Strategies in Handling Dispute Resolution Through Arbitration

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Abstract
Regardless of the risks that arise, business disputes are a potential occurrence, and business entities are expected to prepare and choose the most suitable method for resolving such disputes. This research employs a normative method, focusing on the analysis of primary and secondary legal sources related to the topic being discussed, using a legislative approach. In resolving business disputes, arbitration is considered the most efficient method and is often chosen for dispute resolution. The ease of finding a win-win solution, along with the relatively affordable costs, are the primary reasons for opting for arbitration to settle disputes.

Keywords: arbitration, business dispute resolution, win-win solution, cost efficiency of business dispute resolution.

INTRODUCTION

In order to resolve conflicts that may develop during business operations, arbitration has grown in popularity among business people. Arbitration’s flexibility is one of its key draws. In contrast to traditional court proceedings, arbitration gives all parties to a disagreement the opportunity to decide the dispute’s procedure and even the judge or arbitrator who will resolve their case. Additionally, because both parties have more control over the process’ parameters, the decisions that arise are frequently better in accordance with their requirements and expectations. (Salton, 2021).

Fundamentally, arbitration offers a more narrowly focused and detailed approach to resolving conflicts and a wider range of options than conventional procedures. Many businesses prefer arbitration because of its speed and effectiveness, especially in this era of liberalization where corporate transactions frequently cross international borders and call for swift and exact resolutions.

Furthermore, the development of reputable arbitration organizations and their significance in the contemporary commercial environment cannot be overlooked. In addition to providing a forum for conflict settlement, they also give businesspeople legal certainty, which is essential in the current environment of international investment. With all these benefits, it is not surprising that arbitration is becoming the preferred way for resolving commercial disputes. (Saleh, 2023).

Alternative Dispute Resolution (ADR) is a method for resolving disputes outside of court that is based on mutual consent between the parties involved. There are numerous forms of ADR available in Indonesia, including Arbitration, Mediation, Conciliation, Negotiation, Consultation, and Assessment by Experts, according to Law No. 30 of 1999. The Arbitration strategy should clearly explain what alternative dispute resolution is and the options available in compliance with Indonesian legal requirements in the context of alternative dispute resolution. This is crucial, especially when dealing with legal difficulties that develop during corporate operations.

The goal of this title is to clarify arbitration and examine the factors that make it the most successful and efficient method of resolving disputes.

Statement of the Problem
The primary focus of the issues to be covered in this paper are:
1. Is arbitration the most effective way to settle commercial disputes??
2. Why is arbitration regarded as the best way to resolve commercial disputes?
RESEARCH METHODS

Normative legal research, which focuses on the investigation of primary and secondary legal sources connected to the topic under discussion, is the methodology used in this paper. The method used in this study is based on the rules and regulations in practice in Indonesia.

DISCUSSION AND ANALYSIS

Definition of Arbitration

The Latin word “arbitrare”—which implies “the authority to determine something on a policy basis”—is where the word “arbitration” originates. According to H. Priyatna Abdurasyid, arbitration is a system for resolving disputes that functions similarly to a courtroom trial and relies on evidence provided by the parties in conflict. Arbitration is a procedure in which both parties to a dispute choose to be bound by an impartial third-party judgment made outside of the traditional legal system. People have used arbitration as a method of dispute resolution from the dawn of time. Its practical and straightforward nature has come to be appreciated. As a result, arbitration was approved as a supplement to formal Roman law and became the favored technique for resolving economic disputes during the Middle Ages. (naibaho, 2022).

The definition of arbitration in Article 1 Paragraph 1 of Law No. 30 of 1999 about Arbitration and Alternative issue Resolution is “a method of resolving civil disputes outside the jurisdiction of regular courts, based on written agreement by the parties involved in the dispute.” Essentially, arbitration can be thought of as a unique type of court. Courts, on the other hand, operate as permanent or permanent institutions, whereas a tribunal established particularly to address a single case conducts arbitration. (Tunggaesti, 2021).

Arbitration Clause

A clause is a specific provision in a contract or agreement that clarifies or limits the content of one of the sections or articles. Consequently, an arbitration clause is a specific phrase in an agreement that stipulates that a disagreement will be resolved by arbitration. It is a formal agreement between the parties that any potential disputes will be settled through arbitration. An arbitration agreement is described as “an agreement containing an arbitration clause in a written contract made by the parties before the emergence of a dispute, or an arbitration agreement made after the emergence of a dispute” in Law No. 30 of 1999, Article 1 Paragraph 3. According to this description, an arbitration agreement can take one of two forms, respectively:

Factum de Compromitendo

A factum de compromitendo is a clause created before a dispute occurs. This clause states that if in the future a dispute arises between the parties who have agreed, then its resolution will be carried out by arbitration. For example, when two companies choose to collaborate, an arbitration clause may be drafted if they agree. This clause may be intentionally drafted in a distinct contract or included into an already-existing collaboration agreement. The legal foundation for the application of this clause in Indonesia is provided by Law No. 30 of 1999. According to Article 7 of the Act, “the parties agree to resolve any disputes between them through arbitration procedures.”.

Acte Compromis

An arbitration clause known as an Acte Compromis is one that is created after a dispute has arisen. A written agreement between the disputing parties outlining the arbitration process’s terms is required. A Factum de Compromitendo and Acte Compromis are only different at the time of their preparation.

Arbitration Ethics

Usually, the parties will draft an arbitration agreement that specifies how the arbitration will proceed. The more specific rules of the arbitral institution that the parties
choose will control how the arbitration is handled if they choose that institution to resolve their dispute. However, it is uncommon to find clauses in the arbitration agreement or from arbitral institutions describing professional obligations and ethical dilemmas that can arise during the arbitration. Regulations in this context typically originate from their respective professional associations. For instance, in Indonesia, PERADI may establish standards of conduct and obligations for advocates in relation to arbitration. International arbitrators are subject to strict ethical rules that were published by the International Bar Association (IBA) in 1987. The rules, however, focus on the ethical responsibilities of arbitrators rather than the behavior of advocates throughout the arbitration process.

Legal Standing of Arbitration

There is no express provision regarding arbitration under Law No. 14 of 1970 concerning Basic Principles of Judicial Power. In fact, Article 10 makes it crystal apparent that the four different types of courts in Indonesia—general courts, religious courts, military courts, and state administrative courts—are used to apply the country’s judicial authority. Every court in Indonesia is a part of the state judiciary, as stated in Article 3 paragraph 1 of the Law, and is subject to its regulations. Although the item initially seems to preclude arbitration as a method of resolving disputes, it is stated in its explanation that arbitration is still a valid method of conflict resolution.

Types Of Arbitration

Institutional (Permanent) Arbitration

A permanent arbitration body, institutional arbitration refers to an arbitral entity or organization with permanent or persistent characteristics. Its existence is not only continuous and not time-bound but also has a steady structure and order. The development of this sort of arbitration attempts to provide alternatives to the legal system for resolving disputes. At both the national and international levels, a few instances of permanent arbitral institutions include:

1. Indonesian National Arbitration Board /Badan Arbitrase Nasional Indonesia (BANI)
2. National Sharia Arbitration Board /Badan Arbitrase Syariah Nasional (BASYARNAS)
3. Indonesian Capital Market Arbitration Board /Badan Arbitrase Pasar Modal Indonesia (BAPMI)
4. Court of Arbitration of International Chamber of Commerce (ICC International Court Arbitration)
5. The International Center for Settlement of Investment Disputes (ICSID)

Adhoc Arbitration (Volunteer)

Adhoc arbitration refers to a type of arbitration that is not conducted by or through a specialized arbitral institution. In contrast, this type of arbitration is organized by a group of arbitrations that are provisional in nature, tailor-made to deal with specific disputes that arise. However, in the process of resolving disputes through Ad Hoc Arbitration, some common challenges often arise, such as:

1. Difficulties in conducting negotiations and determining the rules of arbitration procedure.
2. Challenges in devising a way of selecting arbitrators acceptable to all parties involved.

Arbitration Authority

Outside the purview of traditional courts, arbitration offers alternatives for resolving conflicts. Governments give disputing parties options and chances to settle their disputes amicably or in a setting more conducive to their preferences and objectives.

Arbitration Clause Agreement

A clause referred to be an arbitration clause is one that states that any future disputes relating to a commercial contract or other agreement shall be resolved by arbitration. With the intention that if a dispute arises between the parties in the future, it will be resolved through arbitration proceedings, this clause was created before there was a problem. According to Law No. 30 of 1999, the usage of these clauses is authorized in Indonesia.

Arbitration Procedure, Application, and Stages of Proceedings
Arbitration Procedure

In accordance with Law No. 30 of 1999’s Articles 27 to 48, arbitration procedures may be conducted in accordance with the rules of the institution that has been selected to conduct the arbitration (in the case of institutional arbitration) or according to an event or procedure that has been decided upon by the parties and arbitrators (in the case of ad hoc arbitration).

An agreement between the two disputing parties is necessary (and can be made before or after the disagreement) in order to resolve a dispute through an arbitration mechanism. Therefore, prior to the arbitration, the written agreement must be signed by both parties. The Indonesian National Arbitration Board (BANI) and the Indonesian Capital Market Arbitration Board (BAPMI) are two of the specialized organizations in Indonesia that support arbitration proceedings.

There are a few fundamental techniques that must be taken when initiating arbitration proceedings:

1. Registration:
   The initial stage of the arbitration process is to register and submit a request for arbitration to the BANI Secretariat. The request for arbitration shall be granted by the party initiating the arbitration proceedings to the secretariat of the agreed arbitral institution.

2. Filing a Request for Arbitration:
   When submitting an application, the applicant must provide certain details, including the names and addresses of the parties involved, the arbitration agreement that is currently in effect, the specifics and legal justification for the dispute, a description of the issue, the claim, and the amount of the claim.

3. Document Attachment:
   In the application, the applicant must attach a copy of the agreement containing the arbitration clause or arbitration agreement. In addition, the applicant can add other documents that are considered important and related to the dispute.

4. Appointment of Arbitrators:
   The applicant has the option to appoint arbitrators within 14 days after the request for arbitration is registered with the BANI Secretariat or submit the decision on such appointment to the Chairman of BANI. If within the specified time the applicant has not appointed an arbitrator, then the decision on the appointment rests entirely with the Chairman of BANI. If necessary and with good reason, the Chairman of BANI may grant an extension of time for the appointment of arbitrators, but not to exceed an additional 14 days.

Cost of Arbitration

The registration fee must be paid when submitting a request for arbitration. An application fee of IDR 2,000,000 is required. The amount of administrative expenses, however, fluctuates according to the magnitude of the claim. The list of administrative expenses is modified to reflect the amount of the submitted claim. In practice, parties typically only file claims they can substantiate as legal rights because the cost of arbitration proceedings is determined by the number of claims, including, but not limited to, attorney fees required for conflict settlement. However, because it is challenging to establish and prove the worth of the litigation, immaterial claims are rarely made in arbitration practice.

Request for Arbitration

The next stage is to enter the request in BANI’s register after the Secretariat receives the arbitration request, any necessary supporting papers, and payment of the mandatory registration fee. The BANI Governing Board will then examine the application to determine whether the arbitration clause in the contract enables BANI to resolve the brought-forward dispute.

The request for arbitration process includes:

1. Recording of requests for arbitration.
2. Notice of request for arbitration by the applicant to the party being sued.
3. Determination of arbitrators.

While the content of the request or claim for arbitration includes:

1. Identity and addresses of the parties involved.
2. References to arbitration clauses or agreements that become basis
3. Description of the problem that is the source of the dispute, reasons demands, and the amount demanded
4. Agreement between the parties regarding the number of arbitrators.
5. Appointment of arbitrators by disputing parties.

Stages of the trial

The opening phase of the arbitration proceedings begins when the Claimant submits the “Request” to the BANI Arbitration Secretariat, provided that all conditions for convening an arbitral panel have been satisfied. The BANI office is the permanent address of its secretariat. Regarding arbitration processes without the participation of organizations like BANI or BAMUI, the procedure starts when the parties to the dispute start to choose their preferred arbiter.

Arbitration Verdict

Articles 27 to 51 of the Arbitration and Alternative Dispute Resolution Law (AAPS Law) No. 30 of 1999 specify the steps that must be used while arbitrating disputes. The steps of the procedure are laid forth in this law, starting with the application stage and continuing through the examination process and decision-making stage. The arbitrator or arbitral panel establishes a hearing schedule for the reading of the verdict in line with Article 55 of the AAPS Law following the conclusion of all hearings on the dispute.

In line with Section 57 of the AAPS Act, the decision must be made public within a maximum of 30 days of the examination’s closing time. According to Article 54 paragraph (1) of the AAPS Law, the decision must contain a number of crucial components, including:

Opening phrase “DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA”;
1. Identity and full address of the parties to the dispute;
2. Summary of dispute issues;
3. The position or argument of each party;
4. Identity and address of the arbitrator in charge;
5. The reasons and conclusions drawn by the arbitrator or arbitration panel regarding the dispute;
6. The individual opinion of each arbitrator in case of differences of views within the panel;
7. The content of the verdict;
8. Location and date of issuance of the judgment; and
9. Signature of the arbitrator or arbitration panel.

According to Article 58 of the AAPS Act, when the parties have received the judgment, they have 14 days to ask the arbitrator or arbitration panel to fix the procedural error or modify the claims in the verdict. Typographical errors, incorrect spellings of the party’s or arbitrator’s names or addresses, and similar administrative mistakes do not alter the significance of the verdict itself. A disputed party may object to the verdict if it requests something that was not previously mentioned by the opposing party, if it excludes some or all of the issues from consideration, or if it contains contradictory information. The judgment will be executed if no request in accordance with Section 58 of the AAPS Act is made.

Refusal to Execute an Arbitral Verdict

Article 5 paragraph (1) of the 1958 New York Convention concerning the Recognition and implementation of Foreign Arbitral Verdicts lists a number of specific grounds for rejecting the implementation of an international arbitral judgment in the context of international law. These include the agreement’s invalidity, the parties’ inability to present a defense, a decision that is at odds with the mandate, differences in the parties’
agreements regarding the selection or appointment of the arbitrators, and situations in which the decision has not been binding on the disputing parties.

On the other hand, Indonesian law bases its justification for refusing to carry out a decision of a foreign arbitral tribunal on Article 66 of the Arbitration Law. According to this article, a decision of international arbitration can only be recognized and implemented in Indonesia if it satisfies specific requirements, including:

1. The verdict is issued in a country that has an agreement with Indonesia, both bilateral and multilateral, on the recognition and enforcement of international arbitration verdicts.
2. The verdict only covers matters that according to Indonesian law fall within the field of trade law.
3. The verdict can be applied in Indonesia after obtaining approval from the Chief Justice of the Central Jakarta District Court.
4. If an international arbitration verdict involves the State of the Republic of Indonesia as a party to the dispute, execution can only be carried out after obtaining approval from the Supreme Court of the Republic of Indonesia, which is then forwarded to the Central Jakarta District Court.

Only the Central Jakarta District Court (PN Jakpus) is permitted to conduct registration or execution requests relating to international arbitration verdicts in Indonesia, as per the rules of Article 65 of the Arbitration Law. Only judgments from arbitrators or nations that have a formal agreement with Indonesia governing the acceptance and enforcement of the verdicts of arbitration may be implemented there.

An application for the implementation of an international arbitration verdict may be rejected by the Chairman of PN Jakpus if doing so is anticipated to breach standards of public order. The Chief Justice of the District Court with the appropriate authority is in charge of carrying out the execution if the Chairman of the Prosecutor’s Court approves the execution application. On the other hand, each party has the right to appeal to the Supreme Court in the case that the application for execution of an international arbitration verdict is denied. The court’s involvement in the registration and execution processes for arbitral verdicts—whether they are national or international in scope—is strictly restricted to giving permission. Fundamentally, the court lacks the authority to examine the merits of the arbitral tribunal’s issued verdict.

**Annulment of Arbitration Verdict**

The legal action taken by a party to a dispute to ask the District Court to have the verdict of arbitration reversed, either partially or entirely, is known as an annulment of an arbitral verdict. Arbitration verdicts are typically regarded as being final and having legal effect. As a result, the court lacks the authority to evaluate the decision’s merits during the annulment procedure. Only evaluating the validity of the methods followed in the arbitration decision-making process, including the method by which arbitrators are chosen and the application of the legal standards agreed upon by the parties when resolving disputes, is within the purview of the court’s obligations.

**Grounds for Annulment of Arbitration Verdict**

The annulment of the verdicts of arbitration is clearly governed by Article 70 of Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution. According to the article, the following elements may be present in an arbitral verdict for which the parties are seeking its annulment:

1. Letters or documents submitted in the examination, after the judgment has been rendered, are admitted to be false or declared to be false;
2. After the verdict was taken, a decisive document was found, which was hidden by the opposing party; or
3. The decision is taken from the result of a ruse committed by one of the parties in the examination of the dispute.

The application for annulment of this verdict by arbitration should be governed as expressly as feasible because the verdict of the arbitration is final and binding. This is
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described in detail in article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which states: “An application for annulment can only be lodged against a verdict of arbitration that has been registered with the Court. A court ruling is required to establish the grounds for the application for annulment of the judgment mentioned in this article. The judge may consider this court decision when deciding whether to grant or deny the request if it finds that these reasons are proven or not established”.

Given the aforementioned circumstances, it can be argued that if there was fraud in the arbitration process, another legal remedy step that could be done would be to attempt to have the arbitral ruling annulled. Because each arbitral ruling cannot be easily revoked, arbitration has the benefit of allowing the process to proceed quickly.

Mechanism for Annulment of Arbitral Verdicts

An arbitral verdict may be revoked in accordance with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, but a particular process is required. Following are the steps:

1. Registration of the arbitral verdict shall be made with the Registrar of the District Court. The purpose is that, if necessary, execution can be filed when the judgment is not voluntarily executed by the parties involved. Without registration, execution cannot be filed. The obligation to register an arbitral verdict with the Registrar of the District Court rests with the arbitrator or his representative, and must be made within 30 days of the verdict being pronounced.

2. An application for annulment of an arbitral verdict must be submitted in writing to the Chief Justice of the District Court after the verdict has been registered. This application must be filed within 30 days of registration of the judgment.

3. The Chief Justice of the District Court who has the authority to hear the application for annulment of the arbitral verdict is a court with jurisdiction covering the residence of the respondent, i.e., the losing party in the dispute.

4. If the request for annulment is granted, the Chief Justice of the District Court shall have the right to determine the effect of the annulment of the arbitral verdict, either in whole or in part.

5. The authority of the court in this proceeding is limited to factual research related to the grounds of annulment raised by the applicant. If these reasons are not proven, the cancellation request will be rejected. However, if the reasons submitted are in accordance with the provisions of article 70 of Law Number 30 of 1999, then the application for cancellation will be accepted by the District Court.

It is evident from the aforementioned that the District Court lacks the authority to retry matters that have already been dismissed. The emphasis is on factual confirmation of the applicant’s provided reasons for cancellation. (Ardiansyah, 2014).

CONCLUSIONS

For numerous companies, arbitration is frequently the chosen method of resolving disputes. The explanation is that arbitration is regarded as an effective technique of resolving disputes. These efficiencies cover a range of topics, such as the agreement chosen, the location, the time it takes to finish the procedure, and the costs involved.

The parties should discuss one another and get familiar with Law No. 30 of 1999 about Arbitration and alternative dispute resolution before settling on a method of conflict settlement. Transparency between the parties regarding the purpose of the transaction or the nature of the business activity is also crucial so that the rights and obligations of each party are clearly outlined while the contract is being drafted. So, if a dispute emerges, arbitration may be a possibility for resolving it.

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