Journal of International Islamic Law, Human Rights and Public Policy
(JISHUP Journal) | ISSN(e): 3031-2280
Website https://jishup.org/index.php/ojs/index | Volume 3 No. 3 (2025)

# THE EFFECTIVENESS OF ARBITRATION AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM FOR BUSINESS DISPUTES IN THE BENGKULU REGION

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**Received:** 03/08/2025 | **Revised:** 10/08/2025 | **Accepted:** 24/09/2025 | **Published:** 30/09/2025

**Abstract**

Business disputes are an inevitable consequence of increasingly complex commercial activities, including those occurring in the Bengkulu region. Business actors require a dispute resolution mechanism that provides efficiency, confidentiality, legal certainty, and responsiveness to commercial needs. Arbitration constitutes an alternative dispute resolution mechanism recognized under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This study aims to analyze the effectiveness of arbitration in resolving business disputes in Bengkulu and identify the legal and practical factors influencing its implementation. This research employs a normative juridical method using statutory, conceptual, and contextual approaches. The legal materials consist of legislation, legal doctrines, books, journal articles, and supporting documents related to arbitration and business dispute resolution. The materials were analyzed qualitatively through legal interpretation, classification, and systematic analysis. The findings indicate that arbitration is legally capable of providing procedural flexibility, confidentiality, party autonomy, expert-based adjudication, and final and binding awards. Nevertheless, its practical effectiveness in Bengkulu has not been fully optimized because arbitration clauses are not widely used in commercial contracts, access to arbitration institutions remains limited, and arbitration is often perceived as appropriate only for large-value disputes. Strengthening arbitration requires legal education, improved contract drafting, institutional cooperation, affordable procedures, and the development of technology-based dispute resolution services. Arbitration is therefore effective in principle, but its regional implementation depends on accessibility, business awareness, institutional support, and voluntary compliance with arbitral awards.

**Keywords:** alternative dispute resolution; arbitration; Bengkulu; business disputes; legal certainty

## 1. INTRODUCTION

The development of commercial activities in Indonesia has increased the intensity and complexity of legal relationships among business actors. Commercial cooperation is no longer limited to simple sales and purchase transactions but also includes investment agreements, construction contracts, financing arrangements, distribution agreements, partnerships, plantation activities, mining services, and digital transactions. This development creates economic opportunities while simultaneously increasing the possibility of contractual and commercial disputes. In the Bengkulu region, economic activities are supported by trade, services, agriculture, plantations, construction, mining, and micro, small, and medium enterprises. Legal disputes may arise from delayed payments, non-performance of contractual obligations, differences in interpreting contractual provisions, partnership failures, construction delays, investment disagreements, or violations of commercial commitments. Such disputes require a settlement mechanism that protects legal rights without excessively interrupting business continuity.

Litigation through the general courts remains the most widely recognized method of dispute resolution. However, court proceedings may involve formal procedural requirements, relatively lengthy examinations, open hearings, and several levels of legal remedies. These characteristics may not always correspond to the need of business actors for a rapid, confidential, and commercially responsive resolution. Prolonged disputes can increase transaction costs, weaken business relationships, and affect the reputation and financial stability of the parties.

Published by **Radja Publika**

Arbitration provides an alternative mechanism for resolving civil and commercial disputes outside the general court system. Its legal foundation is principally established under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration can only be conducted when the parties have entered into a written arbitration agreement, either in the form of an arbitration clause contained in a contract before the dispute arises or a separate agreement concluded after the dispute occurs.

The contractual foundation of arbitration reflects the principle of freedom of contract. The parties may determine the arbitration institution, applicable rules, number of arbitrators, place of arbitration, language, governing law, and other procedural matters. At the same time, arbitration performs an adjudicative function because arbitrators have the authority to examine the dispute and issue a final and binding award. Arbitration offers several advantages for commercial dispute resolution. First, the process is generally confidential, allowing the parties to protect financial information, business strategies, trade secrets, and corporate reputation. Second, the parties may appoint arbitrators with expertise relevant to the disputed sector. Third, arbitration procedures can be adjusted according to the characteristics of the dispute. Fourth, the final and binding nature of arbitral awards provides greater finality than ordinary litigation involving multiple levels of appeal. Nevertheless, the existence of a strong legal framework does not automatically guarantee the effective use of arbitration. Its effectiveness is also influenced by the quality of contractual drafting, awareness among business actors, availability of professional arbitrators, institutional accessibility, affordability, and the willingness of the parties to comply voluntarily with the award. These factors are particularly relevant in regional business environments where arbitration institutions and specialized legal services may be concentrated in larger commercial centers.

Previous legal studies have extensively examined arbitration from the perspective of national regulation, party autonomy, finality of awards, institutional authority, and enforcement. Arbitration has generally been viewed as an important mechanism for creating legal certainty and efficiency in commercial transactions. However, regional studies concerning the use of arbitration by local business actors remain relatively limited. The effectiveness of arbitration may vary between regions because business structures, legal awareness, contract practices, institutional capacity, and access to legal services are not uniform. Arbitration that functions effectively in major commercial centers may face different challenges when applied in regions where business actors are dominated by small and medium-sized enterprises.

The novelty of this study lies in its analysis of arbitration within the specific context of Bengkulu's business environment. This study does not merely describe the national legal framework but connects arbitration principles with regional business needs, accessibility challenges, contractual practices, and institutional support. The regional perspective is important for understanding whether the normative advantages of arbitration can be translated into practical benefits for local business actors. Accordingly, this study addresses two principal questions. First, how effective is arbitration as an alternative mechanism for resolving business disputes in the Bengkulu region? Second, what factors support and hinder its implementation? This study aims to analyze the legal and practical effectiveness of arbitration and formulate recommendations for strengthening its use in regional commercial dispute resolution.

## 2. RESEARCH METHOD

This study employs a normative juridical research method. Normative legal research examines legal norms, principles, doctrines, statutory provisions, and legal concepts relevant to a particular legal issue. This method is appropriate because the study focuses on the legal status, characteristics, effectiveness indicators, and institutional implications of arbitration in business dispute resolution. The research applies statutory, conceptual, and contextual approaches. The statutory approach examines Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Indonesian Civil Code, and other provisions related to contractual obligations and the enforcement of arbitral awards. The conceptual approach analyzes party autonomy, freedom of contract, legal certainty, confidentiality, procedural efficiency, accessibility, and the finality of arbitral awards. The contextual approach connects the normative framework with the characteristics and needs of business activities in Bengkulu.

The legal materials are divided into primary, secondary, and supporting materials. Primary legal materials include legislation governing arbitration, contractual relationships, and civil dispute resolution. Secondary legal materials comprise books, scholarly articles, legal doctrines, and previous studies concerning arbitration and commercial dispute resolution. Supporting materials include official documents and statistical information describing the economic and business context of Bengkulu. Legal materials were collected through a literature study. The collection process involved identifying, recording, classifying, and reviewing relevant statutory provisions and academic sources. The collected materials were classified based on the legal status of arbitration, procedural characteristics, advantages, implementation challenges, and regional relevance.

The materials were analyzed qualitatively through grammatical, systematic, and conceptual interpretation. Grammatical interpretation was used to understand the wording of statutory provisions. Systematic interpretation examined the relationship between arbitration provisions, contractual principles, and the authority of the courts. Conceptual analysis was used to evaluate arbitration based on indicators of effectiveness. The effectiveness indicators used in this study include legal certainty, procedural efficiency, confidentiality, party autonomy, arbitrator competence, accessibility, affordability, enforceability, and relevance to business needs. Because this study does not employ interviews, surveys, or case-based field observations, the regional analysis is presented as a normative and contextual assessment rather than an empirical measurement of arbitration usage in Bengkulu.

## 3. RESULTS AND DISCUSSION

### 3.1. Legal Status of Arbitration in Business Dispute Resolution

Arbitration has a strong legal status within the Indonesian dispute resolution system. Law Number 30 of 1999 recognizes the authority of parties to submit civil and commercial disputes to arbitration based on a written agreement. The written agreement is a fundamental requirement because arbitration jurisdiction originates from the consent of the parties. An arbitration agreement produces important legal consequences. When a valid arbitration clause exists, the parties are legally bound to resolve disputes through the agreed arbitral forum. The general courts are principally required to respect the arbitration agreement and refrain from examining disputes covered by the clause. This demonstrates that arbitration is not merely an informal settlement method but a formal adjudicative mechanism recognized by law.

The binding nature of an arbitration agreement also promotes predictability. Business actors can determine in advance the forum and procedure to be used when a dispute arises. Predictability reduces uncertainty regarding jurisdiction and prevents parties from engaging in prolonged disagreements over the appropriate dispute resolution forum. The legal status of arbitration is particularly relevant to commercial contracts involving trade, construction, investment, financing, plantation partnerships, mining services, distribution, and other business activities in Bengkulu. By inserting a valid arbitration clause, the parties can create a clear mechanism for resolving future disputes. However, the effectiveness of the clause depends on its formulation. An unclear or incomplete clause may generate disputes concerning the arbitration institution, seat of arbitration, applicable rules, or appointment of arbitrators. Therefore, the legal recognition of arbitration must be accompanied by accurate contract drafting.

### 3.2. Effectiveness of Arbitration Based on Legal Certainty and Finality

Legal certainty is one of the principal indicators of arbitration effectiveness. Arbitration provides certainty because the procedure is founded on an agreement and results in an award that is final and binding. The finality of the award prevents the dispute from being examined through ordinary appellate procedures. For business actors, finality is important because commercial decisions often depend on timely certainty regarding payment obligations, asset ownership, contractual performance, compensation, and the continuation of cooperation. A prolonged dispute may prevent parties from allocating resources, completing projects, or entering into new transactions.

Nevertheless, finality must be accompanied by procedural fairness. The parties must receive equal opportunities to present arguments, submit evidence, appoint arbitrators, and respond to the opposing party. An efficient process should not disregard due process and impartiality. The effectiveness of an arbitral award also depends on compliance. When the losing party voluntarily implements the award, arbitration achieves its objective without further court involvement. When voluntary compliance does not occur, the prevailing party may require court assistance for execution. Consequently, arbitration remains connected to the judicial system, particularly at the enforcement stage.

### 3.3. Procedural Efficiency, Flexibility, and Party Autonomy

Arbitration offers procedural flexibility because parties may select the applicable rules and agree on several aspects of the proceedings. This flexibility distinguishes arbitration from court litigation, where procedures are primarily determined by statutory procedural law. Parties may determine the number of arbitrators, required expertise, place of hearings, language, document submission procedures, hearing schedules, and whether the proceedings will be conducted physically or electronically. These choices allow the procedure to be adjusted to the value, complexity, and technical characteristics of the dispute. Party autonomy is particularly useful in technical business disputes. For example, disputes relating to construction, plantations, mining services, financing, or complex commercial calculations may require decision-makers who understand sector-specific practices. The appointment of arbitrators with relevant expertise can improve the quality and commercial relevance of the award.

However, procedural efficiency is not automatically achieved merely because a dispute is submitted to arbitration. Poor case management, complex evidence, disagreement over arbitrator appointments, or procedural objections may still cause delays. Arbitration effectiveness therefore depends on the quality of institutional rules, arbitrator competence, cooperation between the parties, and clarity of the arbitration agreement.

### 3.4. Confidentiality and Protection of Commercial Interests

Confidentiality is one of the most significant advantages of arbitration. Business disputes often contain information relating to prices, profits, financial records, internal policies, intellectual property, client lists, business strategies, and contractual weaknesses. Public disclosure of such information may affect commercial reputation and competitiveness. Through confidential proceedings, arbitration allows disputes to be examined without unnecessarily exposing sensitive information. This characteristic can help maintain business relationships and reduce reputational harm. Confidentiality is therefore relevant not only to large companies but also to regional enterprises whose market credibility depends on trust within relatively close business communities. Nevertheless, confidentiality should be clearly regulated in arbitration agreements or institutional rules. The parties should understand which documents, statements, hearings, and awards are subject to confidentiality and under what conditions information may be disclosed for enforcement or legal compliance.

### 3.5. Accessibility Challenges in the Bengkulu Region

Although arbitration provides significant normative advantages, its accessibility in Bengkulu remains an important concern. Arbitration institutions, experienced arbitrators, and specialized commercial lawyers are generally more accessible in major economic centers. Regional business actors may therefore face additional expenses related to travel, representation, administrative costs, and professional services. Arbitration is also frequently perceived as a mechanism intended for large corporations or high-value disputes. This perception may discourage micro, small, and medium enterprises from inserting arbitration clauses into their contracts. Smaller businesses may prefer negotiation, mediation, or court litigation because these mechanisms are considered more familiar. The accessibility issue is not limited to physical distance. It also involves access to information and competent legal assistance. Business actors who do not understand the implications of an arbitration clause may omit it entirely or use an unclear standard clause. Consequently, a dispute that could have been settled through arbitration may instead proceed through litigation. A proportional arbitration model is therefore required. Simplified procedures, sole-arbitrator mechanisms, document-only proceedings, online hearings, and cost schedules based on dispute value may make arbitration more relevant to smaller regional businesses.

### 3.6. Contract Drafting and the Validity of Arbitration Clauses

The practical use of arbitration begins with a valid and enforceable arbitration agreement. Business actors cannot unilaterally compel another party to arbitrate in the absence of prior written consent. The quality of the arbitration clause is therefore a decisive factor. A well-drafted arbitration clause should identify the arbitration institution or applicable rules, number of arbitrators, seat of arbitration, language, governing law, and scope of disputes covered by the clause. The clause should also avoid contradictory provisions, such as simultaneously granting exclusive jurisdiction to a district court and requiring arbitration for the same dispute. Contract drafting assistance is particularly important for small and medium enterprises that rely on informal agreements or standard documents obtained from non-specialized sources. Universities, business associations, notaries, advocates, and local government institutions can support the preparation of clearer commercial contracts. Improved contract drafting would strengthen legal certainty before a dispute arises. It would also reduce preliminary disputes concerning the authority of the arbitral tribunal.

### 3.7. Comparison with Previous Studies and Research Contribution

Previous arbitration studies generally conclude that arbitration provides confidentiality, procedural flexibility, party autonomy, and finality. The findings of this study are consistent with that general legal position. Arbitration is normatively appropriate for business disputes requiring specialized knowledge, commercial sensitivity, and timely certainty. However, this study adds a regional dimension by emphasizing that legal recognition alone is insufficient. The effectiveness of arbitration in Bengkulu depends on whether local business actors have access to reliable information, contractual assistance, affordable procedures, and supporting institutions. The study also identifies a distinction between normative effectiveness and practical effectiveness. Normative effectiveness refers to the ability of the legal framework to provide a valid, binding, and enforceable dispute resolution mechanism. Practical effectiveness refers to the extent to which arbitration can actually be accessed, understood, afforded, and implemented by business actors. This distinction constitutes the principal contribution of the study. Arbitration may be legally effective while remaining underutilized in regional business practice. Therefore, the development of arbitration should focus not only on regulatory recognition but also on institutional accessibility and legal capacity building.

### 3.8. Strategies for Strengthening Arbitration in Bengkulu

Several measures are required to improve the use of arbitration in the Bengkulu region. First, legal education should be provided to business actors regarding the function, consequences, benefits, and limitations of arbitration clauses. Educational activities may be organized through cooperation between universities, chambers of commerce, professional associations, advocates, notaries, and arbitration institutions. Second, contract drafting assistance should be made more widely available. Model clauses may be prepared for different categories of commercial relationships, including construction contracts, distribution agreements, plantation partnerships, service contracts, and financing arrangements.

Third, arbitration procedures should be made more affordable and proportional to the value of the dispute. Simplified arbitration can provide a realistic option for small and medium enterprises without sacrificing procedural fairness. Fourth, technology-based proceedings should be developed. Online document submission, virtual hearings, electronic notifications, and digital case administration can reduce geographical barriers and travel costs. Fifth, institutional cooperation should be strengthened. Universities and legal professional organizations in Bengkulu can function as centers for arbitration education, consultation, and preliminary dispute assessment. Such support would not replace formal arbitration institutions but would improve regional access to information and professional assistance.

The following table summarizes the principal effectiveness indicators.

| Effectiveness Indicator | Legal and Contextual Findings | Regional Implication |
|---|---|---|
| Legal certainty | Arbitration agreements and awards are legally recognized and binding | Business contracts must contain valid and clear arbitration clauses |
| Procedural efficiency | Procedures may be adjusted to the dispute | Efficiency depends on case management and party cooperation |
| Confidentiality | Commercial information can be protected from public exposure | Relevant for protecting reputation and business relationships |
| Arbitrator expertise | Parties may appoint experts in the disputed sector | Beneficial for construction, plantation, mining, and trade disputes |
| Accessibility | Institutions and specialized services may be geographically limited | Online and simplified arbitration should be developed |
| Affordability | Costs may be burdensome for small-value disputes | Proportional fee structures are required |
| Enforceability | Awards are final and binding but may require court execution | Voluntary compliance and judicial support remain important |
| Business awareness | Arbitration remains less familiar than litigation or negotiation | Continuous legal education is necessary |

## 4. CONCLUSION

Arbitration has a strong legal foundation and significant potential to function as an effective alternative dispute resolution mechanism for business disputes in the Bengkulu region. Its principal advantages include legal certainty, procedural flexibility, confidentiality, party autonomy, expert-based adjudication, and final and binding awards. These characteristics correspond to the needs of business actors for an efficient and commercially responsive dispute resolution process. However, a distinction must be made between effectiveness in principle and effectiveness in practice. Arbitration is normatively effective because Indonesian law recognizes arbitration agreements, limits court intervention in disputes covered by such agreements, and provides binding force to arbitral awards. Its practical effectiveness in Bengkulu, however, depends on accessibility, affordability, business awareness, contract quality, arbitrator availability, and compliance with awards. The use of arbitration in Bengkulu may be constrained by the perception that it is intended only for large-value disputes, limited familiarity among small and medium enterprises, geographical distance from established arbitration institutions, and inadequate drafting of arbitration clauses. These challenges demonstrate that regulation alone is insufficient to ensure effective regional implementation.

Strengthening arbitration requires legal education, professional contract drafting assistance, simplified procedures, proportional costs, digital hearings, and cooperation among universities, business associations, legal practitioners, local institutions, and arbitration organizations. These measures would make arbitration more accessible and relevant to regional business actors.

This study is limited by its normative juridical design and does not measure the actual experiences of parties who have used arbitration in Bengkulu. Future studies should employ empirical methods through interviews, surveys, or case studies involving business actors, advocates, notaries, judges, arbitrators, and business associations. Such research would provide more detailed evidence concerning the frequency, cost, duration, user satisfaction, and enforcement of arbitration in regional practice.

## AUTHOR CONTRIBUTION

Conceptualization, methodology, validation, formal analysis, investigation, resources, data curation, original draft preparation, review and editing, visualization, supervision, and project administration were undertaken by Novran Harisa. The author has read and approved the final version of the manuscript.

## FUNDING

This research received no external funding.

## DATA AVAILABILITY STATEMENT

No new empirical data were generated or analyzed in this study. The analysis was based on publicly accessible legislation, legal literature, academic publications, and supporting documents relating to arbitration and business dispute resolution.

## ACKNOWLEDGMENTS

The author acknowledges Universitas Muhammadiyah Bengkulu for its academic support during the preparation of this article. AI-based writing assistance was used solely to support language refinement and manuscript organization. The legal analysis, interpretation, conclusions, and academic responsibility remain entirely with the author.

## CONFLICT OF INTEREST

The author declares no conflict of interest.

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