on the arbitration law and bankruptcy law. This is to show that in both laws, the regulation relating to this matter has not been specifically regulated and it causing problems. This part will also provides some concepts and principles to answer the problem. This part will also provide a review on some regulation and practices in some countries related to this issue as a comparative. The last section will act as a conclusion where the author will attempt to provide answers based on the author's perspective related to the existing problems.

## II. Research Method

This study is a normative juridical research<sup>9</sup> because it conducts studies on various provisions of national and international law especially on arbitration and bankruptcy. The approach used in this study is conceptual. In this approach, researchers need to refer to legal

<sup>7</sup> Aria Yudi, *Kepailitan dan Arbitrase (2)*, available from:

<http://www.hukumonline.com/klinik/detail/cl885/kepailitan-dan-arbitrase-2>, accessed on 15 May 2017

<sup>8</sup> Some researches provide reviews of case studies related to cases involving arbitration and bankruptcy (Novi Kusuma Wardhani. 2009. *Tinjauan Yuridis Kewenangan Pengadilan Niaga dalam Menyelesaikan Perkara Kepailitan dengan Adanya Akta Arbitrase (Studi Putusan Kasus PT. Environmental Network Indoensia dan Kelompok Tani Tambak FSSP Maserrocinnae melawan PT. Putra Putri Fortuna Windu dan PPF International Corporation)*, Thesis for Fakultas Hukum Universitas Sebelas Maret; see also: Rahayu Hartini. *Penyelesaian Sengketa Kepailitan di Indonesia: Dualisme Hukum Kepailitan Dan Arbitrase di Indonesia*. Jakarta: Kencana). There are also studies that address this issue with a more general theme (see: Rangga Adi Fitriano. 2016. *Disharmonisasi Ketentuan Arbitrase dan Kepailitan Terkait dengan Perjanjian dan Putusan Arbitrase*, Thesis for Fakultas Hukum Universitas Airlangga)

<sup>9</sup> Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*, Cet. 3 (Jakarta: Universitas Indonesia. pg. 10.

principles<sup>10</sup> specifically regarding arbitration and bankruptcy.

### III. Analysis and Discussion

#### A. General Provisions regarding Arbitration and Bankruptcy

##### 1. General Provisions regarding Arbitration

Prior to the Arbitration Law No 30 Year 1999, the arbitration practice in Indonesia is governed by (1) Articles 615-651 of the Regulation op de Burgerlijke Rechtsvordering (Stb-1847), (2) Article 377 of the Het Herziene Indonesisch Reglement (Stb-1941) and (3) Article 705 of the Rechtsreglement Buitengewesten (Stb-1927).<sup>11</sup> Rapid economic developments lead to a more complex dispute in the field of trade so that there are problems in arbitration that are not regulated in the provisions of the previous arbitration law, thus causing legal uncertainty. Hence, the old arbitration rules are no longer sufficient to regulate arbitration procedures.<sup>12</sup>

As a consequence, on August 12, 1999, the Government of the Republic of Indonesia passed the Law No. 30 Year 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as Arbitration Law). The Law contains eleven chapters and 82 articles covering arbitration and APS definitions, arbitrator

arrangements, procedural law, execution and annulment of arbitral award and arbitration fees.

Arbitration in this Law is defined as the means of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.<sup>13</sup> Arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.<sup>14</sup> The scope of this Law is the settlement of disputes or disagreements between the parties in a particular legal relationship which has entered into an arbitration agreement expressly stating that all disputes or differences of opinion arising or arising out of the legal relationship shall be settled by means of arbitration or through alternative dispute resolution.<sup>15</sup>

In relation to the issue of competence, the Law also ensures that the District Court no longer has the authority to adjudicate a dispute when the parties have an agreement to settle it through arbitration.<sup>16</sup> It further stipulates that in the event that the parties have agreed that the dispute between them shall be settled by arbitration, the

---

<sup>10</sup> Peter Mahmud Marzuki. 2011. *Penelitian Hukum*, Jakarta: Prenada Media Group. pg. 137.

<sup>11</sup> Susanti Adi Nugroho. 2015. "Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya". Jakarta: Prenadamedia Group. pg. 87.

<sup>12</sup> Ibid. pg. 93.

---

<sup>13</sup> Law No. 30 Year 1999 on Arbitration and Alternative Dispute Settlement, art 1 par. 1 (Lembaran Negara Republik Indonesia Year 1999 No. 138, Tambahan Lembaran Negara Republik Indonesia No. 3872)

<sup>14</sup> Ibid. Art 1 Par. 3

<sup>15</sup> Ibid. Art 2

<sup>16</sup> Ibid. Art 3

arbitrator shall decide in its decision on the rights and obligations of the parties if this is not regulated in their agreement.<sup>17</sup> The scope of the dispute that can be resolved in the arbitration is the dispute in the commercial sector.<sup>18</sup> There is no clear explanation of the meaning of this article, the closest explanation can be found in the explanation of article 66 paragraph a of the Law which defines "the scope of trade law covering trade, banking, finance, investment, industry and intellectual property".

Agreement to settle disputes through arbitration is contained in a document signed by the parties.<sup>19</sup> The key point in this clause is that the agreement must be in the written form, hence a verbal agreement does not possess a legal force as a basis in the commencement of arbitration. If an arbitration agreement occurs in the form of an exchange of letters, telex, telegram, facsimile, e-mail or other communications means, it shall be accompanied by a record of acceptance by the parties. The law also accommodates a situation where the parties can not write their arbitration agreements. In this case, the written agreement must be made in the form of notarial deed.

One of the many advantages of arbitration as a dispute resolution forum is the definite timeframes. This is even

governed by the Law. Settlement of disputes or disagreements through alternative settlement of disputes shall be settled in a face-to-face meeting by the parties within a maximum period of 14 (fourteen) days and the results shall be set forth in a written agreement. If the period has passed, the parties may appoint one or more expert advisors or through a mediator to assist in the settlement of the dispute. If within 14 days the agreement is not reached then the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator. If the mediator has been appointed by an arbitration body or an alternative dispute settlement institution, within a maximum of 7 (seven) days, the mediation process must be started. The time period of this dispute resolution is 30 days and the parties must have reached a written agreement signed by all relevant parties. The Agreement must be registered in the District Court within 30 days of signing. The contents of the agreement must be executed within 30 days of registration. If the mediation effort does not reach an agreement, then the parties may continue the arbitration or ad-hoc arbitration process.<sup>20</sup> The examination of the arbitration dispute shall be resolved within a period of 180 (one hundred and eighty) days after the arbitrator or arbitral tribunal is established.<sup>21</sup>

---

<sup>17</sup> Ibid. Art 4

<sup>18</sup> Ibid. Art 5 par 1

<sup>19</sup> Ibid. Art 4 par 2

---

<sup>20</sup> Ibid. Art 6

<sup>21</sup> Ibid. Art 48

Although the examination in the arbitration proceedings are not as formal as it is in the court, the arbitral award as the outcome of the arbitration proceedings has a final and binding power.<sup>22</sup> Final means arbitration is the first and last legal effort, no more legal remedies can be taken to overturn the award like a court award, while binding means the content of the award shall be executed by the parties voluntarily and in good faith. If, in the process, one or both parties refuse to carry out the award, then an execution order may be ordered under the direction of the Chairman of the District Court at the request of either party.<sup>23</sup> In this case, the process of execution of the arbitral award is likened to a court award.

The arbitral award is binding and can not be appealed, but either party may apply for an annulment if the award is allegedly to contain the following elements:<sup>24</sup>

- 1) a letter or document submitted in the hearing, after a award is imposed, acknowledged as false or otherwise false;
- 2) after the award is taken to find the decisive document, which is hidden by the opponent; or
- 3) the decision is taken from the results of the deception done by one of the parties in the dispute.

---

<sup>22</sup> Ibid. Art 60

<sup>23</sup> Ibid. Art 61

<sup>24</sup> Ibid. Art 70

## 2. Principles in Arbitration

Two main principles of arbitration are kompetenz-kompetenz and separability principles. These two principles provide a fundamental basis in which arbitration found its jurisdiction and therefore could manage to become one of the most practical alternative dispute resolution. These two principles deemed to be work in conjunction in order to give the arbitration proceeding the maximum legal validity.<sup>25</sup>

Separability principle deals with the validity of arbitration clause as a part of the underlying agreement. The main notion is that a valid arbitration clause/agreement will remain valid even in the event that the underlying agreement rendered invalid. Arbitration clause considered as a separate and independent agreement between the parties.<sup>26</sup> By enforcing this principles, many arbitration proceeding can be rescued from failing by sole reason that the underlying agreement is invalid or nullified.<sup>27</sup> This principle is well established in Indonesian Arbitration Law, regulated in article 10:

---

<sup>25</sup> Jack M. Graves, "Competence-Competence and Separability-American Style" in S. Kröll, L.A. Mistelis, P. Perales Viscasillas & V. Rogers (eds), Liber Amicorum Eric Bergsten. *International Arbitration and International Commercial Law: Synergy, Convergence and Evolution*. 157-178. 2011. Great Britain: Kluwer Law International.

<sup>26</sup> Priyatna Abdurrasyid. *Ibid*. Pg. 66

<sup>27</sup> Jack Tsen-Ta Lee. 1995. Separability, Competence-Competence and the Arbitrator's Jurisdiction in Singapore. *Singapore Academy of Law Journal*. 7: (421).

An arbitration agreement will not become void because of the circumstances mentioned below.

- a. the death of one of the parties;
- b. the bankruptcy of one of the parties;
- c. novation;
- d. the insolvency of one of the parties;
- e. inheritance;
- f. the conditions to terminate the main agreement become effective;
- g. the implementation of the agreement is assigned to a third party, with the consent of the parties who made the arbitration agreement; or
- h. the main contract expires or is nullified.

Another connected yet distinct principle in arbitration is *kompetenze-kompetenze* which deals with arbitrators competence. *Kompetenze-kompetenze* principle (literally means jurisdiction concerning jurisdiction) defined as:

“if the arbitration agreement is allegedly invalid or for some reason the arbitrators are [...] lack jurisdiction over some or all of the disputes, this does not prevent the arbitrators from deciding the validity issues.”<sup>28</sup>

<sup>28</sup> Jonas Benedictsson, et al. 2009. “Challenges to Jurisdiction” in *International Arbitration Checklists*. Gran Hanessian et al (ed), New York: JurisNet, LLC. pg 67

In other word, arbitrators possess jurisdiction in ruling their own jurisdiction to deal with dispute in question. Even when one of the party filed a challenge regarding jurisdiction to the Court, the arbitrators may decide to continue the arbitration proceeding.<sup>29</sup> Although this principle is well known and widely accepted in the global arbitration practice, Indonesian Arbitration Law does not provide a specific rule regarding this particular principle. This has become a concern among arbitration practitioners<sup>30</sup> considering how important it is to ensure that the arbitrators can decide their own jurisdiction in order to perform an effective arbitration proceeding.

### 3. Indonesian Bankruptcy Law

Bankruptcy-related regulations in Indonesia were originally contained in the third book of *Wet Boek Van Koophandel* under the title *Van De Voorzieningen In Geval Van Onvermogen Van De Koopman* (about regulations in terms of incompetence of traders), contained in articles 749-910, and in the title VII *From the third book of Burgelijke Rechtsvordering* with the title *Van De Toestand Van Kennelijk Onvermogen* (about the real incapacity) that applies to traders. Meanwhile, bankruptcy for non-traders is regulated in the *Reglement op*

<sup>29</sup> Although this may be resulted in some risks since court decision is binding on the arbitrators

<sup>30</sup> [...], *Jelang MEA, Praktisi Usul Perubahan UU Arbitrase*, HukumOnline, available from: <http://www.hukumonline.com/berita/baca/lt566fb4d7bd39a/jelang-mea--praktisi-usul-perubahan-uu-arbitrase> accessed on 13 May 2017

de Rechtsvordering or abbreviated RV (S.1847-52 jo .1849-63, the seventh bb third book entitled van de staat van kenenelijk onvermogen (about the apparently incapable state). In practice this regulation encountered so many problems that in 1905 there was a new regulation namely Faillissementswet which did not differentiate the Law on Bankruptcy between traders and non-traders (Faillissements Verordening, Staatsblad 1905: 217 Juncto Staatsblad 1906: 34).<sup>31</sup> Meanwhile, most of the material in these “old law” is no longer compatible with the developments and legal needs of the trade community, and has therefore been amended by Government Regulation in Lieu of Law No. 1 Year 1998 on amendments to the law on bankruptcy, which is subsequently established into law under the Law No. 4 Year 1998. Once again, the changes made in the new bankruptcy law have not yet met the development and needs of the community. One of the major problems of Law 4/1998 is the absence of regulation regarding arbitration clause that may be exist in the parties' agreement.<sup>32</sup> Consequently there are a very difference view in the panel of court judges when these type of cases brought up. Hence, the promulgation of Law No. 37 Year 2004 on Bankruptcy and Apostponement of

<sup>31</sup> Sutan Remy Sjahdeni. 2016. “Sejarah, Asas dan Teori Hukum Kepailitan”. Jakarta: Prenadamedia Group. Pg. 80

<sup>32</sup> Sunarmi. 2010. Prinsip Keseimbangan dalam Hukum Kepailitan di Indonesia (Edisi 2). Jakarta: PT. Sofmedia. Pg. 376

Debt Obligation (hereinafter referred to as Bankruptcy Law.

The law stipulates the requirements of bankruptcy in Article 2 paragraph 1 of Bankruptcy Law, where the request for bankruptcy statement against a debtor may only be filed if the following conditions are met:

- a. The debtor against whom the petition is filed must have at least two creditors; or in other words must have more than one creditor.
- b. The debtor does not pay at least one debt to one of his Creditors
- c. The unpaid debts must have fallen and been able to be billed (due and payable).

There are six parties who are able to filed bankruptcy in the Bankruptcy Law<sup>33</sup>:

- a. Debtor.
- b. One or more creditors.
- c. Public prosecutor.
- d. Central Bank of Indonesia.
- e. Capital Market Supervisory Agency.
- f. Ministry of Finance.

Whereas, the parties who can be filed bankrupts are:

- a. Natural person and legal person.

---

<sup>33</sup> The regulation before Law No. 4 Year 1998 stated that only three parties can filed bankruptcy namely: the debtor, one or more creditors, public prosecutor. Subsequently, according to Governement Regulation in lieu of Law No 1 Year 1998 the parties who can filed bankruptcy are: the debtor, one or more creditors, public prosecutor, Central Bank of Indonesia and Capital Market Supervisory Agency.



- b. A married debtor.
- c. Legal entity.
- d. Heritage.

Application for bankruptcy is submitted to the Chairman of District Court through the Court's Clerks. The Clerk then submit the application to the Chairman within two days after the application has been submitted. The examination on the application shall be commenced within twenty days after the application submitted. The decision on a petition for declaration of bankruptcy must be rendered at the latest within the time period of 60 (sixty) days counted from the date the petition for declaration of bankruptcy is registered. The court decision as referred to in paragraph (5) shall contain:

- a. particular article(s) of the relevant law or regulation and/or unwritten legal source that is used as the basis for hearing the petition.
- b. legal considerations and dissenting opinion from the members or chairman of the panel of judges.<sup>34</sup>

The decision on the declaration of bankruptcy must also contain the appointment of a Curator and Supervisory Judge from the Court.<sup>35</sup> The Curator shall be authorized to perform the management and/or the settlement of the bankruptcy

assets since the date on which the bankruptcy decision.<sup>36</sup>

## **B. In the Event that one of the Parties of the Arbitration Agreement Rendered Bankrupt**

### **1. Bankruptcy and Arbitration: Jurisprudence in Indonesia**

Lack of specific and understable of the regulation regarding these specific problems can be shown by the varied judges' decisions when confronted with such disputes. Rahayu Hartini<sup>37</sup> cited some of the Court Case of which there is a problem that intersects between the arbitration clause and the bankruptcy:

- a. Bankruptcy Dispute of PT. Basuki Pratama Engineering (Petitioner I) and PT Mitra Surya Tata Mandiri (Petitioner II) Against PT Megarimba Karyatama (Respondent) Year 1999. In this dispute, Applicant I filed a bankruptcy decision against the Respondent on the basis of the Respondent's debts to Applicant I which is due and collectable. However, there is an arbitration clause in the applicant's agreement with the Debtor (Respondent). In this case, the Commercial Court decided that the arbitration clause shall prevail so that the Panel of Judges declares that it is not

<sup>34</sup> Law No. 37 Year 2004 Regarding Bankruptcy and Suspension of Obligation for Payment of Debts (lembaran Negara Year 2004 No. 131, Tambahan Lembaran Negara No. 4443).

<sup>35</sup> *Ibid.* Art. 15

<sup>36</sup> *Ibid.* Art 16.

<sup>37</sup> Rahayu Hartini, Op. Cit. Pg. 232

authorized to decide the case. The applicant subsequently filed an appeal to the Supreme Court where the Supreme Court decided to annul the decision of the Commercial Court and decided that the Respondent was in a state of bankruptcy. The Supreme Court argues in its essence is that, the bankruptcy dispute has an extra ordinary character that specifically resolves the request for bankruptcy so it can not be dismissed with arbitration authority. This ruling is ultimately beingre-canceled at the level of the Review of Court Decision (*Peninjauan Kembali*) where the Court declares the absolute authority of the arbitration can not be dismissed by the commercial court authority.

b. Bankruptcy Dispute of PT Kadi International (Petitioner) Against PT Wisma Calindra (Respondent) Year 2000. In this dispute, The Applicant filed for bankruptcy against the Respondent for the debts of the Respondent which have been due and collectable. In the agreement between the Applicant and the Respondent contains an arbitration clause. In the Commercial court, the Applicants' Petition is declared granted and the Respondent

declared bankrupt. At the level of Cassation, the Cassation Application filed by the Respondent is granted so that the Supreme Court ruled the Bankruptcy decision of the Respondent.

c. Bankruptcy Dispute ofPT Trakindo Utama against PT Hotel Sahid Jaya International. In this dispute, The Applicant filed a bankruptcy decision against the Respondent for the debts of the Respondent which have been due and collectable based on the Arbitral Award. In the agreement between the Applicant and the Respondent contains an arbitration clause. The Commercial Court decided that the application for bankruptcy against the debtor is an "exegeration" and must be rejected because the process of Enforcement of the Arbitral Awards has not been fully implemented. This decision was being challenged in the Cassation Court where the challenge had been rejected. The decision had also been supported by the Decision of the Review of Court Decision (*Peninjauan Kembali*).

d. Bankruptcy Dispute of PT Bangun Prima Graha Persada (Applicant) Against Daito Kogyo Co. Ltd. - PT. Bina Baraga Utama

Joint Operation (Respondent). The applicant requested the bankruptcy decision against the Respondent as the Respondent failed to pay the project's payment bill and there were other creditors. In the agreement between the Applicant and the Respondent contains an arbitration clause. The Commercial Court decided that the Court has the competence in ruling the case hence it rendered the Respondent bankrupt. The decision then dismissed by by the Decision of the Review of Court Decision (*Peninjauan Kembali*) because there is a "*misuse of the law*".

## 2. "Bangkrut" or "Pailit"

The confusion occurring in Indonesia in relation to arbitration and bankruptcy disputes may be as a result of the lack of clarity of regulations. Arbitration Law as the basis for the conduct of arbitration only regulates the matters relating to bankruptcy in article 10 of the Law which regulates:

An arbitration agreement does not become void due to the following circumstances:

- a. The death of one party;
- b. Bankruptcy of either party;
- c. Innovation;
- d. Insolvency of either party;
- e. Etc

Notice that paragraph (b) and (d) stated the law ensures the validity of an arbitration agreement even if one party is insolvent or bankrupt. In paragraph d, the Law stated that in the event of insolvency of either party, the arbitration agreement remain valid. Up to this point, Article 10 does not rendered any problems, considering bankruptcy and insolvency are two different things. According to Rohan Lamprecht:<sup>38</sup> Insolvency does not necessarily lead to bankruptcy, but all bankrupt debts are considered insolvent ". Insolvency itself can occur if the debtor can not pay off all debts or if the debtor has the amount of debt that exceeds the total amount of his property. In conclusion insolvent is a condition that becomes the requirement of bankruptcy, but insolvent parties may not necessarily be terminated bankrupt. Points (d) are not directly related to bankruptcy law

The problem lies with the regulation stated in the paragraph (b) of Article 10 which states that the arbitration agreement is not void even if one party is bankrupt. In the Bahasa version of arbitration law, The term "*bangkrut*" is used. The use of the term "bangkrut" in the Arbitration Law is different from the term used in Bankruptcy Law that use the term "*pailit*". Are "*bangkrut*" and "*pailit*" are the same things?

In Black's LawDictionary, the term that is used is Bankrupt and defined as:

<sup>38</sup> Cited from: Sutan Remy Sjahdeni, *Op Cit.*, pg 151.

The State or condition of a person (individual, partnership, corporation, municipality) who is unable to pay their debt as they are, or become due. The term includes a person who is invited to have filed a voluntary petition, or who has been adjudged a bankrupt. It can be seen that this definition is so widespread that bankrupt is defined as the insolvent state as well as after the entity declared bankrupt. However, it worth to mention that the term "bankruptcy", is used in the translation of the Law no. 37 Year 2004 in the wolrdbank document in which the title is mentioned as "Bankruptcy And Suspension Of Obligation For Payment Of Debts".<sup>39</sup> The defintion of the "bankruptcy" itself from this translation is: General confidence of all assets of a Bankrupt Debtor that will be managed and supervised by a Curator under the supervision of Supervisory Judge as provided for herein. It can be concluded that "bangkrut" and "pailit" are two things in common. In this sense, the arbitration law clearly suggests that the arbitration agreement will remain in effect in the event one of the party rendered banckrupt. Unfortunately the rules in arbitration law stops on the status of the arbitration agreement only. Regarding the effect of bankruptcy of one of the parties to the arbitration proceeding, the law was silent.

---

<sup>39</sup>[...] available from [http://siteresources.worldbank.org/GILD/Resources/2004IndonesiaBankruptcyLaw\(English\).pdf](http://siteresources.worldbank.org/GILD/Resources/2004IndonesiaBankruptcyLaw(English).pdf), accessed on 15 May 2017

### 3. The Regulation in The Banckruptcy Law

The Bankruptcy Law as a regulation related to the conduct of bankruptcy examination may be more detailed in regulating this matter. Unfortunately, the only regulation in the bankruptcy law which related to arbitration is in article 303 which regulates: "The Court shall remain be competent to examine and adjudicate the petition for declaration of bankruptcy from contracting parties containing arbitration clause provided that the debt being basis of application for bankruptcy has fulfilled the requirements as referred to in Article 2 paragraph (1) hereof."

This rule is further explained in the formal explanation of the law: "The provision in this Article intends to confirm that the Court shall remain authorized to hear and settle the petition for bankruptcy declaration from the parties, although the agreement on indebtedness they has drawn up contains an arbitration clause." Instead of making it more clear, this rule create more confussion. Rahayu Hartini<sup>40</sup> even considered the regulation of article 303 resulted in a "worse" rule than the previous law in relation to the legal certainty because this rule has violated the principle of *pacta sunt servanda* as regulated in Article 1338 paragraph (1) of the Civil Code. The author has not come to this conclusion, but the authors agree that although this rule is intended to clarify

---

<sup>40</sup> Rahayu Hartini. *Op Cit.* Pg. 243

the previous Bankruptcy Law, this regulation in the article 303 in the Bankruptcy Law is even more confusing in its implementation, especially if it is confronted with the Article 10 of the Arbitration Law .

Article 10 of the Arbitration Law states that the arbitration agreement is not invalid even if either party is bankrupt. So if, for example, there is an arbitration dispute where one of the parties is being filed for bankruptcy, under article 10 of arbitration law, the arbitration process can still be commenced because the arbitration agreement itself is still valid. If the arbitrator or Court declares that the arbitration is not authorized to decide upon the case, then by definition, he will violate the principle of *pacta sunt servanda* because "the absence of the absolute authority of the arbitration in resolving the dispute can only be justified if the parties have unanimously agreed to withdraw the arbitration agreement".<sup>41</sup>

However, pursuant to article 303 bankruptcy law, at the same time, the Commercial Court can still examine the dispute of the same parties in the same agreement regarding the same assets provided that the provisions in the Bankruptcy Law have been fulfilled. Then what about the arbitration process? Can it still be continued? Is it possible if the two judicial processes may continued concurrently i.e. arbitration in one hand

and bankruptcy in the other? Are claims regarding the same assets may be processed under two different settlement mechanisms?

The Bankruptcy Law regulates the effect of bankruptcy related to claims that occur outside of bankruptcy dispute. The claim of rights or obligations concerning the bankruptcy assets must be filed by or against the curator.<sup>42</sup> This is understandable because as long as the bankruptcy occurs, the debtor basically has no authority anymore in taking care of the bankruptcy assets, the curator acts on behalf of the debtor. Meaning that the claims can still be carried out provided that the claim is brought against the curator. However, if the claim ultimately leads to a punishment of the debtor, the penalty has no legal effect on the bankruptcy assets.<sup>43</sup> Basically there are two possible situations due to bankruptcy:

First, if the debtor acts as an applicant in an ongoing lawsuit during the bankruptcy, the case is suspended to allow the defendant to call the Curator to take over the case within the time period determined by the judge. In case the Curator fails to fulfill the summons, the defendant has the right to request the dismissal of the case, and if the debtor fails to do just that, then the case may be continued between the Debtor and the

---

<sup>41</sup>*Ibid.* Pg. 242.

<sup>42</sup> Bankruptcy Law Art. 26 par. 1

<sup>43</sup>*Ibid.* Art 26 par. 2

defendant, as long it is related to the assets beyond the bankruptcy assets.<sup>44</sup>

Second scenario is when the debtor act as a defendant, then the claims against debtors may not be related to claims for obtaining compliance from bankruptcy assets as these claims can only be filed by registering them for reconciliation.<sup>45</sup> Again, these regulations still provides an opportunity for the lawsuits outside of bankruptcy proceedings to be proceed. Article 29 states a lawsuit will be declared void by law, insofar as it concerns the fulfillment of the bankruptcy assets when the decision of bankruptcy is rendered, but this article only regulates the lawsuit in the Court, not for the dispute mechanism outside of the Court such as arbitration.

Fred G. Tumbuan<sup>46</sup> argues that if the legal claims in the arbitration are still in progress, then *mutatis mutandis*, applied the article 26 and article 27 of the Bankruptcy Law. In the event of the circumstances referred to in article 26 Bankruptcy Law, The curator with the permission of the Judge Supervisor takes over the case. The result of the arbitration award becomes the profit of bankruptcy assets. The cost of arbitration becomes the burden of bankruptcy assets. The same applies whenever the curator takes over the case in arbitration under the

provisions referred to in article 27 of Bankruptcy Law and the cost of the arbitration case becomes the debt of bankruptcy assets.

Fred further distinguishes two forms of lawsuit in such cases, namely (i) a claim which must be filed for verification in accordance with article 25 Bankruptcy Law as it pertains to the fulfillment of the compliance of the bankrupt assets and (ii) a claim which is not intended to obtain compliance with the bankruptcy assets for example a demand for termination of the agreement accompanied by a claim for compensation (vide article 1267 Civil Code). Where the treaty contains an arbitration clause, the termination of the agreement shall be in the exclusive authority of the arbitrators.

#### 4. Pacta Sunt Servanda

When the parties have agreed to choose arbitration as a forum for the settlement of their dispute, then they have been contractually bound in line with the principle of *pacta sunt servanda* as set forth in the first paragraph of Article 1338 of the Civil Code, this agreement shall apply as a law to its parties. Rahayu even calls this as “the absolute attachment of the arbitration clause which in itself embodies the absolute authority / competence of the arbitration to resolve the dispute arising from the agreement”.<sup>47</sup> She further argues that the expiration of the absolute authority of arbitration in

---

<sup>44</sup> Art 28 bankruptcy Law

<sup>45</sup> Art 27 bankruptcy Law

<sup>46</sup> Fred G. Tumbuan. Arbitrase dan Kepailitan. available from: [http://www.bapmi.org/in/ref\\_articles2.php](http://www.bapmi.org/in/ref_articles2.php), accessed on 23 February 2017

---

<sup>47</sup> Rahayu Hartini, Op Cit. Pg. 242.

resolving the dispute can only be justified if the parties have firmly agreed to withdraw the arbitration agreement. Questions arise as to whether the public nature of bankruptcy can affect the absolute arbitrage of authority based on contractual nature.

### 5. The Nature of The Dipute is Basically Different

We are going full circle to the very nature of bankruptcy and arbitration. When viewed from its own nature, bankruptcy and arbitration basically works in a very different spectrum. Arbitration is a dispute resolution mechanism, which aims to resolve disputes between the parties due to violation of the terms of the agreement, while bankruptcy is a mechanism related to the personal status of persons, from non-bankruptcy to bankruptcy and it has a public law consequences. Based on Art. 1 (1) jo. Art. 6 of the Bankruptcy Law, a bankruptcy petition may be filed if the debtor has two or more debts, and one of the debt is collectable, and can be proven simply. While arbitration is a dispute resolution mechanism which requires disputes to be resolved.<sup>48</sup>

From this, it can be concluded that arbitration and bankruptcy are two different things, to file a bankruptcy request is not required a dispute, and while the entry of the case to arbitration

must be through a dispute or dispute or the like. As a public process, bankruptcy is a legal process which has public implications. With the existence of bankruptcy, the provisions of Article 22 to Article 32 of the Bankruptcy Law is quite clear that the rights and obligations of the insolvent debtor turn to the curator as the party who will make the payment of the debtor's bankruptcy liability from the proceeds of the sale of the bankrupt property, as well as the law enforcement processes relating to the bankruptcy property.<sup>49</sup>

The link of these two spectrum, lies in the assets of the debtor, which is placed as the bankruptcy assets. If the arbitration is exercised by or against the debtor in which the claim relates to the payment of the money, the position of the debtor as the applicant or the defendant in the arbitration proceedings will ultimately affect the bankruptcy assets, especially if the arbitral panel declares to punish the debtor to pay some money. Two scenarios may occur in this case, if the arbitration decision is decided before the bankruptcy boedel is determined, then the arbitration award may be filed by the creditor as a collectible debt against the debtor.<sup>50</sup> However, if the arbitration decision is terminated after the bankruptcy boedel is

<sup>48</sup> [...]. Kepailitan dan Arbitrase (1). Available from: <http://www.hukumonline.com/klinik/detail/cl808/kepailitan-dan-arbitrase-1>, accessed on 16 May 2017.

<sup>49</sup> *Ibid.*

<sup>50</sup> Explanation of Article 2 Bankruptcy Law: "*Debt which has become due and payable*" shall mean the obligation to pay debt that has become due, either under the contract, accelerated or due to the sanctions imposed by the regulatory body or **decision of the court, arbitrator or panel of arbitrators.**"

determined, this will cause problems, because if the judgment is detrimental to the bankruptcy assets, in accordance with the provisions of Article 26 paragraph 2, this decision shall have no legal effect on the bankruptcy assets.

## 6. Regulation in Another Jurisdiction

In most jurisdictions, only state courts (usually special courts) have the authority to process, manage and resolve bankruptcy proceedings, including the process of liquidating a bankrupt company, establishing receivables, appointing curators or distributing pro-rata payments to creditors. Disputes considered to be "core" bankruptcy issues, are generally regarded as nonarbitrable. However, the issue of dispute involving only a bankrupt company as one of its parties, or not directly related to bankruptcy law (e.g termination of a contract), may be settled by arbitration. Usually the consideration is being taken between (i) the desire to establish a centralized forum to resolve all bankruptcy disputes and (ii) the existence of parties' commitments prior to the bankruptcy to resolve their dispute through arbitration.<sup>51</sup>

There are three kinds of groups of jurisdictions governing this matter namely (i) a jurisdiction which completely prohibits arbitration if a party is insolvent, (ii) a jurisdiction which does not prohibit arbitration if a party is insolvent and (iii) a

jurisdiction that considers it by case-by-case.<sup>52</sup>

### a. Jurisdiction Which Completely Prohibits Arbitration if A Party is Insolvent

In some countries for example Latvia<sup>53</sup> and Poland<sup>54</sup>, the law automatically terminate the arbitration agreement when a party is rendered bankrupt. In Dutch law, financial related claims against bankrupt parties must be settled in a special process of bankruptcy and not in arbitration (the *sidpute* rendered as non-arbitratable)<sup>55</sup>. In Italy, all financial related claims against a bankruptcy may only be filed exclusively through bankruptcy court<sup>56</sup> although the law also

---

<sup>51</sup> Gary B. Born. 2014. "International Commercial Arbitration: Vol. III. Netherlands: Kluwer Law International. Pg 995.

---

<sup>52</sup> Patricia Zivkovic. 2012. Effects of Bankruptcy on Arbitration Proceeding. Thesis for Department of Legal Studier Central European University. Pg. 30

<sup>53</sup> Latvian Civil Procedural Law Year 2007, art. 487 (8) regarding the rights and duties of such persons as who, up to the taking of the award of the arbitration court, have been declared insolvent. Available From: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=191081#LinkTarget\\_3101](http://www.wipo.int/wipolex/en/text.jsp?file_id=191081#LinkTarget_3101) (accessed on 16 May 2017).

<sup>54</sup> Upon a declaration of bankruptcy Polish law renders any arbitration agreement concluded by an insolvent party ineffective and discontinues any pending arbitration proceedings. See: Jonathan Sutcliffe & James Rogers. 2010. "Effect of Party Insolvency on Arbitration Proceedings: Pause for Thought in Testing Time. London: Sweet & Maxwell. Pg. 284

<sup>55</sup> The wording of article 122 seems to imply that arbitration agreements signed before a bankruptcy ruling may not be Petitioned by or against the curator (guardian) of the insolvent party (See Dutch Bankruptcy Law Art. 122.

<sup>56</sup> Italian Bankrupt Code art 52: all monetary claims against a bankrupt company must be specifically requested to the Bankruptcy Court. For claims that do not result in a award that the insolvency Owed a sum of money, the arbitration agreement remains valid Art 83bis: the curator may terminate all agreements signed by the bankrupt party that have not been fully implemented, when the curator terminates the agreement the pending arbitration process can not proceed.



provided an opportunity for a non-financial claim to be resolved through arbitration. In Portugal, an arbitration agreement, whereby one of the parties is imposed for bankruptcy, and which may affect the assets of the insolvent, will be suspended during bankruptcy proceedings<sup>57</sup>. Such legislation may be categorized as (1) regulations relating to substantive terms, which may result in the invalidation of previously valid arbitration agreements or (2) regulations relating to the capacity of the parties, which eliminates the capacity of the insolvent party to carry out the arbitration proceedings.

#### **b. The Jurisdiction That Does Not Prohibit Arbitration If The Party is Subject to Bankruptcy**

In other jurisdictions, the bankruptcy of either party shall have no effect whatsoever on the arbitration agreement signed before the bankruptcy. The agreement remains binding on the company and its curators. Except for "core" bankruptcy issues, contractual disputes involving a bankrupt company remain subject to the signed arbitration agreement prior to the bankruptcy in France<sup>58</sup>. Although arbitration agreements

remain valid and proposed disputes are considered arbitrable, it is usually a common practice that the trial process is suspended. Usually public policy becomes the basis of suspension of the trial. Suspension may also be imposed by a court decision.

#### **c. The Jurisdiction That Considered it Case-by Case**

In Spain, the bankruptcy law states that arbitration agreements may be suspended during the period of bankruptcy based on court decisions.<sup>59</sup> When the court considers that the agreement could disrupt the bankruptcy process, they may terminate the suspension of the agreement. In the UK, curators of bankruptcy parties are authorized to cancel contracts in bankruptcy, or bankruptcy courts may provide discretion that arbitral disputes must be terminated through bankruptcy proceedings<sup>60</sup>.

The Singapore Court of Appeal states that if an arbitrary dispute affects the substantive rights of another creditor, or is based on regulations

---

is common knowledge that jurisprudence and doctrine in France regulate all trials, including arbitration, suspended by the commencement of bankruptcy proceedings. But under Article 48 French Bankruptcy Law, suspension is only executed until the creditor submits his claim. After that the proceedings may proceed immediately but the arbitration object may generally change. (See: Rosell & Prager. 2011. International Arbitration and Bankruptcy: United States, France and the ICC. Journal of International Arbitration 18 (4). p 422)

---

<sup>57</sup> Portuguese Bankruptcy Law Art. 78 Similar rules are also adopted in the French Bankruptcy Law Art. 47: all proceedings (including arbitration, suspended in the event of bankruptcy proceedings) Austrian Insolvency Act art 7: arbitration proceedings suspended in the bankruptcy process.

<sup>58</sup> Jean X v. Int'l Co. In French Cour de Cassation, legal proceedings against bankruptcy Should be suspended until the plaintiff filed his claim with the liquidator, after which the trial process was limited to validation and calculation of claims, it

<sup>59</sup> Spanish Insolvency Act Art 52 (1): The bankruptcy process itself has no effect on mediation or arbitration agreements signed by bankruptcy parties

<sup>60</sup> English Insolvency Act 1986 Art 349A (3)

pertaining to bankruptcy per se, then the dispute is non-non-arbitrable. In addition, the court also states that if the dispute is only based on the agreement signed before the bankruptcy, there is generally no reason to cancel the arbitration agreement.<sup>61</sup>

The most obvious example of this kind of jurisdiction is the US jurisdiction where in general the claim is regulated in the US Federal Bankruptcy Law, this suspension is made until the court's permission to proceed. Usually the US court declares that the debtor must continue to implement arbitration agreements, especially on things that are non-core.

In this regard, it seems that, in regards of bankruptcy and arbitration, the Indonesian law is more likely fall under the jurisdiction the second type where the commencement of the arbitration itself is not prohibited in its regulation although one party is rendered bankrupt. The concept of core/non-core matters can actually be adopted in Indonesia because Indonesian Law itself support this concept.<sup>62</sup> Practically it can be concluded that core matters that can only be solved through bankruptcy mechanisms in the Commercial Court are those that are directly related to and incur losses to the bankruptcy assets, therefore cannot be

resolve in arbitration. While, non-core matters are the disputes that are not directly related to bankruptcy property and are falls under the jurisdictions of arbitration, for example regarding the termination of agreements, statements of default, and the like.

#### IV. Conclusion

Alternatives Disputes Resolution where the area of bankruptcy and arbitration meets often occur in Indonesia, unfortunately there is not yet any discrepancies in court decisions regarding this matter. This is likely due to the lack of clarity of the arrangements in both the Arbitration Law and the Bankruptcy Law. The provisions of Article 10 of the Arbitration Law and Article 303 of the Bankruptcy Law do not result in clarity, but instead resulting to further confusion as both regulations give authority to arbitration as well as Court in resolving such dispute. The middle way that writers can offer is the application of core/non-core matters concept that are practiced in some countries. This concept explains that the arbitration agreement is not necessarily invalid with the bankruptcy of one of the parties since the dispute arose between the two parties may not be all directly related to the public element of bankruptcy, as well as the Commercial Court does not necessarily have no authority in examining the petition for bankruptcy because the matters of a public nature relating to bankruptcy can

---

<sup>61</sup> Larsen Oil & Gas Pte Ltd v. Petroprod Ltd. 2011

<sup>62</sup> If one analyze these concept together with the rules found in the article 25, 26, 27, 303 of bankruptcy Law and Article 10 of Arbitration Law, one can conclude that the *core/non core concept* is in fact does not contradict these rules. It may be even supported it.

not be terminated by an arbitration institution which in fact can only resolve private disputes.

## Bibliography

### Books:

- Benedictsson, Jonas. et al. 2009. *Challenges to Jurisdiction in International Arbitration Checklists*. Gran Hanesian et al (ed), New York: JurisNet, LLC.
- Born, Gary B. 2014. *International Commercial Arbitration*. Vol. III. Netherlands: Kluwer Law International.
- Buxbaum, Richard M. 2009. *Public Law, Order Public and Arbitration: A Procedural Scenario and a Suggestion*. in Peter Hay, et al (ed.). *Resolving International Conflicts*. New York: CEU Press.
- Graves, Jack M. 2011. *Competence-Competence and Separability-American Style*. in S. Kröll, L.A. Mistelis, P. Perales Viscasillas & V. Rogers (eds), *Liber Amicorum Eric Bergsten. International Arbitration and International Commercial Law: Synergy, Convergence and Evolution*. Great Britain: Kluwer Law International.
- Peter Mahmud Marzuki. 2011. *Penelitian Hukum*. Jakarta: Prenada Media Group.
- Priyatna Abdurrasyid. 2011. *Arbitrase dan Alternatif Penyelesaian Sengketa (APS): Suatu Pengantar*. Jakarta: PT. Fikahati Aneska.
- Rahayu Hartini. 2009. *Penyelesaian Sengketa Kepailitan di Indonesia: Dualisme Hukum Kepailitan Dan Arbitrase di Indonesia*. Jakarta: Kencana.
- Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*. Cet. 3. Jakarta: Universitas Indonesia.
- Sutan Remy Sjahdeni. 2016. *Sejarah, Asas dan Teori Hukum Kepailitan*. Jakarta: Prenadamedia Group.
- Sunarmi. 2010. *Prinsip Keseimbangan Dalam Hukum Kepailitan di Indonesia*. (Edisi 2). Jakarta: PT. Sofmedia.
- Sutcliffe, Jonathan & James Rogers. 2010. *Effect of Party Insolvency on Arbitration Proceedings: Pause for Thought in Testing Time*. London: Sweet & Maxwell.
- Susanti Adi Nugroho. 2015. *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*. Jakarta: Prenadamedia Group.

### Journal:

- Aragaki, Hiro N. 2016. "Arbitration: Creature of Contract: Pillar of Procedure", *Arbitration Law Review*, (8).
- Lee, Jack Tsen-Ta. 1995. "Separability, Competence-Competence and the Arbitrator's Jurisdiction in Singapore", *Singapore Academy of Law Journal*. 7: 421.

Park, William W. 2005. "Private Disputes and the Public Good: Explaining Arbitration Law", *American University International Law Review*, 20 (5) : 903-906.

Rosell & Prager. 2011. "International Arbitration and Bankruptcy: United States, France and the ICC". *Journal of International Arbitration*, 18 (4): 422.

### Legislations:

Law No. 30 Year 1999 on Arbitration and Alternative Dispute Settlement (Lembaran Negara Republik Indonesia Year 1999 No. 138, Tambahan Lembaran Negara Republik Indonesia No. 3872)

Law No. 37 Year 2004 Regarding Bankruptcy and Suspension of Obligation for Payment of Debts (lembaran Negara Year 2004 No. 131, Tambahan Lembaran Negara No. 4443).

Dutch Banckruptcy Act.

English Insolvency Act 1986.

Latvian Civil Procedural Law Year 2007.

### Thesis:

Novi Kusuma Wardhani. 2009. Tinjauan Yuridis Kewenangan Pengadilan Niaga dalam Menyelesaikan Perkara Kepailitan dengan Adanya Akta Arbitrase (Studi Putusan Kasus PT. Environmental Network Indoensia dan Kelompok Tani Tambak FSSP Maserocinnae

melawan PT. Putra Putri Fortuna Windu dan PPF International Corporation), *Thesis* for Fakultas Hukum Universitas Sebelas Maret.

Patricia Zivkovic. 2012. Effects of Bankruptcy on Arbitration Proceeding. *Thesis* for Department of Legal Studier Central European University.

Rangga Adi Fitriyono. 2016. Disharmonisasi Ketentuan Arbitrase dan Kepailitan Terkait dengan Perjanjian dan Putusan Arbitrase. *Thesis* for Fakultas Hukum Universitas Airlangga, Surabaya.

### Paper:

Garuda Wiko. 2017. "Arbitration in Indonesia." *Presented in Seminar titled The Role and Development of Arbitration: Alternative Dispute Resolution on Construction Disputes*. Jakarta, 16 Mei.

### Internet:

Aria Yudi, Kepailitan dan Arbitrase (2), available from: <http://www.hukumonline.com/klinik/detail/cl885/kepailitan-dan-arbitrase-2>. (Acessed May 15, 2017).

Fred G. Tumbuan. Arbitrase dan Kepailitan. available from: [http://www.bapmi.org/in/ref\\_articles2.php](http://www.bapmi.org/in/ref_articles2.php). (Acessed February 23, 2017).

[...]. *OJK Terima 47 Laporan Sengketa Jasa Keuangan*. Jakarta, 9 August. available from:

<http://www.republika.co.id/berita/ekonomi/keuangan/16/08/09/obn7pm383-ojk-terima-47-laporan-sengketa-jasa-keuangan>. (Accessed February 24, 2017).

[...], Jelang MEA, Praktisi Usul Perubahan UU Arbitrase, HukumOnline, available from: <http://www.hukumonline.com/berita/baca/lt566fb4d7bd39a/jelang-mea--praktisi-usul-perubahan-uu-arbitrase> (Accessed May 13, 2017).

[...] available from [http://siteresources.worldbank.org/ILD/Resources/2004IndonesiaBankruptcyLaw\\_\(English\).pdf](http://siteresources.worldbank.org/ILD/Resources/2004IndonesiaBankruptcyLaw_(English).pdf), (Accessed May 15, 2017).

[...]. Kepailitan dan Arbitrase (1). Available from: <http://www.hukumonline.com/klinik/detail/cl808/kepailitan-dan-arbitrase-1>, (Accessed May 16, 2017).