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Evidentiary Application Of Arbitration In The Indonesian Legal System

[1]Asmaul Husna, [2]Alfania Pane, [3]Bima Ilman Mirazha Hasibuan
[1,2,3]Universitas Islam Negeri Sumatera Utara
E-mail: [1]asmahusna262@gmail.com, [2]alfanipane2004@gmail.com,
[3]bimailmanmirazhahasibuan@gmail.com

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Abstract
In the dispute resolution mechanism both litigation and non-litigation such as arbitrary, proofing evidence process plays essential role to reconstruct the real occurrence in order to seek the truth. Proofing principles that is used in Indonesian arbitrary process is based on the Law number 30 year 1999 on arbitrary and alternative dispute resolution that is lex arbitri for Indonesia. Arbitrary is part of formal civil law, therefore its proofing principles is basically the same with the dispute resolution trough litigation. The Law number 30 year 1999 shows that Even though Indonesia is a civil law jurisdiction, there are some common law principles that are accommodated in the arbitrary process. Using conceptual and statute approach, this article attempts to look at proofing principles may arise in arbitrary mechanism based on the law mentioned and based on the actual practice.

I. INTRODUCTION

The legal system in Indonesia is a civil law system (Firdaus & Wibowo, 2020). This legal system is implemented in Indonesia as a result of the previous Dutch colonization. The civil law system allows for two methods of resolving civil disputes between conflicting parties: first, resolution through the court (litigation), and second, resolution outside the court (non-litigation), one of which is through arbitration (Syita, 2014).

The Rv (Reglement voor de Rechterlijke Organisatie) is the procedural law designated for the European population (Quisha et al., 2024). During the colonial era of the Dutch East Indies, the Indonesian population was divided into several groups based on Articles 131 and 163 of the Indische Staatsregeling (IS). According to these articles, the population in Indonesia was categorized into European residents, Bumiputera residents, and Chinese and foreign Eastern residents. For the European population, Western law applies, while the Bumiputera population adheres to their customary laws or may also be subject to Western law if there are public and social interests involved. For the Chinese and foreign Eastern populations, Western law applies with some exceptions. Due to this differentiation in population groups, there was also a differentiation in legal treatment. Thus, for the Bumiputera population, the applicable procedural law is not the Rv but the Herziene Inlandsch Reglement (HIR) for the regions of Java and Madura, whereas for regions outside Java and Madura, the Rechtsreglement Buitengewesten (RBg) is applied (Ishaq, 2022).

Therefore, to understand the rules regarding arbitration law within the Indonesian legal framework, its legal basis is derived from Article 377 of the HIR and Article 705 of the RBg, which state, “if Indonesian and foreign Eastern individuals wish to have their disputes resolved by an arbitrator, they must adhere to the procedural rules applicable to the European population.” However, since neither the HIR nor the RBg contains further provisions regarding arbitration, Articles 377 HIR or 705 RBg directly refer to the arbitration provisions found in the Rv. Articles 377 HIR or 705 RBg indicate a submission to Western law concerning the arbitration process to resolve disputes through “arbitrators.” This is evident in the phrase: “must adhere to the procedural rules applicable to the European population.” Article 377 HIR illustrates that it is permissible for the disputing parties to pursue and resolve issues through non-litigation avenues.

The term arbitration originates from the Latin word "arbitrare," which means the power to resolve matters based on “wisdom” (Vahzrianur & Siswajanthy, 2024). At first glance, the association of the term arbitration with wisdom seems to imply that the arbitration panel does not need to

consider the law in resolving the disputes of the parties but can rely solely on discretion. This view is incorrect because arbitrators also apply the law, much like judges in courts.

In examining and deciding a dispute, an arbitrator or arbitration panel always bases its decisions on the law, specifically the law chosen by the disputing parties (choice of law). Nevertheless, it is possible for arbitrators, if desired by the parties, to decide based on fairness and equity (ex aequo et bono).

From this understanding, it can be interpreted that arbitration is a civil agreement made based on the parties' consensus to resolve their disputes decided by a third party known as the arbitrator, who is mutually appointed by the disputing parties, and the parties express their intention to abide by the decision made by the arbitrator.

II. RESEARCH METHODS

This research employs a descriptive method with a qualitative research type as its methodology. According to Moleong (Moleong, 2018), qualitative research is defined as research aimed at understanding phenomena regarding what happens according to the understanding and perspective of the research object. The data collection techniques used in this study involve observation and document study methods (online proceedings, online journals, books, print and online news media, and others). After all the data has been collected, the researcher then performs analysis using interactive data analysis techniques.

III. RESULTS AND DISCUSSION

A. Proof In Arbitration

Proof is the most important aspect of a series of trial processes, whether civil or criminal, as it is the heart of a case or dispute being litigated (Hasanah, 2023). For a party that cannot present evidence to support its claims, it can be assured that this party will likely lose in the trial. Proof is an action to convince the judge (arbiter) examining and adjudicating a dispute using evidence that is legally recognized to support the claims previously presented.

To prove something means to convince the Arbitration Panel regarding the claims put forward in a dispute, meaning the claimant must prove the claims (statement of claim) (Supriyanta, 2020). This burden of proof does not solely rest on the claimant but is actually the responsibility of all parties involved in the dispute.

The law of evidence in litigation is a very complex matter in the litigation process. The complexity increases because proof relates to the ability to reconstruct past events as a form of truth. Although the truth sought and realized in civil proceedings is not an absolute truth but rather a relative truth or even a probable truth, seeking such a truth still presents difficulties. Civil judges, in performing their function of seeking truth, are hindered by various restrictions. For example, they cannot freely choose when presented with perfect and binding evidence (authentic deeds, confessions, or oaths). In such cases, even if the truth is doubted, the judge has no freedom to assess it (Permono et al., 2022). According to Susanti Adi Nugroho (Hadiati & Tampi, 2020), the proof procedure in district courts can be conducted in arbitration as long as it does not contradict:

- Law No. 30 of 1999.
- The arbitration provisions chosen by the parties.
- The nature and essence of arbitration.

In applying procedural law that governs trial processes and decision-making methods, which we know as judgments. However, legal practitioners must understand how to present evidence and what needs to be proven and what does not need to be proven, which must be comprehensively understood. According to experts, there are matters that do not need to be proven. The law does not need to be communicated to the judge by the parties and does not need to be proven. Judges are assumed to know the law (ius curia novit). This is a principle of procedural law. Therefore, judges must possess knowledge of the law (Aulia et al., 2024). It is indeed the case that the legal principles in a dispute do not need to be proven by the parties involved, whether the plaintiff or the defendant, as the judges or arbiters are assumed to know the law. The difference is that judges in district courts are appointed by the court chairperson who assesses the judges' legal competence, while they are responsible for completing the arbitration tasks assigned to them. In arbitration, the disputes are selected by the parties based on their competence and expertise, rather than being appointed by the chairperson of the arbitration institution.

B. Principles Of Evidence

The first reference for determining valid evidence in the examination of disputes through arbitration is the evidence stipulated in specific

legislation, and the establishment of this reference is contingent upon the arbitration agreement (Seknun, 2021). The term "general principles of evidence" refers to the foundations for applying evidence. All parties, including the judge, must adhere to the standards set forth by these principles. In addition to this, there are specific principles applicable to each type of evidence, which must also serve as guidelines in the evidence system (PANGESTU, 2024).

An arbitrator holds a position similar to that of a judge once selected by the parties; thus, the arbitrator has the authority to resolve disputes based on valid facts submitted to them. To obtain this authority, it must be based on the parties' agreement, and this authority is something entrusted to them by the parties (Pasaribu & Zulfa, 2021). Just like a judge or a panel of judges that will resolve the disputes submitted to the arbitration institution, the resolution must be based on evidence presented to the arbitration panel, which must have the same standard of value as other arbitration panels in evaluating the submitted evidence.

The evidence procedure in the district court can be applied in the arbitration process as long as it does not contradict Law No. 30 of 1999, the arbitration provisions chosen by the parties, and does not conflict with the nature and essence of arbitration (Hombokau, 2024). According to M. Yahya Harahap the following are several general principles in evidence (Tutuhatunewa, 2022):

1. Evidence seeks and realizes formal truth.
2. A confession ends the examination of the case.
3. Evidence in the case is not necessarily logical.

The author will briefly outline the above general principles of evidence.

1. Evidence Seeks and Realizes Formal Truth

It is no secret that when a party submits a claim (lawsuit) to the court, including arbitration, the goal is to restore the state of their civil rights disrupted by the actions of another party that does not adhere to the laws that have been previously established. The ultimate form of the submitted claim is victory or the lawsuit being granted.

The evidence system adopted by Civil Procedural Law is not a negative system according to the law (negatief wettelijk stelsel), as in criminal proceedings which demand the search for truth (Tutuhatunewa, 2022).

a. It must be proven based on evidence that reaches the minimum threshold of proof, namely at least two valid pieces of evidence that meet both formal and material requirements;
b. Furthermore, above the proof that reaches this minimum threshold, it must also be supported by the judge's belief in the truth of the evidence beyond a reasonable doubt.

The truth being sought and realized, besides being based on valid evidence and reaching the minimum proof threshold, must be believed by the judge. This principle is referred to as beyond reasonable doubt.

The truth that is realized is truly based on indisputable evidence, so that the truth is considered essential truth (materiele waarheid, ultimate truth) (Seknun, 2021). The best resolution of a dispute is the realization of peace between the contending parties; thus, the arbitration panel, in resolving a dispute, strives more for the realization of peace, consistent with the nature of civil law itself, whereby the judge as an adjudicator is more passive compared to criminal proceedings, where the judge is more active in seeking the truth of an incident. However, in the case of arbitration, the arbitrator or arbitration panel is more active, meaning that they endeavor to promote peace. Therefore, the goal that the arbitration body wants to create is to maintain good legal relations among the parties, and it is not surprising that the decisions of the arbitration body (BANI) are often regarded as win-win solutions.

2. Confession Ends the Examination of the Case

According to civil procedural law, the examination of evidence will be set aside, or not considered, if there is a confession from one party regarding the core material of the case. The form of the confession referred to is one that is expressly stated regarding the legal situation and facts to the judge who is examining and adjudicating a dispute.

In principle, the examination of the case has ended when one party provides a confession that is comprehensive regarding the core material of the case. If the defendant admits fully and entirely to the core material claimed by the plaintiff, it is considered that the disputed matter has been resolved because this confession has confirmed and settled the legal relationship between the parties. Similarly, if the plaintiff acknowledges the rebuttal claims made by the defendant, it means it can be confirmed and proven that the claim submitted by the plaintiff is entirely untrue (Tutuhatunewa, 2022).

A confession in front of a judge during a trial (gerechtelijke bekentenis) is a unilateral statement, either written or verbal, that is clearly made by one party in the case in court, confirming either entirely or partly an event, right, or legal relationship submitted, which results in further examination by the judge being unnecessary (Seknun, 2021).

The mechanism for making a confession during the examination of a dispute, whether in court or in arbitration proceedings, can be categorized as a confession that ends the examination of the case if the following criteria are met:

a. The confession is made directly by the principal involved in the case;
b. The confession is delivered during the trial process, heard directly by the judge/arbitration panel, and recorded by the substitute clerk;
c. The confession is not made after the session has been closed;
d. The confession is submitted in written form and signed by the principal;
e. The confession is presented in writing in the form of a notarial deed;
f. The confession is made by legal counsel, accompanied by written documentation from the principal.

3. Evidence in the Case is Not Necessarily Logical

In legal science, no proof has ever been found, obtained, or produced that is as certain and logical as the evidence derived from exact sciences, as in this field, methods of proof can be devised leading to absolute results. Evidence in civil cases does not require or impose a burden on the parties to present evidence that is logical.

Evidence in the resolution of disputes or conflicts in civil matters, whether through the courts or dispute resolution institutions outside the court, is formal evidence regarding what is disputed. Unlike the evidence found within the scope of criminal law, where in examining and adjudicating a crime in court, the focus is on seeking the material truth of a crime, so that the evidence produced in criminal law is not merely formal evidence.

Evidence in civil law prioritizes formal evidence in a submitted dispute; thus, if a person has submitted a claim regarding their civil rights that have been disrupted by the actions of another party, they must present formal evidence of what they are claiming. On the other hand, the defendant or respondent must also present formal evidence related to their rebuttal in the legal process.

C. Burden Of Proof

In the implementation of procedural law for dispute resolution, which has been applied in courts, there is a comprehensive understanding of how court proceedings are conducted. As the formal law that has governed dispute resolution in courts, the HIR/RBG has accommodated the burden of proof. Although there are many opinions from scholars questioning to whom the burden of proof should reasonably be assigned, as this burden will have direct implications for the decisions rendered by the court in a dispute resolution process.

Misallocating the burden of proof can lead to injustices for the party assigned the burden and give undue advantage to the other party. However, as stipulated in the HIR/RBG, which serves as formal law in dispute resolution in courts, it is clear that anyone who asserts something must prove their assertion. Thus, literally, between the plaintiff/applicant and the defendant/respondent in the resolution of a dispute occurring in the district court, this is a mandatory obligation that must be fulfilled by both the plaintiff/applicant and the defendant/respondent. When the plaintiff/applicant submits a claim to the court, they must prove the truth of their assertions, while on the other hand, the defendant/respondent, whose legal interests have been drawn into court by the plaintiff/applicant, must refute what the plaintiff/applicant has claimed in their legal action. To defend their rebuttal, the defendant/respondent is required to provide evidence of its truth.

Thus, the burden of proof in resolving a dispute in court is equally heavy for both parties, whether they are the plaintiff/applicant or the defendant/respondent. The same principle applies in dispute resolution conducted through arbitration, adhering to the provisions set forth in the HIR/RBG that anyone who asserts something must prove the assertions they have made.

Both the BANI regulations and UNCITRAL stipulate that each party is obliged to explain their position to prove the facts that form the basis of their claims or responses. However, these regulations do not specify how evidence is obtained, presented, and accepted. This provides the arbitration panel with flexibility in determining which pieces of evidence are

acceptable, relevant, and material to the issues at hand and possess evidentiary weight. This flexibility allows the parties and the arbitration panel to utilize advanced technological means of evidence, such as email, video conferences, and others (NIM, 2023).

D. Minimum Evidence Presented

To support the claims made by the parties against each other, it is essential to base this on the evidence provided. Formal law in the implementation of dispute resolution does not limit the maximum number of pieces of evidence presented in court. However, in principle, there is a minimum level of evidence that must be met by the parties resolving disputes through arbitration. Similarly, in the resolution of disputes through the courts, a minimum of two pieces of evidence is required.

In contrast to the evidentiary process in court dispute resolution, evidence in arbitration may be limited by the maximum number established by the arbitration agreement previously agreed upon by the parties. The intent of this maximum limitation in arbitration proceedings refers to the types of evidence that the parties have agreed upon; thus, evidence outside of the agreed arbitration agreement cannot be submitted.

The allowance to agree on limitations on the means of evidence is based on the principle of "freedom to contract," as stipulated in Article 1338 of the Civil Code. The principle of freedom to contract is not only present in legal life and national legislation; in principle, civil law—both formal and material law—tends to be a law that governs and can be set aside based on the agreement of the parties making a contract. Therefore, there is no prohibition against them determining the means of evidence they wish to use in the resolution of disputes that arise. They may specify and choose particular pieces of evidence from the various types commonly regulated by national or international legal provisions. If this is the case, the arbitration institution reviewing the dispute must adhere to what has been determined by the parties (Tutuhatunewa, 2022).

In the evidentiary system of general court proceedings, there is no limit to the number of pieces of evidence presented; however, it is fundamentally constrained by relevance to the subject matter being examined and adjudicated by the respective court. If evidence unrelated to the disputed events is presented, the panel of judges handling the case will reject the evidence submitted by the parties, or the evidence may not be considered by the judges examining and adjudicating the case in question.

According to Susanti Adi Nugroho (Wijayanti et al., 2022), evidence is not admissible if it meets any of the following criteria:

1) It falls under privilege, such as professional privilege, or is a document marked "without prejudice" or similar.
2) It is not relevant to the matters in the arbitration process.
3) Testimonial evidence consists solely of "opinions" (except for testimony from expert witnesses).
4) Hearsay evidence, which is testimony based on what was heard from a third party without firsthand knowledge. This means testimony that does not originate from what the witness saw, heard, or experienced.

E. Evidence

Evidence (bewijsmiddel) comes in various forms and types that can provide information and explanations about the issues being litigated in court. The evidence presented by the parties aims to substantiate the claims made or the counterclaims raised. Based on the information and explanations provided by this evidence, the judge assesses which party has the more convincing proof (Tutuhatunewa, 2022).

It is important to distinguish evidence from physical proof; in civil procedural law, there are five types of evidence that can be used in civil dispute resolution, as stipulated in HIR/RBG, namely: (1) documentary evidence; (2) witness testimony; (3) presumptions; (4) admissions; and (5) oaths.

Arbitration prioritizes a win-win solution, which differentiates it from the pattern of dispute resolution conducted by courts, where it is certain that there will be a winning party and a losing party, commonly known as the win-lose solution. Nevertheless, this does not imply that understanding evidence in arbitration proceedings is unimportant. Knowledge of evidence is crucial because the evidence presented during the evidentiary phase is the heart of dispute resolution.

Determining valid evidence in the examination process of a dispute or case is very important. A limitative determination of valid evidence is the foundation of legal certainty in the evidentiary process and decision-making. The determination of valid evidence in an examination depends on the legal provisions indicated in specific

legislation. This reference determination lies within the arbitration clause. If, for example, the parties designate BANI or SIAC as the arbitration institution for dispute resolution, they are subject to the rules regarding the determination of evidence as regulated by each of these institutions. If the parties agree to designate, for instance, BANI, they agree to be governed by the procedural law applicable in Indonesia (Tutuhatunewa, 2022).

F. Submission Of Evidence

The submission of evidence, whether in civil court proceedings or through arbitration hearings, follows specific mechanisms that must be adhered to. It is unlikely that everyone is fully familiar with and understands the intricacies of court proceedings and evidence submission; thus, legal professionals such as lawyers should be well-versed in the procedures for submitting evidence at the various stages of the hearings.

It is impractical for parties to immediately present their evidence as soon as the court session begins. There are mechanisms and procedures that must be followed by the disputing parties. Given this context, the presence of a legal professional becomes essential for those seeking justice in court.

When discussing the submission of evidence in civil dispute resolution through the courts, the submission is done in turns, starting with the plaintiff/petitioner. This practice is not merely a long-standing routine but is grounded in the provisions of Article 163 of the HIR, which states that whoever claims a right or affirms it, or disputes another's right, must provide proof of that claim or event. Thus, it is important to understand how evidence is submitted in arbitration as follows:

1) Submission of Evidence Without a Hearing

The submission of evidence without a hearing is a procedure that cannot be found in the district court, as every stage of examination conducted by judges in district courts must occur in a hearing that is open to the public. This is where the examination of disputes through arbitration differs, as arbitration allows for the submission of evidence without a hearing. The purpose of submitting evidence without a hearing is to optimize time and costs associated with the proceedings for the parties involved. However, not all evidence can be submitted without a hearing; only certain written evidence qualifies for submission without a hearing, which includes documents possessed by the parties.

Written evidence can be simply defined as anything that contains written characters intended to express thoughts or feelings that can be used as proof. Written evidence may include: (a) authentic acts; and (b) letters or handwritten documents.

2) Testimony of Fact Witnesses

A fact witness can be understood as someone who is knowledgeable about an event that has occurred. The value of a fact witness's testimony in a case is determined by how the witness came to know about the event. A witness who has direct knowledge of the event in question, having seen or heard it firsthand, possesses evidentiary value in court. In contrast, a witness who learns about the event not through direct experience but through secondhand accounts from others does not hold evidentiary value under the law. Such testimony is referred to as testimonium de auditu, and this type of testimony cannot be accepted as valid evidence.

3) Expert Testimony

Expert testimony differs significantly from that provided by fact witnesses. While fact witnesses must provide testimony based on their own direct knowledge, meaning the testimony must originate from their personal observations, testimony based on what others have said does not hold evidentiary value. Expert testimony, on the other hand, is given by someone based on their expertise. When providing testimony, the expert does not rely on the facts of the case but rather on their specialized knowledge, which allows them to clarify the disputed issues for the parties involved. This testimony can serve as guidance in decision-making.

G. Presumptions

A presumption is an inference drawn by a judge from events or occurrences in a trial. Therefore, if the presumption is made by the judge, it is referred to as a judicial presumption; whereas, if the presumption is based on law, it is called a statutory presumption. In the context of evidence law, a presumption cannot stand alone in a case examination conducted by either judges in a district court or arbitrators in arbitration proceedings. This is because a presumption must be based on what is revealed in the facts of the trial, whether during the examination of witnesses or the presentation of written evidence.

H. Confession

A confession in court (gerechtelijke bekentenis) is a statement made by one party,

either in writing or verbally, that acknowledges, in whole or in part, the events, rights, or legal relationships asserted by the opposing party, which results in further examination by the judge becoming unnecessary.

The confession made before the judge refers to a statement given during a trial specifically held for the dispute presented. It is not permissible to meet the judge at any occasion and make a confession when a hearing is not taking place. Therefore, all parties involved or their representatives must understand when a confession can be used as evidence to resolve the ongoing dispute.

The evidence in the form of a confession is actually similar to a confession made in the response of the respondent. A confession is not viewed as evidence, based on the argument that if one party acknowledges the claims of the other party (the claimant), then the party presenting the claims does not need to prove them further.

A confession serves as a statement that affirms the events, rights, or legal relationships put forth by the opposing party. Article 1916 of the Civil Code (BW) stipulates that the strength given to a confession is a presumption under the law; this presumption does not allow for any proof if, based on this presumption, the law states the invalidity of certain actions or denies the acceptance of a claim, unless the law itself permits proof against it. Thus, with the existence of a confession, the dispute is considered resolved, even if the confession does not align with the truth, and the judge does not need to examine the truth of the confession.

I. The Strength of Evidence

When discussing the strength of evidence, the system is not regulated in each rule. Each rule merely touches upon the fact that every decision made must pay attention to and consider the pieces of evidence found during the examination process. However, how the assessment of the strength of evidence inherent in each piece of evidence is evaluated is not questioned. For instance, the Civil Procedure Code (Rv) mentions documentary evidence and witness testimony, as referenced in Articles 628 and 630, but it does not regulate how to assess the strength of the mentioned pieces of evidence. Similarly, Article 14 of the BANI Procedural Regulation mentions evidence in the form of statements, documentary evidence, and evidence from witnesses or experts, yet it does not explain the value of the strength of this evidence. There is also no mention of the minimum threshold of proof. The same applies to the ICSID.

Article 34 of the ICSID mentions evidence consisting of documentary evidence (written evidence) or other forms of evidence. However, it does not discuss how to assess the strength of the evidence. The situation described in the aforementioned rules is consistent with what is regulated in UNCITRAL. Articles 24, 25, and 27 broadly touch upon the application of evidence through documentary evidence, witness statements, and expert testimony. Yet, how to assess the strength of each piece of evidence is not discussed. Although Article 25, paragraph (6), warns that, "The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered," based on the warning contained within it, the Arbitral Tribunal must assess the validity and material relevance of the evidence presented by the parties in making their decision. However, how to evaluate the validity and material relevance of the strength of each piece of evidence is not further regulated. It seems that the application of the system for assessing the strength of evidence is not elaborated upon, thus leaving the implementation of this assessment entirely to the discretion of the Arbitral Tribunal. But if we ask, is such an assumption justifiable? Is it not dangerous to fully entrust the discretion of evidence evaluation to the Arbitral Tribunal without guidelines? Clearly, it is dangerous!

The discretion in assessing the strength of evidence without clear direction and guidelines can lead to a situation of unfair trial, or a trial that is not fair, resulting in biased and partial decisions. To avoid an unfair trial, there is a need for legal rules governing the assessment of the strength of evidence so that the Arbitral Tribunal does not arbitrarily evaluate each piece of evidence presented by the parties during the examination process. Since none of the rules discussed above outlines any governing principles, we must seek references to the principles found in legal doctrines and customs. From these doctrinal references and principles, the procedures for assessing the strength of the evidence in the Arbitral Tribunal forum can be established.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Arbitration is a part of formal civil law, as it also represents the enforcement of substantive civil law, namely Commercial Law. Therefore, the

general principles of evidence in civil cases generally also apply as principles of evidence in arbitration. Referring to the provisions in Law No. 30/1999, which serves as the lex arbitri in Indonesia.

The principle of audi alteram partem also applies in arbitration, as evident in Article 29, paragraph (1) of Law No. 30/1999. The burden of proof in arbitration is not regulated in any article of Law No. 30/1999, either implicitly or explicitly. Thus, the reference is made to the provisions in the Civil Code (BW) and the Code of Civil Procedure (HIR), where the BW and HIR, as the lex generalis of Law No. 30/1999, essentially stipulate that the burden of proof lies with the party making the assertion (whoever asserts must prove), while still adhering to the principles of fairness and balance. Law No. 30/1999 also does not regulate the obligation to testify. This raises issues when there is a witness who is unwilling to appear without valid reasons. If the arbitrator requests a third party to produce certain documents and that third party refuses, Law No. 30/1999 does not provide provisions that the arbitrator can use to compel the witness to appear or the third party to produce the requested documents. The subpoena mechanism, which should be a viable solution, is lacking.

B. Suggestion

To improve arbitration practices in Indonesia, it is crucial to amend Law No. 30/1999 to explicitly define the burden of proof and establish procedures for compelling witness testimony and document production. Introducing a comprehensive subpoena mechanism would address existing shortcomings and enhance the fairness and effectiveness of the arbitration process.

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