

The Effectiveness of Arbitration as A Commercial Dispute Resolution Solution in Indonesia

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ABSTRACT

Despite being regulated in Law Number 30 Year 1999, the effectiveness of arbitration in Indonesia still faces various challenges, such as lack of public understanding, high costs for small businesses, and limited arbitration infrastructure in the regions. Therefore, there is a need to evaluate and strengthen the role of arbitration to ensure that this mechanism can be a quick, fair solution and support business sustainability in Indonesia. The purpose of this study is to assess the extent to which arbitration has been able to be an effective solution in resolving commercial disputes in Indonesia, identify factors that influence its success, and provide recommendations to increase its efficiency and trustworthiness as a fair and speedy dispute resolution alternative. This research uses a descriptive method with a qualitative approach to describe phenomena systematically and accurately. Data was collected through documentation techniques, analyzing various relevant documents such as reports, archives, or articles. Data analysis was conducted in three stages: data reduction, data presentation, and conclusion drawing validated through triangulation. The results showed that arbitration is an effective commercial dispute resolution mechanism in Indonesia because it offers a fast process, affordable costs, and a final and binding award. Its advantages include flexibility, confidentiality, and international recognition through the New York Convention. However, its optimization requires strengthening regulations and education to overcome challenges such as the lack of understanding of business actors and inconsistencies in the application of the law.

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Introduction

In the era of globalization and rapid economic development, business activities in Indonesia are experiencing significant growth. This creates great opportunities, but on the other hand, also

increases the potential for commercial disputes (Arif, 2024). Such disputes can arise from various factors such as breach of contract, performance discrepancies, and differences in interpretation of agreements. Slow and complicated dispute resolution is often a major obstacle in maintaining business sustainability (Manik et al., 2024). Therefore, a dispute resolution mechanism is needed that is fast, efficient, and can provide legal certainty to the parties involved.

The dispute resolution process through general courts in Indonesia is often considered ineffective. In addition to requiring a long time, high costs, and complex procedures, the courts also face challenges in the form of a backlog of cases that result in delays in dispute resolution (Sari et al., 2024). In business, this situation not only hampers the company's operations, but can also damage the reputation and relationship between the parties. This condition encourages the search for more practical alternative dispute resolution, one of which is through an arbitration mechanism (Baharuddin, 2024).

Arbitration has become one of the main options in commercial dispute resolution because it offers advantages in the form of a more flexible, confidential, and efficient process compared to courts. In arbitration, the parties have the flexibility to choose arbitrators who are competent and understand the context of the relevant industry (Nurhamidah et al., 2024). In addition, arbitration decisions are final and binding, which means there is no appeal process that can prolong the resolution of the case. This mechanism has been regulated in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, which provides a clear legal framework for its implementation in Indonesia (Niagara & Hidayat, 2020).

Although arbitration offers various advantages, its effectiveness in resolving commercial disputes in Indonesia is still debatable. Several challenges such as lack of understanding of arbitration, relatively high costs for small businesses, and limited arbitration infrastructure at the local level can be obstacles (Fadillah & Putri, 2021). Therefore, it is important to evaluate the extent to which arbitration mechanisms can fulfill the need for quick and fair dispute resolution.

Previous research conducted by Syahroni & Widyaningrum (2024) stated that alternative approaches in resolving state administrative disputes not only increase efficiency and reduce costs, but are also able to build public trust in the government and strengthen a sense of justice in dispute resolution.

The novelty of this research lies in the in-depth analysis of the effectiveness of arbitration as a commercial dispute resolution mechanism in Indonesia, particularly in the context of evolving legal and economic dynamics. The research not only evaluates the advantages of arbitration over litigation mechanisms in the courts, but also highlights the practical challenges faced in its implementation, such as compliance with arbitral awards and the role of courts in the execution process. The purpose of this study is to examine the extent to which arbitration is able to be an effective solution in resolving commercial disputes in Indonesia, identify the factors that influence its success, and provide recommendations to increase its efficiency and trustworthiness as a fair and speedy alternative to dispute resolution.

Research Methods

The approach used in this research is a descriptive method with a qualitative approach. The descriptive method aims to describe or explain phenomena, circumstances, or events systematically, factually, and accurately based on available data (Syahrizal & Jailani, 2023). Data collection was carried out using documentation techniques, which is a way of collecting data by collecting and analyzing documents relevant to the research topic. The documents analyzed can be written records, reports, archives, photos, videos, recordings, books, articles, or other documented data (Thalib, 2022).

After the data was obtained, the analysis process was carried out in three stages. The first stage is data reduction, which is selecting and simplifying data to make it more focused. The second stage is data presentation, which is organizing data systematically in the form of tables, graphs, diagrams, or descriptive narratives to facilitate the identification of patterns and relationships between data. The last stage is conclusion drawing, which includes the process of understanding the meaning of the data that has been analyzed, formulating the main findings, and ensuring the validity of the results through cross-checking or triangulation.

Results and Discussion

The commercial field encompasses various activities of trading goods and services, which are inherently related to efforts to obtain profits through commercial or business activities. In this field, business disputes are inevitable, especially in the midst of the increasingly complicated dynamics of the business world. Such disputes can arise from various factors, such as differences in contract interpretation, dissatisfaction with the performance of business partners, or imbalances in business relationships. This confirms that disputes are an integral part of business activities that continue to grow (Wandira et al., 2024).

Relevant technological developments and increased cross-border interactions have complicated the business landscape, adding to the challenges of handling disputes that arise. This complexity is not only felt by businesses, but also by lawyers and governments involved in finding solutions to such disputes (Hetiyasari et al., 2024). In this situation, it is important to understand that different cultures, legal systems and business interests influence the way disputes are resolved. This makes the process of selecting a settlement method challenging, especially when balancing efficiency, fairness and the continuity of the business relationship. Business dispute resolution has become a very important aspect in maintaining the stability and sustainability of a company's operations. Dispute resolution is not only about resolving legal issues, but also an effort to maintain trust and good relations between the parties involved (Gurieli, 2023).

However, in Indonesia, dispute resolution tends to use the court or litigation route. The litigation process has a number of disadvantages, such as long settlement times and win-lose outcomes. This settlement system often leaves the losing party feeling aggrieved and creates the potential for further conflict. In addition, the public nature of litigation can cause reputational damage to the companies involved. Coupled with its formal and procedural nature, litigation is also considered less responsive to the needs of the business world that demands time efficiency,

considering that in the commercial sector, time is very valuable to pursue new opportunities (Rahmatsyah, 2024).

To overcome the weaknesses of the litigation route, out-of-court dispute resolution is becoming an increasingly attractive alternative. These methods include approaches that are more flexible, speedy, and cost-effective compared to the conventional justice system. One such approach is arbitration, which is now the main choice in business dispute resolution, including in Indonesia. Arbitration offers advantages because the process is conducted in private, is more focused, and provides a decision that is binding on both parties. The process involves arbitrators, chosen by the disputing parties, to provide a fair settlement based on evidence and relevant regulations (Dalimunthe et al., 2024; Winarta, 2022).

The effectiveness of arbitration in Indonesia is further strengthened by the presence of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. This law provides a solid legal basis for the implementation of arbitration in Indonesia, although its focus is more on arbitration than other alternative dispute resolution explicitly. This regulation is an important foundation in promoting arbitration as a more efficient and responsive mechanism in resolving disputes, especially in the business sector.

The presence of arbitration institutions such as the Indonesian National Arbitration Board (BANI) also strengthens the position of arbitration in the dispute resolution system. As an independent body, BANI provides arbitration, mediation, and various forms of out-of-court dispute resolution services. Established on December 3, 1977 by three jurists, namely Soebekti, Priyatna Abdurrasyid, and Haryono, BANI is managed by a board of directors and an advisory board consisting of experienced individuals and companies. This institution plays an important role in handling disputes through arbitration, including those involving international parties, thus supporting an increasingly globally integrated business world (Aulya & Maulana, 2024). Even the view of the effectiveness of arbitration is also supported by experts, one of whom is Prof. Jimly Asshiddiqie, a constitutional expert and former Chairman of the Indonesian Constitutional Court. He stated that arbitration can be a very effective tool in resolving disputes, especially in the field of international business (Agustina, 2024).

Arbitration is considered effective because it has a number of advantages that support efficient and fair dispute resolution, especially in the commercial field. One of the main advantages of arbitration is that it provides higher legal certainty for the parties to the dispute. Arbitration is based on an agreement previously agreed by the parties, which is the main basis for the dispute resolution process outside the court (Rahmatsyah, 2024). This arbitration agreement can be made before the dispute occurs (*pactum de compromittendo*) or after the dispute arises (*acta compromise*). Through this agreement, the parties agree that their dispute will be resolved by an arbitrator or arbitral tribunal, providing assurance that the mechanism used is the result of mutual agreement. This thus creates a solid legal foundation and ensures that the arbitration process is only conducted if it meets the formal requirements agreed upon beforehand (Martinelli et al., 2024).

Another advantage of arbitration is the final and binding nature of the award. Arbitral awards cannot be appealed to the court, except under certain conditions strictly regulated by law.

Pursuant to Article 59 paragraphs (1) and (4) of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, the arbitrator's award has binding legal force and must be registered with the District Court in order to be executed. However, there are exceptions as stipulated in Article 70 of the law, namely:

1. False Letter or Document

There is an admission or determination that a letter or document submitted in the examination process is false, and this is discovered after the arbitral award is rendered.

2. Concealment of Important Documents

After the verdict was rendered, it was found that important documents were deliberately concealed by the opposing party during the dispute process.

3. Deceit

The arbitral award is based on a ruse committed by one of the parties during the dispute hearing process.

Furthermore, the advantages of arbitration can be seen in the efficiency it offers, both in terms of process and cost. In terms of speed of process, arbitration is usually much faster than litigation in court. This is because the procedure is simpler and not hampered by the busy court schedule. The disputing parties have the flexibility to determine their own hearing schedule and the procedures to be followed, which makes the process more organized and efficient (Hetiyasari et al., 2024). In terms of cost, arbitration tends to offer a more cost-effective solution than litigation, especially for complex disputes. The arbitration process provides a more predictable approach at a relatively lower cost than conventional litigation, which often involves attorney fees, court costs, and a longer duration of time (Martinelli et al., 2024). Although the costs of arbitration can be significant, they generally remain more manageable and efficient than traditional litigation (Agustina, 2024).

Furthermore, in addition to efficiency, the confidentiality aspect of arbitration is also a significant advantage. Arbitration proceedings are private and conducted in secret, which is particularly advantageous for businesses that often require protection of sensitive information. This confidentiality includes hearings that are not open to the public as well as arbitral awards that are not published, thus helping to preserve the reputation of the parties to the dispute (Dalimunthe et al., 2024). This is in contrast to court proceedings, which are open to the public and often in the media spotlight, which can affect the reputation and integrity of the disputing parties (Martinelli et al., 2024). The confidentiality and cooperative nature of arbitration provides a more peaceful and less confrontational atmosphere for dispute resolution. It provides a solution that maintains good relations between the disputing parties and protects their integrity in the eyes of the public.

Furthermore, flexibility is another advantage of arbitration, which provides room for the parties to customize the dispute resolution process according to their needs and interests. One form of this flexibility is the freedom to choose arbitrators. The parties have the right to appoint arbitrators who have special expertise in the field being disputed, so that the resulting award is more relevant and of high quality. This provision is also stipulated in Article 13 paragraph 1 of Law No. 30 of 1999, which states that if there is no agreement regarding the selection of arbitrators

or the appointment of arbitrators is not provided for, the chairman of the district court may appoint a suitable arbitrator or panel of arbitrators. This ensures that the arbitration process continues despite the impasse in the appointment of arbitrators. The arbitration procedure can also be customized according to the needs and agreement of the parties. This flexibility allows the procedure to be simpler and more efficient than traditional litigation, resulting in faster and more contextually appropriate settlements (Agustina, 2024).

In addition to flexibility in procedure, arbitration also offers neutrality which is important in the dispute resolution process. The arbitrator chosen is expected to be neutral and not have a personal interest in the case. This neutrality gives the parties confidence that the decision is fair and fact-based. In addition, arbitration is often conducted in a venue that is neutral to both parties, which helps to create an atmosphere conducive to dispute resolution (Widyanti et al., 2024).

However, while arbitration has various advantages that make it an effective solution for resolving commercial disputes in Indonesia, there are several challenges that need to be overcome for this mechanism to be fully utilized. One such obstacle is the lack of understanding among the public, especially small and medium-sized enterprises (SMEs), of arbitration procedures. The lack of socialization and education about the benefits and process of arbitration makes many parties reluctant to choose it as an alternative dispute resolution (Ritonga et al., 2024). The initial cost of arbitration is also a challenge. Although the total cost of arbitration tends to be lower than litigation, upfront expenses, such as administrative costs and arbitrator fees, can be prohibitive, especially for parties with limited budgets. This factor often makes arbitration seem less affordable, even though it is actually more cost-effective in the long run.

In addition, regulatory limitations are also an issue that affects the effectiveness of arbitration in Indonesia. Although there is a legal umbrella in the form of Law No. 30/1999 on Arbitration, the regulation is still not as comprehensive as that of some other countries. Certain aspects, such as the procedure for enforcing international arbitral awards, still require refinement to be in line with global practices (Samudra & Adiasih, 2023).

Another challenge lies in the development of human resources in the field of arbitration. Indonesia still needs more qualified arbitrators and professionalized arbitration institutions to ensure that the arbitration process runs efficiently and according to international standards. Investment in arbitrator training and capacity building of arbitral institutions are important steps to support the growth of arbitration in Indonesia (Aulya & Maulana, 2024).

To maximize the effectiveness of arbitration as a dispute resolution solution, especially in the commercial field, a concerted effort involving various parties is required. One important step is to increase legal awareness among the business community. A better understanding of the benefits, procedures and advantages of arbitration may encourage more businesses to choose it as an alternative dispute resolution. As part of this effort, socialization and education on arbitration should be increased, especially among small and medium-sized enterprises (SMEs), most of which do not have sufficient understanding of this mechanism. From increased legal awareness, it is expected that more parties will feel confident and understand how to use arbitration as an efficient and cost-effective means of dispute resolution.

In addition, strengthening arbitration institutions in Indonesia is also a key step to increase the effectiveness of arbitration. Arbitration institutions need to continuously strive to improve service quality and professionalism in administering the arbitration process. This includes strengthening the competence of arbitrators as well as improving administrative and service systems that support the smooth running of the arbitration process. Professional arbitration institutions will ensure the achievement of fast, fair and efficient dispute resolution, which will certainly increase public confidence in arbitration as the main choice in commercial dispute resolution.

Regulatory improvement is also an important aspect. Although Indonesia already has an Arbitration Law, the existing regulations still need to be adjusted to the development of global practices and challenges in Indonesia. The government needs to periodically evaluate and improve the laws and regulations relating to arbitration. This includes strengthening the enforcement of arbitral awards and ensuring better protection for parties involved in arbitration proceedings, both in the domestic and international contexts.

With these measures, it is hoped that the effectiveness of arbitration as a dispute resolution solution, particularly in the commercial field, can be enhanced. Given the dynamic and risky nature of the business world, an efficient, fast and reliable dispute resolution system such as arbitration will further support the smooth and stable commercial sector in Indonesia.

Conclusion

Based on the research results, it is found that arbitration is an effective solution in resolving commercial disputes in Indonesia because it offers a faster process, relatively affordable costs, and final and binding decisions. This effectiveness is supported by its flexible nature, maintaining the confidentiality of the parties to the dispute, and the recognition of international arbitration awards through the New York Convention. However, challenges such as businesses' lack of understanding of arbitration and inconsistencies in the application of the law in recognizing arbitral awards still affect its optimization. With strengthened regulation and increased education, arbitration has great potential as an efficient and reliable commercial dispute resolution mechanism.

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