ISNU Nine-Star Multidisciplinary Journal (INS9MJ)
(eISSN: 3063-8984)
Volume 2, Number 1, May 2025 (22-29)

Legal Analysis: Settlement of Disputes Between Company Shareholders Through Arbitration

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Info Articles
Article History
Received: 2025-04-18
Revised: 2025-05-15
Published: 2025-05-30

Keywords:
Arbitration; Corporate Disputes; Shareholders; Limited Liability Companies

Abstract
Disputes between shareholders are a common challenge in corporate practice and have the potential to cause instability within a company's internal structure. The open and time-consuming nature of litigation in court often deviates from business needs, which prioritize efficiency and confidentiality. Therefore, arbitration is seen as an alternative dispute resolution method that is more adaptable to the dynamics of the business world. This article examines the legal mechanism for resolving disputes between shareholders through arbitration, focusing on an analysis of the national legal framework, particularly Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The approach used is normative juridical, supported by literature review and jurisprudential analysis. The results of the study indicate that the existence of an arbitration clause in the articles of association or agreement between shareholders is a fundamental element in transferring jurisdiction from the courts to arbitration institutions. However, challenges remain in harmonizing norms and implementing consistent arbitration practices. Therefore, there is a need for strengthening regulations and legal education for stakeholders so that dispute resolution through arbitration can run optimally and provide legal certainty.

I. INTRODUCTION

In the increasingly complex and competitive dynamics of the business world, the existence of shareholders as an integral part of the company structure has a very crucial role.(Mujito et al., 2024)Shareholders are not only a source of capital for the company, but also influence the direction of the company's strategic policies.(Handarini, 2018)However, differences in interests, investment objectives, and views on the direction of company management often lead to friction among shareholders. If not managed properly, these conflicts can lead to legal disputes that impact the company's internal stability and viability.

Disputes between shareholders can cover a variety of issues, ranging from abuse of authority, to conflicts of interest, to dividend distribution.(Rifqi Hasbulloh, 2022). Appointment or dismissal of directors and commissioners, up to the exercise of voting rights in the general meeting of shareholders (GMS)(Saputra et al., 2024)Disputes that are not promptly and effectively resolved can reduce the value of shares and company operations, disrupt operations, and even trigger broader legal intervention. Traditional dispute resolution through litigation in court, while legally valid, is often at odds with the practical needs of the business world.

Formal, public litigation processes that are time-consuming and costly tend not to be suited to the characteristics of the business world, which requires fast, efficient and confidential solutions.(Sugianto & Marpaung, 2022)Therefore, alternative dispute resolution methods such as arbitration are becoming increasingly relevant and reliable options for business actors. Arbitration, as a private, flexible, and final dispute resolution method, offers various advantages, particularly in the context of corporate disputes, which often require resolutions that are not only

legally fair but also maintain the continuity of business relationships between parties.(Radhina, nd).

However, the implementation of arbitration in disputes between shareholders is not free from challenges, especially in terms of the application of arbitration clauses, interpretation of jurisdiction(Lumowa, 2022). and the implementation of arbitration decisions. This article aims to examine the legal framework for resolving disputes between shareholders of a company through the arbitration mechanism. This study focuses on analyzing the legal framework applicable in Indonesia, including Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 40 of 2007 concerning Limited Liability Companies.

Furthermore, this research will also discuss the effectiveness of arbitration implementation in practice and the legal challenges faced. This research is crucial for providing a comprehensive understanding to stakeholders, including regulators, legal practitioners, and shareholders, so they can create a dispute resolution system that is not only efficient and equitable, but also capable of providing legal certainty and maintaining a conducive investment climate in Indonesia.

II. RESEARCH METHODS

This research is a normative legal research that aims to analyze the mechanism for resolving disputes between company shareholders through arbitration based on the legal framework applicable in Indonesia.(Jonaedi Efendi et al., 2018)This research was conducted using a juridical approach that focuses on the study of positive legal norms and relevant legal doctrines.

The type of research used is normative legal research, namely research conducted by examining legal materials as a basis for answering problems. The law being studied. This research uses several approaches, namely: Statute approach which is used to analyze laws and regulations governing arbitration and corporations, especially Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 40 of 2007 concerning Limited Liability Companies. Conceptual approach to understand the basic concepts related to arbitration, shareholder rights, and the principles of dispute resolution in corporations.

The case approach is carried out by examining relevant arbitration and court decisions as an illustration of the application of legal norms in practice. The sources of legal materials used in this study consist of: Primary legal materials, namely applicable laws and regulations, including laws, implementing regulations, as well as arbitration decisions and/or court decisions related to shareholder disputes.

III. RESULTS AND DISCUSSION

A. The Significance of Arbitration in Shareholder Dispute Resolution

In the dynamic corporate world, disputes between shareholders are unavoidable, especially when there are differing views regarding company management, profit distribution, or decision-making rights. In such circumstances, an effective, expeditious, and fair dispute resolution mechanism is required. Arbitration has emerged as an alternative dispute resolution option increasingly chosen by parties, including shareholders, due to its flexibility, confidentiality, and orientation toward peaceful resolution.(Bianti, 2023).

Arbitration in the context of shareholder disputes offers several advantages over litigation in court. One of the main advantages is confidentiality. In corporate disputes, maintaining the company's reputation is a priority. The closed nature of the arbitration process significantly supports this need, unlike court hearings, which are open to the public. Furthermore, arbitration decisions are final and binding, thus providing legal certainty without the lengthy appeals process that occurs in court.(Mustika & Ferrary, 2023).

Arbitration procedures also tend to be quicker than lengthy court proceedings. This allows companies to resume business operations without the distraction of protracted internal conflicts. Furthermore, the parties can select arbitrators with expertise in business or

corporate law, allowing for resolution by parties who understand the context and complexities of the dispute.(Isnaini, 2020).

In practice, arbitration clauses are usually included in a company's articles of association or in a shareholders' agreement. This clause provides the legal basis for bringing disputes to an arbitration institution when a conflict arises. Therefore, it is important for shareholders to ensure that the clause is clearly drafted, including selecting a reputable arbitration forum such as the Indonesian National Arbitration Board (BANI) or another international arbitration institution. However, selecting an arbitrator is not without challenges.(Isnaini, 2020).

The relatively high costs of arbitration and the limitations in the enforcement of arbitration awards in some jurisdictions are noteworthy. However, in the context of shareholders, the benefits of arbitration in maintaining internal corporate stability and efficient dispute resolution often far outweigh the disadvantages.(Winarta, 2022).

Thus, arbitration becomes a strategic instrument in maintaining harmonious relations between shareholders and the sustainability of corporate activities. Through a professional, flexible approach and minimal publicity, arbitration plays a crucial role in creating a healthy investment climate and increasing trust in alternative legal systems in the business sector.

In addition to the advantages already explained, arbitration also plays a crucial role in strengthening corporate institutions. In modern corporate systems, an efficient dispute resolution mechanism is essential to prevent protracted conflicts that could harm a company's operations. Arbitration allows for resolutions that focus more on business solutions than merely formalistic legal aspects, resulting in more applicable outcomes and a focus on the sustainability of relationships between shareholders.(Nugroho & SH, 2017).

In practice, arbitration is also considered more adaptable to the complexities of stakeholder relationships, which often involve emotional aspects, trust, and business networks. The arbitration process allows the parties to discuss matters openly while maintaining a non-confrontational atmosphere.(Masse & Rusli, 2017)This makes arbitration an ideal option for resolving internal disputes without creating friction that could damage long-term relationships among shareholders. The advantages of arbitration in resolving shareholder disputes can be summarized as follows:(Sari, 2019)

1. Privacy and confidentiality: The arbitration process is conducted behind closed doors, thereby maintaining the confidentiality of sensitive company information.
2. Speed of resolution: Arbitration has a faster procedure compared to court litigation.
3. Legal certainty: The arbitration decision is final and binding, so it is impossible to prolong the process.
4. Flexibility of procedure: The parties can agree on the arbitration procedure to be used, including choosing an arbitrator that suits their needs.
5. Long-term cost efficiency: While the initial costs of arbitration can be high, its efficiency in resolving disputes completely can save costs compared to lengthy litigation.
6. Reducing negative impact on business relationships: With a more peaceful approach, arbitration can keep relationships between shareholders professional after a dispute.

The importance of understanding arbitration mechanisms from the outset has also prompted many companies to involve legal consultants in drafting their articles of association and shareholder agreements. This ensures that, should a dispute arise, the arbitration process can be initiated promptly without procedural obstacles. Therefore, legal awareness and strategic planning from the outset are crucial for the effectiveness of arbitration in a corporate context.

Overall, arbitration is not merely an alternative to litigation, but has become an integral part of risk management in modern corporate governance. Companies that implement good corporate governance (GCG) principles generally integrate arbitration as part of their internal

conflict resolution mechanisms to maintain business continuity and investment stability.

B. Loading of Arbitration Clauses in Agreements and Contracts

For arbitration to be used as a forum for resolving disputes between shareholders or between parties in a business relationship, a written agreement must be reached between the parties. This agreement is usually set out in the form of an arbitration clause contained in a primary agreement, such as a shareholders agreement, a company's articles of association, or other cooperation contract.(MUNIROH, 2021).

This arbitration clause serves as the legal basis for the arbitration institution to hear and decide any disputes that arise in the future. A good arbitration clause must be clearly and concisely drafted to avoid multiple interpretations.(Latumahina, 2020). Ambiguity in the clause can give rise to additional disputes regarding jurisdiction, which could potentially slow down the settlement process.(Muryati & Heryanti, 2011).

1. Therefore, the parties are advised to draft an arbitration clause with the assistance of a legal professional, preferably one who understands national and international arbitration practices and laws. Some important elements that need to be included in an arbitration clause include: An agreement to resolve disputes through arbitration explicitly stating that any disputes that arise will be resolved through arbitration, not through the courts.
2. The chosen arbitration institution is the Indonesian National Arbitration Board (BANI), the Singapore International Arbitration Centre (SIAC), or other institutions.
3. The number of arbitrators and the method of appointment are usually determined by one or three people, and appointed by the parties or by the arbitration institution.
4. The seat of arbitration to determine the applicable procedural law.
5. The language used in the arbitration process to avoid confusion in communication and documents.
6. The type of arbitration chosen can be institutional arbitration or ad hoc arbitration.

It's important to note that an arbitration clause is not merely a formality, but rather a legally binding agreement. An arbitration award arising from this clause can be recognized and enforced by a court after obtaining an exequatur (executory order) in accordance with Articles 59 and 65 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Arbitration clauses also provide protection for investors or minority shareholders who are concerned about the dominance of majority shareholders in corporate decision-making. Through arbitration, minority shareholders have a more neutral and effective legal avenue to assert their rights without the need for complex and lengthy litigation.(Sumaya, 2013).

Therefore, the inclusion of an arbitration clause should not be taken lightly. This clause is both a preventative measure and a strategic solution to address potential future conflicts. For the business world, carefully drafting an arbitration clause reflects a readiness to manage legal risks professionally and efficiently.(Marsca & Humaira, 2022).

In Indonesian business practice, awareness of the importance of including arbitration clauses in contracts remains variable. Multinational companies or corporations accustomed to operating across borders are generally more familiar with the existence and function of arbitration clauses. However, for most domestic companies, these clauses are often ignored or considered merely administrative add-ons.

In fact, the existence of an arbitration clause can actually be a first line of legal defense when a conflict arises unexpectedly. One of the main challenges in drafting an arbitration clause is the discrepancy between the wording of the clause and prevailing legal practice. For example, in some cases, the clause states that the parties "may" resolve the dispute through arbitration, rather than "must."(Rudy & Mayasari, 2022).

The word "may" is permissive and non-binding, potentially creating legal ambiguity and opening the door for one party to refuse arbitration. This can undermine the effectiveness of dispute resolution and even trigger litigation. Furthermore, an overly general arbitration clause that doesn't specify the arbitral institution or applicable rules can also create uncertainty.(Rudy & Mayasari, 2022).

Disputes over who has the authority to resolve a case or how the arbitration procedure is conducted can be time-consuming and costly. Therefore, careful wording of the clause is crucial to its effectiveness in practice. Furthermore, the inclusion of an arbitration clause must also consider its applicability to third parties or parties who did not explicitly sign the contract but are involved in its implementation. In some jurisdictions, the principle of privity of contract limits the applicability of the clause to only the parties who signed it.(Diansari, 2021).

However, in modern arbitration, the group of companies doctrine approach allows for the extension of arbitration responsibility to substantially related parties, even if not explicitly listed as parties. From a legal protection perspective, arbitration clauses guarantee that dispute resolution is not only prompt and confidential, but also impartial, especially when disputes involve foreign investors.

In the context of cross-border investment, selecting international arbitration, such as through the International Centre for Settlement of Investment Disputes (ICSID), can even be a determining factor in investors' willingness to invest in a country, including Indonesia. Therefore, the inclusion of an arbitration clause not only concerns the technical aspects of contract drafting but also reflects legal certainty, business protection, and the parties' readiness to face risks. This clause serves as a legal bridge connecting national legal interests with international practice, as well as the spirit of peaceful resolution with the effectiveness of legal protection.(Latumahina, 2020).

C. The Existence of Arbitration as an Alternative Resolution of Business Disputes in Company Shares

In the dynamic business world, particularly within a limited liability company structure, share ownership not only impacts financial interests but also managerial rights, voting rights, and strategic decision-making. When conflicts arise between shareholders, particularly regarding company management, dividends, share transfers, or the exercise of voting rights, business disputes are inevitable. In this context, arbitration presents itself as a highly relevant and strategic alternative dispute resolution (ALDR) mechanism.(Wajdi et al., 2023).

The existence of arbitration as a dispute resolution mechanism offers various benefits to shareholders. Compared to litigation proceedings in court, which tend to be open to the public, arbitration offers a high degree of confidentiality.(Radhina, nd)This is important to maintain the company's good name and prevent the leak of sensitive information to the public or business competitors.

Furthermore, arbitration is relatively quicker to resolve because it doesn't require a tiered appeals system like in general courts. In corporate cases, arbitration is often the preferred option for resolving internal disputes, such as between majority and minority shareholders.

These disputes can arise from management actions deemed detrimental to one of the parties, such as unfair board decisions, conflicts of interest in transactions, or abuse of voting rights. Through arbitration, these disputes can be resolved with a more neutral, efficient approach, and based on the principles of corporate justice. The role of arbitration is also evident in cases of violations of shareholder agreements, which are agreements typically made between shareholders outside the articles of association. If such agreements contain an arbitration clause, any disputes arising between shareholders will be resolved through the arbitration forum. This strengthens arbitration's role as a legitimate and final resolution forum in the realm of civil and corporate law.(Nugroho & SH, 2017).

In Indonesia, arbitration has been legally recognized through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law provides a strong legal basis for parties seeking to resolve disputes privately and independently of the state court system. Furthermore, institutions such as the Indonesian National Arbitration Board (BANI) have long been the primary choice for resolving business disputes, including conflicts between shareholders within a company.(Maharani et al., 2020).

However, the use of arbitration in business practice, particularly in resolving shareholder disputes, still faces various challenges. One of these is a lack of understanding among business actors regarding arbitration procedures and the legal force of arbitration decisions. Furthermore, there remains resistance from some parties who prefer general courts as a "formal" means of dispute resolution.(Albar, 2019).

Despite this, global trends indicate that arbitration is increasingly becoming a preferred instrument for resolving corporate disputes. In many developed countries, arbitration clauses have become standard in nearly all important business documents, including shareholder agreements, joint venture agreements, and investment agreements. This practice is slowly being adopted by businesses in Indonesia, especially those dealing with foreign investors. Going forward, arbitration is expected to make a significant contribution to creating a healthy, efficient, and fair business legal ecosystem. Prompt and professional dispute resolution will provide legal certainty for shareholders and maintain the stability of company operations. Therefore, education about arbitration and strengthening the role of national arbitration institutions need to be continuously promoted as part of economic law reform in Indonesia.(Mangei, 2020).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Arbitration is a form of alternative dispute resolution (ALDR) that is increasingly relevant in the context of share ownership disputes in companies. Its significance lies not only in the speed and efficiency of the resolution process, but also in its ability to maintain confidentiality, neutrality, and provide legal certainty to the disputing parties.

In shareholder relations, particularly in cases of disputes between the majority and minority parties, arbitration allows for fair resolution without the need for lengthy litigation, which often results in reputational losses and time wastage. Including an arbitration clause in a contract or agreement between shareholders is key to ensuring this mechanism's effective use. The clause must be drafted explicitly, clearly, and in accordance with applicable legal practices to avoid new disputes regarding the forum for resolution.

Lack of clarity or ambiguity in arbitration clauses can potentially create additional conflict and reduce the effectiveness of settlements. The existence of arbitration in the corporate stock market demonstrates the synergy between the business world's need for professional and expeditious dispute resolution and a modern legal system that encourages non-litigative resolution.

Therefore, education for business actors and strengthening of arbitration institutions such as BANI must continue to be carried out in order to create a more adaptive, efficient dispute resolution culture and support legal certainty in the Indonesian business environment.

B. Suggestion

As a recommendation, in efforts to resolve disputes between company shareholders through arbitration, it is necessary to strengthen legal awareness among shareholders regarding the importance of including an arbitration clause in the company's articles of association or shareholder agreement from the company's inception. Furthermore, selecting a credible and experienced arbitration institution is also crucial to ensure a fair, expeditious, and efficient resolution process. The government and relevant authorities are also expected to continuously evaluate existing regulations to support the effective implementation of arbitration and ensure the enforceability of arbitration decisions through a responsive national judicial system.

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