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CHOICE OF PARADIGM IN ARBITRATION: ARBITRATOR'S AUTONOMY OR PARTIES' AUTHORITY?

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Abstract
The choice of paradigm in dispute resolution through arbitration raises a fundamental question: should the arbitral tribunal render its decision based on the law or ex aequo et bono? Most legal scholars affirm that the disputing parties have the full authority to dictate the tribunal's choice of paradigm in resolving disputes. This perspective, in Indonesia, is justified by two grounds: the Elucidation of Article 56(1) of Arbitration and Alternative Dispute Resolution Law, and the party autonomy principle in arbitration. Against this mainstream view, this paper repositions the role of arbitrators, emphasizing that they should possess autonomy -rather than being dictated to- when choosing the paradigm dispute resolution. This paper concludes that the choice of paradigm should rest within the authority of arbitrators.

Keywords: *Choice of Paradigm; Ex Aequo Et Bono; Choice of Law; Arbitrator's Consideration; Arbitrator.*

A. Introduction

Arbitration can only arise as a dispute resolution mechanism when disputing parties ("the parties") agree to resolve their dispute through arbitration (Memi, 2017; Pamolango, 2015; Pujiyono, 2018). This agreement is usually embodied in a clause within a contract, commonly referred to as an arbitration clause (Entriani, 2017). With the inclusion of an arbitration clause, district courts no longer have absolute jurisdiction to resolve the dispute (Undang-Undang Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999). Conversely, without an arbitration clause or a compromis (a separate agreement executed after the dispute arises), arbitration cannot be employed as a dispute resolution method by the parties.

The substance of the arbitration clause is a crucial element to be determined. Among the critical aspects to include is whether the parties will opt for institutional arbitration, such as through the Indonesian National Arbitration Board (BANI Arbitration Centre), or ad hoc arbitration (Salar, 2023). This choice is referred to as a choice of forum (Adolf, 2014; Christine et al., 2022). When institutional arbitration is chosen, the parties agree to adhere to the rules and procedures established by the chosen arbitration institution. Furthermore, the specific arbitration institution must be clearly stated, whether it is BANI Arbitration Centre or another, as each institution has its own distinct rules and procedures. In the context of ad hoc arbitration, the parties must determine or even formulate the procedural rules to be applied (Winata, 2012).

Another frequently included element in an arbitration clause is whether an arbitrator or an arbitral tribunal is to resolve the dispute based strictly on legal principles or on principles of equity and fairness (*ex aequo et bono*). This choice, termed "choice of paradigm" by Eko Dwi

Prasetyo in his dissertation titled "*Choice of Paradigm dalam Arbitrase: Refleksi Filosofis terhadap Kebebasan Memilih Hukum atau Ex Aequo et Bono sebagai Pertimbangan Putusan Arbitrase*" [Choice of Paradigm in Arbitration: A Philosophical Reflection on the Freedom to Choose Law or Ex Aequo et Bono as the Basis for Arbitration Decisions] revolves around the fundamental approach to be taken by the arbitrators (Prasetyo, 2024). If the parties desire the arbitrators to resolve the dispute using a strict legalistic approach, the arbitrators are expected to focus solely on the contractual text and refrain from considering matters outside the contract (Gaillard, 2010; Tobias, 1960). Conversely, under *ex aequo et bono*, the arbitrators are requested to resolve the dispute based on principles of equity and fairness, which may not be explicitly stipulated in the contract and might even deviate from its provisions. The choice of paradigm can be formulated as alternative, cumulative, or cumulative-alternative.

The widely accepted proposition is that the choice of paradigm lies within the authority of the parties ("mainstream view"), as reflected in the explanation of Article 56, paragraph 1 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. The primary argument for this view is rooted in the principles of freedom of contract and party autonomy, which underpin the inclusion of an arbitration clause in the contract. According to this mainstream view, the contract falls outside the arbitrators' authority. If arbitrators issue decisions contrary to the stipulated choice of paradigm, such actions may be deemed *ultra petita* (beyond the scope of claims) or even *ultra auctoritas* (beyond authority) (Sujayadi, 2015).

As the originator of the term, Prasetyo argues in his dissertation that the choice of paradigm unequivocally belongs to the parties, and the arbitral tribunal must adhere to it (Prasetyo, 2024). This perspective aligns with the opinions of Hadylaya and Saleh, who assert that even though arbitrators may apply *ex aequo et bono*, they must obtain the parties' consent to respect their autonomy (Hadylaya, 2024; Saleh, 2023). In addition to focusing on Article 56 of the Arbitration Law, Hadylaya elaborates on why the application of ex aequo et bono requires party consent: (1) to prevent misuse of discretion; (2) to avoid unpredictable arbitration awards; and (3) to uphold the parties' right to transparency in the formulation of the arbitral tribunal's decisions (Hadylaya, 2024; Helm et al., 2016).

In contrast to existing research, this study critically examines this mainstream perspective. The core thesis of this study is that the choice of paradigm should rest with arbitrators, not the parties. Although parties may merely include the choice of paradigm in their arbitration clause, arbitrators should not be bound by it, as it forms part of arbitrator autonomy. To date, this research has found no academic work asserting that the choice of paradigm should belong to arbitrators. While Leon Trakman, in his article "Ex Aequo et Bono: Demystifying an Ancient Concept", emphasizes that *ex aequo et bono* is a valuable tool for arbitrators to resolve disputes, he does not address the question of who holds the authority to decide the choice of paradigm (Trakman, 2008).

This critical analysis begins with a fundamental review of arbitrators' freedom of thought in resolving business disputes. Since a paradigm resides in the arbitrators' minds and serves as the foundation for their decision-making, restricting their paradigms to the parties' choices effectively subjugates arbitrators' thought processes to the disputing parties. Consequently, the legal relationship between the parties and the arbitrator becomes hierarchical under the mainstream view. In reality, arbitrators should retain freedom of thought, and their relationship with the disputing parties should be based on trust, not subordination (Roosdiono, Taqwa, & Salsabila, 2022; Roosdiono, Taqwa, & Subiyanto, 2022). This independence is also crucial for arbitrators as trusted subjects in dispute resolution. Arbitrators must remain open to various considerations to resolve the disputes they face. Difficulties arise when the paradigm dictated by the parties is deemed inadequate by the arbitrators, as it constrains their ability to reach an effective resolution.

While it is possible for parties to stipulate that arbitrators may use both paradigms alternatively or cumulatively, such flexibility cannot be generalized to all disputes, given that many parties narrowly define the dispute resolution paradigm. Placing the authority to determine the choice of paradigm in the hands of the parties undermines arbitrator autonomy, an essential factor in shaping their awards. Party autonomy encroaches upon arbitrator autonomy, creating blurred boundaries between the two. However, party autonomy in arbitration does not imply absolute freedom for parties to dictate every aspect of the arbitration process.

B. Method

This qualitative research seeks to provide a critical perspective on the current legal status quo. According to the Explanation of Article 56, paragraph 1 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution (ADR) and various other provisions, including Article 16, paragraph 3 of the 2022 BANI Rules and Procedures, the choice of paradigm lies within the authority of the parties. In the first section, the concept of choice of paradigm is explained as a key term utilized throughout this paper. To address the research question, three aspects are examined: (1) the arbitrator's freedom of thought and their non-hierarchical relationship with the parties; (2) the arbitrator's position as the leading subject in dispute resolution; and (3) the boundaries between party autonomy and arbitrator autonomy. The primary sources used in this analysis include books and scholarly journals related to the position of arbitrators, principle of arbitration, ex aequo et bono, and party autonomy. These sources are further combined with practical observations to examine the real-world implications of the mainstream perspective that the choice of paradigm is determined by the disputing parties.

C. Result and Discussion

1. Choice of Paradigm in Arbitration: A Conceptual Framework

The term choice of paradigm, as claimed by Eko Dwi Prasetyo in his dissertation, is his original idea devised to describe the reality of choosing between legalistic law or *ex aequo et bono* as the basis for dispute resolution (Prasetyo, 2024). Prasetyo argues that the phrase "choice of law" is less appropriate when applied to the reality of selecting between formal legal principles and equity & fairness (*ex aequo et bono*) (Prasetyo, 2024). The term "choice of law" conveys an impression that dispute resolution considerations are based solely on aspects of "law"—a term that, when translated into Indonesian as "*hukum*," focuses primarily on formalistic legal elements, even though "law" in this context may encompass aspects of fairness and equity (Prasetyo, 2024). Prasetyo asserts that the more accurate term is "paradigm," as dispute resolution is not always grounded in formal law but may also consider extralegal aspects, such as morality (Prasetyo, 2024). This paper adopts the term "choice of paradigm" to represent the selection of foundational considerations in dispute resolution.

The phrase encompasses two key components that require careful understanding: choice and paradigm. The act of choosing implies the presence of three key variables. *First,* the subject making the choice must have the capacity to choose. This capacity must be recognized legally, ensuring that only competent subjects make choices (Kitab Undang-Undang Hukum Perdata, n.d.). *Second,* there must be multiple options available to choose from. The notion of choice inherently requires the existence of more than one option. *Third,* rationalization underpins the act of choosing. The subject must rationally evaluate the available options and may opt for alternatives or even combine options cumulatively, depending on their reasoning.

On the other hand, a paradigm can be defined as the foundational framework or mindset guiding one's actions and decisions (Badan Pengembangan dan Pembinaan Bahasa, 2024). This paper views a paradigm as a starting point that determines the trajectory connecting various elements into a cohesive framework. For instance, if an arbitrator selects a paradigm that dispute

resolution must be strictly based on written contracts, all subsequent actions will be directed by the content of the contract, regardless of whether the contract's provisions are suitable for resolving the dispute. Conversely, if an arbitration tribunal chooses to disregard the contract entirely, viewing it as irrelevant to the dispute's context, their reasoning will be guided solely by equity and fairness, as determined by their rational judgment. Thus, choice of paradigm in arbitration refers to selecting among various paradigms that form the basis of the tribunal's thought process before formulating legal considerations. Conceptually, this reality can be illustrated schematically, where the tribunal's foundational paradigm influences every subsequent step in the resolution process.

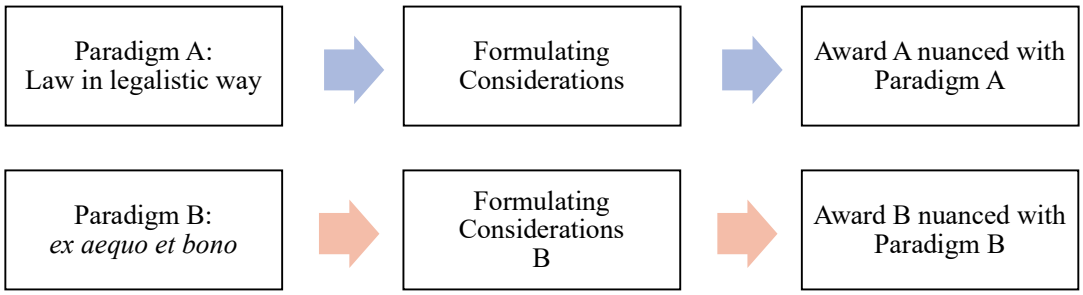

Chart 1. Process Flow in Formulating an Award by Arbitrators (Authors, 2024)

The primary question concerning the choice of paradigm in this paper is whether the authority to determine this choice lies with the parties or arbitrators. Based on the provisions of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration and ADR Law"), this choice appears to rest with arbitrators. Article 56, paragraph 1 of the law states, alternatively, that legal provisions (comprising the parties' contract and relevant legislation) or equity and fairness (*ex aequo et bono*) may serve as the basis for an arbitrator—or an arbitral tribunal, in the case of multiple arbitrators—to formulate their considerations in rendering an award.

However, the explanatory section of the same article (Article 56, paragraph 1) clearly indicates that the authority to choose lies with the parties. This authority is embedded in the arbitration clause included in the parties' contract (Undang-Undang Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999). Consequently, arbitrators are perceived to be bound to formulate their legal considerations based on the paradigm chosen by the parties. Only when the parties fail to specify their choice do arbitrators gain the authority to determine the paradigm (Tektona, 2011). In essence, the authority to make this choice is held by the parties, even though the explanatory section of the article provides no detailed guidance on the legal consequences should arbitrators disregard the paradigm chosen by the parties. This paper seeks to critically examine this prevailing status quo.

2. Choice of Paradigm Aspects

Choice of Paradigm as Arbitrator's Freedom of Thought

The first aspect to examine in determining who should hold the authority over the choice of paradigm is: whose mind does the paradigm reside in? Simply put, the paradigm in question is the arbitrators' paradigm during the process of formulating an award to resolve a dispute between the parties. If this paradigm exists in the arbitrators' mind while being controlled by the parties, then arbitrators lose their freedom of thought. If the paradigm is dictated by the parties, the arbitrator becomes nothing more than a "mouthpiece" for the parties' desires—a situation that ought not to occur.

Concetually, the arbitrator is the subject chosen or appointed to resolve disputes (Ginsburg, 2010; Helm et al., 2016). However, this normative understanding does not explicitly mention another essential element: trust (Roosdiono, Taqwa, & Salsabila, 2022; Soebagjo & Jatim, 1995). As explained earlier, any choice requires justification to ensure that the choice is rational. The desired outcome of such rationality is the effective resolution of the dispute. Rather than resolving the dispute independently, the parties delegate this responsibility to another subject. Delegating this activity inherently involves trust, which contains an element of voluntary consent. Such trust arises from a rational justification that the chosen subject possesses the competence and integrity to resolve the dispute (Roosdiono, Taqwa, & Salsabila, 2022).

This trust is concretely manifested in the arbitration clause. If the parties entrust their dispute resolution to an arbitral institution, the registered arbitrators within that institution are available for selection by the parties (Gautama, 1996). Conversely, if the parties choose ad hoc arbitration, the selected arbitrator must be explicitly named in the arbitration clause or appointed by a court (Nugroho, 2015). This understanding raises the next question: does this imply that the arbitrator holds a subordinate position to the parties? Subordination suggests a hierarchical relationship, typically found in organizations where superiors and subordinates exist (Rohanawati & Wicaksono, 2018). For example, the relationship between a Chief Executive Officer and a financial staff member within a company, or the clear hierarchy in military organizations, where subordinates must follow orders from their superiors. In such relationships, mental submission is necessary to align the organization's direction.

In arbitration, however, the relationship between arbitrators and parties is not hierarchical, as they are not part of a single organization and are only connected through the provision of services, namely, dispute resolution (Ibrahim, 2022; Sweet & Grisel, 2017). Analogously, the relationship is better understood as similar to that between a patient and a doctor. A patient must trust the doctor as an expert and not dictate what actions the doctor should take. If the patient lacks trust in a doctor, they may choose another doctor but should not dictate the prescriptions of a doctor whose advice they dislike. Each doctor retains independence in applying their knowledge and experience (Kedokteran Indonesia, 2012).

Even under the Arbitration and ADR Law, arbitrators' independence in resolving disputes is implied (Undang-Undang Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999). Although the law does not explicitly and firmly outline this independence as it does for judges under the Judiciary Law, arbitrators must remain free in resolving disputes, ensuring no subordinative relationship exists. Independence here means that arbitrators are not bound by allegiance to any particular party and, more broadly, are not in a relationship where they are dictated by any party (Witasari, 2019).

Thus, arbitrators, in principle, are not representatives of the parties appointing them (*to represent*); rather, they serve, along with other arbitrators, as subjects tasked with resolving the dispute (*to settle the dispute*), even if their views differ from those of the appointing party. The trust granted to arbitrators does not create a subordinative legal relationship between the appointing party and the arbitrator. This is distinct from the role of legal counsel, who acts on behalf of and represents one of the disputing parties (Vartolomei, 2014). Unlike arbitrators, legal counsel has no obligation to consider the perspective of the opposing party (Giesel, 2007). Arbitrators, however, must seek solutions that account for all perspectives, even if appointed by one party.

In this legal relationship and role, disputing parties should not dictate the choice of paradigm to be used by arbitrators, as doing so would create a subordinative relationship in dispute resolution. Paradigms are crucial as they form the framework of arbitrators' thought processes in resolving disputes. If such dictation occurs, the arbitrator's mind falls under the control of the parties, establishing a subordinative relationship and negating the arbitrator's freedom to determine the framework for resolving disputes. This contradicts the principle of independent

thought, which is essential for arbitrators to effectively address and resolve disputes, potentially diverging from the perspectives of the parties (Rogers, 2005).

The Need for Arbitrator Freedom of Thought as the Leading Subject in Dispute Resolution

In a non-subordinate relationship such as this, the arbitrator must be positioned as the *leading subject* in dispute resolution. As the leading subject, the arbitrator must possess the freedom of thought, including the autonomy to determine their *choice of paradigm*, rather than being dictated in their reasoning. This freedom is critical, as the *choice of paradigm* plays a significant role in achieving the ideal orientation of arbitration across various disputes of differing complexity. The correlation lies in the fact that the orientation of arbitration guides the selection of the arbitration paradigm, with the paradigm being chosen to facilitate the desired outcome. Consequently, this choice directly impacts both the reasoning underlying the decision and the ultimate resolution rendered by the arbitrator.

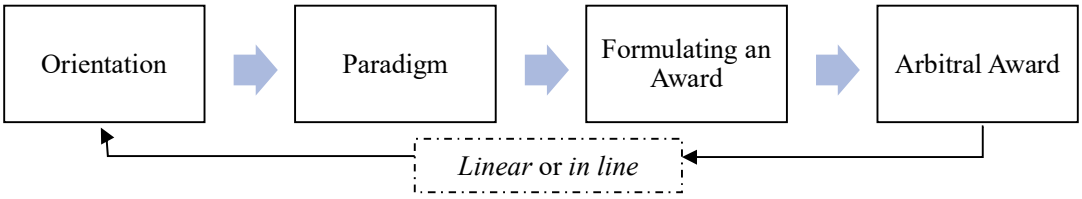

Chart 2. Position of Orientation in the Process of Formulating an Arbitral Award (Authors, 2024)

Generally, orientation is understood as the expected outcome or goal that parties seek to achieve in resolving disputes through arbitration. Typically, these orientations are limited to forms such as win-lose, win-win/lose-lose, or alternatives (Hariyanto, 2024; Roosdiono & Taqwa, 2023). For claimants, a favorable outcome—victory—means their claims are accepted and granted, obliging the respondent to pay the damages sought. Conversely, for respondents, a victory—signifying the claimant's defeat—occurs when the claimant's requests are denied or when a counterclaim is granted. Each orientation influences whether the selected paradigm will be applied alternatively (“or”) or cumulatively alternatively (“and/or”). In an alternative context, only one option can be chosen—either based on law or equity and fairness. In a cumulative alternative context, arbitrators may choose one or both: based on law, based on equity and fairness, or both combined. For a party aiming to win by relying solely on the written terms of a contract, the arbitrator is likely to be directed toward choosing a paradigm strictly based on contract law (Tan, 2023). On the other hand, a party seeking victory through equity and fairness may push for a paradigm based on those principles (Wawuru, 2023). However, in various disputes, a combined application of both paradigms may be necessary (Purba & Batubara, 2013).

To determine the appropriate orientation in arbitration, it is essential to normatively examine the concept of arbitration itself. One inherent element in the definition of arbitration under the Arbitration and Alternative Dispute Resolution Act is "dispute resolution." Arbitration is a means of resolving disputes outside the general court system. Thus, the ultimate goal for the parties should be the resolution of the dispute. "Resolution" implies the cessation of conflict between the parties, with an expectation of reconciliation in their cooperative relationship (Stipanowich, 2010; Triana, 2019). Such an orientation inherently possesses selfless characteristics, focusing on objectivity and relying on the parties' good faith. The expected outcome is not simply to secure victory or maximize claims but to achieve dispute resolution, even if resolution requires one party to pay damages. The emphasis is on problem-solving, looking forward to future cooperation rather than merely assigning blame (looking backward). Victory or defeat should not be the sole orientation (Stipanowich, 2010).

When the orientation of "dispute resolution" is linked to the *choice of paradigm*, it implies that the selected paradigm should facilitate the resolution of the dispute. Both law and equity can serve as paradigms to resolve disputes depending on the context (Pamolango, 2015). For instance, in a hypothetical contract where Y (the contractor) is entitled to receive 50% payment upon completing 85% of the work, but X (the employer) pays only 30% without valid justification, a legal/contractual approach is appropriate for addressing Y's claim. Conversely, if Y completes 85% of the work but fails to meet X's quality expectations, applying the literal terms of the contract may be unjust. In such cases, the text of the contract must be contextualized, and considerations of equity and fairness may prevail.

By choosing arbitration as the dispute resolution method, parties essentially entrust arbitrators with addressing the complexities of their conflict (Ariprabowo & Nazriyah, 2017). Arbitrators, as trusted individuals, must be positioned as leading subjects responsible for resolving the dispute. If arbitrators are not placed in this leading role, each party's orientation may dominate, potentially obstructing the realization of arbitration's intended objectives. When parties include arbitration clauses in their contracts, they acknowledge the variability of potential disputes. The critical factor in resolving diverse disputes is the arbitrator's ability to employ various approaches grounded in truth and justice. Therefore, granting arbitrators authority over the *choice of paradigm* reflects the trust necessary to achieve the ideal orientation of dispute resolution in arbitration (Allsop, 2013).

The demarcation between Arbitrator Autonomy and Party Autonomy

The next aspect that needs to be understood, as a subsequent consequence of the arbitrator's independence, is the distinction between party autonomy (the autonomy of the disputing parties) and arbitrator autonomy. In general, arbitrator autonomy is not often discussed because party autonomy and freedom of contract are more frequently emphasized in the arbitration process. However, party autonomy should not interfere with arbitrator autonomy, and party autonomy should be limited to the pre-arbitration phase. The pre-arbitration phase includes decisions regarding choice of forum, choice of arbitrator, and choice of language.

In formulating the dispute resolution clause, the parties must first agree on the dispute resolution mechanism to be used: whether through state courts, mediation, arbitration, or another option. This is referred to as choice of forum (Adolf, 2014). Each mechanism must be known and understood by both parties, including its advantages, disadvantages, and the legal consequences arising from the features of each mechanism. When state court proceedings are chosen, the arbitration institution or ad-hoc arbitrators do not have the authority to compel the parties to resolve their dispute through arbitration.

Furthermore, the parties are also granted the freedom to select and trust the arbitrators registered with the designated arbitration institution, known as choice of arbitrator (de Clippel et al., 2014). The arbitration institution does not have the authority to dictate the selection of arbitrators unless the parties have delegated this trust to the institution. Once three arbitrators have been appointed by the parties, other arbitrators and the arbitration institution cannot interfere with that choice, as it is part of the pre-arbitration process. In addition to these two choices, the parties are also free to determine the language to be used during the proceedings. However, once the arbitration process begins, the parties cannot influence the arbitrators in formulating their decision.

Nevertheless, the existence of party autonomy does not mean that every aspect of the arbitration process must comply with the will and dictates of the disputing parties. For example, in the context of choice of forum, parties who select institutional arbitration must adhere to the arbitration rules and procedures of the chosen institution. When the parties entrust the Indonesian National Board of Arbitration (BANI) with administering the arbitration process, the parties can only select arbitrators registered with BANI (Peraturan Dan Prosedur Arbitrase Badan Arbitrase

Nasional Indonesia, 2022). Even though there may be an opportunity to choose arbitrators who are not listed, this must still receive approval from the Chair of BANI. Furthermore, at BANI, the chair of the arbitration panel is appointed by the Chair of BANI, while each party can only appoint one arbitrator (Peraturan Dan Prosedur Arbitrase Badan Arbitrase Nasional Indonesia, 2022). These two examples demonstrate that party autonomy in the context of choice of forum cannot be exercised freely in all matters.

In addition to the autonomy of the arbitration institution, there is also another form of autonomy, referred to as arbitrator autonomy. Derived from the Greek words "*auto*" (self) and "*nomos*" (law), autonomy refers to a characteristic where the subject with autonomy has control over themselves. Arbitrator autonomy, as elaborated in point C.2.2., is based on the essence of the arbitrator in arbitration as a subject-oriented toward finding a dispute resolution, not as a "mouthpiece" (in Indonesia, "*corong*") or representative of the parties. This search requires intellectual freedom. One example of this autonomy is that if the arbitration panel deems it necessary, the panel can summon witnesses or even experts to provide clarification in the dispute resolution process. Since the panel is obligated to issue a dispute resolution decision, it must use all available resources to produce a sound decision. Choice of paradigm, which is the intellectual framework guiding the arbitrator in resolving the dispute, is also part of arbitrator autonomy and a limitation on party autonomy in the context of choice of arbitrator. This is done to achieve the ideal orientation for dispute resolution.

Concerns, as expressed by Hadylaya, that granting the power of choice of paradigm to the parties is to avoid unpredictable decisions or abuse of discretion, are an irrelevant justification. When such concerns arise, it does not mean that the solution is to transfer this power from the arbitrator to the parties. From the outset, the parties should carefully select arbitrators who can resolve the dispute by reviewing the capabilities and credibility of the potential arbitrators to be appointed. Moreover, the potential consequences discussed by Hadylaya do not negate the essential nature of the arbitrator's freedom of thought and action as a leading subject in the resolution of disputes through arbitration.

D. Conclusion

This argumentative paper argues that choice of paradigm should rest with the arbitrator. This proposition is supported by three justifications: the arbitrator's intellectual freedom as the leading subject, the achievement of the ideal orientation of dispute resolution through arbitration, and the fact that arbitrator autonomy should not be undermined by party autonomy. The ideal orientation in arbitration is the resolution of the dispute. Both the dispute resolution paradigm based on the contract from the parties and/or the truth & justice that are not bound by the contract can serve as a basis for resolving the dispute. The parties should not be positioned as subjects capable of "locking" the arbitrator into choosing only one paradigm. Given the arbitrator's role as the leading subject entrusted with resolving the dispute, this choice should be entirely left to the arbitrator. The arbitrator is not an subordinate to the parties but is a trusted individual tasked with resolving the dispute between them.

Therefore, this paper offers recommendations from two perspectives. The first is the elimination of the substance contained in the explanation of Article 56 (1) of the Arbitration Law and the Alternative Dispute Resolution Act, while leaving Article 56 (1) itself intact. Additionally, as Hadylaya suggests, the explanation of this article introduces a new norm that does not align with the article itself. The substance of the explanation degrades the position of the arbitrator, making them appear merely as a "mouthpiece" rather than a dispute resolver or problem solver. The second perspective relates to the mindset of the parties who have agreed to resolve their dispute through arbitration. The parties seeking to resolve their dispute through arbitration should be aware that party autonomy has limitations that must not contradict the

principles and ideal orientation of arbitration, nor should it interfere with the arbitrator's role in the dispute resolution process, where the arbitrator's autonomy includes the choice of paradigm.

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