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Disharmonization of Arbitral Judgments and District Courts in Guarantee Bank Claims Disputes

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Abstract

This research is motivated by the phenomenon of dualism of decisions between arbitration institutions and district courts in the case of bank guarantee claims which have implications for legal certainty for the principal or customer. In practice, often the arbitral institution decides that the principal is not proven to be in default, while the District Court orders the disbursement of the bank guarantee to the guarantor. This condition creates a normative conflict between the principle of finality and binding in the arbitration award and the judicial authority of the district court. This study uses normative legal research methods with a statute approach, a comparative approach, and a case study approach, and a case study approach, and relies on secondary data from laws and regulations, literature, and related court decisions. The results of the study show that normatively, arbitral awards have a legal status on par with district court decisions and are final and binding, but in practice there are still judicial interventions that cause legal uncertainty. The dualism of the decision has an impact on economic losses, reputation, and the effectiveness of business dispute resolution. Using Gustav Radbruch's theory of legal certainty, this study emphasizes the importance of consistency in the application of the principle of final and binding and the harmonization of authority between arbitration and general courts to ensure legal certainty, justice, and stability of the business climate in Indonesia.

Keywords: Arbitration, Bank Guarantee, Legal certainty.

A. Introduction

In social life, the existence of law is an essential element that regulates all aspects of human activities. As Lawrence M. Friedman stated, there are 4 (four) main functions of law in life, namely the system of control, dispute resolution, redistribution and social maintenance.[1] When there is a dispute in life, the law is the only mechanism that can be accepted by many parties to mediate the dispute. Because basically the law has a coercive nature and is not only applied to certain groups of people, but to all parties.[2]

In fact, there is not only one dispute resolution method in law, but there are several dispute resolution options. But in general, dispute resolution is divided into 2 (two) types, namely litigation and non-litigation. The dispute resolution method by litigation is simply a dispute resolution method carried out in court, in the sense that the litigation method only dwells on the

[1] Fatma Afifah and Sri Warjiyati, "PURPOSE, FUNCTION AND LEGAL POSITION," *Wijaya Putra* Journal of Law 2, no. 2 (2024): 142–52, https://doi.org/https://doi.org/10.38156/jihwp.v2i2.206

[2] Randi Aritama, "FRAUD IN CRIMINAL LAW AND CIVIL LAW," *CENTRI: Journal of Scientific Research* 1, no. 3 (November 2022): 728–36, https://doi.org/10.55681/sentri.v1i3.283.

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trial in court.[3] Meanwhile, the non-litigation dispute resolution method means resolving disputes outside of court.[4] Among the non-litigation dispute resolution are consultation, negotiation, mediation, conciliation, arbitration and so on.

In the business and economic sphere, arbitration tends to be preferred by business actors to resolve existing disputes. The selection of this arbitration is not only based on subjective aspects, but on deep strategic and juridical considerations. The main advantage underlying this preference is the time efficiency in the case settlement process. Arbitration tends to be fast in the dispute resolution process, this is because arbitration has a private nature so that cases processed by the arbitration method will be resolved faster.[5] Another advantage of arbitration is the freedom for the parties to determine the arbitrator based on the principle of competence. The arbitrator's specialization in case material ensures that the examination of disputes is carried out in depth, so that the resulting decisions are often seen as more quality and substantive justice than the litigation method.[6] Furthermore, the arbitral award is *final and binding* or cannot be remedy again, so that the arbitration award will be more exclusive than the court award in general.[7] Moreover, the method of arbitration dispute resolution has been recognized by Indonesia through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law) and there has been an independent institution that oversees arbitration like a court overseeing the litigation method, namely the Indonesian National Arbitration Board (BANI). This makes arbitration trusted as a method of dispute resolution in the business and economic spheres.

As an intermediary institution that prioritizes the principle of prudence, the banking sector tends to choose arbitration to maintain the confidentiality of data and corporate reputation, especially in guarantee banks. Bank guarantees, which are a form of coverage agreement in their agreements, often use arbitration in terms of dispute resolution. In general, a bank guarantee is an agreement in which a third party, in this case a banking institution, binds itself with an agreement to pay an agreed amount of money to the guarantor if the customer defaults.[8] From this understanding, it can be understood that the main components of a bank guarantee are the existence of the bank as the *guarantor*, the customer as the subject guaranteed by the bank *(Principal),* the beneficiary of the guarantee *(obligee/bowheer)* and the existence of a default committed by the *principal* on a work. Default in the guarantee bank does not mean that there needs to be a default event first before being able to apply for a bank guarantee, but the guarantee bank is a preventive effort if the customer cannot meet the performance as agreed. The guarantee bank also involves various parties in its activities, including the principal or customer who is the guaranteed subject in the guarantee bank who is generally the executor of a work or project, *the obligee* or the beneficiary of the guarantee who is generally the employer or project owner, the bank who plays the role of guaranteeing the project carried out by the principal or customer, and the insurance who acts as the party that issues the counter guarantee bank.

[3] Rengga Kusuma Putra et al., "The Effectiveness of Non-Litigation Dispute Resolution," *Journal of Science Collaborative* 7, no. 6 (2024): 2200–2206, https://doi.org/https://doi.org/10.56338/jks.v7i6.5548.

[4] Hilda Ananda and Siti Nur Afifah, "Litigation and Non-Litigation Settlement," *Sharecom : Journal of Islamic Economics and Finance* 1, no. 1 (2023): 55–64.

[5] Rini Eka Agustina, "The Effectiveness of Arbitration as a Dispute Resolution," *Ethics and Law Journal : Business and Notary (ELJBN)* 2, no. 1 (2024): 263–72, https://doi.org/https://doi.org/10.61292/eljbn.130.

[6] Agustina, "The Effectiveness of Arbitration as a Dispute Resolution."

[7] Misbahul Huda, "JURIDICAL REVIEW OF ARBITRATION AS AN ALTERNATIVE FORUM OPTION IN THE SETTLEMENT OF BUSINESS DISPUTES OUTSIDE THE COURT," *Syntax Idea* 7, no. 3 (2022): 4897–918.

[8] Gracella Sigalingging et al., "The Role of Banks in the Provision of Bank Guarantees," *Scientific Journal of Wahana Pendidikan* 10, no. 21 (2024): 341–44, https://doi.org/https://doi.org/10.5281/zenodo.14325469.

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In the event of a default committed by the customer, the guarantor has the right to apply for the disbursement of the bank guarantee to the bank, but in general, in the case of disbursement of the bank guarantee, a condition is required in the form of a court decision stating that the customer has legally and convincingly committed a default.[9] Apart from the diversity of disbursement requirements at each bank, normatively the crucial point on which disbursement is based is the legal determination regarding the default status of the secured party. This condition triggers the dualism of absolute competence when there is ambiguity in the dispute resolution clause, which in turn results in an overlap of authority between the general court and the arbitration forum. The problem arises when the terms of disbursement of the Bank Guarantee explicitly require a court decision, while in the principal agreement the parties have agreed that all disputes must be resolved through arbitration. The overlap of this norm causes significant legal consequences, namely the inhibition of the right of the guarantor to disburse the Bank Guarantee. Juridically, if the guarantor files a civil lawsuit through the district court, then based on Article 3 of the Arbitration Law, the court automatically does not have the authority to examine and adjudicate the case because of the existence of an arbitration clause that is binding and negates the authority of the general court. [10]

This happened in the case of the disbursement of the bank guarantee of the Down Payment Guarantee No. 0230/DPSP-BG/KP-JKT/III/2022 dated March 22, 2022 worth IDR 6,930,000,000 (six billion nine hundred and thirty million Rupiah) and the bank guarantee of the Implementation Guarantee No. 0231/DPSP-BG/KP-JKT/III/2022 dated March 22, 2022 at PT Bank KB Bukopin Syariah. This case began with a work order between PT. Tatamulia Nusantara Indah (PT. TNI) with PT. Indotech Karya Mandiri (PT. IKM) number 025/JMB/TATA-IKM/II/2022 dated February 21, 2022 for the Juno Main Buildings - Cikarang project. In the work order, PT. TNI and PT. IKM agreed to adjudicate all disputes arising by the arbitration method, but when an arbitration award was issued stating that PT. IKM legally and convincingly does not commit default based on Decision Number 47074/X/ARB-BANI/2024. Prior to the BANI decision, PT TNI sued PT KB Bukopin Syariah and PT Jamkrindo Syariah to the Central Jakarta District Court with case number 747/Pdt.G/2024/PN.Jkt.Pst because it could not immediately disburse the bank guarantee claim because in carrying out a banking transaction, the principle of prudence must be prioritized, and there must be evidence that PT. IKM in this case as *the Principal* was declared to be in default. Based on these problems, the author proposes that in practice, the arbitration award does not have the same executory effectiveness as the court decision related to the disbursement of the Bank Guarantee, even though in principle the arbitration award is *final and binding*.

As a similar research was conducted by, ***First,*** Lalu Rosihan Syarif in a research entitled *Analysis of the Implementation of Bank Guarantee by Bank NTB Syariah in the Construction Service Agreement Between the NTB Provincial Marine and Fisheries Service and CV. Azka Anugrah*.[11] The subject of this study discusses the mechanism for issuing and disbursing bank guarantees by Bank NTB Syariah in detail and thoroughly. However, this study does not discuss

[9] Riska Agustina, Hartono Widodo, and Grace Sharon, "Legal Certainty of Bank Guarantees for Creditors against Debtors' Defaults in the Implementation of Construction Work Agreements," *Journal of Krisna Law* 3, no. 2 (2021): 1–11.

[10] Apriliani Indri Ningtyas Putri and Devi Siti Hamzah Marpaung, "THE POSITION OF INTERNATIONAL ARBITRATION AWARDS IN INDONESIA AS AN ALTERNATIVE TO BUSINESS DISPUTE RESOLUTION BASED ON LAW NUMBER 30 OF 1999," *Justitia : Journal of Law and Humanities* 9, no. 3 (2022): 1106–17, https://doi.org/www.dx.doi.org10.31604/justitia.v9i3.

[11] Then Rosihan Syarif, "Analysis of the Implementation of Bank Guarantee by Bank NTB Syariah in the Construction Services Agreement between the NTB Provincial Marine and Fisheries Service and CV. Azka Anugrah" (Thesis, University of Mataram, 2025), https://eprints.unram.ac.id/50217/.

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the dualism of arbitration awards and court decisions and their implications for the client's legal certainty. ***Second,*** Desy Nurkristia Tejawati's research is related to bank guarantees with the title *Settlement of Bank Guarantee Agreements in Banking Law*.[12] This study discusses related to the details of the types of bank guarantees, the form of bank guarantees and the rights of principals in the claims of bank guarantees. However, Desy's research does not describe it related to the mechanism of issuance and disbursement of bank guarantees and does not describe it related to the dualism of the arbitration award with the court decision in the disbursement of bank guarantees. ***Third,*** research by Laras Kinanthi and friends entitled *Legal Protection of Defaulting Debtors in Bank Guarantee Agreements*.[13] This research is to discuss that when the debtor defaults and has been pledged with a guarantee bank agreement, the burden of debt repayment has shifted to the bank as the *guarantor*, but in fact this study does not discuss the terms and dualism of the judgment that has the potential to occur in the guarantee bank. ***Fourth,*** research by Intan Setio Wibowo and Zakki Adlhiyati entitled *Problems of the Implementation of International Arbitration Awards in Indonesia*. This research focuses on the discussion of the nihility of regulations that regulate the registration and determination of the enforcement of international arbitral awards, thereby hindering the execution of international arbitration awards. In this study, it is clearly explained that Indonesia does not have clear rules related to this matter, thus causing legal uncertainty for the party won in the decision. In addition, in this study, it was also found that there is a nihility of a clear definition of *public order* so that it also causes legal uncertainty. ***Fifth,*** research in the form of a scientific journal by Panusunan Harahap entitled *Enforceability of Arbitration Decisions by Judicial Institutions*, in which in this study the author focuses on the authority to execute arbitral awards both nationally and internationally and the procedure for the execution of these awards. In the study, it was stated that basically the authority to execute arbitral awards, both national and international, is the chairman of the district court with the record that the losing party does not have good faith to implement the results of the arbitration award. While the procedure for the execution of arbitral awards has been regulated in national law and the 1958 New York Convention which has been ratified by Presidential Decree No. 34 of 1981, but technically the execution is subject to the execution provisions of the *Herzien Inlandsch Reglement* (HIR) and *the Rechtreglement voor de Buitengewesten* (RBg).

Based on this, the author is interested in examining more deeply the legal position of the BANI arbitration award compared to the court decision in terms of the bank guarantee claim and the juridical implications of the dualism of the BANI award and the court decision on legal certainty for the customer. The purpose of this research is to examine and analyze the position of the BANI decision in the guarantee bank claim, related to the equality of status with the court decision and to examine and analyze the juridical implications that arise if the dualism of the decision occurs. The benefits of the research conducted by the author will be divided into 2 (two), namely theoretically and practically. Theoretically, this research is expected to contribute to the expansion of science, especially in the field of banking law and *Alternative Dispute Resolution*. Meanwhile, practically, this research is expected to be a recommendation for related parties who carry out the function of supervision over the activities of banking institutions, especially in the implementation of bank guarantees. The purpose of this study is to examine the legal position of the bani arbitration award compared to the district court decision in the case of guarantee bank

[12] Desy Nurkristia Tejawati, "The Settlement of Bank Guarantee Agreements in Banking Law," *Perspective* 17, no. 2 (May 2012): 108–17, https://doi.org/10.30742/perspektif.v17i2.100.

[13] Laras Kinanthi et al., "Legal Protection of Defaulting Debtors in Bank Guarantee Agreements," *Al-Court: Journal of Law, Politics and Government* 1, no. 1 (2024).

Volume 12, Number 02, April-June 2026, Pages 211-226
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Sinta 3; decree No. 0173/C3/DT.0500/2025

claims, as well as to examine the juridical implications of the dualism of the award between BANI and the district court on the certainty of the principal law.

B. Research Method

In this study, the author used normative legal research. The data collection technique in this study uses the *Library Research technique*, namely by examining various laws and regulations and also reviewing literature related to the theme of Bank Guarantee. The data sources used are secondary data sources consisting of primary legal materials in the form of laws and regulations related to BANI and the General Judiciary, secondary legal materials in the form of books and journals related to research themes, and tertiary legal materials in the form of dictionaries, encyclopedias, newspapers, and other internet sources. It is followed by studying the legal materials and data that have been collected during the research and then analyzing with positive laws. In addition, this study also looks at the phenomenon that occurs through the statute *approach*, the comparative *approach,* the *case study approach*. The technique of presenting data in this study is presented in a descriptive-analytical-prescriptive manner. The data analysis technique is carried out qualitatively, and the conclusion making technique is deductive.

C. Results and Discussion

a. Kedudukan Hukum Putusan Arbitrase BANI Dibandingkan Dengan Putusan Pengadilan Negeri Dalam Perkara Klaim Bank Garansi

The essential element in the guarantee bank claim is if a default is found by the customer or principal, so that if the customer or principal of the guarantee bank commits a default, this can cause legal consequences for the guarantee bank claim. As already explained, bank guarantee is a form of an insurance agreement (*Borgtocht*) which was originally regulated in the Civil Code. Therefore, the majority of regulations related to bank guarantees refer to the Civil Code, especially in Articles 1820-1850. In article 1821 of the Civil Code, it is stated that the insurance agreement or in this case a bank guarantee agreement, is *Accesoir* or depends on the initial agreement.[14] In addition, the bank guarantee also has *an Unconditional nature* which means that the guarantee on the bank guarantee can be disbursed without any conditions and *Irrevocable* nature which means that the bank guarantee that has been agreed in the agreement cannot be arbitrarily canceled by the parties.[15] Although the basic arrangement of bank guarantees is sourced from the Civil Code, there are actually 2 (two) institutions that regulate bank guarantees in a *specialist* and binding manner, namely Bank Indonesia (BI) and the Financial Services Authority (OJK). BI's macroprudential regulatory authority in the economic system actually aims to maintain financial stability in Indonesia and maintain the liquidity of banking institutions as stated in the fifth part of Law Number 4 of 2023 concerning the Strengthening and Development of the Financial Sector Article 8 letter c.[16] In relation to bank guarantees,

[14] Muksal, Ayumiati, and Ilham Fachreza, "Issuance of Bank Guarantees to Construction Service Providers at Islamic Banks," *Mutanaqishah: Journal of Islamic Banking* 3, no. 2 (May 2024): 97–105, https://doi.org/10.54045/mutanaqishah.v3i2.1412.

[15] Kimaya Vinayak Dalvi, "A Critical Analysis of Whether The Bank Guarantee Can Be Interfered By The Court : Ansal Engg.Proj.LTD. V. Tehri Hydro Development Corp. LTD. & ANR. 1997," *International Journal of Advanced Legal Research* 4, no. 2 (2023).

[16] Solikin M. Juhro, *Introduction to Central Banking: Theory and Policy* (Jakarta: PT RajaGrafindo Persada, 2020).

Volume 12, Number 02, April-June 2026, Pages 211-226
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Sinta 3; decree No. 0173/C3/DT.0500/2025

bank guarantees have the potential to disrupt economic stability, which if banking institutions issue bank guarantees without adequate *Check and Balance procedures*, when the bank guarantee is claimed to interfere with the bank's liquidity. This is done by BI in several forms of regulations issued by BI, including BI Decree of the Board of Directors No. 23/88/KEP/DIR, SE BI No. 23/7/UKU, BI Regulation No. 1/7/PBI/1999, BI Regulation No. 14/26/PBI/2012 and many other regulations. Meanwhile, the authority of the OJK's Microprudential Authority regulates with a focus on the health and *fiduciary principles* of each banking institution, where the purpose is to protect consumers and the Bank's liquidity.[17] The OJK's Microprudential Authority in regulating Bank Guarantees is contained in Financial Services Authority Regulation (POJK) Number 6/POJK.03/2016, POJK Number 2/POJK.05/2017, POJK Number 26 of 2024 and so on.

Arbitration is regulated in the Arbitration Law with the purpose of establishing an Arbitration Law to legalize alternative options in dispute resolution based on arbitration agreements. In the implementation of arbitration, there are main principles that are a reference in its operation, including the principles of justice, the principles of transparency, *finality and binding*, impartiality, *competence,* non-intervention and confidentiality.[18] The principle of justice is something that needs to exist in all forms of dispute resolution, where in this case the dispute resolution institution is very crucial in limiting the human rights of each party to the dispute. So that the principle of justice needs to be implemented thoroughly in dispute resolution, both in evidentiary events, verdicts and in other events. The principle of transparency is also equally important in the dispute resolution process, especially in arbitration. In addition to supporting the nature of arbitration, which is more transparent than the district courts, the principle of transparency is also reflected in all arbitration proceedings where the parties will be ensured to be truly transparent and not hide other crucial facts. The principle *of impartiality* also needs to live in the arbitration process because basically the *principle of Impartiality* means that the arbitrator needs to be neutral and impartial as mentioned in Article 18 Paragraph (1) of the Arbitration Law. In fact, the arbitrator has the authority to examine his own jurisdiction regarding the validity of the arbitration agreement submitted, which is the essence of the Competent principle contained in Article 22 of the Arbitration Law. *Final and Binding* is also a living principle in arbitration because basically there is no specific mechanism to file a legal remedy for an arbitral award, only limited to the execution of the arbitration award itself.[19]

Based on Article 11 Paragraph (1) of the Arbitration Law, the existence of a written agreement between the parties to resolve the dispute through arbitration automatically aborts the authority of the district court to examine and adjudicate the case. The manifestation of this absolute competence is reaffirmed in Article 11 Paragraph (2), which requires the district court to reject cases that have been bound by

[17] Agustinus Samosir, "Reconstructing the Authority of the Financial Services Authority (OJK) in Supervision to Improve Banking Policies Based on Equity Values" (Dissertation, Sultan Agung Islamic University Semarang, 2023).

[18] Moh Azril Azim Mubarok, Wibowo Abdul Mutolip, and Yumna Mutiara Sasi, "ETHICAL RESPONSIBILITY IN THE ARBITRATOR PROFESSION AND THE PRINCIPLES OF DISPUTE RESOLUTION THROUGH ARBITRATION," *JArbI : Indonesian Arbitration Journal* 1, no. 2 (2025): 127–33.

[19] Agustini Andriani, "Legal Consequences of Annulment of Arbitral Awards in Relation to the Principle of Final and Binding," *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 4, no. 1 (June 2022): 25–36, https://doi.org/10.37680/almanhaj.v4i1.1528.

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

the arbitration clause. However, considering that arbitration is based on the consensual principle, the arbitrator is also obliged to declare himself or herself without authority if it is proven that one of the parties has never agreed to the dispute to be resolved through this mechanism. Nevertheless, this limitation of absolute competence does not completely eliminate the role of the general judiciary. Normatively, the district court still holds attributive authority in the aspect of the execution of the decision. This is in accordance with Article 61 of the Arbitration Law which stipulates that arbitral awards (including those issued by BANI) only acquire executory power through the order of the chief justice of the district court.[20] Thus, outside of such executory functions, the district court has absolutely no jurisdiction to interfere or adjudicate a case that has become the domain of arbitration. An arbitral award also needs to be recognized, because as previously explained, an arbitral award has a *final and binding* nature, which is a manifestation of the Principle *of Res Judicata Pro Veritate Habetur* or a judgment that *is already binding*. This maintains the exclusivity of arbitration compared to other dispute resolution methods.

The dispute that is the object of this study stems from the legal relationship between PT TNI as the main *contractor* and PT IKM as *the subcontractor* in the Juno Main Buildings – Cikarang project based on the Cooperation Agreement No. 025/JMB/TATA-IKM/II/2022 dated February 21, 2022 (SPK No. 25). The dispute began when PT TNI submitted Addendum I, II, and III consecutively. PT IKM postulates that Addendum II and III in SPK No. 25 were prepared unilaterally by PT TNI without the approval of PT IKM, so that there was a change in the content of the agreement that was not based on mutual agreement. Then, PT TNI claimed that PT IKM did not carry out the work as agreed (*breach of contract*) and submitted an application to BANI to adjudicate the default committed by PT IKM. Procedurally, the arbitration application submitted in BANI Decision No. 47074/X/ARB-BANI/2024 has met the formal requirements. Based on Article 14 of SPK No. 25, the parties are required to go through consensus deliberation for 30 days before arbitration. Considering that the parties have sought to resolve the conflict through family meetings three times, the threshold of deliberation obligations has been exceeded. Thus, the Applicant's *legal standing* in choosing the BANI forum is legally valid.

However, dynamics arise in the BANI Decision which does not expressly *verbatim* state that PT IKM committed default, but only grants part of the Applicant's request. This decision was also colored by a *dissenting opinion* by one of the members of the Panel of Arbitrators, namely Prof. Dr. Danriyanto Budhijanto, S.H., LL.M., in IT Law, FCBArb., FIIArb. After the ruling, PT TNI filed a new lawsuit to the Central Jakarta District Court with case number 747/Pdt.G/2024/PN Jkt.Pst. The lawsuit was addressed to PT Bank KB Bukopin Syariah and PT Penjaminan Jamkrindo Syariah as the guarantor of the Bank Guarantee, with demands for the disbursement of advance guarantee and implementation guarantee based on SPK No. 25, which stated that in the work of PT. SMEs need to provide a down payment guarantee letter in the form of a bank guarantee of 10% (ten percent) of the total contract value and an implementation guarantee in the form of a bank guarantee of 5% (five percent) of the contract value. The Panel of Judges at this level then declared that the guarantors committed an

[20] Agustini Andriani, "Legal Consequences of Annulment of Arbitral Awards in Relation to the Principle of Final and Binding," *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 4, no. 1 (June 2022): 25–36, https://doi.org/10.37680/almanhaj.v4i1.1528.

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Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

Unlawful Act (PMH) and ordered the disbursement of the guarantee.

The author is of the view that there is a fundamental error in this series of decisions. There are at least three crucial points that focus on the misapplication of the law by the Panel of Judges of the Central Jakarta District Court. ***First,*** in the author's view, the Central Jakarta District Court judge decided the case filed by PT TNI due to the *dissenting opinion* of the BANI arbitrator. As we know, in some decisions from both judicial and non-judicial institutions, differences in the opinion of judges or their equivalents are natural. This is basically because each judge or the equivalent of a judge sees the case from their own point of view, so it can produce differences of opinion. But in the position of dispute resolution, often the difference of opinion is not well accommodated and does not even produce any *output*, which is because in general the judges or their equivalents in a case are odd so that if there is a panel of arbitration judges who disagree then it will automatically lose. In general, *a dissenting opinion* is listed at the end of a decision or the last sheet of a decision, so it is often misinterpreted that a *dissenting opinion* is the final decision of a case. But in fact, *dissenting opinions,* both in arbitration cases and *Judicial Review* cases at the Constitutional Court, are worth nothing, but only the opinion of the judge or its equivalent. Thus, in a case, the judge should not give a verdict based on the *dissenting opinion* used as the actual verdict.

Second, regarding the filing of a lawsuit by PT TNI, the Central Jakarta District Court should be the place where the dispute was filed to reject the lawsuit (*Niet Ontvankelijke Verklaard*) because the Central Jakarta District Court was not authorized to examine the case. As agreed in article 14 of SPK No. 25, the parties agree to resolve all matters through consensus and if the dispute is not resolved, it will be submitted to BANI. It can be argued that the disbursement of bank guarantees is a unit in SPK No. 25, so that all legal remedies when a dispute occurs need to be resolved by arbitration method in accordance with the content of article 14 of SPK No. 25. If both parties have agreed that all disputes that arise will be resolved by the Arbitration method, then the District Court is no longer authorized to examine and adjudicate the case as explained in Article 11 Paragraph (1) of the Arbitration Law. Not only that, in Article 11 Paragraph (2) the district court also has the obligation to reject the case that is agreed to be resolved by arbitration submitted to it. However, this is returned to the parties where the parties must agree in advance that the dispute will be resolved by arbitration, if it is known that there is a party who refuses to be resolved by arbitration, then the arbitrator should have an obligation to refuse to submit the matter to arbitration. Then this raises the question of whether the District Court, which has an absolute nature, really does not have authority over Arbitration cases? Normatively, the District Court has authority in Arbitration cases, namely the execution of decisions. Arbitration awards issued by BANI can only be submitted for execution of the award to the District Court as stipulated in Article 61 of the Arbitration Law. Apart from the execution of the arbitration award, the District Court is no longer authorized to adjudicate arbitration cases. An arbitral award also needs to be recognized, because as previously explained, an arbitral award has a *final and binding* nature, which is a manifestation of the Principle *of Res Judicata Pro Veritate Habetur* or a judgment that *is already binding*. This maintains the exclusivity of arbitration compared to other dispute resolution methods.

The normative conflict between the *final and binding principles of the* Arbitration Law and judicial authority as stipulated in Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) lies at the point of clash between the principle of the independence of the arbitration institution and the function of judicial

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

control of the court in the national legal system. The principle *of final and binding* in arbitration emphasizes that the arbitral award is final, binding on the parties, and cannot be submitted for legal remedies such as appeal, cassation, or review, as affirmed in Article 60 of the Arbitration Law.[21] However, on the other hand, the Judicial Power Law emphasizes that all the exercise of judicial power is under the Supreme Court as the peak of the national judicial system which has the function of supervision over all courts under it.[22] This is where the normative tension arises as to whether the finality of an arbitral award can completely close the court's judicial authority to correct or assess the validity of an arbitral award. In practice, although arbitration is *lex specialis*, the district court still has limited room for intervention, such as in the case of annulment of an arbitral award (Article 70 of the Arbitration Law) and the granting of an execution determination (Article 61). This shows that the principle *of non-intervention* in arbitration is not absolute, as the courts continue to play a role in ensuring compliance with the provisions of national law and the principle of substantive justice. From the perspective of the legal hierarchy, the Arbitration Law and the Judicial Power Law both have an equal degree, so that the settlement is carried out on the principle of *lex specialis derogat legi generali*, where the Arbitration Law as a special law overrides the Judicial Power Law in the event of disputes agreed to be resolved through arbitration. Thus, respect between judicial institutions requires a balance between the autonomy of the arbitration institution as a private forum and the control function of the court as the guardian of the rule of law and national justice, so that the principle *of final and binding* continues to run without eliminating the principle *of checks and balances* in the Indonesian judicial system.

Ideally, the hierarchical position between the arbitral award and the district court decision should be placed within the framework of a functional and coordinating relationship, not a hierarchical-subordinative one, considering that both come from two different judicial systems, where arbitration is a contract-based private dispute resolution forum (*private justice system*) and the district court is part of the *state justice system*. [23] Normatively, an arbitral award is not subject to a district court decision, because Article 60 of the Arbitration Law expressly states that an arbitral award is final and has permanent legal force (*final and binding*) from the date of its issuance, without the need for further judicial proceedings. However, in order for the arbitral award to be enforced by force, the role of the district court is only administrative-jurisdictional, namely to provide an *exequatur* determination as stipulated in Article 61 of the Arbitration Law. From the perspective of the legal hierarchy, arbitration awards and district court decisions actually stand on an equal footing, as they are legitimate forms of law enforcement based on laws that differ in scope. However, in practice, there is often a misperception that the district court is "superior" to arbitration, because it has the authority to reject or grant an application for execution as well as adjudicate the

[21] Hezekiah Raymond, "Final and Binding Problems of Arbitration Awards in Law Number 30 of 1999," *Sultan Jurisprudence: Journal of Legal Research* 1, no. 2 (December 2021), https://doi.org/10.51825/sjp.v1i2.12672.

[22] Rheina Aini Safa'at and Graciella Azzura Putri Ananda, "The Position and Authority of the Supreme Court in Exercising Judicial Power in Indonesia," *Journal of Citizenship* 8, no. 1 (2024), https://doi.org/https://doi.org/10.31316/jk.v8i1.6150.

[23] Vehrial Vahzrianur and Farahdinny Siswajanthy, "The Role of Arbitration in Out-of-Court Dispute Settlement According to Law No. 30 of 1999," *JOURNAL OF LAW, POLITICS AND SOCIAL* SCIENCES 3, no. 3 (June 2024): 357–64, https://doi.org/10.55606/jhpis.v3i3.3940.

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

annulment of an arbitral award. In fact, this authority does not make the district court an institution of appeal or correction of arbitration, but solely as a function of controlling legality and formal compliance with national law. Thus, the position of the arbitral award must be respected on a par with a district court decision that has permanent legal force, as long as it does not conflict with public *policy* or fundamental principles of national law.

In theory, this position reflects the application of the principle *of res judicata pro veritate habetur*, where any decision that has been final must be considered correct and binding.[24] Therefore, the district court should not re-examine the substance of the arbitral award, because it would violate the principle of *final and binding* as well as the principle *of non-intervention* guaranteed in the Arbitration Law. Ideally, the relationship between the two should be placed within the framework of mutual recognition and respect, i.e. arbitration performs the function of independent contract-based dispute resolution, while the district court performs the function of the state to ensure the implementation of the award in accordance with national law. With such an arrangement, Indonesia's legal system can maintain a balance between the autonomy of private dispute resolution and the authority of the country's judicial power, without neitating each other.

Third, related to bank guarantees. In concept, a bank guarantee is an agreement in the form of an accessory agreement. In the view of Gunawan Widjaya and Ahmad Yani, an accessory agreement is an agreement that has conditions, the implementation or cancellation of the agreement depends on the requirements.[25] In this case, the disbursement of the bank guarantee requires proof that the secured party (PT IKM) has committed a legal and convincing default on the parent cooperation agreement or contract. The legal instrument that has the authoritative authority to prove the occurrence of the default is the decision of the judicial institution. In the context of dispute resolution through non-litigation channels, an arbitration award has the same legal status and force as a court decision that has permanent legal force. Juridical problems arose when the BANI arbitration award in this case did not prove the existence of a default committed by PT IKM. Given these legal facts, the District Court Judge's order to the guarantors, both banking institutions and other guarantor institutions, to disburse the bank guarantee becomes legally irrelevant. Without proof of default through an arbitral and *binding award*, the material requirements for the disbursement of the guarantee are not met, so that the order for disbursement is an error in the application of the law.

b. Juridical Implications of the Dualism of the Decision Between Bani and the District Court on the Principal's Legal Certainty

The situation of dualism of awards between arbitration institutions such as BANI and district courts reflects one of the most serious juridical problems in the practice of business dispute resolution in Indonesia, especially in the case of Bank Guarantee claims. Hypothetically, this condition occurs when the two institutions produce

[24] Muhammad Wahyu Andi Zulkipli, "Limitations on Submission of Review Based on Laws and Regulations and Principles in the Judicial System in Indonesia" (Thesis, Islamic University of Indonesia, 2024).

[25] Sri Widodo, "The Authority to Adjudicate Disputes Based on the Principal Agreement (Sharia Agreement) and the Accessory Agreement (APHT) Due to Different Legal Choices (Study of Decision Number 499/Pdt.G/2021/PA. YK at the Yogyakarta City Religious Court)" (Thesis, Islamic University of Indonesia, 2022).

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

decisions whose substance contradicts each other. For example, BANI in its capacity as an authorized arbitration institution based on the agreement of the parties states that the principal or customer is not proven to have committed default, so there is no legal basis for the issuing bank to disburse the Bank Guarantee.[26] However, on the other hand, the district court actually ruled that the bank must disburse the Bank Guarantee to *the beneficiary* because it is considered an *unconditional* and *on-demand guarantee*.[27] These two decisions give rise to a very crucial normative conflict, because each has a valid legal basis, BANI is based on the Arbitration Law, while the district court is based on the general authority granted by the Judicial Power Law.

This contradiction not only gives rise to academic debate about *lex specialis derogat legi generali*, but it also creates real legal uncertainty in the field. For the principal (the client or the secured party), the existence of two conflicting judgments puts them in a weak and uncertain legal position. On the one hand, the district court's decision is executory and can be directly enforced against the issuing bank to disburse the guarantee. On the other hand, the final and binding BANI decision should confirm that the *beneficiary's claim* is invalid because there is no default. As a result, the principal loses certainty regarding the status of the obligation and the right to bail, because normatively he is not guilty, but can factually lose the value of the guarantee due to an execution order from the district court. In practice, this situation also poses a dilemma for the issuing bank, which is faced with two conflicting obligations, namely obeying the district court's decision or respecting the arbitration result that has been agreed upon by the parties to the contract.

The impact of this dualism of the ruling extends not only to the juridical aspect, but also to the economic, reputational, and effectiveness aspects of the national business dispute resolution system. From an economic point of view, the principal must bear direct financial losses in the form of loss of the value of collateral that is forcibly disbursed even though there is no proven default. In addition, the dual litigation process, through arbitration and general courts, creates *high litigation costs* and *time costs*, which ultimately reduce economic efficiency in doing business. In terms of reputation, principals who are declared not in default by BANI but still lose collateral due to a district court decision will suffer immaterial losses in the form of a decrease in trust from business partners, financial institutions, and the market. Meanwhile, from the legal system's perspective, this phenomenon creates a negative perception that the arbitration mechanism in Indonesia is not really final, because the decision can still be "corrected" or ignored by the courts. As a result, business actors' confidence in the effectiveness of arbitration as a fast, confidential, and efficient business dispute resolution forum has decreased.

The bank guarantee cannot be disbursed immediately without material proof of the occurrence of default by the insured. This is a fundamental characteristic of a bank guarantee that is positioned as *an accessoir agreement*, where the enforceability of rights and obligations therein is entirely dependent on the fulfillment of the conditions stipulated in the principal agreement. The juridical implications of the nature *of the*

[26] Dewi Ratrika Rinupa Sejati, "Alternative Settlement of Default Disputes Through the Indonesian National Arbitration Board (BANI)," *Indonesian Journal of Law and Justice* 1, no. 3 (December 2023): 12, https://doi.org/10.47134/ijlj.v1i3.2074.

[27] Muhammad Astherix Chandra, "Bank Guarantee as a Transfer of Liability in the Event of Default by Customers of Bank 9 Jambi Limited Liability Company and Wholesale Companies" (Thesis, Batanghari University, 2023).

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

accessoir confirm that without a court decision or an authoritative dispute resolution institution stating that it has been proven to have committed a default, the conditions for disbursing the bank guarantee are automatically not met. In the context of this case, the judge's order to disburse the guarantee actually causes negative impacts and legal risks for banking institutions and other guarantor institutions. Considering that the BANI decision does not state that PT IKM committed an act of default, the disbursement order by the district court does not have a strong legal basis and has the potential to cause real losses to the banking sector due to the neglect of legal facts that have been decided in the arbitration forum.

Theoretically, this dualism is in contradiction with Gustav Radbruch's theory of legal certainty, which asserts that good law must be able to fulfill three fundamental values: legal certainty (*rechtssicherheit*), utility (*zweckmäßigkeit), and justice (gerechtigkeit*).[28] In the context of Bank Guarantee disputes, the value of legal certainty is the most shaken element. Gustav Radbruch argued that without certainty, the law loses its usefulness as a guide to behavior and cannot guarantee justice. When two different institutions issue judgments that nullify each other, the law loses its predictive function, the parties can no longer predict the legal consequences of an action, including whether the outcome of the arbitration will actually be recognized by the state. In other words, the dualism of the verdict is a manifestation of the failure of the law in providing certainty and justice for the subject of the law**.**

From the perspective of the legal system, this situation also indicates the weak application of *the principle of finality and binding* which should be at the heart of the arbitration system. Article 60 of the Arbitration Law expressly states that an arbitral award is final and has permanent legal force, so it cannot be appealed, cassated or reviewed. Thus, a decision of a district court that decides the substance of a dispute that is the same as that of the case decided by the arbitration can be seen as a violation of the principle *of non-intervention* and the principle *of competence,* where the arbitrator is competent to determine its own jurisdiction. In order to maintain the integrity and effectiveness of the national legal system, it is necessary to uphold the principle *of lex specialis derogat legi generali*, that in disputes that have been agreed to be resolved through arbitration, the provisions of the Arbitration Law must take precedence over the general provisions of the Judicial Power Law.

Ultimately**,** consistency in the application of *the principle of final and binding* is the key to restoring legal certainty and creating a healthy business climate. The State through the courts must respect the autonomy of the arbitration institution as a form of respect for the principle of *freedom of contract* and the principle of *pacta sunt servanda*. That way, business actors do not need to worry that disputes that they have entrusted to the arbitration institution will still be reopened in court. This consistency is also a symbol of Indonesia's seriousness in building a credible commercial dispute resolution system that is in line with international standards. Only then can the law return to its function as intended by Gustav Radbruch, providing reliable certainty, tangible benefits, and substantial justice for all parties in economic and business activities.

[28] Khaerul Umam, Alwan Hadiyanto, and Wijayono Hadi Sukrisno, "Considerations of Pretrial Judges' Decisions Regarding the Validity of Suspect Determinations," *Journal Juridisch* 3, no. 2 (October 2025): 169–84, https://doi.org/10.26623/jj.v3i2.12865.

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

D. Conclusion and Recommendations

The study concludes that BANI arbitral awards have legal standing equal to district court judgments as long as they fulfill the final and binding principle under the Arbitration Law. Consequently, district courts are not authorized to re-examine disputes that have been validly resolved through arbitration, except in matters expressly permitted by law, such as annulment and execution of arbitral awards. In the case examined, the district court's reliance on a dissenting opinion and its order to disburse the bank guarantee despite the absence of a finding of default in the BANI award contradict the principles of final and binding, non-intervention, and the accessory nature of bank guarantees.

Furthermore, the dualism between BANI and district court decisions creates legal uncertainty for principals, weakens confidence in arbitration as an effective dispute resolution mechanism, and undermines the principle of legal certainty as articulated by Gustav Radbruch. To preserve legal certainty and maintain a healthy business climate, disputes that have been agreed to be resolved through arbitration should remain subject to arbitration law, while the role of district courts should be limited to execution and formal supervisory functions.

The author recommends strengthening the harmonization of authority between arbitration institutions and the judiciary through regulatory reform and clearer jurisdictional boundaries. In addition, institutional coordination between BANI and district courts should be enhanced to ensure consistent implementation of the final and binding principle and to provide greater legal certainty for business actors.

Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v12i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

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Volume 12, Number 02, April-June 2026, Pages 211-226
e-ISSN:2614-1485
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