
Harmonizing Arbitration: Clarity, Consistency, and Consent in the Application of Ex Aequo Et Bono

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Article Info

Submitted: May 11, 2023
Revised: Dec 19, 2023
Accepted: Jan 30, 2024

Keywords:

Arbitration Procedures;
Ex Aequo Et Bono
Principle; Legal
Hermeneutics.

How to cite [Chicago Manual of Style 17th edition (full note)]:

Michael Herdi Hadylaya,
"Harmonizing
Arbitration: Clarity,
Consistency, and Consent
in the Application of Ex
Aequo Et Bono" Jambura
Law
Review 6, no. 1 (2024):
88-101

Abstract

This article delves into the intricate dynamics surrounding the application of the ex aequo et bono principle in arbitration, addressing concerns arising from potential procedural challenges and deviations from justice principles amid the escalating popularity of arbitration. The study intricately navigates the legal complexities of this principle, centering on the interpretation of Article 56 of Law 30/1999. Specifically, it scrutinizes whether the article mandates parties' consent for the arbitrator to decide based on ex aequo et bono. Employing a normative legal research approach and utilizing legal hermeneutics with a structuralist focus, the research analyzes the interplay of written agreements, tacit understandings, and standard practices in arbitration. The article underscores the critical role of precise protocols and unequivocal agreements in safeguarding the integrity and effectiveness of the arbitration process. It highlights the paramount need for clarity and consistency in legal provisions, advocating for collaborative efforts between legal authorities and arbitration institutions. This collaboration is essential for aligning statutory provisions and arbitration rules, ultimately fortifying a robust and dependable framework for the equitable resolution of conflicts. In conclusion, the article calls for a harmonized approach to address inconsistencies, enhance the legitimacy of arbitration decisions, and foster trust in the arbitration process. By exploring these challenges, the article contributes to the ongoing discourse of optimizing arbitration as a fair and efficient means of resolving international disputes.

1. Introduction

Arbitration is a fast and easy way to settle disputes.¹ Although initially intended to serve as a prompt and uncomplicated substitute for conventional litigation, the overuse of arbitration in many unsuitable situations gives rise to apprehensions.² When people rely too much on arbitration, the results may not always follow the rules of fairness and justice because the tendency of arbitration becomes more litigious. Litigation strategies employed in the arbitration process could hurt international arbitration's image as an excellent way to settle international disagreements.³ Therefore, it is important to find a balance to ensure that arbitration retains its efficiency and is not trapped by the complicated procedure.

The method of resolving disputes in court is falling out of favor due to dissatisfaction with its procedural aspects. People who want justice in court must follow the procedural rules. The legal system, which includes different types of litigation, gives people an organized way to settle disagreements. Emphasizing procedures heavily has become the court's Achilles' heel compared to arbitration.⁴

One feature that often falls under the procedural trap concerns the authority of the arbitrator to decide based on equity or *ex aequo et bono*, which is usually avoided because it is thought to be illegal or against the law.⁵ The idea of *ex aequo et bono* puts the power in the judges to settle disagreements by doing what is fair and in good conscience.⁶

The concept of *ex aequo et bono* comes from Roman law, in which the arbitrators can ignore the rules and norms of a certain national law and settle the case based on what

¹ Nigel Blackaby KC et al., *Redfern and Hunter on International Arbitration*, Seventh Edition, Seventh Edition (Oxford, New York: Oxford University Press, 2022), 2.

² Kimberly R Wagner, "The Perfect Circle: Arbitration's Favors Become Its Flaws in an Era of Nationalization and Regulation" 12 (2013).

³ Emmanuel Gaillard, "Abuse of Process in International Arbitration," *ICSID Review* 32, no. 1 (February 2017): 17–37, <https://doi.org/10.1093/icsidreview/siw036>.

⁴ Valbon Mulaj, "The Advantages and Disadvantages of Arbitration in Relation to the Regular Courts in Kosovo," *Hungarian Journal of Legal Studies* 59, no. 1 (March 2018): 118–33, <https://doi.org/10.1556/2052.2018.59.1.7>.

⁵ Leon Trakman, "Ex Aequo et Bono: Demystifying an Ancient Concept," *Chicago Journal of International Law*, n.d.

⁶ Marko Jovanović, "The Role of Ex Aequo et Bono in ICSID Arbitration," *Revija Kopaonice Skole Prirodnog Prava* 3, no. 1 (2021): 147–64, <https://doi.org/10.5937/RKSPP2101147>.

they think is fair, just, and moral.⁷ The parties must give the arbitrators clear permission to use *ex aequo et bono* so that this concept can become a source of law for their dispute.⁸

The stipulation that arbitrators must acquire explicit consent from the disputing parties before implementing the *ex aequo et bono* principle is not unique to international arbitration. The same is true in Indonesian arbitration. Under elucidation of Article 56 of Law No. 30 Year 1999 on Arbitration and Alternative Dispute (Law 30/1999), arbitrators must obtain specific approval from the parties involved to apply the *ex aequo et bono* concept.⁹ Therefore, it enables decisions to be grounded in equity and justice rather than solely following legal regulations. The consistent application emphasizes the universality of this practice and shows that it is crucial to obtain explicit authorization from all parties involved before invoking this equitable principle.

Obtaining the consent of the disputing parties for the arbitrator to implement the *ex aequo et bono* can be understood as the implication of implementing such principles is a departure from the rigid enforcement of the legal tenets and enabling decisions based on concepts of equity and justice.¹⁰ Obtaining the parties' consent guarantees that they are aware of and willing to accept this unconventional method, which deviates from established legal standards.

Furthermore, acquiring consent supports the notion of party autonomy in arbitration. It acknowledges and upholds the parties' autonomy to establish the parameters for resolving their dispute. It allows them to determine various aspects of the arbitral proceedings, including the place, applicable law, language, tribunal composition, and confidentiality.¹¹ Therefore, consent by parties to give authority to the arbitrator to decide by *ex aequo et bono* protects against possible disputes or challenges to the

⁷ Nobumichi Teramura, "Ex Aequo et Bono as a Response to the 'Over-Judicialisation' of International Commercial Arbitration" (Thesis, UNSW Sydney, 2018), <https://doi.org/10.26190/unsworks/20865>.

⁸ Jovanović, "The Role of Ex Aequo et Bono in ICSID Arbitration."

⁹ Republik Indonesia, "Undang-Undang No. 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (1999).

¹⁰ Arsha Nurul Huda, "Ex Aequo et Bono as a Manifestation of Legal Justice for Society," *Damhil Law Journal* 1, no. 2 (November 29, 2021): 116–29, <https://doi.org/10.56591/dlj.v1i2.1039>.

¹¹ Yeshnah D Rampall, "The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium," *Harvard Negotiation Law Review* 23 (2017).

arbitral ruling that may arise from using *ex aequo et bono* without the explicit permission of the parties involved.

Moreover, demanding consent encourages openness and adherence to proper procedures. It guarantees that the parties are notified of the arbitrator's intention to deviate from rigid legal standards, giving them the chance to express any concerns or objections before the unfolding of the procedure. Securing the agreement of the parties involved in the dispute to apply *ex aequo et bono* is crucial for preserving arbitration independence, ensuring openness, and reducing potential obstacles to the arbitration process.

By obtaining such an agreement, openness is enhanced, and the standards of fairness are upheld in the arbitration process. This helps to establish a system where all parties are fully informed and willing to accept the employment of this specific approach. Furthermore, this criterion emphasizes the significance of upholding a harmonious equilibrium between legal norms and fair considerations in resolving conflicts.

However, the notion of disputing parties' agreement is not explained thoroughly, particularly regarding the implementation of *ex aequo et bono*. Waruwu, et al. observe that the agreement must be given in writing so that the arbitrator can decide based on *ex aequo et bono*.¹² Tan observes that the understanding that the arbitrator will only apply a settlement grounded in *ex aequo et bono* if mutually agreed upon by both disputing parties, with such concurrence being a prerequisite for implementation.¹³ Umam & Nasution contend that the implementation of *ex aequo et bono* is viable when the parties have reached an agreement for institutional arbitration and the designated institution has conferred the arbitrator with the authority to decide based on *ex aequo et bono*.¹⁴

¹² Ariful Hakim Waruwu et al., "Kewenangan Arbiter dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono," *Locus Journal of Academic Literature Review*, December 1, 2023, 986–99, <https://doi.org/10.56128/ljoalr.v2i12.268>.

¹³ David Tan, "Analisa Yuridis Pengesampingan Prinsip-prinsip Keadilan dan Kepatutan dalam Proses Pengambilan Keputusan oleh Arbiter," *Humani (Hukum dan Masyarakat Madani)* 11, no. 1 (May 5, 2021): 38–56, <https://doi.org/10.26623/humani.v11i1.2772>.

¹⁴ Khotibul Umam and Muhammad Guntur Hamonangan Nasution Nasution, "Pemaknaan Dan Implementasi Prinsip Ex Aequo et Bono Dalam Penyelesaian Sengketa Ekonomi Syariah Melalui

Moreover, existing research has yet to provide insights into the interpretation of party consensus as outlined in the elucidation of Paragraph 56 of Law 30/1999. Therefore, examining the formality of the consensus itself becomes crucial, aiming to ensure that the implementation of *ex aequo et bono* goes beyond procedural debates and authentically mirrors the substantive agreement between the disputing parties.

2. Problem Statement

It is necessary to examine the arbitrator's authority in deciding *ex aequo et bono* by looking at not only the Law 30/1999 but also Indonesian private law in general, particularly regarding agreement. Previous research has primarily looked at the *ex aequo et bono* from the perspective of arbitration law only. Meanwhile, the body of Article 56 of Law 30/1999 does not explicitly mention the necessity of agreement by disputing parties, and it is only mentioned in the elucidation. It does not necessarily mention whether the agreement is written or verbal or when the contract must be made. Given this context, the forthcoming research will center on the interpretation of Article 56 of Law 30/1999, specifically examining whether it necessitates the parties' consent regarding granting the arbitrator the authority to decide based on *ex aequo et bono*.

3. Methods

Legal research involves systematically identifying the governing legal principles of a particular activity and discovering authoritative sources that offer explanations or analyses of these principles.¹⁵ Therefore, this research is legal research as it attempts to provide analyses about how to interpret the Article 56 of Law 30/1999 specifically about the consent by the disputing parties for arbitrator authority relating to *ex aequo et bono*.

This research utilizes legal hermeneutics, specifically adopting a structuralist approach, wherein the meaning of language is sought and elucidated through an examination of its grammatical structure.¹⁶ As a normative legal research, the data

Basyarnas," *Veritas et Justitia* 9, no. 2 (December 30, 2023): 456–84, <https://doi.org/10.25123/vej.v9i2.7303>.

¹⁵ Kent C. Olson, ed., *Legal Research in a Nutshell*, Fourteenth edition, West Nutshell Series (St. Paul, Minn: West Academic Publishing, 2021), 2.

¹⁶ Christo Botha, *Statutory Interpretation: An Introduction for Students*, 5. ed (Cape Town: Juta, 2012), 89.

used is secondary.¹⁷ Therefore, the structure of the Article 56 of Law 30/1999 shall be look upon with its consistency of the structure of the said article with the consistency in the elucidation of such article.

4. Discussion

Ex aequo et bono is not a foreign concept to Indonesian Law. In Indonesian court, the principle of *ex aequo et bono* often used by the disputing parties as an alternative to anticipate if the primary claim is not granted by the judges.¹⁸ In arbitration, the authority to decide based on *ex aequo et bono* pertains to the substance of the dispute, while the conduct of the arbitral proceedings, is governed by the *lex arbitri*.¹⁹

Numerous arbitration rules explicitly prohibit the Arbitral Tribunal from deciding a case solely based on the principles of amiable compositeur or *ex aequo et bono*. Article 22.3 of the London Court of International Arbitration (LCIA) stipulates that when deciding the case, the Arbitral Tribunal will only use *ex aequo et bono* concepts if both sides have agreed in writing to do so.²⁰ Article 21(3) of the International Chamber of Commerce (ICC) Arbitration rules also specifies that the arbitral tribunal can decide based on *ex aequo et bono* only if the parties have agreed to grant it such powers.²¹ Article 16(3) of *Badan Arbitrase Nasional Indonesia* (BANI) also stipulates the same in essence that the arbitral tribunal can decide based on *ex aequo et bono* only if the parties have agreed.²²

Court practice provides judges with the discretion and authority to render decisions differently under *petitum ex aequo et bono*, as opposed to arbitration where consensus among the parties is required for a decision based on the principle of *ex aequo et bono*.²³ This allowance is subject to the decision's basis in appropriateness or equity.

¹⁷ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Depok: Rajawali Press, 2020), 118.

¹⁸ Bambang Sugeng Ariadi Subagyono, Johan Wahyudi, and Razky Akbar, "Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo et Bono," *Yuridika* 29, no. 1 (February 23, 2014), <https://doi.org/10.20473/ydk.v29i1.360>.

¹⁹ Milan Lazić, Giulio Palermo, and Srđan Dragičević, "Ex Aequo et Bono in International Arbitration," *Revija Kopaonike Skole Prirodnog Prava* 2, no. 1 (2020): 47–66, <https://doi.org/10.5937/RKSPP2001047L>.

²⁰ The London Court of International Arbitration, "LCIA Arbitration Rules" (2020).

²¹ International Chamber of Commerce, "ICC Arbitration Rules" (2021).

²² BANI, "Peraturan Dan Prosedur Arbitrase" (2022).

²³ Hartini, "Pengecualian terhadap Penerapan Asas Ultra Petitum Partium dalam Beracara di Pengadilan Agama," *Mimbar Hukum* 21, no. 2 (June 2009): 381–93.

Moreover, the suitability or equity that is applied or granted must be consistent with the principal petition and the arguments that have been put forth.

One of the most important parts of arbitration is that the parties' rights and duties in the event of a disagreement are clear from the start. Prominent concerns regarding the efficacy of *ex aequo et bono* are the potential for arbitrators to abuse their discretion and the resultant unpredictability.²⁴ Thus, the application of *ex aequo et bono* in arbitration generally necessitates the assent of the parties, thereby promoting a more regulated and mutually agreed-upon procedure in contrast to the state court.

The divergence in the implementation of the procedural law is one of the reasons why disputing parties tend to incline to arbitration. While the state court has already fix procedural law, the parties in arbitration can determine Arbitration Procedure Law i.e. institutional arbitration procedure or ad hoc arbitration procedure.²⁵ It bring the implication to the restriction of *ex aequo et bono* where in arbitration generally necessitates the assent of the parties, thereby promoting a more regulated and mutually agreed-upon procedure.

In contrast, state courts grant judges greater latitude in implementing *ex aequo et bono* reasoning in the absence of explicit consent from the involved parties. Arbitration's appeal as a dispute resolution mechanism is enhanced by its inherent predictability, party autonomy, and potential for a more customized and mutually acceptable resolution. These factors contrast with state court proceedings, which may be less predictable and more authoritative in nature.

The application of *ex aequo et bono* in arbitration practice needs careful consideration, as it can become a source of conflict if the party dissenting from the arbitration decision uses it as a ground for challenging the decision's validity. Article 643 of the *Reglement op de Rechtsvordering* (RV) stipulates that an arbitration award can be annulled if it grants more than what the disputing parties have requested or includes elements not requested by the parties. Therefore, if one party disagrees with the arbitration decision

²⁴ Gautam Mohnaty, "Ex Aequo Et Bono: A Redundant Concept in a Modern Legislation? Some Reflections From Indian Arbitral Jurisprudence," *GNLU Student Law Review* II (2021): 19–32.

²⁵ Indah Sari, "Keunggulan Arbitrase sebagai Forum Penyelesaian Sengketa di Luar Pengadilan," *JURNAL ILMIAH HUKUM DIRGANTARA* 9, no. 2 (October 9, 2019), <https://doi.org/10.35968/jh.v9i2.354>.

and believes that *ex aequo et bono* was misapplied, they may use this disagreement as a basis for seeking the annulment or challenge of the decision.

Arbitration is derived from the Latin word *arbitrare*, which signifies the discretionary authority to resolve a dispute.²⁶ Even though arbitration itself is a private judgement arbitrators apply the law like judges do in court.²⁷ Therefore, it is bound to the prevailing law and regulations.

The current Article 56 of Law 30/1999 does not specifically prohibit the arbitrator from granting *ex aequo et bono* without the written consent of the disputing parties. The limitation of such. The structure of the Article 56 of Law 30/1999 structured as follow:²⁸

- “1. The arbitrator or arbitration panel will base his/her decision on the provisions of the law or on justice and fairness.
2. The parties are entitled to determine the applicable law to resolve any disputes which may arise, or which have arisen among the parties.”

Based on how Article 56 Law 30/1999 is structured, the consent of the parties in *ex aequo et bono* in arbitration is unnecessary. The conditions related to the agreement of the parties only appear in the explanation of Article 56 Law 30/1999. However, according to Appendix I of Law No. 12 of 2011 concerning Formation of Legislation *juncto* Law No. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, the elucidation cannot be used as a legal basis to create further regulations and should not include formulations that contain norms.

The elucidation only includes descriptions of words, phrases, sentences, or equivalents of foreign terms in the provisions, accompanied by examples. Even though the elucidation functions as the official interpretation by the legislative authority for

²⁶ Nelly Novianty et al., “Strengthening the Independent Execution of the Rulings of the National Arbitration Body Based on Legal Principles and Theories,” *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1 (December 20, 2021): 1–145.

²⁷ Mohammad Nevisandeh, “The Nature of Arbitration Agreement,” *Procedia Economics and Finance*, 1st International Conference on Applied Economics and Business, 36 (January 1, 2016): 314–20, [https://doi.org/10.1016/S2212-5671\(16\)30042-9](https://doi.org/10.1016/S2212-5671(16)30042-9).

²⁸ Republik Indonesia, Undang-Undang No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

specific norms within the legal provisions, the explanation serves as a means to clarify the norms within the legal provisions and must not result in any ambiguity regarding the intended norms.

The inconsistency observed between the main body of Article 56 of Law 30/1999 and its elucidation introduces a level of uncertainty in the practical application of the law. This issue extends beyond the specific legal provision, as texts displaying discrepancies in their intended meaning may undermine the overall reliability of legal communication and diminish their credibility as authoritative sources of information.²⁹ Consequently, addressing and harmonizing such inconsistencies becomes imperative for ensuring clarity and dependability within the legal framework. Moreover, the formulation of either Article 56 of Law 30/1999 or its elucidation fails to interpret the written agreement explicitly. Meanwhile, agreement is not necessarily written. An oral agreement remains valid and holds legal force.³⁰ Therefore, the current provisions of Article 56 of Law 30/1999 not only bring uncertainty whether *ex aequo et bono* must be agreed by the parties, but also what form of agreement that the parties can need to make to ensure the validity of invoking *ex aequo et bono*.

This lack of clarity not only hinders the predictability of arbitration proceedings but also poses challenges in upholding the integrity of the dispute resolution process. It is imperative for legal authorities to address these uncertainties and provide clear guidelines, ensuring that the application of *ex aequo et bono* aligns with the intended legal principles and facilitates a more reliable and consistent arbitration framework.

Furthermore, the lack of an explicit agreement on *ex aequo et bono* in a contract not only creates ambiguity but can also be interpreted as an implicit disagreement with its application by the arbitrator. In cases where parties align on aspects not expressly outlined, a tacit agreement may be deduced. Tacit agreements are contracts inferred

²⁹ Martin Camper, *Arguing over Texts: The Rhetoric of Interpretation* (New York: Oxford University Press, 2018), 93.

³⁰ Billy Dicko Stepanus Harefa, "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.YYK)," *Privat Law IV*, no. 2 (December 2016): 113–22.

from the conduct of the parties, in contrast to explicit agreements conveyed through written or verbal declarations of intention.³¹

Such tacit agreement also can be deduced of the common practice of the petitioner and the respondent that mentioning *ex aequo et bono*. In BANI, the use of the *ex aequo et bono* principle is commonly found in both the petitioner's claim and the respondent's answer which typically, in the closing statement of the claim, a phrase like "If the Arbitration Panel thinks differently, the Petitioner asks for a fair decision (*Ex Aequo Et Bono*)" is used.³²

The issues arise when attempting to interpret these possibilities as either the lack or the existence of consent to *ex aequo et bono*, not only for the parties concerned but also for the arbitrator. The lack of clarity in this situation may expose the arbitrator to possible risks to their reputation, since the judgement they make could be questioned, thereby impacting the confidence and dependability connected with their judgments.

It is crucial to create precise protocols and unambiguous agreements about the use of *ex aequo et bono* in arbitration proceedings. Ensuring the validity and effectiveness of the arbitration process relies heavily on having clear and unambiguous consent methods. Furthermore, it is crucial for the arbitration community to acknowledge and handle these possible issues, in order to cultivate a stronger and more dependable arbitration framework for all parties concerned.

If the current requirements of Article 56 of Law 30/1999 are not changed, it can be interpreted that the arbitrator is not required to get approval from both parties.³³ This view may raise issues regarding potential conflicts with arbitration procedures that necessitate such permission, perhaps constituting a breach of the prevailing law. As a result, any award that arises from an arbitration institution enforcing these principles may be considered invalid.

³¹ C.J. Pretorius, "The Basis of Tacit Contracts," *Obiter* 31, no. 3 (2010): 518-34, <https://doi.org/10.17159/obiter.v31i3.12322>.

³² Waruwu et al., "Kewenangan Arbiter dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono."

³³ Michael Herdi Hadylaya, "Arbitrator's Authority to Decide Ex Aequo et Bono: A Juridical Review," *Law Review* 23, no. 1 (July 31, 2023): 50-67, <https://doi.org/10.19166/lr.v23i1.7338>.

It is crucial to address this possible conflict in order to uphold the integrity and effectiveness of the arbitration process. Legal authorities and arbitration institutions should cooperate to maintain consistency between statutory provisions and arbitration rules, promoting a framework that is both legally robust and supportive of equitable conflict settlement. Aligning these factors will enhance the legitimacy of arbitration decisions and strengthen trust in the arbitration process.

5. Conclusion

Although arbitration is generally considered a fast and effective way to resolve disputes, there are worries about its excessive usage in unsuitable situations, which could undermine fairness and justice. If the use of arbitration is not properly regulated, it might result in a more adversarial approach, which can damage its standing as an effective method for resolving international disputes. Maintaining equilibrium is vital to sustain the efficiency of arbitration while avoiding procedural complexities.

An analysis of the interpretative dimension of Article 56 of Law 30/1999 exposes a dearth of lucidity on the requirement of parties' consent for arbitrators to decide *ex aequo et bono*. The presence of this ambiguity, along with the disparities between the primary content and its explanation, emphasizes the necessity for legal authorities to tackle incongruities and establish unambiguous directives. The lack of a clear agreement may result in uncertainty and possible objections to arbitration rulings.

The current construction of Article 56/1999 can be understood to be complicated by unspoken agreements and established customs. Explicit protocols and unequivocal agreements are crucial to guarantee the legitimacy and efficacy of arbitration. Neglecting to resolve these concerns could have a negative effect on the standing of arbitrators and undermine confidence in the arbitration procedure.

Given these factors, it is crucial for legal authorities and arbitration institutions to work together in order to align statutory provisions with arbitration procedures. The collective endeavor is crucial for fostering a strong and reliable arbitration structure that conforms to legal standards and advances fair dispute resolution. By tackling these obstacles, the credibility of arbitration rulings will be strengthened and trust in the arbitration procedure as a whole would be reinforced.

References

- Amiruddin, and Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Depok: Rajawali Press, 2020.
- BANI. Peraturan dan Prosedur Arbitrase (2022).
- Botha, Christo. *Statutory Interpretation: An Introduction for Students*. 5. ed. Cape Town: Juta, 2012.
- Camper, Martin. *Arguing over Texts: The Rhetoric of Interpretation*. New York: Oxford University Press, 2018.
- Gaillard, Emmanuel. "Abuse of Process in International Arbitration." *ICSID Review* 32, no. 1 (February 2017): 17–37. <https://doi.org/10.1093/icsidreview/siw036>.
- Hadylaya, Michael Herdi. "Arbitrator's Authority to Decide Ex Aequo et Bono: A Juridical Review." *Law Review* 23, no. 1 (July 31, 2023): 50–67. <https://doi.org/10.19166/lr.v23i1.7338>.
- Harefa, Billy Dicko Stepanus. "Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.YYK)." *Privat Law IV*, no. 2 (December 2016): 113–22.
- Hartini. "Pengecualian terhadap Penerapan Asas Ultra Petitem Partium dalam Beracara di Pengadilan Agama." *Mimbar Hukum* 21, no. 2 (June 2009): 381–93.
- Huda, Arsha Nurul. "Ex Aequo et Bono as a Manifestation of Legal Justice for Society." *Damhil Law Journal* 1, no. 2 (November 29, 2021): 116–29. <https://doi.org/10.56591/dlj.v1i2.1039>.
- International Chamber of Commerce. ICC Arbitration Rules (2021).
- Jovanović, Marko. "The Role of Ex Aequo et Bono in ICSID Arbitration." *Revija Kopaonike Skole Prirodnog Prava* 3, no. 1 (2021): 147–64. <https://doi.org/10.5937/RKSP2101147J>.
- KC, Nigel Blackaby, Constantine Partasides KC, Alan Redfern, Nigel Blackaby KC, Constantine Partasides KC, and Alan Redfern. *Redfern and Hunter on International Arbitration*. Seventh Edition, Seventh Edition. Oxford, New York: Oxford University Press, 2022.
- Lazić, Milan, Giulio Palermo, and Srđan Dragičević. "Ex Aequo et Bono in International Arbitration." *Revija Kopaonike Skole Prirodnog Prava* 2, no. 1 (2020): 47–66. <https://doi.org/10.5937/RKSP2001047L>.

- Mohnaty, Gautam. "Ex Aequo Et Bono: A Redundant Concept in a Modern Legislation? Some Reflections From Indian Arbitral Jurisprudence." *GNLU Student Law Review* II (2021): 19–32.
- Mulaj, Valbon. "The Advantages and Disadvantages of Arbitration in Relation to the Regular Courts in Kosovo." *Hungarian Journal of Legal Studies* 59, no. 1 (March 2018): 118–33. <https://doi.org/10.1556/2052.2018.59.1.7>.
- Nevisandeh, Mohammad. "The Nature of Arbitration Agreement." *Procedia Economics and Finance*, 1st International Conference on Applied Economics and Business, 36 (January 1, 2016): 314–20. [https://doi.org/10.1016/S2212-5671\(16\)30042-9](https://doi.org/10.1016/S2212-5671(16)30042-9).
- Novianty, Nelly, Muhamad Amirulloh, Rika Ratna Permata, and Eman Suparman. "Strengthening the Independent Execution of the Rulings of the National Arbitration Body Based on Legal Principles and Theories." *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1 (December 20, 2021): 1–145.
- Olson, Kent C., ed. *Legal Research in a Nutshell*. Fourteenth edition. West Nutshell Series. St. Paul, Minn: West Academic Publishing, 2021.
- Pretorius, C.J. "The Basis of Tacit Contracts." *Obiter* 31, no. 3 (2010): 518–34. <https://doi.org/10.17159/obiter.v31i3.12322>.
- Rampall, Yeshnah D. "The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium." *Harvard Negotiation Law Review* 23 (2017).
- Republik Indonesia. Undang-Undang No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa (1999).
- Sari, Indah. "Keunggulan Arbitrase sebagai Forum Penyelesaian Sengketa di Luar Pengadilan." *JURNAL ILMIAH HUKUM DIRGANTARA* 9, no. 2 (October 9, 2019). <https://doi.org/10.35968/jh.v9i2.354>.
- Subagyono, Bambang Sugeng Ariadi, Johan Wahyudi, and Razky Akbar. "Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo et Bono." *Yuridika* 29, no. 1 (February 23, 2014). <https://doi.org/10.20473/ydk.v29i1.360>.
- Tan, David. "Analisa Yuridis Pengesampingan Prinsip-prinsip Keadilan dan Kepatutan dalam Proses Pengambilan Keputusan oleh Arbiter." *Humani (Hukum dan Masyarakat Madani)* 11, no. 1 (May 5, 2021): 38–56. <https://doi.org/10.26623/humani.v11i1.2772>.

- Teramura, Nobumichi. "Ex Aequo et Bono as a Response to the 'Over-Judicialisation' of International Commercial Arbitration." Thesis, UNSW Sydney, 2018. <https://doi.org/10.26190/unsworks/20865>.
- The London Court of International Arbitration. LCIA Arbitration Rules (2020).
- Trakman, Leon. "Ex Aequo et Bono: Demystifying an Ancient Concept." *Chicago Journal of International Law*, n.d.
- Umam, Khotibul, and Muhammad Guntur Hamonangan Nasution Nasution. "Pemaknaan Dan Implementasi Prinsip Ex Aequo et Bono Dalam Penyelesaian Sengketa Ekonomi Syariah Melalui Basyarnas." *Veritas et Justitia* 9, no. 2 (December 30, 2023): 456–84. <https://doi.org/10.25123/vej.v9i2.7303>.
- Wagner, Kimberly R. "The Perfect Circle: Arbitration's Favors Become Its Flaws in an Era of Nationalization and Regulation" 12 (2013).
- Waruwu, Ariful Hakim, Tan Kamello, T. Keizerina Devi Azwar, and Abd Harris. "Kewenangan Arbiter dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono." *Locus Journal of Academic Literature Review*, December 1, 2023, 986–99. <https://doi.org/10.56128/ljoalr.v2i12.268>.