

Ex Aequo Et Bono Principle Needs to Be Regulated in Arbitration

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Business dispute is generally resolved through three means, namely, reconciliation, through arbitration agency or the court. Arbitration, however, as an alternative agency that settles disputes has its role in helping business disputes nationally or internationally. Many business players choose arbitration as a way of dispute settlement as it enables the use of *Ex Aequo Et Bono* principle. Moreover, the consideration taken by business players to choose arbitration is due to the existence of Law No 30/1999 on Arbitration and Alternatives to Dispute Settlement.

Ex aequo et bono as is known is the freedom of the arbitrator to decide the dispute by not grounding it on rigid laws but justice principle.

"Generally, arbitration uses this principle," said doctoral student of Law at Faculty of Law UGM, Nadia Fitriyani, in her doctoral promotion at Faculty of Law UGM on Friday (20/10).

In her dissertation entitled Use of *Ex Aequo Et Bono* Principle in Business Dispute in National and Sharia Arbitration, she said the implementation of arbitration verdict that uses this principle between parties in dispute has agreed to use this principle. So arbitral authorities emerge to resolve



the dispute by using justice outside the laws. Nadia said, however, the use of such principle should be ruled rigidly in the arbitration law so that it will not create different interpretations.

She explained if the arbitral judge is authorised to use this principle, the arbiter has to explore justice not just in the terms of the law but based on unwritten objective norms, religious belief, common sense, and consciousness that are not subjective so it may create an unjust and incorrect verdict. “Obviously, this principle cannot be used haphazardly, but there has to be rules to comply with by the arbiter,” she said.

So is the sharia arbitration. The arbitration cannot even ignore the conscience that is based on Islamic teaching to seek justice for dispute resolution that is based on the sharia.

Nadia proposed that to avoid different interpretations of arbitration agency, the use of this principle has to be firmly ruled in the arbitration law as choice of law.

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