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COMPARATIVE STUDY OF THE SETTLEMENT OF COPYRIGHT DISPUTES THROUGH ARBITRATION BETWEEN INDONESIA AND THE UNITED KINGDOM

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Abstract: Settlement of copyright disputes through arbitration is an alternative outside the court that is seen as more efficient, faster, and maintains the business confidentiality of the parties. Indonesia through Law No. 28 of 2014 concerning Copyright and Law No. 30 of 1999 concerning Arbitration has opened up space for non-litigation resolution of copyright disputes. Meanwhile, the UK with a common law system has developed a more mature arbitration mechanism through the Arbitration Act 1996 and the Copyright, Designs and Patents Act 1988. This article aims to analyze comparatively the arbitration system in the settlement of copyright disputes in Indonesia and the United Kingdom. The research method used is normative legal research with legislative, conceptual, and comparative approaches. The results of the study show that although both countries recognize arbitration as a dispute resolution forum, the UK has a more advanced legal infrastructure, international arbitration institutions, and practices than Indonesia. This study recommends strengthening copyright arbitration in Indonesia by adopting best practices from the UK, especially related to the specialization of IPR arbitrators and the effectiveness of the execution of arbitral awards.

Keywords: Copyright, Arbitration, Dispute Resolution, Indonesia, UK.

1. Introduction

Copyright protection is an important issue in the development of intellectual property law, especially in the era of globalization and digitalization. Copyright as an exclusive right inherent to the creator of copyrighted works in the fields of science, art, and literature, has a vital role in encouraging innovation, creativity, and creative economic growth. IPR continues



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to develop in accordance with the openness of the world which greatly affects the progress of the field of science and technology. The openness of the world economy also affects the development of international relations, both in the Asean regional environment, and in the global scope, namely with developed countries. It is evident from the signing of *the Framework Agreement on Enhancing Asean Economic Cooperation* and *the Agreement on the Common Effective Preferential Tariff (CEPT)*. The first step in anticipating the globalization process towards the Asean free market has been the formation of *the Scheme for the Free Trade Area (AFTA)*.¹

IPR is the right to a copyrighted work, whether it is a work of art, technology, or the fruit of thought that is *given* and inherent to the creator of the work and cannot be denied its existence. A person's work must be protected because it will benefit not only him, but also all of humanity. Intellectual works make a great contribution to the progress of society, including in the economic field, so that inventors and creators deserve to be rewarded for their intellectual rights. Intellectual Property Rights (IPR) affect the economic growth of a country which ultimately affects the welfare of the community.

Copyright is a form of Intellectual Property Rights (IPR) that provides protection for intellectual works in the fields of science, art, and literature. Copyright disputes often arise as a result of violations of economic and moral rights, such as piracy, abuse of licenses, and violation of distribution contracts. The resolution of these disputes can be pursued through litigation or non-litigation.

In the context of dispute resolution, litigation (court) channels are often considered ineffective by copyright holders and users of works. The long process, high costs, and open nature raise concerns, especially for those who want to maintain business confidentiality. Therefore, *Alternative Dispute Resolution (ADR)*, especially arbitration, is a relevant option.

¹ Etty Susilowati, *Intellectual Property Rights and Licenses on IPR*, (Semarang: UNDIP PRESS, 2013), page 1.



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Arbitration offers several advantages, including confidentiality, flexibility, time efficiency, and the finality of the binding award.

In Indonesia, the arbitration mechanism is regulated through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which generally accommodates the settlement of civil disputes, including copyright disputes as stipulated in Law Number 28 of 2014 concerning Copyright. However, the practice of arbitration in the settlement of copyright disputes in Indonesia is still relatively limited, and the public takes more of the litigation route.

In contrast to Indonesia, the United Kingdom as a country with *a common law tradition* has long experience in the development of arbitration. Through the Arbitration Act 1996 and the support of international arbitration bodies such as the London Court of International Arbitration (LCIA), arbitration has become the primary forum for the settlement of commercial disputes, including intellectual property disputes. In addition, the UK also has a special court, the Intellectual Property Enterprise Court (IPEC) which gives the parties flexibility to choose an arbitration or litigation forum.

The comparison between Indonesia and the UK is interesting to study because both have different legal systems: Indonesia adheres to the civil law system and the UK adheres to the common law system which affects the approach, implementation, and effectiveness of arbitration in copyright disputes. The UK has built an established, efficient, and internationally recognized arbitration system, while Indonesia still faces challenges both in terms of institutions, practitioner understanding, and legal harmonization between fields.

Thus, this research is important to analyze comparatively how the resolution of copyright disputes through arbitration is applied in Indonesia and the United Kingdom, in order to find the ideal model to be applied in Indonesia.

1. Arbitration Theory and Alternative Dispute Resolution (ADR)

- a. Conceptually, arbitration is rooted in the principle of freedom of contract, where the parties are given the freedom to determine their own dispute resolution forum without state interference.² According to Gary B. Born, an expert in international arbitration, arbitration is a private process based on the voluntary consent of the parties, where the resulting award is final *and binding*.³
- b. Basic Theory of Arbitration

According to M. Yahya Harahap, there are several main principles that underlie dispute resolution through arbitration, namely:⁴

 1. The Principle of Consent, where arbitration can only be enforced if the parties agree.
 2. The Principle of Freedom of Contract, the parties are free to determine the applicable procedures, institutions, and laws.
 3. Final and Binding Principle, the arbitral award is final and cannot be appealed or appealed.
 4. Principle of Confidentiality, the arbitration process is closed to the public.
 5. The principle of neutrality, arbitrators must be independent and impartial.
- c. International and National Arbitration
 1. Arbitration can be differentiated into national and international. According to Article 1 number 9 of Law No. 30 of 1999, international arbitration is an arbitration whose award is made outside the jurisdiction of Indonesia or by an international arbitration institution based on the agreement of the parties.
 2. Meanwhile, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides a basis for participating

² Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2019), p. 142.

³ Gary B. Born, *International Commercial Arbitration*, (Kluwer Law International, 2014), p. 21.

⁴ M. Yahya Harahap, *Arbitration and Alternative Dispute Resolution*, (Jakarta: Sinar Grafika, 2018), p. 56.

countries, including Indonesia and the United Kingdom, to recognize and enforce foreign arbitral awards reciprocatingly.⁵

d. Relevant Arbitration Bodies

Some of the arbitration institutions that are known for resolving Intellectual Property Rights (IPR) disputes include:

1. the Indonesian National Arbitration Board (BANI) in Indonesia;
 2. WIPO Arbitration and Mediation Center in Geneva, Switzerland;
 3. the London Court of International Arbitration (LCIA) in the United Kingdom;
- and

The WIPO Arbitration Center specifically handles IPR and domain name disputes, which shows the global tendency towards arbitration mechanisms in the resolution of copyright disputes.⁶

2. Copyright Theory

a. Definition and Essence of Copyright

According to Article 1 number 1 of Law Number 28 of 2014 concerning Copyright, copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form, without reducing restrictions according to the provisions of laws and regulations. According to WIPO (World Intellectual Property Organization), copyright is a branch of intellectual property rights that protects original works in the fields of literature, art, and science, and gives creators the right to allow or prohibit the use of their creations.⁷

b. Copyright Protection Theory

⁵ United Nations, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*.

⁶ WIPO, *Arbitration and Mediation Center Overview*, (Geneva: WIPO Publication, 2020).

⁷ WIPO, *What is Copyright?*, (Geneva: WIPO Publication, 2019).

There are several basic theories that underlie copyright protection, namely:⁸

1. Utilitarian Theory (Economic Incentive Theory) protects copyright so that people can benefit economically from copyrighted works.
 2. The Natural Right theory states that copyrights are the result of the creator's energy, time, and ability, so that their protection is natural.
 3. Moral Rights Theory: copyright protection also includes recognition of the personality and integrity of the creator.
- c. Copyright Disputes and Their Resolution Mechanisms

Copyright disputes can arise due to violations of economic rights, such as unauthorized use of the work, infringement of licenses, or employment contract disputes between the creator and the user of the work. In Indonesia, copyright disputes are generally resolved through the Commercial Court, as stipulated in Article 95 of Law No. 28 of 2014. However, Article 95 paragraph (4) opens up the opportunity for settlement through arbitration or other alternative dispute resolution, as long as it is agreed by the parties.⁹

3. Comparative Theory of Law

The comparative method of law has several main principles:¹⁰

1. Functional Approach – comparing two legal systems based on their legal functions, not just normative texts;
2. Contextual Principles – taking into account the social, cultural, and economic background in interpreting the law;
3. Historical Principles – considers the history and evolution of the laws in each country.

⁸ Sudargo Gautama, *Intellectual Property Rights*, (Bandung: Alumni, 2017), p. 93.

⁹ Law No. 28 of 2014, Article 95 paragraph (4).

¹⁰ René David & John Brierley, *Major Legal Systems in the World Today*, (London: Stevens & Sons, 1985), p. 25.

Using this method, a comparison between the Indonesian and UK arbitration systems can provide a deeper understanding of the characteristics and effectiveness of each system.

2. Research Methods

This research employs normative legal research (doctrinal research) with a focus on examining laws and regulations, legal doctrines, and legal practices related to copyright dispute resolution through arbitration. The study applies several approaches, namely the statute approach, which analyzes regulations concerning copyright and arbitration in Indonesia and the United Kingdom; the conceptual approach, which explores the legal concepts of arbitration, Intellectual Property Rights (IPR), and Alternative Dispute Resolution (ADR); and the comparative approach, which compares arbitration practices and regulatory frameworks between the two countries. The legal materials used in this research consist of primary legal materials, including Law No. 28 of 2014 concerning Copyright, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Arbitration Act 1996 (United Kingdom), and the Copyright, Designs and Patents Act 1988 (United Kingdom).

In addition, secondary legal materials include literature, legal journals, scientific articles, and academic works discussing arbitration and intellectual property law, while tertiary legal materials consist of legal dictionaries, encyclopedias, and other supporting references. The collection of legal materials is conducted through a literature study, by reviewing legislation, academic literature, and previous research findings. Furthermore, the analysis of legal materials is carried out using a descriptive-analytical method with a comparative perspective, aimed at identifying similarities and differences between the two legal systems and formulating practical recommendations for improving the arbitration mechanism in copyright dispute resolution.

3. Analysis or Discussion

3.1 Overview of Arbitration in Copyright Dispute Resolution

1. The Concept of Arbitration as an Alternative to Dispute Resolution

Arbitration is an out-of-court dispute resolution mechanism (non-litigation) that is based on the agreement of the parties to submit the dispute to a neutral arbitrator. In the context of copyright, arbitration is an effective means of settlement because it concerns technical, economic, and commercial secret aspects that cannot always be dealt with quickly by a common court.

The main advantages of arbitration are its confidential, final and binding nature, as well as the freedom to choose arbitrators and applicable law. In the settlement of copyright disputes that often involve cross-border parties, arbitration is also a mechanism compatible with the international legal system because it is supported by the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.¹¹

2. The Position of Copyright in the Intellectual Property Legal System

Copyright is part of Intellectual Property Rights (IPR) which provides protection for human copyrights in the fields of science, art, and literature. Copyright disputes can arise from infringement of moral rights, economic rights, or license infringements, either between creators, publishers, or users.

Resolution of copyright disputes can be done through:

- 1) Litigation (Commercial Court in Indonesia or High Court in the UK);

¹¹ New York Convention 1958, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.



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- 2) Alternative Dispute Resolution (ADR), including arbitration, mediation, and negotiation.

In practice, arbitration is the main choice for parties who want time efficiency, flexibility, and forum neutrality.

Arbitration System in Copyright Dispute Resolution in The Indonesia

1. Legal Basis of Arbitration in Indonesia

The legal framework for arbitration in Indonesia is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which is the legal basis for all domestic and international arbitration activities in Indonesia. Article 1 number (1) of the Law states that arbitration is a way of resolving civil disputes outside the general courts based on a written arbitration agreement. In the context of copyright, the legal basis is also strengthened by Article 95 of Law Number 28 of 2014 concerning Copyright, which states that copyright disputes can be resolved through arbitration or other alternative dispute resolution. In addition, Indonesia is also a party to the 1958 New York Convention, which regulates the recognition and enforcement of foreign arbitral awards, thus providing a juridical basis for enforcing international arbitral awards in Indonesian territory.

2. Arbitration Institutions in Indonesia

Arbitration institutions that are authorized to resolve copyright disputes in Indonesia include:

- a. The Indonesian National Arbitration Board (BANI), which handles commercial disputes including intellectual property rights;
- b. WIPO Arbitration and Mediation Center (through international cooperation agreements on behalf of Indonesia);

- c. An ad hoc arbitration institution, as long as it is agreed upon by the parties to the agreement.

The dispute resolution mechanism at BANI generally starts from Submission Arbitration Application, Appointment of Arbitrators, Case Inspection, to Verdict which is final and binding (Article 60 of Law No. 30 of 1999).

3. Challenges and Problems

Some of the problems that Indonesia still faces in the application of arbitration for copyright disputes include:

- a. Lack of understanding of the public and creative industry players towards the arbitration mechanism;
- b. The limitations of arbitrators who have special expertise in the field of IPR;
- c. Lack of effectiveness in the implementation of international arbitral awards, especially when dealing with district courts;
- d. The absence of a special arbitration forum for IPR in the country.¹²

These problems hinder the development of arbitration as an alternative Copyright Dispute Resolution in Indonesia.

Arbitration System in Copyright Dispute Resolution in The UK

1. Legal Basis of Arbitration in the UK

The UK regulates the arbitration mechanism through Arbitration Act 1996, which becomes The main legal umbrella in the settlement of civil disputes, including disputes intellectual property¹¹. Article 1 (a) of the Arbitration Act affirms the main

¹² Djoni Sumardi, "The Effectiveness of Arbitration in IPR Disputes," *Journal of Law and Business*, Vol. 5 No. 2 (2021), p. 144.

principle that the purpose of arbitration is to provide a fair and uncomplicated dispute resolution mechanism- convoluted, with minimal court intervention.¹²

Meanwhile, the settlement of copyright disputes is regulated in *Copyright, Designs and Patents Act 1988 (CDPA)*, which gives exclusive rights to the creator and recognize arbitration as one of the dispute resolution mechanisms between licensees and users of the work.

2. Arbitration Institutions and Practices in the UK

One of the well-known arbitration institutions in the UK is *London Court of Appeal International Arbitration (LCIA)*, which has an international reputation in handling commercial disputes and IPR. In addition, WIPO Arbitration and Mediation Center also handles many copyright cases involving parties in England. Arbitration in the UK is recognized for its legal system that provides:

- a. High independence to the parties in determining the applicable law (*party autonomy*);
- b. Broad authority for arbitrators to determine procedures and evidence;
- c. Strong protection against arbitral awards, where courts can only set aside an award for limited reasons (e.g. violation of principles of justice or public policy).¹³

3. Advantages of the English System

Some of the advantages of the UK arbitration system include:

- a. Have a professional and independent institutional structure;
- b. Strong judicial support, as the court respects the principle of finality of the arbitral award;
- c. High transparency and predictability of the law thanks to the *precedent system*;

¹³ Redfern & Hunter, *Law and Practice of International Commercial Arbitration*, (Oxford: OUP, 2015), p. 101

- d. Effective international enforcement through *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.¹⁴

Comparison of the Arbitration System between Indonesia and the UK

Aspects	Indonesia	English
Legal Basis	Law No. 30 of 1999; Copyright Law 2014	Arbitration Act 1996; CDPA 1988
Nature of Arbitration	Final and binding, but often overturned by the courts	Final and binding, can only be cancelled under limited conditions
Institutional	BANI, ad hoc, WIPO cooperation	LCIA, WIPO, Chartered Institute of Arbitrators
Court Support	Intervention is still quite large	Principle of non-intervention
Professionalism of the Arbitrator	Limited to general fields	Certified and specialized (IPR, contract, technology)
Enforcement of the Decision	Sometimes hampered at the district court level	Fully supported by the judicial system
International Framework	Ratification of the 1958 New York Convention	Pioneer countries and active implementers of the convention

¹⁴ WIPO, *International Arbitration Review*, (2022), p. 58.



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Comparative Analysis

Conceptually, the Indonesian and British arbitration systems have similarities in basic principles namely resolving disputes outside of court with a final and binding award. However, differences emerge in effectiveness, institutional support, and legal culture.¹⁵

1. From an institutional aspect, the UK has the upper hand because institutions such as the LCIA and the Chartered Institute of Arbitrators have high standards of professionalism.
2. From the aspect of law enforcement, the UK is more consistent in applying the principle of *finality*, while Indonesia still provides a great opportunity for the cancellation of the arbitration award.
3. From the aspect of legal culture, the common law system places high trust in non-litigation mechanisms, while the Indonesian civil law system still places the courts as the central institution.
4. From the aspect of arbitrator expertise, Indonesia needs to develop the capacity of IPR arbitrators to be on par with international practice.

Thus, the British arbitration system can be used as a learning model for Indonesia in strengthening the effectiveness of resolving copyright disputes in a modern and efficient manner.

Ideal Model for Resolution of Copyright Disputes through Arbitration in Indonesia

¹⁵ Konrad Zweigert & Hein Kötz, *An Introduction to Comparative Law*, (Oxford: Clarendon Press, 1998), p. 53.

Based on the results of the above comparison, the ideal model for resolving copyright disputes in Indonesia should include:

1. The establishment of the Indonesian Special Arbitration Institution needs to establish a special arbitration institution in the field of IPR with experts who understand international law, technology, and the creative economy.
2. Improving the Competence of Arbitrators Arbitrators must have certification and training in the field of copyright, in order to understand the technical and economic context of the copyrighted work.
3. Harmonization of National Law with International Practice Arbitration Law and Copyright Law need to be revised to be more responsive to international provisions such as the WIPO Arbitration Rules and the UNCITRAL Model Law.
4. Strengthening Enforcement of Arbitral Awards The Court must limit its intervention to the arbitral award, in accordance with the principle of *non-intervention*.
5. Digitization of Arbitration Processes Following the example of the LCIA and WIPO systems, arbitration in Indonesia can use an online system (*online arbitration*) for cost and time efficiency.

4. Conclusion

1. In conclusion, the comparative analysis of copyright dispute resolution through arbitration in Indonesia and the United Kingdom shows that both systems share the same fundamental objective of providing a fast, fair, confidential, and binding mechanism for resolving civil disputes outside the court system. However, the implementation of arbitration in the United Kingdom is more mature and effective due to stronger institutional support, specialized arbitrators, limited court



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intervention, and a legal culture that favors non-litigation dispute resolution. In contrast, although Indonesia has established a legal framework through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 28 of 2014 concerning Copyright, its practical implementation still faces challenges such as limited public awareness, a shortage of qualified intellectual property arbitrators, inconsistent judicial recognition of arbitral awards, and the absence of a specialized intellectual property arbitration institution. Therefore, the development of Indonesia's arbitration system should move toward strengthening institutional frameworks, improving arbitrator capacity, enforcing the principles of finality and non-intervention, adopting digital arbitration processes, and harmonizing national regulations with international standards. Through these improvements, arbitration can become a more effective, credible, and adaptive mechanism for resolving copyright disputes in line with the evolving dynamics of the global creative industry.

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