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The Necessity and Permissibility of Arbitration Agreements: A Hermeneutic Approach

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The significance of determining the nature of any contract in terms of its necessity or permissibility lies in its crucial role in defining the effects of the contract, regulating the relationships between the parties, and clarifying their obligations and duties. Legislators have explicitly determined the nature of many contracts in this regard, while remaining silent in certain cases. Regarding arbitration, as regulated in Articles 454 to 501 of the Civil Procedure Code, the nature of arbitration agreements has not been explicitly addressed, leaving the matter ambiguous. This ambiguity arises from the provisions stated in Articles 472 and 481 of the aforementioned code. Interpretations provided by legal scholars also fail to clearly determine whether arbitration agreements are necessary or permissible. Judicial precedents have further contributed to this divergence. The three modern methods of interpreting legal texts and sources, collectively known as legal hermeneutics—ranging from romantic hermeneutics to historical and reader-oriented approaches—offer new perspectives on interpreting the laws related to this issue. Adopting such an approach, this article analyzes the nature of arbitration agreements and the debate over their necessity or permissibility. Using a descriptive-analytical method, it seeks to elucidate the issue through the three hermeneutic approaches and justify the differing outcomes.

Keywords: *Arbitration agreement, necessity and permissibility, hermeneutics, interpretation, Civil Procedure Code.*

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1. Introduction

Arbitration, as one of the methods for resolving disputes, has a jurisprudential and legal background and functions as a contractual mechanism aimed at ensuring the proper execution of agreements. It has consistently been of interest to the legislature. For the first time, in 1911, with the enactment of the Temporary Laws on the Principles of Civil Procedure, Chapter Two of Book Seven of this law, consisting of 23 articles (Articles 775–779), was dedicated to arbitration. Subsequently, the 1927 Arbitration Act replaced voluntary arbitration with semi-compulsory arbitration (initiated upon the request of one party). This method of arbitration was repealed by the 1934 Arbitration Act. With the enactment of the Civil Procedure Code in 1939, Articles 632 to 680 (Book Eight) addressed the regulations related to arbitration. Finally, this law was repealed with the adoption of the Civil Procedure Code

for General and Revolutionary Courts in Civil Matters on April 10, 2000.

Throughout this historical evolution, arbitration has played a role as a dispute resolution mechanism with jurisprudential and legal foundations, ensuring proper contract execution. However, due to ambiguities regarding its nature, including its necessity or permissibility, it has not received adequate attention from citizens and courts. This is especially relevant as the arguments of proponents and opponents of the necessity of arbitration agreements often involve interpretive and even hermeneutic debates. In reality, claims of strict textual adherence and the impermeability of formal legal texts appear precarious. Wherever language and expression are involved, ambiguity and the need for interpretation, and even hermeneutics, arise. Consequently, the authors aim to revisit the nature, necessity, and permissibility of arbitration agreements through a hermeneutic approach.

The central issue is that, under certain considerations, arbitration agreements satisfy the conditions of permissible contracts, while under other considerations, they may be aligned with obligatory contracts. Article 481(1) of the Civil Procedure Code, by emphasizing the necessity of a written revocation, implies the binding nature of arbitration agreements. However, Article 481(2), by recognizing the effects of death or legal incapacity on dissolving the agreement, leans toward permissibility. The limited analyses dedicated to interpreting this article do not clarify the nature of arbitration agreements. Given the complex rules governing arbitration and the numerous procedural and substantive challenges courts face in handling disputes related to it, precisely determining the nature of arbitration agreements reduces ambiguities and imposes distinct consequences on arbitration, warranting this research. This study is structured into an introduction, six sections, and a conclusion with recommendations and employs a descriptive-analytical method.

2. Definition of Arbitration

The *Civil Procedure Code* (2000) does not define arbitration but merely outlines its effects and rulings in Articles 454–501. However, legal scholars have attempted to define it. For instance, one scholar states: "Arbitration is the resolution of disputes by a non-judge without adhering to the formalities of judicial procedures" (Jafari Langroudi, 2009, 2012). Another researcher defines arbitration as "the renunciation of individuals from the involvement of official authorities in resolving disputes over their private rights and their submission to a private authority trusted for its expertise and technical knowledge" (Matin Daftari, 2012). According to the *International Commercial Arbitration Act*, resolving disputes between parties outside the court by an individual or individuals—either mutually agreed upon or appointed—is considered an arbitration agreement (*International Commercial Arbitration Act*, Article? Paragraph?). Another view holds: "The selection of third parties by the disputing parties to determine a binding solution for resolving the dispute constitutes an arbitration agreement" (Khodabakhshi, 2013). Arbitration, or adjudication, involves resolving disputes through individuals trusted by the disputing parties rather than the competent judiciary (Shariat Panahi & Kazem). Others state that arbitration is "the delegation of authority to resolve existing or potential disputes to an individual or individuals (arbitrator or adjudicator) by the disputing parties, accompanied by a commitment to adhere to the decisions of the arbitrators" (Rahpeik & Aziziani).

3. Features of Arbitration

3.1. Sovereignty of the Principle of Free Will

One of the most important features of arbitration is breaking the monopoly of the judiciary in resolving disputes and adjudicating claims. This feature significantly influences individuals' inclination toward arbitration. There is no barrier preventing individuals from waiving the intervention of official authorities in disputes related to their private rights and submitting to a private authority trusted for their knowledge, technical expertise, or reputation for integrity and honesty (Matin Daftari, 2012). The implications of this principle are evident in the choice of arbitrator (Article 454), the determination of their jurisdiction, the timeframe for proceedings, and even the method of delivering the arbitrator's decision (Articles 458, 483, and 485). Nevertheless, complex rules govern arbitration, and judicial authorities face numerous procedural or substantive challenges related to it.

3.2. *Non-Requirement of Adherence to Civil Procedure Rules*

A primary obligation of arbitrators is to adhere to the terms of the agreement between the disputing parties and act within its parameters (Yousefzadeh, 2013). Arbitration forums formed for resolving individual disputes operate within a completely different scope than state courts. While courts possess extensive powers to resolve disputes, arbitration forums are limited to the powers granted to them by the parties within the framework of the rules or provided by law (Shams, 2005). However, arbitrators are required to observe principles such as impartiality, independence, and providing a fair opportunity for defense. Although the *Civil Procedure Code* does not explicitly mention these obligations, likely due to their apparent nature, Article 477 mandates adherence to arbitration regulations (Karimi & Parto, 2016, 2020).

3.3. *Time-Bound Nature of Proceedings*

The legislature has referenced the duration of arbitration in Articles 458, 465, 468, 474, 480, the note to Articles 484 and 487, and Article 489(4) of the *Civil Procedure Code*, emphasizing numerous implications for "time limits." One of the primary motivations for choosing arbitration is the speed of dispute resolution, which conflicts with indefinite arbitration durations. Thus, the duration must be specified. However, if the arbitration agreement does not set a duration, the legislature addresses this omission by stipulating a three-month legal timeframe for arbitration agreements without a specified duration in the note to Article 484. The implication is that the absence of a specified duration does not render the arbitration agreement void, and the supplementary rule of the note assumes a three-month period as the intended timeframe (Karimi & Parto, 2016, 2020).

3.4. *Ambiguity in the Nature of Arbitration Agreements*

Article 481 of the *Civil Procedure Code* is one of the most complex and enigmatic provisions regarding arbitration. Paragraph 1 of Article 481 and Article 472 suggest the obligatory nature of arbitration agreements. However, Paragraph 2 of Article 481 refers to death or legal incapacity as grounds for the dissolution of arbitration agreements, which, under Article 854 of the *Civil Code*, are conditions exclusive to permissible agreements. The legislature, following its previous approaches in the 1927 and 1934 *Arbitration Acts*, the 1910 *Temporary Principles of Civil Procedure*, the 1929 *Arbitration Reform Act*, and Article 656 of the 1939 *Civil Procedure Code*, has ruled that arbitration dissolves upon the death or legal incapacity of one party, without providing a legal basis.

Such a ruling conflicts with the foundational philosophy of arbitration and the judicial policies of Iran's legal system, which consistently emphasize resolving disputes amicably and outside formal judicial systems. The legislature's drafting of Article 481 of the *Civil Procedure Code*, whether intentional or unintentional, contradicts general contract principles, as a contract is either obligatory or permissible. The simultaneous categorization of a contract as both obligatory and permissible is logically and legally implausible. Thus, the drafting of Paragraphs 1 and 2 of Article 481 has complicated the determination of arbitration agreements' nature regarding necessity or permissibility. Paragraph 1 defines an obligatory contract as one that cannot be terminated unilaterally without mutual agreement. In contrast, Paragraph 2 defines a permissible contract as one dissolved upon the death or legal incapacity of a party.

The authors argue that relying on textual interpretation, as confined by the principle of literal interpretation in jurisprudence, leaves readers of Article 481 facing an ambiguous issue of necessity and permissibility in arbitration agreements. This invites hermeneutic approaches, even in formal legal texts. Accordingly, this study examines legal hermeneutics and its impact on addressing the issue under investigation.

4. Legal Hermeneutics

Legal hermeneutics benefits from three major schools of thought as outlined below.

4.1. *Romantic Hermeneutics*

Schleiermacher's romantic hermeneutics is the art of interpreting texts and emphasizes technical interpretation. Schleiermacher argued that, at times, the interpreter's understanding of a text may surpass that of the author. This is because a text must be interpreted with consideration of the author's sentiments and intentions, and reliance solely on the apparent meaning

of the text is insufficient. Schleiermacher's approach to analyzing texts involves understanding the conditions under which the text was produced, the characteristics of the speaker, and the personal features influencing the text. His hermeneutics is text-centered, asserting the existence of a definitive meaning for the text (Weinsheimer, 2002). In this perspective, the interpreter and their expectations play no role in the interpretation.

4.2. *Historical Hermeneutics*

According to Dilthey, the essential point is that a text emerges within a historical context that shapes its creation. Thus, a text alone cannot convey the sender's message to the recipient without consideration of its historical context (Palmer, 2003). Dilthey argued that no objective truth is available in interpreting texts because our interpretations are always constrained by our historical position (Palmer, 2003). In their everyday lives, individuals find themselves needing to comprehend the events occurring around them (Reikhtegaran, 1999, p. 89). Understanding is shaped by the past, present, and future—our historical context—and by our emotions, desires, and moral duties (Palmer, 2003). Meaning is contingent upon both text and context, which are integral to the historical situation. The implication is that understanding a text correctly in a foreign historical context is challenging. However, studying the history of the text can provide clues. Despite the challenges posed by history, it is possible to uncover the author's intention by delving into its layers, although, as will be discussed, Gadamer disagreed with Dilthey's perspective. In Dilthey's hermeneutics, the interpreter and their expectations also do not play a significant role in interpretation.

4.3. *Reader-Oriented Hermeneutics*

Gadamer, however, posits that when an interpreter engages in the process of understanding and interpreting a text, they are accompanied by a set of presuppositions regarding the text and its interpretation (Vaezi, 2020). Legal hermeneutics, which examines presuppositions and foundational issues concerning legal texts and their interpretation, raises distinct questions about the nature of these texts. Questions include: "Is a legal text different from other texts, such as literary texts?" "Is a legal text a 'propositional discourse' whose meaning is derived through interpretive logic, rules, and techniques, or is it a 'social discourse' aimed at controlling behaviors, actions, and intellectual and social movements, underpinned by dominant political power and ideology?" "Is intentionalism in interpretation and referring to the intent of legislators necessary in legal interpretation?" "Is textualism, or reliance on the conventional meaning of legal terms without considering the legislator's intent and purpose, justifiable?" "In complex cases, is judicial reasoning achieved through the deduction of laws, judicial interpretation, or does a judge need to legislate or develop the law in practice?" (Vaezi, 2020).

In this regard, Gadamer highlights that *applicability* is a unique feature of legal texts. From Gadamer's perspective, applicability is a fundamental element of understanding legal texts that defines them from the outset. Understanding transforms into interpretation through application (Aghayi, 2014).

Another important issue in legal interpretive methods is the debate between legal realism and formalism. In the 20th century, American formalists argued that judges adjudicate based on distinct legal rules and reasons that justify a singular outcome. Conversely, realists maintained that judges fundamentally make decisions not based on law but on what they perceive and feel to be "fairness." In other words, the factual aspects of a case, influenced by perception and intuition, are primary and determinative, while legal rules and reasons are secondary, applied after forming a fair understanding. Consequently, judicial decisions are essentially based on non-legal considerations, and legal arguments and interpretations serve to rationalize judicial rulings. As Llewellyn, one of the legal realists, stated in 1950, courts affirm the principle that "the law cannot go beyond its text" while simultaneously acknowledging that "for the law to achieve its objectives, it must extend beyond its text" (Aghayi, 2014).

This situation recalls Gadamer's assertion that the need for legal hermeneutics arises from the insufficiency of the law. However, this insufficiency does not stem from an inherent defect in the law but rather from the fact that human realities cannot be entirely encapsulated in legal texts. Therefore, reliance solely on the law is insufficient (Aghayi, 2014).

The implications of the aforementioned interpretive approaches will now be examined in relation to Article

481 of the *Civil Procedure Code* (2000), which includes two distinct clauses, each suggesting the necessity or permissibility of arbitration agreements. Article 481 states: "In the following cases, arbitration is terminated: (1) By the written agreement of the disputing parties (indicating the necessity of arbitration agreements). (2) By the death or legal incapacity of one of the parties (indicating the permissibility of the agreement)."

5. The Necessity and Permissibility of Arbitration Agreements

5.1. *The Theory of Permissibility in Arbitration Agreements*

Permissibility, as defined, refers to permission, being permissible, or allowable (Amid, 2010). According to Article 186 of the Civil Code, a permissible contract is one that either party may terminate at any time.

5.1.1. *Jurisprudential Approach to Permissibility in Arbitration Agreements*

In Imamiyyah jurisprudence, *permissibility* refers to a contract that is inherently revocable without requiring a specific right of revocation. Article 954 of the Civil Code states that all permissible contracts are nullified upon the death of one of the parties. Thus, the right of revocation pertains exclusively to obligatory contracts and has no place in permissible contracts, as these contracts are inherently revocable, and including a right of revocation is meaningless (Katouzian, 1995, 1999). A few scholars, such as Naraghi, have rejected the principle of obligation in civil law and Imamiyyah jurisprudence, arguing for a presumption of non-obligation. Naraghi claims that the presumption of obligation cannot be established solely based on the Quranic verse *"And fulfill [your] covenants"*. Instead, he argues that the principle of non-obligation applies to all contracts unless the obligatory nature of a specific contract, such as sale or similar transactions, is substantiated through reliable and credible evidence (Al-Hasani).

5.1.2. *Legal Approach to Permissibility in Arbitration Agreements*

Article 186 of the Civil Code states: "A permissible contract is one that either party may terminate at any time." As mentioned earlier, the predominant principle among legal scholars dictates that contracts entered into by the parties are obligatory, meaning one party cannot terminate the contract unilaterally without the consent of the other. For this reason, the ability to terminate contracts is considered unconventional and exceptional. Legal scholars who advocate for the permissibility of arbitration agreements argue that since the arbitrator is appointed by the parties to the dispute, those who have the right to appoint the arbitrator also have the right to dismiss them. These scholars assert that there is no compelling reason for arbitration agreements to be obligatory (Jafari Langroudi, 2012). Even some scholars who believe arbitration agreements are obligatory concede that such agreements, whether entered into individually or jointly by the parties, may be considered permissible contracts, allowing the parties to jointly dismiss the arbitrator (Yousefzadeh, 2013).

Other scholars, referencing the death or legal incapacity of either party as grounds for dissolving permissible contracts, argue that although arbitration agreements are considered obligatory by many legal scholars, they share similarities with permissible contracts in that they are nullified upon the death or legal incapacity of either party (Sadr Zadeh Afshar, 2000). It appears that these scholars tentatively accept the permissibility of arbitration agreements, with some even considering them personal to the parties, stating that they do not extend beyond the original parties (Ahmadi, 1996).

Judicial practice has adopted a literal approach in addressing the nature of arbitration agreements. The majority of rulings issued by trial and appellate courts consider the death of one party before the issuance of an arbitral award as invalidating the arbitration award. For instance, Judgment No. 9209970221500484, dated July 17, 2013, from the 16th Civil Court of Tehran, held that the arbitration agreement became void upon the death of one party on February 15, 2008, rendering the subsequent arbitral award invalid based on Article 481(2) of the Civil Procedure Code. Similarly, Judgment No. 9209970221500312, dated June 15, 2013, from the 15th Appellate Court of Tehran, found that the arbitration agreement was void because the award was issued in 2012, after one party's death in 2008.

The Legal Affairs Directorate of the Judiciary has issued advisory opinions aligning with these judicial interpretations. Advisory Opinion No. 2865/97/7, dated January 13, 2019, states that, as per Article 481 of the Civil Procedure Code, arbitration terminates upon the

death, legal incapacity, or mutual agreement of the parties. It concludes that the continuation of arbitration requires the parties' consent, and if one party dies before the arbitral proceedings conclude, the arbitration becomes void due to the absence of mutual agreement.

Advisory Opinion No. 2462/95/7, dated December 18, 2016, further elaborates that in cases involving multiple parties, if one party dies, the arbitration agreement is void with respect to the deceased party. However, if the dispute is indivisible, the arbitration agreement is entirely void. If the dispute is divisible, the agreement remains valid for the remaining parties. These interpretations affirm the permissible nature of arbitration agreements.

5.2. *The Theory of Necessity in Arbitration Agreements*

5.2.1. *Jurisprudential Approach to Necessity in Arbitration Agreements*

The term *necessity* (لزوم) is derived from the root "lazm," which means obligation, continuity, adherence, or commitment (Bandar Rigi, 1989). These meanings collectively convey the enduring nature of an obligation for the bound party. The first scholar to explicitly mention and rely on the principle of necessity was Allama Hilli (Hilli, [Date]). Following Allama Hilli, other jurists, including Fakhr al-Muhaqqiqin, Shahid Awwal, and Fazel Muqaddad, adopted this principle, with Shahid Awwal, the author of *Al-Qawa'id wa al-Fawa'id*, presenting the principle of necessity as a jurisprudential rule (Bayati & Fathi, 2015).

According to Muhaqqiq Karaki in *Jami' al-Maqasid*, the term "principle" refers to predominance and prevalence. In the context of contracts, this principle suggests that necessity is the default assumption for contracts (Al-Ansari, 1990). The most important Quranic evidence for the principle of necessity in contracts, including arbitration agreements, is the verse: *"O you who have believed, fulfill [all] contracts"* (Quran, Al-Ma'idah, 5:1). Bajnoordi interprets this verse to mean that adherence to all contracts is obligatory, establishing the principle of necessity (*Asalat al-Luzoom*), as the definite article in "contracts" conveys generality.

Bajnoordi also addresses interpretative and linguistic concerns about the term *contracts*. He identifies four potential interpretations: (1) referring to pre-Islamic contracts, (2) referring to covenants with God rather than with people, (3) referring to all contracts in general, and (4) addressing the People of the Book, urging them to fulfill their obligations toward Muslims. Bajnoordi responds, citing his father, Ayatollah Mirza Hassan Bajnoordi, that even if *contracts* refers to pre-Islamic agreements in some contexts, this specificity does not invalidate the general principle. The verse thus supports the principle of necessity in all contracts, including arbitration agreements (Mousavi Bojnourdi, 1993).

The principle of necessity in contracts, including arbitration agreements, is also supported by the consensus (*bina' aqlaa*), which assumes that parties entering into a contract are committed to it and will not revoke it. Arbitration agreements are no exception to this principle and are therefore considered obligatory.

5.2.2. *Legal Approach to Necessity in Arbitration Agreements*

According to Article 185 of the Civil Code, "An obligatory contract is one that neither party has the right to revoke, except in specific cases," such as those provided under the *options of termination* outlined in Article 283 of the same code. The most significant implication of the principle of necessity is that in cases of doubt about whether a contract is obligatory or permissible, the default assumption is that the contract is obligatory, and its effects should be enforced (Safaei, 2005). This is because permissibility is an exceptional status that requires explicit legal provision (Katouzian, 1995).

Relying on Article 10 of the Civil Code to declare private contracts obligatory is insufficient because this article only establishes the validity of such contracts. Moreover, the legislature has not explicitly addressed whether private contracts are obligatory or permissible elsewhere in the code. Therefore, in these cases, Article 219 of the Civil Code must be invoked to determine that unspecified contracts are obligatory (Shahidi).

In legal terms, whenever a contract is validly concluded, the assumption is that it is binding on the parties, and neither party may revoke it unless explicitly allowed by law (Madani, 2004). Many legal scholars and jurists have upheld this principle, considering it one of the foundational bases for deriving legal rulings (Ahmadi, 1996; Al-Ansari, 1990; Bayati & Fathi, 2015; Marashi Shushtari, 1999; Mossadeq Al-Saltaneh, 2017; Mousavi Bojnourdi, 1993; Shahidi).

5.3. *Hermeneutic Analysis of Opinions Supporting the Necessity of Arbitration Agreements*

5.3.1. *Hermeneutic Explanation of the Opinions*

Various hermeneutic approaches have been applied to interpret Article 481 and its clauses. Some legal scholars argue for the necessity of arbitration agreements without providing legal or jurisprudential reasoning (Mossadeq Al-Saltaneh, 2017). Abdullah Shams states that the dissolution of arbitration agreements due to the death or legal incapacity of one of the parties is an exceptional case (Shams, 2005). These scholars appear to take the necessity of arbitration agreements as a given, reflecting a Gadamerian or reader-centered hermeneutic approach, as they interpret the necessity of arbitration agreements based on preconceived assumptions. This aligns with Gadamer's view that interpretation is influenced by the interpreter's understanding rather than the persuasive arguments of the text itself. Similarly, scholars who call for the removal of Clause 2 of Article 481 seem to follow this approach (Karimi & Parto, 2016, 2020).

The Gadamerian perspective can also be seen in the argument that arbitration agreements are subject to Article 185 of the Civil Code, which makes them obligatory since the legislator has made their termination dependent on mutual consent (Matin Daftari, 2012). These scholars presume the necessity of arbitration agreements when interpreting legal phenomena, assuming that Clause 1 of Article 481 suggests the obligatory nature of arbitration agreements, while Clause 2 indicates their permissibility. When faced with ambiguity, they default to the principle of necessity as a pre-established understanding. Their reliance on Clause 1 as textual evidence for the necessity of arbitration agreements does not contradict their Gadamerian stance, as their interpretation of Clause 2 conflicts with the same principle.

Other scholars argue that the actions of courts in appointing arbitrators under Articles 459 and 460 of the Civil Procedure Code indicate the necessity of arbitration agreements, reflecting a reinterpretation of the legislator's intent regarding the importance of arbitration (Yousefzadeh, 2013). Shahbazi Nia, relying on Article 10 of the Civil Code, contends that if a private contract includes mutual obligations, it is obligatory, and arbitration agreements fall within this category (Shahbazi Nia, 2006). This group seems to follow a romantic hermeneutic approach. Schleiermacher's hermeneutics emphasizes understanding the intentions of the author or legislator. If interpreters deduce that the purpose of Article 481 is to replace government adjudication with private arbitration for resolving disputes, they may argue that arbitration agreements must be necessary. Such an important objective is incompatible with the permissibility of arbitration agreements.

From Schleiermacher's perspective, understanding the legislator's mindset—that arbitration agreements are obligatory because they transform public adjudication into private arbitration—leads to the interpretation that Clause 2 of Article 481 does not imply the dissolution of arbitration agreements due to the death or legal incapacity of a party. Instead, it suggests that only the agreement with the arbitrator, which is permissible, is dissolved, as some scholars argue (Yousefzadeh, 2013).

Shid, who extensively discusses the necessity and permissibility of arbitration agreements, critiques the view that arbitration agreements dissolve due to the death or legal incapacity of a party. He refutes the argument that arbitration agreements are permissible contracts, as no one acts on behalf of another in arbitration, which distinguishes it from agency contracts. He also notes that legal incapacity does not necessarily dissolve all permissible contracts, indicating that the principle of personality in arbitration agreements is not absolute. Shid concludes that Article 481 is not grounded in substantive legal principles but represents an exercise of sovereignty without legal justification. This contradicts judicial policies aimed at promoting arbitration as a means of amicable dispute resolution. Shid's conclusions align with Schleiermacher's romantic hermeneutics, as they focus on the legislator's objectives, emphasizing that contracts designed to reduce litigation must be necessary.

A historical hermeneutic analysis, based on Dilthey's approach, also provides insights. A comparison of Article 481 of the 2000 Civil Procedure Code with Article 656 of the 1939 Code reveals a significant difference: the earlier law considered the death or legal incapacity of either party as grounds for dissolving arbitration agreements, whereas the 2000 law specifies "parties to the dispute," suggesting that the agreement applies only after a dispute has arisen. This implies that the arbitration

agreement's validity does not extend to pre-dispute scenarios. According to Schleiermacher's hermeneutics, the dissolution of arbitration agreements due to the death or legal incapacity of a party conflicts with fundamental legal principles, such as freedom of contract and the principle of necessity, warranting a narrow interpretation that favors the necessity of arbitration agreements.

Another reader-centered Gadamerian interpretation suggests that the intent and explicit provisions of the 2000 Civil Procedure Code imply that arbitration agreements are necessary. However, since they are personal to the contracting parties, they dissolve upon the death or legal incapacity of one party (Mohammadzadeh Asl).

Finally, a literal interpretation also supports the necessity of arbitration agreements. This view argues that the term *"contract"* means "a binding commitment." Therefore, parties must adhere to their agreements, and once a contract becomes binding, the other party cannot dissolve it (Mousavi Bojnourdi, 1993). This perspective disregards the legislator's intent and the interpretive assumptions of the reader.

5.3.2. Critique and Analysis

A careful examination of the behavioral and psychological foundations underlying parties' recourse to the courts reveals that, under the conditions of a dispute, the parties often perceive each other as adversaries, prioritizing conflict over conciliation. The focus on concluding proceedings and maintaining order, without emphasizing the satisfaction of the disputing parties, underscores the significance of arbitration, which shifts their perspective toward reconciliation, forgiveness, and peace. Considering that the legislator's intent regarding arbitration encompasses these elements, Article 481 can be interpreted through a romantic hermeneutic lens. The personal role of the arbitrator, the direct involvement in arbitration, and even the judiciary's acceptance of arbitration requests suggest that the legislator likely considered arbitration agreements to be necessary.

Furthermore, the dissolution of arbitration due to the death or legal incapacity of one party, which reflects the personal nature of arbitration, does not render arbitration agreements permissible. If it did, the intrinsic nature of permissibility would allow either party to terminate arbitration at any time, which the legislator has not authorized. According to Article 459 of the Civil Procedure Code, one party may appoint their arbitrator and notify the other party through an official declaration, requesting the appointment of an arbitrator. The other party is obligated to respond within ten days, either by appointing their arbitrator or agreeing on a third arbitrator. Failure to act allows the interested party to request the court's intervention. This provision demonstrates that, despite the absence of an explicit declaration by the legislator regarding whether arbitration agreements are necessary or permissible, the legislator's intent leans toward necessity (Shahidi).

The spirit of the legislator, as expected in Schleiermacher's hermeneutics, is evident in the legislator's implicit assumption of necessity for arbitration agreements. Therefore, from a romantic hermeneutic perspective, the default position for arbitration agreements is necessity.

Historical hermeneutics can also be applied to this issue. The term "dispute" (Da'va) existed in Article 625 of the former Civil Procedure Code but was omitted in Article 481 of the current law. Analyzing the historical evolution of these legal provisions leads to a historical hermeneutic interpretation. The term "parties to the dispute" in Clause 2 of Article 481 (2000 Civil Procedure Code) implies that discussions about necessity or permissibility are irrelevant before a dispute arises. The critical question is the timing of the claim. This timing may refer to the date of the law's enactment, interpretation, or application, or the timing of litigation before or after proceedings. These different contexts influence the interpretation and resulting implications.

A reader-centered hermeneutic approach is also applicable to Article 481 of the 2000 Civil Procedure Code and arbitration laws. This approach shifts the focus from the legislator's intent or the historical context of the law's enactment and implementation to the reader's preconceptions, expectations, and demands. For instance, there is a significant difference between a reader who views adjudication purely as the conclusion of proceedings and a reader who prioritizes values like justice, satisfaction, and reconciliation (Katouzian, 1995, 1999), or even one seeking restorative justice (Clarkson, 1995, p. 257).

These differing preconceptions lead to varying interpretations of the law. Even procedural laws, such as

arbitration statutes, are subject to these interpretive influences. The essence of legal hermeneutics demonstrates that factors beyond textual, grammatical, and logical interpretation influence the understanding of arbitration laws. If a legal interpreter assumes that the purpose of relevant legal provisions is to reduce litigation, given the legislator's trust in arbitrators to expedite and amicably resolve disputes outside formal judicial proceedings, arbitration agreements must be deemed necessary. Otherwise, this interpretation would contradict the stated goals and expectations.

6. Conclusion

An analysis of the three hermeneutic approaches—romantic, historical, and reader-centered—when applied to the necessity or permissibility of arbitration agreements, highlights their incompatibility with the text-focused interpretive approach of Islamic jurisprudence. Clause 2 of Article 481 of the Civil Procedure Code, when interpreted literally, clearly indicates that arbitration agreements are permissible. However, the results of the three hermeneutic interpretations prove otherwise.

From the findings of this research:

1. Interpretation beyond the apparent meaning applies even to procedural rules of the Civil Procedure Code, as interpretability is inherent to language, and legal texts, including procedural laws, are linguistic constructs.
2. Hermeneutic interpretations affirm the necessity of arbitration agreements. In addition to the legal text—specifically Article 481—three factors significantly influence the message conveyed by the text: (a) the legislator's intent and objectives, (b) historical considerations, and (c) the reader's expectations. Together, these factors lead to a novel interpretation that establishes the necessity of arbitration agreements.

It is recommended that researchers investigate other ambiguous and interpretable aspects of arbitration, as this study demonstrates the interpretability of Article 481 as a foundational step. Specifically, the timing and purpose of submitting an arbitral award to the court, an area marked by textual ambiguities, should be the focus of future hermeneutic analyses.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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