



Investor Protection Through Arbitration: The Urgency of Alternative Mechanism in Resolving Investment Disputes in Indonesia

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<p>Sejarah Artikel Received : 2026-04-13 Revised: 2026-04-21 Published: 2026-05-04</p> <p>Kata kunci: <i>Arbitration; Investment Disputes; Investor Protection</i></p>	<p>This study examines the strategic role of arbitration as a mechanism for resolving investment disputes in Indonesia. Investment plays a vital role in national economic development, yet it inherently carries the potential for conflicts between investors, business partners, and the government. Conventional litigation often proves lengthy, costly, and insufficiently confidential, prompting a demand for alternative dispute resolution. This research employs normative legal methods (doctrinal research), using statute and conceptual approaches to analyze relevant legislation, including Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and Law No. 25 of 2007 on Investment, as well as arbitral awards and scholarly literature. The study systematically identifies legal issues, collects and classifies legal materials, and applies qualitative analysis through grammatical, systematic, and teleological interpretation. Findings indicate that arbitration provides legal certainty, procedural flexibility, neutrality, and enforceable outcomes, strengthened by Indonesia's ratification of the 1958 New York Convention. Despite legal and practical challenges, arbitration effectively protects investor rights, supports a conducive investment climate, and enhances Indonesia's economic competitiveness. Recommendations include strengthening institutions, human resources, and future research aligned with digital and cross-border investments.</p>

I. INTRODUCTION

Investment occupies a crucial position in supporting national economic development. In addition to contributing to economic growth, investment plays a significant role in creating employment opportunities, promoting technology transfer, and enhancing the country's competitiveness at the global level. As a developing country, Indonesia continues to strive to increase its attractiveness to both domestic and foreign investors by providing various facilities and legal certainty guarantees. Nevertheless, investment activities inherently carry the potential for disputes, whether between investors and business partners or with the government, generally arising from differences in contract interpretation, breaches of agreement, regulatory or policy changes, and legal uncertainties (P. Harahap, 2018).

In practice, dispute resolution through conventional courts often faces several obstacles, including lengthy procedures, relatively high litigation costs, and the open nature of court proceedings that may

compromise the confidentiality of business interests. This situation has created a demand among investors for a simpler, faster, and more efficient dispute resolution mechanism that also provides legal certainty. In this context, arbitration has emerged as a viable alternative, offering advantages such as procedural flexibility, the parties' freedom to select arbitrators with specialized expertise, and decisions that are final and binding (Zaryanda, 2023). These features make arbitration particularly relevant in the investment sector, where investors require certainty and protection of their capital and rights.

In Indonesia, the legal framework for arbitration is clearly defined under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a juridical basis for parties to resolve disputes outside the court system, including investment-related conflicts (Zaryanda, 2023). Furthermore, Law Number 25 of 2007 on Investment specifically allows for the resolution of disputes between the government and investors through

international arbitration, provided there is mutual agreement between the parties. These regulations affirm the legal recognition of arbitration as a legitimate dispute resolution mechanism, ensuring the protection of investors' rights and strengthening legal certainty within Indonesia's investment climate.

Indonesia's commitment to international legal norms further reinforces the role of arbitration as an alternative mechanism for resolving investment disputes. By ratifying the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Indonesia demonstrates its readiness to acknowledge and enforce arbitral decisions rendered in other countries. This step underscores the state's commitment to providing a neutral dispute resolution mechanism, protecting the interests of foreign investors, and significantly contributing to investor confidence in committing capital to Indonesia (Mangei, 2020).

Although arbitration offers numerous advantages, its practice in Indonesia still faces several challenges. From a regulatory perspective, obstacles arise when aggrieved parties attempt to annul arbitral awards in court due to procedural errors or inconsistencies with public policy principles. Implementation challenges include limited capacity of executing institutions, complex and time-consuming administrative procedures, and the scarcity of professional arbitrators (P. Harahap, 2018). These issues may reduce arbitration's effectiveness as a mechanism for investor protection, necessitating regulatory improvements and enhanced coordination between arbitration institutions and the judicial system.

Based on the discussion above, this study confirms that arbitration holds a pivotal position as an out-of-court mechanism for resolving investment disputes in Indonesia. Its role is comprehensive, serving not only as a tool for legal protection of investors but also as an instrument that contributes to the creation of a stable, conducive, and sustainable investment climate. Through arbitration, legal certainty and predictability are maintained, thereby strengthening investor confidence in the national legal system. Within this framework, arbitration serves as a strategic instrument for the government to attract

investment while enhancing Indonesia's competitive position in the global economic arena.

II. RESEARCH METHODS

This study employs a normative legal research method (doctrinal research) that focuses on an in-depth analysis of legislation concerning arbitration and the mechanisms for resolving investment disputes in Indonesia (Rizkia & Fardiansyah, 2023). The approach applied encompasses two main aspects: first, the statute approach, which examines the positive legal framework; and second, the conceptual approach, which explores the theoretical foundations and practical application of arbitration in dispute resolution. The legal sources analyzed are divided into two categories: primary sources, such as Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 25 of 2007 on Investment, and relevant arbitral awards; and secondary sources, which include legal literature, scholarly journal articles, and expert opinions in the field of arbitration.

The research was conducted through a series of planned and systematic stages. The initial stage involved identifying legal issues related to the protection of investors' rights through arbitration mechanisms. This was followed by the collection of legal materials through library research. In the next stage, the gathered legal sources were classified and qualitatively analyzed using various legal interpretation techniques, including grammatical, systematic, and teleological interpretation, to assess the relevance and application of arbitration in investment dispute resolution. The final stage involved compiling the analytical findings in an argumentative manner to address the research questions and formulate conclusions. The research process can be summarized as follows: issue identification, collection of legal materials, analysis and interpretation, formulation of conclusions.

Normative legal research does not employ concepts of population or sample as in empirical studies; instead, it focuses on relevant legal materials as the object of analysis. Therefore, this research is not confined to a specific geographic location, but is conducted through literature review exploring legal sources, including legislation,

arbitral awards, and academic legal literature. Methodologically, this study is classified as library-based research, carried out through the examination of legal materials available in libraries, legal archives, and national and international legal databases.

III. RESULTS AND DISCUSSION

A. The Role of Arbitration as a Mechanism for Resolving Investment Disputes in Indonesia

Within Indonesia's legal framework, arbitration plays a pivotal role as a means of dispute resolution, particularly in the field of investment. Arbitration is not merely an alternative to the general judicial system; it is also legally recognized as a forum that ensures legal certainty for disputing parties. The demand from both domestic and foreign investors for a neutral, professional, and efficient forum renders arbitration a strategic and relevant mechanism. This position reflects the principle of party autonomy, where parties have full freedom to determine procedures, appoint arbitrators, and select the venue of arbitration based on mutual agreement (Japar, 2025).

Normatively, the position of arbitration is reinforced by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which acknowledges arbitration as a legitimate mechanism for resolving disputes with binding legal effect. Article 1 of this law defines arbitration as a method of resolving conflicts outside conventional courts based on a written agreement between the parties. This provision affirms the independence of arbitration as a dispute resolution forum, with decisions that are final and binding, thereby significantly reducing the risk of protracted legal proceedings in court. In addition, Law No. 25 of 2007 on Investment provides a specific legal framework for resolving disputes between investors and the government through international arbitration, provided there is agreement among the disputing parties (Astiti & Tarantang, 2018).

From the perspective of legal certainty and efficiency in dispute resolution, arbitration assumes critical importance. Court litigation often involves lengthy processes, rigid procedures, and high costs for the parties. In contrast, arbitration offers a more efficient alternative with flexible procedures, the

opportunity to appoint arbitrators with specialized expertise, and awards that can be immediately enforced. These features are particularly significant for investors making large-scale, long-term investments, as legal certainty is a key factor in protecting economic rights and ensuring business continuity (Prayuti et al., 2024).

Moreover, the role of arbitration becomes increasingly significant when viewed from an international law perspective. By ratifying the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Indonesia demonstrates its commitment to recognize and enforce arbitral awards rendered outside its territory. This step underscores the legitimacy of arbitration as a globally recognized dispute resolution mechanism while providing legal protection for foreign investors. At the same time, this policy enhances Indonesia's competitiveness in attracting international investment flows. Thus, arbitration functions not only as a tool for domestic dispute resolution but also as an integral part of cross-border investment dispute settlement systems (Kurniawan, 2024).

Although arbitration holds a strong position within the dispute resolution system, it does not entirely eliminate the role of courts. The judiciary retains certain limited powers, such as registering arbitration agreements, appointing arbitrators when parties fail to reach an agreement, and reviewing the annulment or enforcement of arbitral awards under conditions explicitly defined by law. Consequently, the relationship between arbitration and courts is complementary, with the judiciary serving as a supporting institution to ensure the effectiveness of arbitration without undermining the principle of party autonomy (Yamin, 2024).

Based on the foregoing discussion, this study confirms that arbitration holds high urgency as a mechanism for resolving investment disputes outside the courts in Indonesia. The role of arbitration is multifaceted: on one hand, it provides legal certainty and protection for investors, and on the other, it contributes to creating a conducive investment climate, supports sustainable economic growth, ensures predictability in law, and strengthens confidence in the national legal system. Within this framework,

arbitration serves as a strategic instrument for the state to enhance investment attraction and reinforce Indonesia's competitive position in the global economic arena.

B. The Urgency of Arbitration in Providing Legal Protection for Investors

Arbitration also holds significant importance within the framework of international law. By ratifying the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Indonesia demonstrates its commitment to acknowledge and enforce arbitral awards rendered outside its national jurisdiction. This step strengthens the legitimacy of arbitration as a globally recognized dispute resolution mechanism, provides legal certainty and protection for foreign investors, and enhances Indonesia's competitiveness in attracting international investment flows. This position confirms that arbitration functions not only as a tool for domestic dispute resolution but also as an integral component of cross-border investment dispute settlement systems (Hakim, 2022).

One of the primary advantages of arbitration lies in its final and binding nature. Unlike court litigation, which may involve prolonged appeals, arbitration effectively reduces the risk of legal uncertainty that could harm investors. Legal certainty is a crucial factor for investors engaging in long-term investment, as it ensures protection of their rights and fair dispute resolution. Furthermore, arbitration offers procedural flexibility, including the determination of the arbitration venue, the choice of language, and scheduling of hearings, allowing the dispute resolution process to be conducted more efficiently and tailored to the needs of the parties.

The urgency of arbitration also stems from the need to provide adequate protection for foreign investors. In cross-border investment disputes, concerns often arise regarding potential bias in national courts. Arbitration provides a neutral and independent forum, where dispute resolution is based on the law agreed upon by the parties and applicable international legal principles. Consequently, investors gain greater security and legal certainty. Indonesia's ratification of the 1958 New York Convention further reinforces this

position, enabling the recognition and enforcement of foreign arbitral awards within Indonesian territory and thereby offering more effective legal protection for international investors (Agustina, 2024).

In addition, arbitration ensures a relatively higher level of confidentiality compared to open court proceedings. Investment disputes often involve sensitive information, such as strategic company data, trade secrets, and business reputation, which could be jeopardized if handled publicly. Through arbitration, dispute resolution is conducted privately, thereby protecting the business interests of the parties. This confidentiality creates a sense of security for investors and helps mitigate reputational risks that may arise from public court proceedings (Juliana, n.d.).

The significance of arbitration as a dispute resolution mechanism is further strengthened by its legal legitimacy within the national framework. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides a clear legal basis for parties to resolve disputes outside the court system. Meanwhile, Law No. 25 of 2007 on Investment specifically accommodates the resolution of disputes between the government and investors through international arbitration, provided that the parties agree. These regulations demonstrate the state's commitment to establishing an effective dispute resolution mechanism that guarantees legal certainty and protection for investors while fostering a stable and conducive investment climate (Asnawi et al., 2024).

Beyond practical advantages, arbitration also plays a strategic role in the national economy. By offering a dispute resolution mechanism that is fast, neutral, and professional, arbitration enhances investor confidence in Indonesia's legal system. This trust, in turn, encourages investors to channel their capital domestically, which positively impacts economic growth, technology transfer, and job creation. Thus, arbitration serves not merely as a legal instrument but also as an essential means of supporting sustainable economic development.

C. Legal Regulation of Arbitration in Investment Disputes in Indonesia

The legal framework for arbitration in Indonesia is explicitly governed by Law No. 30

of 1999 on Arbitration and Alternative Dispute Resolution. This law provides a legal foundation for parties to resolve disputes independently through arbitration, including investment-related disputes. Article 1 of the Arbitration Law defines arbitration as the resolution of disputes outside the court system based on a written agreement between the parties, thereby affirming the principle of party autonomy as the legal basis for settling investment disputes (Triana & Si, 2019).

In addition to general provisions on arbitration, Law No. 25 of 2007 on Investment specifically regulates the dispute resolution mechanism between investors and the government. Article 32 of this law allows for the possibility of resolving disputes through international arbitration, provided that the parties mutually agree. This regulation is particularly important for foreign investors who require a neutral forum and decisions recognized internationally, thereby ensuring legal protection for their capital and rights (Indonesia, Law No. 25 of 2007 on Investment, Article 32 paragraph 4, 2007).

The legal regulation of arbitration in Indonesia also covers procedural aspects and the enforcement of arbitral awards. The Arbitration Law grants courts the authority to register arbitration agreements, appoint arbitrators if the parties fail to reach an agreement, and execute arbitral awards when the losing party does not voluntarily comply. Furthermore, Indonesia has ratified the 1958 New York Convention, which governs the recognition and enforcement of foreign arbitral awards. This ratification enables international arbitral awards to be enforced within Indonesian territory, thereby strengthening the position of arbitration as a legitimate, effective, and legally recognized dispute resolution mechanism at both the national and international levels (Maharani et al., 2020).

Consequently, arbitration regulations in Indonesia emphasize the importance of party consent, the independence of the arbitration mechanism, and integration with the court system for supervision and enforcement purposes. This legal framework provides legal certainty, ensures the neutrality of the arbitration forum, and enhances investor confidence in the dispute resolution system in Indonesia.

D. Obstacles and the Effectiveness of Arbitral Award Enforcement in Investment Disputes in Indonesia

The enforcement of arbitral awards in the context of investment disputes in Indonesia exhibits a relatively high level of effectiveness, yet it is not without various legal and practical challenges. From a legal perspective, obstacles arise when the losing party submits a request to annul an arbitral award through the courts based on certain grounds, such as alleged irregularities in the appointment of arbitrators, fraud, or awards that contravene public policy (Entriari, 2017). Such legal actions can delay the execution of arbitral awards and reduce legal certainty for investors, thereby affecting their confidence in Indonesia's dispute resolution system.

Other challenges are practical in nature, including the limited number of competent professionals within the institutions responsible for enforcing arbitral awards, slow administrative procedures in courts supporting enforcement, and coordination difficulties between the courts and arbitration institutions. These conditions may cause the execution of arbitral awards to take longer than expected, particularly in disputes involving substantial investments or foreign parties. These practical factors present significant challenges in ensuring arbitration's effectiveness as a mechanism for legal protection of investors (Kharlie, n.d.).

Nevertheless, arbitral awards remain more effective than conventional litigation because they are final and binding. This characteristic provides legal certainty for investors, minimizes the risk of protracted disputes, and reduces the likelihood of lengthy appeals. This effectiveness is further reinforced by national legal support, particularly through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which regulates the enforcement of arbitral awards and the role of courts as supportive institutions, without diminishing the principles of party autonomy and independence.

Moreover, the effectiveness of arbitral awards is strengthened by Indonesia's ratification of the 1958 New York Convention, which allows for the recognition and enforcement of foreign arbitral awards within the country. Through this ratification, foreign investors are assured that international

arbitral awards can be legally executed in Indonesia, thereby enhancing their confidence in arbitration as a safe, neutral, and reliable mechanism for resolving investment disputes (S. K. Harahap, 2022).

Overall, despite the presence of both legal and practical obstacles, arbitration remains an effective mechanism for ensuring the protection of investors' interests. The advantages of arbitration are reflected in procedural flexibility, forum neutrality, legal certainty, and recognition of awards at both national and international levels. Therefore, strengthening arbitration institutions, enhancing human resource competencies, and improving coordination with the courts are crucial steps to maximize arbitration's effectiveness as a legal protection instrument for investors in Indonesia.

CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the discussion above, it can be concluded that arbitration holds a strategic role as a mechanism for resolving investment disputes in Indonesia. Arbitration is not merely an alternative to the general courts but is also legally recognized as a forum that ensures certainty, neutrality, and professionalism in dispute resolution. National regulations, such as Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution and Law Number 25 of 2007 on Investment, reinforce the legitimacy of arbitration, including the recognition of international arbitral awards through the ratification of the 1958 New York Convention. These advantages provide effective legal protection for investors while supporting a conducive investment climate, economic growth, and Indonesia's competitiveness on a global scale.

Although there are legal and practical obstacles, such as the possibility of annulment by courts, limited human resources, and suboptimal coordination, the effectiveness of arbitration remains higher compared to conventional litigation. Arbitral awards are final and binding, offer procedural flexibility, and safeguard the confidentiality of the parties' strategic information. Therefore, strengthening arbitral institutions, enhancing human resource capacity, and improving coordination with the courts are crucial steps to maximize the function of arbitration. Thus,

arbitration serves not only as a legal instrument but also as an essential means of providing legal protection and certainty for investors in Indonesia.

B. Suggestions

Based on the findings of this study, it is recommended that the strengthening of arbitral institutions continue, including the enhancement of human resource capacity and the standardization of dispute resolution procedures. This measure is essential to ensure the effectiveness of arbitration as a mechanism that provides legal certainty and optimal protection for both domestic and international investors.

Furthermore, future research can be directed towards the development of legal frameworks and arbitration practices that align with the growth of the digital economy and cross-border investment. Such efforts will make a significant contribution to enriching the body of arbitration law literature while supporting the advancement of legal scholarship and more adaptive, innovative approaches to investment dispute resolution.

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