



Analysis Of Dispute Resolution With Arbitration Measures Based On Law NO. 30 Year 1999

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Abstract

Dispute resolution through litigation often faces various obstacles, such as lengthy processes, relatively large costs, and lack of flexibility in meeting the needs of the parties. Therefore, arbitration is one of the alternative dispute resolution options that provides a more effective mechanism based on the principle of freedom of the parties. This study aims to analyze the position of arbitration and the stages of dispute resolution based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The research method used is normative juridical research with a statute approach and a conceptual approach. Research data was obtained through literature studies of legal regulations, literature, and doctrines related to arbitration and dispute resolution. The results of the study show that arbitration is a mechanism for resolving civil disputes outside the court which has special characteristics in the form of a process that is private, flexible, involves arbitrators who have certain expertise, and produces final and binding judgments. Based on Law No. 30 of 1999, dispute resolution is carried out through several stages, namely peace efforts between the parties, the assistance of mediators or expert advisors, and if no agreement is reached, it can be continued through arbitration institutions or ad hoc arbitration. In conclusion, arbitration is an effective dispute resolution mechanism because it is able to provide legal certainty, time efficiency, and protection of the interests of the parties in resolving civil disputes, especially in the field of trade.

I. INTRODUCTION

The development of legal relations in the fields of trade, investment, and modern business activities has led to an increase in the potential for disputes between the parties involved in a legal relationship. The dispute is basically a consequence of differences in interests, interpretation of agreements, and the implementation of rights and obligations that do not run as they should. In the Indonesian legal system, dispute resolution can generally be done through litigation mechanisms in court or through non-litigation mechanisms, one of which is arbitration (Winarta, 2022).

Arbitration is a form of out-of-court dispute resolution that gives authority to a third party, namely an arbitrator, to examine and decide disputes based on the agreement of the parties. The existence of arbitration in Indonesia is specifically regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The regulation provides a legal basis for the parties to choose arbitration as a dispute

resolution forum by prioritizing the principles of freedom of contract, process confidentiality, procedural flexibility, and legal certainty through final and binding decisions (Rafika, 2022).

Theoretically, arbitration has various advantages over litigation mechanisms through the courts. The settlement process through arbitration is considered faster, more flexible, and able to provide a settlement that is more in accordance with the characteristics of disputes, especially in the field of trade and business. The parties also have the freedom to determine the arbitrator who has competence in accordance with the field of dispute at hand. In addition, the closed nature of the audit provides protection for the business interests of the parties because information related to the dispute is not open to the public (Diansari, 2021).

However, although arbitration has a clear legal basis and offers various advantages, its application in Indonesia still faces a number of problems. One of the main problems is the low understanding of the public and business actors

regarding the procedures and legal consequences of resolving disputes through arbitration. Many parties still view the court as the only dispute resolution institution that has legal legitimacy, so the existence of arbitration has not been fully utilized optimally. This condition shows that there is a gap between the normative arrangements of arbitration and the level of its use in practice (Wijaya, 2021).

In addition to the issue of public understanding, other problems arise in the aspect of the implementation of the arbitration award. Although Article 60 of Law Number 30 of 1999 states that the arbitral award is final and binding on the parties, in practice there are still obstacles when one of the parties does not voluntarily implement the award. This situation raises questions about the effectiveness of arbitration as a dispute resolution mechanism, especially with regard to how the process of executing an arbitral award can provide legal certainty for the winning party (Harahap, 2022).

Another problem is also related to the stages of dispute resolution through arbitration which has not been fully comprehensively understood. In practice, the arbitration process is not only concerned with the award by the arbitrator, but includes a series of stages ranging from the submission of an arbitration application, the establishment of an arbitration panel, the examination of disputes, the submission of evidence and arguments of the parties, to the issuance and enforcement of the arbitration award. Understanding each of these stages is important so that the arbitration mechanism can run in accordance with the principles of justice, efficiency, and legal certainty.

Based on these conditions, it can be seen that there is a problem between the purpose of the formation of Law Number 30 of 1999 which requires arbitration as an effective dispute resolution mechanism and various obstacles in its implementation. Therefore, a more in-depth study is needed on how arbitration stands in the Indonesian legal system and how dispute resolution measures through arbitration are implemented based on the applicable legal provisions.

This study aims to analyze the mechanism of dispute resolution through arbitration based on Law Number 30 of 1999, especially regarding the stages of the arbitration process from the submission of an application to the issuance of a

judgment. In addition, this study also aims to identify the effectiveness of arbitration as an alternative dispute resolution in providing legal certainty for the parties to the dispute.

II. RESEARCH METHODS

This study uses normative juridical research methods. The selection of this method is based on the characteristics of research that focuses on the study of legal norms, legal principles, legal doctrines, and laws and regulations related to dispute resolution through arbitration mechanisms. Normative legal research places law as a norm or rule that applies in society, so the analysis is carried out by examining various legal provisions that regulate arbitration and alternative dispute resolution (Jonaedi & Ibrahim, 2018).

The data source in this study uses secondary data obtained through library research. The secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material is in the form of laws and regulations that are directly related to the object of research, especially Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Secondary legal materials are obtained from various legal literature, such as books, scientific journals, academic articles, as well as the opinions of experts who discuss arbitration, dispute resolution, and civil law. Meanwhile, tertiary legal materials are used as supporting materials in the form of legal dictionaries and other reference sources that help clarify the legal concepts analyzed.

The research approach used in this study includes the statute approach by analyzing the legal provisions that govern the arbitration mechanism, as well as the conceptual approach by examining legal concepts, theories, and principles related to out-of-court dispute resolution (Mahmud Marzuki, 2005). The data obtained was then analyzed qualitatively by descriptive-analytical method, namely by defining, interpreting, and connecting the applicable legal provisions to obtain a comprehensive understanding of the position and stages of dispute resolution through arbitration based on Law Number 30 of 1999.

III. RESULTS AND DISCUSSION

A. The Position and Characteristics of Arbitration as a Mechanism for Resolving Civil Disputes Outside the Court

The development of legal relations in the fields of trade, business, investment, and other economic activities has led to an increase in the potential for conflicts of interest between the parties. In this context, dispute resolution through litigation mechanisms in court is often considered to be incapable of meeting the needs of business actors who want a fast, flexible, confidential settlement process, and produce decisions from parties who have special competence in the disputed field. Therefore, arbitration exists as one of the out-of-court dispute resolution mechanisms that provides an alternative for the parties to resolve disputes based on the principles of freedom of contract and mutual agreement (Hakim, 2022).

Juridically, the definition of arbitration is affirmed in Article 1 number (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as Law 30/1999), which states that arbitration is a way of resolving civil disputes outside of the general courts based on an arbitration agreement made in writing by the parties to the dispute. The provision indicates that arbitration is not a mechanism that can be applied automatically to every type of dispute, but can only be used if there is an agreement or arbitration clause that expressly authorizes the arbitrator to resolve the dispute (Asokawati, 2023).

The existence of an arbitration agreement is the main basis for the birth of the arbitrator's authority in examining and deciding a case. This principle is known as the principle of competence-competence, which is the authority of the arbitration institution to determine for itself the existence and limits of its authority in resolving disputes. Thus, arbitration not only functions as an alternative dispute resolution procedure, but also as an independent legal mechanism that has special characteristics different from the dispute resolution process through the courts (Kurniawan, 2024).

In understanding arbitration, an important aspect that needs to be studied is about the object or type of dispute that can be resolved through the arbitration mechanism. Not all legal conflicts can be used as objects of arbitration because the authority of arbitration is limited by the provisions of laws and regulations. Based on Article 5 paragraph (1) of Law 30/1999, disputes

that can be resolved through arbitration only include disputes in the field of trade and disputes regarding rights that according to the law and laws are fully under the control of the parties to the dispute (Baharuddin, 2024).

The restriction indicates that arbitration applies only to disputes that are of a civil nature and relate to private rights that are negotiable by the parties. On the other hand, disputes relating to the public interest, the status of a person, or rights that cannot be legally waived by the parties cannot be made the subject of arbitration. Affirmation of the scope of trade in arbitration can be found in the Explanation of Article 66 of Law 30/1999 which covers various economic activities, including trade, banking, finance, investment, industry, and intellectual property rights (Asnawi et al., 2024).

The limitation of the object of arbitration has legal rationality because arbitration is based on the principle of party autonomy. The parties are given the authority to determine for themselves how their disputes will be resolved, including choosing a resolution forum, determining an arbitrator, choosing the law to be used, and determining the procedure for examining the case. However, this freedom still has limits, namely it must not contradict mandatory legal provisions or contrary to public order (Ariprabowo & Nazriyah, 2017).

In the perspective of modern dispute resolution, arbitration has a unique position. Conceptually, arbitration is often categorized as part of Alternative Dispute Resolution (APS) because the process is carried out outside of the country's judicial institutions. However, there is an academic view that distinguishes arbitration from other forms of APS. This view states that arbitration cannot be fully categorized as an APS because its characteristics have an element of adjudication, namely the existence of a third party who has the authority to give a final and binding award. Unlike mediation or negotiation which results in an agreement based on the will of the parties, arbitration produces a judgment that has the force of law like a court decision (Sugiarto, 2019).

These characteristics make arbitration a sui generis dispute resolution mechanism, namely a legal institution that has its own characteristics and systems. Arbitration is in the position between private dispute resolution through negotiation and public dispute resolution through court. In this case, arbitration retains a private

nature because it is formed based on the agreement of the parties, but at the same time has the authority to decide like the adjudication institution.

The main advantage of arbitration over litigation proceedings in court lies in the flexibility of procedures and the ability to provide a more effective settlement. In the arbitration process, the parties have the freedom to choose arbitrators who are considered to have competence and experience in accordance with the field of dispute. The selection of arbitrators based on certain expertise provides an advantage because dispute resolution is not only based on formal legal aspects, but also takes into account the technical understanding of the disputed issue.

In addition to the aspect of arbitrator competence, arbitration also offers the principle of confidentiality which is one of the main attractions for the business world. Unlike court proceedings which are generally open to the public, arbitration examinations are conducted behind closed doors so that information about business conflicts, business strategies, and company documents can remain protected. These characteristics provide advantages for parties who have an interest in maintaining the reputation and sustainability of business relationships (Mantili, 2021).

In terms of efficiency, arbitration also offers a relatively faster resolution than litigation mechanisms. The arbitration examination process has a certain time limit as stipulated in Law 30/1999, thus providing certainty regarding the period of settlement of the case. This is different from the court process which allows for a tiered examination through appeal, cassation, and review legal remedies that can prolong dispute resolution.

In practice, arbitration can be divided into two main forms, namely *ad hoc* arbitration and institutional arbitration. *Ad hoc* arbitration is an arbitration that is specifically formed by the parties to resolve certain disputes. In this mechanism, the parties have full authority to determine procedures, select arbitrators, and regulate the procedure of the examination without relying on a specific arbitration institution. Due to its temporary nature, the authority of *ad hoc* arbitration ends after the dispute on which it is based is decided (Yamin, 2024).

Unlike *ad hoc* arbitration, institutional arbitration is an arbitration conducted by a

permanent arbitration institution that has its own procedural, administrative, and list of arbitrators. The existence of an arbitration institution provides convenience for the parties because the dispute resolution procedure is available and more structured. In the Indonesian context, one of the arbitration institutions that has an important role is the Indonesian National Arbitration Board (BANI) which provides business dispute resolution services through an arbitration mechanism (Sinaga & Susanti, 2025).

Thus, arbitration in the Indonesian legal system is not only understood as an alternative to the judicial process, but as a dispute resolution mechanism that has its own legal basis, characteristics, and procedures. The existence of Law 30/1999 gives legitimacy to arbitration as a dispute resolution instrument that is able to answer the needs of the modern business community through the principles of efficiency, expertise, confidentiality, and respect for the freedom of the parties. Therefore, understanding the characteristics of arbitration is an important basis before analyzing the stages or steps of dispute resolution through arbitration as stipulated in the provisions of positive Indonesian law.

B. Stages of Dispute Resolution Through Arbitration Mechanism and Alternative Dispute Resolution Based on Law Number 30 of 1999

The settlement of disputes through arbitration in the Indonesian legal system cannot be separated from the main principle that places peace and agreement of the parties as the basis for the settlement of civil conflicts. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution not only regulates the arbitration and arbitration award mechanism, but also provides space for the parties to first resolve disputes through alternative mechanisms based on the principles of deliberation, good faith, and freedom of contract (Sukardi & Herlambang, 2020).

The provisions regarding the stages of dispute resolution are specifically regulated in Article 6 of Law No. 30 of 1999. This provision describes that the settlement of disputes is carried out through a gradual process, starting from a direct settlement between the parties, followed by the assistance of a third party through a mediator or expert advisor, and if an agreement is still not reached, the parties can choose to settle through an

arbitration institution or ad hoc arbitration (Tampubolon, 2019).

The first stage in the dispute resolution mechanism based on Article 6 paragraph (1) of Law No. 30 of 1999 is the existence of a moral and legal obligation for the parties to first seek to resolve the dispute peacefully through alternative dispute resolution based on the principle of good faith. At this stage, the parties are given the opportunity to resolve differences of opinion without involving the state judiciary. This principle reflects the character of civil law which provides ample space for the parties to determine for themselves how to resolve their legal interests.

The direct settlement approach between the parties has strategic value because it allows the creation of solutions that are not only oriented towards the victory of one of the parties, but also maintain legal and business relationships that have been formed before. In contrast to the litigation process that is confrontational and produces a win-lose solution, the alternative settlement mechanism prioritizes reaching a mutually acceptable agreement.

Based on Article 6 paragraph (2) of Law No. 30 of 1999, if the parties choose a direct settlement, the process must be carried out within a maximum period of 14 (fourteen) days from the start of negotiations. The results of the meeting are then outlined in a written agreement if the parties succeed in reaching a settlement. The written agreement has an important position because it is proof of the existence of a binding legal agreement between the parties.

However, if the direct settlement does not succeed in reaching an agreement, then Article 6 paragraph (3) of Law No. 30 of 1999 provides an alternative in the form of the use of the assistance of a third party, namely an expert advisor or mediator. The presence of a third party in the dispute resolution process aims to help the parties find common ground without taking over the authority of the parties in determining the final outcome of the settlement.

The mediator in this context has a function as a neutral facilitator and does not have the authority to make decisions on disputes that occur. Unlike arbitrators who have the authority to produce final and binding decisions, mediators only assist in the communication process, identify the interests of each party, and encourage the creation of mutually acceptable agreements (Vahzrianur & Siswajanthi, 2024).

If within a maximum period of 14 (fourteen) days with the assistance of expert counsel or mediator, the parties still do not reach an agreement, then based on Article 6 paragraph (4) of Law No. 30 of 1999, the parties may request the assistance of an arbitration institution or an alternative dispute resolution institution to appoint a mediator. This provision shows that the dispute resolution system in Law No. 30 of 1999 is flexible in nature because it provides repeated opportunities for the parties to reach peace before entering the adjudication stage through arbitration (Syahfitra et al., 2024).

After the mediator is appointed by the arbitration institution or alternative dispute resolution institution, the mediation process must begin within a maximum of 7 (seven) days as stipulated in Article 6 paragraph (5). The mediation process is carried out with the principle of confidentiality, so that information, statements, or documents that appear during the settlement process cannot be used freely outside the interests of dispute resolution. This principle of confidentiality is one of the main characteristics of the APS mechanism because it provides a sense of security for the parties to express their interests openly (Sariffudin & Fida, 2023).

Furthermore, Article 6 paragraph (6) stipulates that the settlement process through a mediator must result in a written agreement within a maximum of 30 (thirty) days. The agreement must be signed by all parties involved as a form of final agreement on the outcome of the dispute resolution. From the perspective of treaty law, the agreement has binding force because it is born based on the agreement of the parties that meet the principle of freedom of contract as known in civil law.

The written agreement resulting from dispute resolution as referred to in Article 6 paragraph (7) is final and binding for the parties. This means that after the agreement is made, the parties have a legal obligation to implement it in good faith. In addition, the law provides an obligation to register the agreement with the District Court within a maximum period of 30 (thirty) days from the time it is signed. The registration aims to provide legal certainty and strengthen the position of the agreement as a dispute resolution instrument that has executory power.

The implementation of the dispute settlement agreement must also be carried out within a maximum period of 30 (thirty) days from registration at the District Court as specified in

Article 6 paragraph (8). The provisions regarding this time limit show that Law No. 30 of 1999 seeks to create an effective and efficient dispute resolution mechanism by avoiding protracted processes.

If all stages of peaceful settlement as stipulated in Article 6 paragraph (1) to paragraph (6) do not succeed in reaching an agreement, then the parties have the authority to continue the dispute resolution through arbitration. Based on Article 6 paragraph (9) of Law No. 30 of 1999, dispute resolution can be submitted through an arbitration institution or ad hoc arbitration based on the written agreement of the parties.

At this stage, arbitration has a position as an adjudicative dispute resolution mechanism. Unlike mediation, which only results in an agreement if the parties agree to it, arbitration gives the arbitrator the authority to examine disputes and render a final and binding award. Thus, arbitration becomes a last resort when the consensual settlement mechanism is unable to produce a settlement.

Based on all these stages, it can be understood that Law No. 30 of 1999 establishes a dispute resolution system that prioritizes the principles of efficiency, freedom of the parties, and peaceful settlement before entering the termination process by a third party. The tiered settlement structure shows a balance between the interests of the parties to obtain a speedy settlement and the need to provide legal certainty through an arbitration award. Therefore, arbitration in the perspective of Law No. 30 of 1999 is not only an alternative to the court, but is a dispute resolution mechanism that has legal legitimacy, special procedures, and binding power for the parties who choose it.

C. Legal Strength and Effectiveness of Arbitration Awards as a Form of Legal Certainty in Dispute Resolution

The success of a dispute resolution mechanism is not only determined by the process taken, but also by the legal force of the outcome of the settlement. In the context of arbitration, the award produced by the arbitrator has a different legal status from the outcome of settlement through negotiation and mediation. If negotiation and mediation depend on the voluntary agreement of the parties, then arbitration results in a binding award and must be enforced by the disputing party (Wijaya, 2021).

Based on Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is emphasized that the arbitration award is final and has permanent legal force and is binding on the parties. This provision indicates that after the arbitrator makes a decision, the parties no longer have room to file appeals or cassation legal remedies as applicable in the general justice system. This final and binding character is one of the main characteristics of arbitration that distinguishes it from the dispute resolution mechanism through the courts.

The final nature of an arbitral award means that it is the final decision on a dispute that has been examined by the arbitrator. This is closely related to the principle of legal certainty because the parties obtain clarity regarding the status and resolution of the legal problems they are facing. In the business world, this certainty has an important value because it allows the parties to immediately take legal and economic steps after the dispute is decided without having to face a lengthy process through various levels of justice (Al-Ghifari et al., 2025).

In addition to having a final nature, an arbitral award also has binding force against the parties. This principle is based on the principle of *pacta sunt servanda*, which is that every legally made agreement is valid as a law for the party who made it. Since arbitration is born from an arbitration agreement made in writing, the parties have consciously authorized the arbitrator to resolve their disputes and commit to implementing the resulting award (Harahap, 2022).

Although the arbitration award is binding, its implementation still requires certain legal mechanisms if the losing party does not voluntarily implement the award. In this case, Law No. 30 of 1999 stipulates that national arbitration awards must be registered with the District Court to obtain executory power. The registration does not mean changing the private nature of arbitration into a litigation process, but rather a form of state involvement in providing support for the implementation of the arbitration award.

The authority of the District Court in the execution stage of the arbitral award is basically administrative and limited. The court does not have the authority to reexamine the substance or legal considerations that have been decided by the arbitrator. This is a consequence of the principle of arbitration autonomy which gives the arbitrator primary authority to resolve disputes

based on the agreement of the parties (Isnaini, 2020).

The effectiveness of arbitration as a dispute resolution mechanism can also be seen from its ability to provide solutions that suit the needs of the modern business community. In an increasingly complex trade relationship, the parties not only need a quick settlement, but also a mechanism that is able to maintain the confidentiality of information, make decisions based on specific expertise, and maintain future business relationships. These characteristics make arbitration one of the most widely used dispute resolution options in commercial legal relationships (Prayuti et al., 2024).

However, the implementation of arbitration is also inseparable from several challenges. One of the problems that often arises is related to the implementation of the decision if one of the parties does not have the will to carry it out voluntarily. In addition, the limited public understanding of the arbitration mechanism has led to arbitration not being fully the primary option compared to settlement through the courts. Therefore, the effectiveness of arbitration does not only depend on the quality of the regulations, but also on the legal awareness of the parties and the support of law enforcement agencies in ensuring the implementation of the arbitration award.

In the context of Indonesian law, the existence of Law No. 30 of 1999 shows the efforts of lawmakers to create a more flexible dispute resolution system that is responsive to economic development. Arbitration strikes a balance between the freedom of the parties to determine the dispute resolution mechanism and the need for legal certainty through a final and binding award.

Thus, arbitration not only functions as an alternative to dispute resolution through court, but also as a legal instrument that has its own legitimacy and effectiveness in providing protection for the interests of the parties. Through the arbitration mechanism, dispute resolution can be carried out more efficiently, professionally, and in accordance with the characteristics of modern legal relations, as long as the parties are committed to respecting the arbitration agreement and implementing the award that has been determined.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on the discussions that have been carried out, it can be concluded that arbitration is a mechanism for resolving civil disputes outside the court which has a legal basis in Law Number 30 of 1999. Arbitration can only be used against certain disputes, in particular disputes in the field of trade and rights that are fully controlled by the parties. The existence of arbitration provides an alternative dispute resolution that is more flexible, fast, confidential, and involves arbitrators who have expertise in the field of dispute.

The dispute resolution stage based on Law No. 30 of 1999 begins with peace efforts through direct negotiations, then can be continued through the help of mediators or expert advisors. If the settlement is unsuccessful, the parties may choose an arbitration mechanism through an arbitration institution or ad hoc arbitration. An arbitration award has permanent legal force, is final and binding on the parties, thus providing legal certainty in dispute resolution.

Thus, arbitration is an effective legal instrument in modern dispute resolution because it is able to combine the principle of freedom of the parties with the need for legal certainty.

B. Suggestions

It is necessary to increase public understanding, especially business actors, regarding the benefits and mechanisms of arbitration as an alternative to dispute resolution. In addition, arbitration institutions need to continue to improve the quality of arbitrators and the effectiveness of the implementation of awards so that public trust in arbitration increases. The development of arbitration regulations also needs to be carried out in order to be able to adapt to the development of business relations and modern legal needs.

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