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Inclusion Of The Arbitration Clause In The Notary Deed As A Dispute Settlement Forum

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ABSTRACT

The Dispute Settlement Clause in an agreement (in a notarial deed or under the hand) is an attempt to limit the parties, if a dispute arises from the parties' agreement, the dispute settlement forum is unequivocal. On the other hand, the presence of the clauses requires anyone (including the court) to reject whatever is indicated in the final decision. This study uses a library research methodology by collecting data from several literature books, journals and laws with analysis of relevant research literature the results of this study analyze normatively, no provision obliges to include such a clause in the agreement it makes, but it is the choice and desire of the parties as Partij Autonomy. It is the obligation of the parties if there is a dispute to resolve it through arbitration, and then it is obligatory to make an Arbitration Agreement with a notary deed, if not done then the legal action is null and void. So that an Arbitration Agreement can be made before a dispute occurs, which is made to be included in the parent agreement (Factum de Compromitendo) or after a dispute (Deed of Compromise).

Keywords: Arbitration Agreement, Notary.

1. INTRODUCTION

Humans cannot fulfill their own needs in living this life. Humans who can fulfill their own needs are rare and powerful. Adam while living in heaven still needed Eve. Allah SWT created Eve to accompany Adam. Cooperating or needing each other (and not interdependence), is human nature from Allah SWT – The All-Knowing – The Creator. By working together it will cover each other's shortcomings and meet the needs of each party. In the implementation of the cooperation, it can be written, just based on mutual trust (not written), because of habit (customs of the community or those who have collaborated for a long time) or an agreement or contract is made in writing in the form of an underhand deed or poured into a notary deed, which can now be done manually (physically) or electronically (digitally) (Van Apeldorn 1982).

If it is studied in the perspective of the Qur'an about us having to write business or trade in the Qur'an, it is called muamalat[1] namely "O you who believed, when you contract (i.e. when you have or contract a debt) a debt one upon anoher for a stated term, then write it down." (Qur'an 2: 282). The Word of Allah SWT, this is an imperative (must), that we write down if we muamalat. This relates to one of human nature, namely being wrong and forgetting and even breaking promises so that if it is recorded it can eliminate errors and omissions, and also as evidence between the parties that we have agreed. Besides that, by regularly registering in muamalat, human affairs among humans and for the general benefit can run well. That we should record when we pray, it is not a human habit, but Allah SWT - The All-Knowing, has created and determined a "Grand Design" for all His creatures. That we must register every time we pray is a form that can

connect one human to another in a very large scope (Sjahdeini 1993).

Muamalat is also a human culture to meet the needs of life (Pound and DeRosa 2017). In ancient society (even today) there is still a form of muamalat, just verbally and ends with shaking hands as a sign of agreement. Of course, this kind of transaction is for **"cash and carry" transactions,** but those with large values need to be listed.

Noting that in muamalat, in various people's lives, certain names or terms are given following the customs in the society concerned. Contract or Agreement[2] is a form and term for recording in a business or business transaction (Black 1983)

If the meaning of the transaction is drawn into a legal action carried out by one party with another party or which means an agreement or contract, which is carried out individually or in groups, then the transaction can be poured into a written form, because in writing it will be seen and defined the rights and obligations of each party and there is legal certainty (Adjie 1999). In general, contracts (business) start from differences in interests that are tried to be reconciled through contracts, through contracts these differences are accommodated and then framed with legal instruments so that they bind the parties.

The day the number of transactions carried out in society or by economic actors will not be counted, so that in making an agreement or contract it is necessary to consider all aspects, the substance of the agreement or contract that balances the rights and obligations between the parties and packs various desired clauses. And it is agreed that the parties will provide a healthy transaction and the parties are protected. But it should also be remembered that no matter how good the making or drafting of an agreement or contract is, it will be up to you the parties concerned, and the agreement or contract is a fence for the parties that legally the parties must obey it. (Marzuki 2003).

When the interested parties make the contract or written agreement, of course, a clause will be made that protects the rights and obligations of the contracting parties (contracts) (Isnaeni 2000). In a business relationship or agreement, there is always the possibility of disputes arising. Disputes that need to be anticipated are regarding how to implement the clauses of the agreement, what is the content of the agreement, or due to other reasons (RM 2006).

The clause in the contract is made following the substance desired by the parties. One of the substances contained in the contract clause is that if there is a dispute between the parties, the settlement forum has been determined or there is also a dispute resolution forum that does not include a dispute resolution forum. The dispute resolution clause is the free will of the parties and must be obeyed by those who made it (Adolf 2014), the parties have the right to determine the dispute resolution forum, such as deliberation for consensus, to the court.

Arbitration is a popular choice among contracting parties for resolving disputes. (Adolf 2014). Article 1 point 1 of Law Number 30 of 1999 (AAPS Law) confirms that Arbitration is a way of settling a civil dispute outside a general court based on an Arbitration Agreement made in writing by the disputing parties. Arbitration can take the form of 2 (two) forms, namely (Nugroho and SH 2017):

1. The arbitration clause contained in (include) a written master agreement made by the parties before a dispute arises **(Factum de Compromitendo)**; or
2. After a dispute emerges, the parties enter into a separate Arbitration agreement **(Deed of Compromise).**

Specifically for the Deed of Compromise, the terms and conditions have been regulated in Article 9 of Law Number 30 of 1999, the AAPS Law stipulates that if the parties agree to choose dispute resolution through Arbitration after the dispute occurs, the agreement must be made in writing and contain:

a. disputed issues;
b. full names and places of residence of the parties;
c. full name and place of residence of the Arbitrator/Arbitration Tribunal;

d. where the Arbitrator/Arbitration Tribunal will make a decision;
e. full name of the trial secretary;
f. the period of dispute resolution;
g. statement of willingness from the Arbitrator.

Unlike the AAPS Law, which only mandates **Factum de Compromitendo,** which is made to be included in the main agreement or made by the parties, one of its articles includes a clause on dispute resolution by arbitration as part of the main agreement. In this regard, it is also required to debate **Factum Compromise** outside of the parties' main agreement or in a separate agreement that cannot be removed from the main agreement, and compliance to carry out the arbitration clause when the parties disagree.

The form **of the Factum de Compromitendo,** which poured into a Notary deed from the perspective of Indonesian Notary Law has its legal consequences when the main agreement is canceled. Since in Indonesian Notary Law, it is known that there is a deed that violates the formal aspects so that the content/substance of the main agreement has not been examined. When the formal aspect of making the deed is declared invalid has a legally binding force, will the provisions of Article 9 of the AAPS Law apply?

Problem Formulation

1. The urgency of the inclusion of the Arbitration clause in the Notary deed in the main agreement or making a separate deed/agreement outside the main agreement.
2. Compliance to implement the inclusion of the Arbitration clause when the parties are in dispute.

2. METHODOLOGY

This research method uses a qualitative - descriptive design literature research. According to Zainudin Ali, that descriptive research reveals legislation relating to legal theories that are the object of research (Wijaya et al., 2020). This study examines written legal norms from various aspects, such as from the theoretical aspect, formality, binding power of a law and court decisions. To be able to explain and explain the legal facts that apply in Indonesia such as court decisions and applicable laws and regulations. This research uses a normative juridical approach, namely legal research conducted by researching library materials. discussion to be researched through the analysis of the understanding of the search for a case of PT. Comarindo Express Tama Tour & Travel and Yemen Airways, Indonesia Representative made two agreements, namely the appointment of a General Sales Agent (Passenger) on October 29, 2001 (“GSA Passenger”) and the appointment of a General Sales Agent (Cargo) on November 5, 2002 (“GSA Cargo ").

PT Dharma Niaga, Ltd. versus Hati Prima Potash PTE, Ltd. In the agreement made by the parties, it is stated that "a dispute arising out of or in connection with this sale and purchase agreement, or a breach of contract that cannot be resolved amicably between the parties, must be submitted and resolved in Indonesia based on the laws and regulations of the Indonesian state." The agreement does not mention a clause through arbitration. Through clarification the Petitioner (PT Dharma Niaga) has submitted to the West Jakarta Court (Stipulation Number: 764/Pdt.P/1996/PN.Jkt.Brt) to be resolved through BANI, and by appointing each - 1 (one) arbitrator each. In an agreement there is an arbitration clause which is associated with several books, decisions and laws and regulations, and journals related to arbitration as well as literature relevant to the problems in this study. Data analysis selected by researchers in this study is to use the approach of court decisions and the constitution of the Republic of Indonesian.

3. RESULTS AND DISCUSSION

The Importance of The Inclusion of The Arbitration Clause In The Notary Deed in The Major Agreement or A Separate

Deed/Agreement is Made Outside of The Major Agreement.

In making a Notary deed, the provisions regarding the terms of a Notary deed must be fulfilled as stated in Article 38 of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions or the Law on Notary Positions - Amendments (UUJN- P), namely:

(1) Each Deed consists of:
   a. the beginning of the Deed or the head of the Deed;
   b. Deed body; and
   c. end or closing of the Deed.

(2) The beginning of the Deed or the head of the Deed contains:
   a. title of Deed;
   b. deed number;
   c. hour, day, date, month, and year; and
   d. full name and domicile of the Notary.

(3) The Deed Body contains:
   a. full name, place, and date of birth, nationality, occupation, position, position, the residence of the appearers and/or the person they represent;
   b. information regarding the position of acting against;
   c. the contents of the Deed, which is the will and desire of the interested party; and
   d. full name, place, and date of birth, as well as occupation, position, position, and residence of each identifying witness.

(4) The end or closing of the Deed contains:
   a. a description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
   b. a description of the signing and the place of signing or translation of the Deed, if any;
   c. full name, place, and date of birth, occupation, position, position, and residence of each witness to the deed; and
   d. a description of the absence of modifications made during the creation of the Deed, or a description of the changes made in the form of additions, deletions, or replacements, as well as the number of changes made.

(5) The Deed of Substitute Notary and Temporary Notary Officials. In addition to the provisions mentioned in paragraphs (2), (3), and (4), it also includes the number and date of appointment, as well as the official who appointed them.

(1) A dispute settlement clause might be inserted in the contract in issue, for example, in the Debt Agreement in the last article, which is part of the Final Contents of the Deed (before the End of the Deed). The inclusion of the clause is an inseparable part of the contents of the contract so that if the parties cancel the contract in question, the contract will become invalid. It includes the clause on the inclusion of the dispute settlement clause. For example, if an agreement in the form of a notary deed contains conditions, it violates Article 1320 of the Civil Code, which governs Subjective Terms. If the agreement includes a clause on dispute resolution through arbitration, does it become null and void if it violates the Objective Conditions as regulated in Article 1320 of the Civil Code? or does it become null and void if it violates the Objective Conditions as regulated in Article 1320 of the Civil Code?

If it occurs as described, it appears that Article 10 of AAPS Law Number 30 of 1999 foreshadowed it, stating that "An arbitration agreement does not become unlawful due to the following circumstances:

1. the death of one of the parties;
2. The bankruptcy of one of the parties;
3. Novation (renewal of debt);
4. Insolvency of one of the parties (unable to pay);
5. Inheritance;
6. The validity of the conditions for the termination of the principal engagement;
7. If the implementation of the agreement is transferred to a third party with the consent of the party entering into the arbitration agreement; or
8. Expiration or cancellation of the main agreement.

Based on the above provisions, a clause for Settlement of Disputes through Arbitration, which is part of the Principal Agreement. If the Principal Agreement ends or is canceled does not result in the arbitration clause being void, but remains in effect or persists or does not become null and void, this is called the Separability Principle) this is the doctrine of the autonomy of the arbitration clause.

The Separability Principle is still valid even though it has complied with the provisions as stated in Article 10 of Law Number 30 of 1999 of the AAPS Law. This must be related to the validity of the Notary deed, if an agreement is made which contains a Dispute Resolution Forum clause made with a Notary deed, it must meet 3 (three) conditions, namely:

In connection with the discussion, assessing the implementation of the duties of a Notary's position can be from 3 (three) aspects:

a. Manufacturing procedure

The deed must be carried out in stages and sequentially as regulated in several articles in the UUJN/UUJN-P, which in general are:

- make an introduction to the appeared, based on his/her identity shown to the Notary;
- ask, then listen and pay attention to the wishes or wishes of the parties (question-answer).
- examine the documentary evidence relating to the wishes or wishes of the parties.
- provide advice and create a deed framework for the appearers
- to fulfill all administrative techniques of deed making
- provide a copy, and file for the minuta.
- perform other obligations related to the implementation of the duties of a Notary.
- if in making the deed there is a procedure that is not followed/carried out then the deed can be qualified as an invalid or invalid notarial deed, because it is not following the procedures specified in UUJN / UUJN - P.

b. Authority

Juridically, authority is a limitation given by law/statutory regulations to certain positions that apply to cause legal consequences. Notaries in carrying out their positions must be following the authorities stipulated in UUJN-P as stated in Article 15 UUJN-P.

The authority provided above must be used by notaries in carrying out their duties. If the Notary signs a deed at the request of parties who are not under his authority. For instance, deciding that another official has authority, the action can be classified as an act outside of authority, and the action is the responsibility of the Notary if there are parties who are aggrieved, and the deed in question has no binding power.

c. Substance

Article 38 paragraph (3) letter c of the UUJN-P confirms that the contents of the deed are the wishes and desires of the parties themselves, which in its preparation the Notary must also pay attention to the provisions of Article 1337 of the Civil Code. Notaries can only act within the scope of civil law. The notary does not grant the wishes of the parties materially whose substance is outside civil law.

If the three methods mentioned above are carried out and can be proven, then the Notary deed has perfect evidentiary power, but if only one element is not fulfilled, then the deed in question is invalid and has no binding legal force. According to Article 41 UUJN - P, the infringement of the provisions referred to in Articles 38, 39, and 40 results in the Deed only having the power of proof as a private deed. Therefore, if there has been a violation of the Formal Terms in the making of a Notary deed, specifically a violation of the provisions of Article 38 UUJN - P, which causes the Notary deed's proof value to be degraded to the point of being an underhand deed, then the entire

Notary deed loses its power of proof as a Notary deed.

When a deed is degraded, its evidentiary value only has the power of proof as an underhand deed. It does not happen immediately, but it must go through a court decision or before a public official who is authorized for that at the place where the deed was made. "A deed that cannot be considered as an authentic deed, either because of the inability or incompetence of the public official concerned or because of a flaw in its form, has the authority as written under the hand if signed by the parties," according to Article 1869 of the Civil Code. The degradation is equivalent to a defect in its form due to a violation of the formal aspects of making a Notary deed, however, it remains as evidence for the parties as long as there is no denial from the parties.

Another deed, the Notary deed regarding the Principal Agreement has not been examined (which includes a Dispute Settlement clause), but only the formality aspect (procedures for making the deed), evidence for the parties has been examined. It ensures that the Dispute Settlement clause remains in effect.

The urgency of including the Arbitration clause in the Notary deed in the main agreement or making a separate deed/agreement outside the main agreement will have a legal force that binds the parties if all the provisions for making the deed are referred to in Article 38 UUJN-P are fulfilled. Even though there is a violation of the formal aspects of making the deed, it will still have the power as evidence for the parties. Furthermore, all of the articles in it, including the Dispute Resolution clause, can be implemented because the clause can still be enforced if the parties to the dispute agree. There is no arbitration without a valid arbitration agreement (Anonymous).

Compliance to Implement The Inclusion of The Arbitration Clause When The Parties Are in Dispute

Before the Law on Arbitration and Alternative Dispute Resolution (UU AAPS) number 30 of 1999 enactment, there was always a struggle for authority (Widjaja 2008), (KARTASASMITA 2014). to decide a dispute, even though the agreement they made in **factum de compromised** after the enactment of the AAPS Law did not run smoothly – for several reasons:

1. Inclusion of a non-clear/multi-interpreted Dispute Settlement Clause through Arbitration.
2. The inclusion of an optional Dispute Settlement Clause through Arbitration, for example, also mentions the court.

The inclusion of a clear Dispute Settlement Clause through Arbitration and a Factum de Compromitendo or Deed of Compromise will simplify and clarify the authority of the institution that will resolve the dispute between the parties. [3]The ambiguity will already require court assistance to resolve it following:

Article 13:

(1). If the parties cannot reach an agreement regarding the selection of an arbitrator or no provisions are made regarding the appointment of an arbitrator, the Chairman of the District Court shall appoint the arbitrator or arbitration tribunal.

(2). In an ad hoc arbitration for any disagreement regarding the appointment of one or more arbitrators, the parties may apply for the Head of the District Court to appoint one or more arbitrators in the context of resolving the parties' dispute.

Article 14:

(1). If the parties have agreed that the dispute will be reviewed and decided by a lone arbitrator, the parties must also agree on the sole arbitrator's appointment.

(2). The applicant by registered letter, telegram, telex, facsimile, e-mail, or with an expedition book must propose to the

respondent the name of the person who can be appointed as the sole arbitrator.

(3). If within 14 (fourteen) days after the respondent receives the applicant's proposal as referred to in paragraph (2) the parties fail to determine a sole arbitrator, at the request of one of the parties, the Chairman of the District Court may appoint a sole arbitrator.

(4). The Chairman of the District Court will appoint a sole arbitrator based on the list of names submitted by the parties, or obtained from the arbitration organization or institution as referred to in Article 34, taking into account both the recommendations and objections raised by the parties against the person concerned.

There are examples of cases that are very interesting because of the lack of clarity on the Factum de Compromitendo or the Deed of Compromise in the agreement made by the parties, which eventually resulted in a prolonged legal problem such as the case of PT. Comarindo Express Tama Tour & Travel and Yemen Airways, Indonesian Representatives made two agreements, namely the Appointment of General Sales Agent (Passengers) dated October 29, 2001 ("GSA Passengers") and Appointment of General Sales Agent (Cargo) dated November 5, 2002 ("GSA Cargo "). In Article 24 GSA Passengers and Article 23 GSA Cargo written clause is as follows: "Arbitration This Agreement shall in all respects be interpreted following the Laws of the Republic of Yemen". PT. Comarindo Express Tama Tour & Travel Representative of Indonesia as the applicant has submitted a request for arbitration to BANI Surabaya Representative because Yemen Airways as the respondent is considered a breach of the GSA agreement Passengers and GSA Cargo. Then the respondent rejected the authority of the BANI Representative in Surabaya because of his opinion that Article 24 GSA Passengers and Article 23 GSA Cargo are not clauses or arbitration agreements. However, on On August 19, 2004, BANI Surabaya Representative still issued the BANI Surabaya Representative Arbitration Award No.15/ARB/BANI JATIM/III/2004, which the contents of the decision granted all requests from the applicant.

Yemen Airways then submitted a request to cancel the BANI Surabaya Arbitration Award No.15/ARB/BANI JATIM/III/2004 to the South Jakarta District Court. In Decision No. 254/Pdt.P/2004/PN.Jak.Sel. 6 January 2005, the South Jakarta District Court issued a verdict: "to cancel the arbitration award No.15/ARB/BANI JATIM/III/2004, dated August 19, 2004, which was issued by the Indonesian National Arbitration (BANI) Surabaya Representative". PT Comarindo then filed an appeal to the Supreme Court, then with Supreme Court Decision No. 03/Arb.Btl/2005 dated 17 May 2006 the appeal was rejected by the Supreme Court, so the BANI Arbitration Award Surabaya Representative No.15/ARB/BANI JATIM/III/2004 dated 19 August 2004 is still canceled. In legal considerations, the Supreme Court stated that the formulation of the clause: "[…] it is clear that the settlement of disputes arising under these agreements must be settled according to the laws of the Republic of Yemen, and therefore BANI Surabaya Representative is not authorized to settle disputes between Petitioner and Respondent".

In the case mentioned above, there is no Factum de Compromitendo agreement or Deed of Compromise, but it refers to the law in force in the Republic of Yemen and does not appoint BANI Surabaya Representative, so the Supreme Court cancels the arbitration decision [4].

In another case, PT Dharma Niaga, Ltd. versus Hati Prima Potash PTE, Ltd. In the agreement made by the parties, it is stated that "disputes arising out of or in connection with this sale and purchase agreement, or breach of

contract which cannot be resolved amicably between the parties, must be submitted and settled in Indonesia based on the laws and regulations of the Indonesian state". In the agreement, there is no mention of a clause through arbitration. The Petitioner (PT Dharma Niaga) has applied the West Jakarta Court (Stipulation number: 764/Pdt.P/1996/PN.Jkt.Brt) to be resolved through BANI, and by appointing 1 (one) arbitrator each.

The lack of clarity regarding the dispute resolution forum without mentioning arbitration already requires a long way to resolve the case or case in question.

The arbitration ruling is final, has permanent legal effect, and is binding on the parties, according to Article 60 of the AAPS Law. So that, even if the parties are dissatisfied with the arbitral ruling, the parties who have made a dispute resolution agreement in the form of a Factum de Compromitendo or a Deed of Compromise must nevertheless follow the clause. It is still possible to file a lawsuit for the arbitration award cancellation to the court. A country with the conditions as stated in Article 70 of the AAPS Law: "Against the arbitration award, the parties may submit a request for cancellation if the decision is suspected that it contains the following elements:

a. the letter or document submitted in the examination, after the decision is rendered, is recognized
   false or declared false;
b. after the decision is taken, documents of a decisive nature are found which were hidden by the opposing party; or
c. The decision is taken from the results of deception carried out by one of the parties in the examination of the dispute.

Elucidation of Article 70 of the AAPS Law: "Only an arbitration award that has been registered in court can be the subject of an annulment request. As described in this article, the basis for the cancellation request must be supported by a court ruling. If the court rules that the reasons are proven or not proven, the judge can utilize this decision to grant or deny the application."

In Article 72 paragraph (4) of the AAPS Law, it is stated "Applications for the decision of the District Court can be submitted to the Supreme Court which decides in the first and last instances." Elucidation of Article 72 paragraph (4) of the AAPS Law "What is meant by "appeal" is only to the cancellation of the arbitration award as referred to in Article 70".

Elucidation of Article 70 of the AAPS Law has been declared to have no binding legal force based on Constitutional Court Decision No. 15/PUU-XII/2014 11 November 2014:

“Accepting the petition of the Petitioners in its entirety;

1.1 Elucidation of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138, Supplement to the State Gazette of the Republic of Indonesia Number 3872) contradicts the 1945 Constitution of the Republic of Indonesia;

1.2 Elucidation of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138, Supplement to the State Gazette of the Republic of Indonesia Number 3872) does not have binding legal force;

Even though the Elucidation of Article 70 of the AAPS Law has been declared to have no binding legal force, not a few applicants have used this as a legal loophole to apply for annulment of the arbitral award without including a court decision to prove the reasons for the cancellation request (Kartasasmita 2014). It was also emphasized that the cancellation of the Elucidation of Article 70 of the AAPS Law, could mean that the article became independent and did not need to be interpreted differently because the sound of the article itself was very clear (expressis verbis). Therefore, the applicant for cancellation must still be able to prove the arguments for his application (Kartasasmita 2014).

The compliance of the parties, either by Factum de Compromitendo or by the Deed of Compromise, must be carried out, because this is the choice of the parties themselves, and the parties must be consistent regardless of the decision. It became a little strange, against his own choice a cancellation request was filed because he was not satisfied with the arbitral award, even though there was an opportunity to do so.

CONCLUSION

Since the parties have promised each other since the beginning when the agreement or deed was signed, the inclusion of an "include" arbitration clause in the agreement as outlined in the notary deed is a clearer and firmer effort in the event of a dispute between the parties. Only in this case, it needs to be emphasized in a sentence that does not have multiple interpretations, for example only mentioning "settled through arbitration", but in a firm and clear sentence by mentioning "settled". Through the National Arbitration Board (BANI) Representative," The mention of "Body" means that it will be settled by the BANI arbitration institution so that all and the provisions for the settlement procedure are subject to the provisions of the procedures applicable at BANI. If the sentence is "settled through arbitration" there is a possibility and it is interpreted through Ad Hoc arbitration. If the agreement or deed does not include a dispute resolution clause and a dispute arises, an Arbitration Agreement with a Notary deed is required. Additional challenges will arise, such as renegotiating the parties to the case to come before a Notary to sign an Arbitration Agreement (institutional or ad hoc). It will not be a problem if both parties agree and want it, but it cannot be forced if you do not want it. When in an agreement or in a deed which states clearly and unequivocally (not multiple interpretations) that the dispute settlement is "settled through the National Arbitration Board (BANI) Representative,", then any institution (including the court) must respect this clause as an absolute arbitration authority. Only in this case, even if there is an arbitration clause in the agreement or contract, if the parties still file a lawsuit in district court, the district court will dismiss it. However, the rejection of authority will be noted in the final decision. In contrast, if the parties do not agree on a settlement, the Arbitrator (Ginting 2017) or the Arbitrator Council will reject the application unless the parties make an Arbitration Agreement first with a Notary deed.

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CONFLICT OF INTEREST

The authors have declared no conflict of interest

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