



Arbitration Authority in Business Dispute Resolution in Indonesia

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Article History Received : 2024-08-15 Revised: 2024-08-17 Published: 2024-09-30 Keywords: <i>Arbitration, Business Dispute Resolution, Legal Authority</i>	Arbitration has become one of the important mechanisms in the resolution of business disputes in Indonesia, mainly due to its ability to provide a faster, more flexible, and confidential resolution compared to general courts. However, there are various legal issues related to the authority of arbitration, especially in terms of the implementation of the arbitration award and the involvement of the court in the execution process. This research aims to analyze the authority of arbitration in the resolution of business disputes in Indonesia, evaluate the effectiveness of the implementation of arbitration decisions, and discuss future developments in arbitration policies and regulations. This research uses a normative juridical method with a legislative approach, utilizing primary legal materials such as Law Number 30 of 1999 concerning Arbitration, as well as secondary legal materials in the form of journals, books, and scientific articles. The data analysis technique used is qualitative, which analyzes various legal rules and their implementation in arbitration practices in Indonesia. The results of the study show that the authority of arbitration in Indonesia has been regulated quite clearly through laws and regulations, although in practice there are obstacles in the execution of arbitral awards involving courts. In addition, the practice of arbitration in Indonesia continues to grow, but challenges remain related to competition with international arbitration bodies and the need for regulatory reform. The discussion of this research highlights the advantages and disadvantages of arbitration compared to the courts, the effectiveness of the implementation of arbitration decisions, and the direction of arbitration policies going forward, including the adoption of technology and harmonization with international standards. The conclusion of this study emphasizes that arbitration is an effective business dispute resolution mechanism, but it requires strengthening in the aspects of regulation and decision implementation. This research recommends policy reforms to strengthen arbitration mechanisms and encourage businesses to utilize arbitration as an efficient and effective solution.

I. INTRODUCTION

In the era of globalization and rapid economic development, business dynamics are increasingly complex and often cause disputes among business actors. These business disputes, if not handled appropriately, can negatively impact business continuity, damage good relations between partners, and disrupt the stability of the company. Traditional dispute resolution mechanisms through the courts are often considered inadequate by businesses, mainly due to lengthy processes, convoluted procedures, and high costs. In addition, the public nature of the trial can be detrimental to the reputation of the parties to the

dispute. Therefore, many business actors have begun to turn to alternative dispute resolution, one of which is through arbitration (Susanto et al., 2021).

Arbitration offers several advantages that make it attractive to business people, such as flexibility in the process, guaranteed confidentiality, and a final and binding award. In Indonesia, the arbitration mechanism has been regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a legal basis for its implementation. Arbitration is seen as an important instrument that can resolve business

disputes efficiently, without having to go through the common court channels. However, although arbitration has many benefits, its application in Indonesia is still faced with a number of challenges. One of the most crucial is related to the authority of arbitration itself, both in terms of the scope of disputes that can be resolved through arbitration and the recognition and enforcement of its award by the court (Wajdi et al., 2023).

This issue of arbitral authority raises a number of important questions. For example, what business disputes fall within the realm of arbitration authority? How can arbitration work effectively when the court still has considerable authority in recognizing and enforcing arbitral awards? On the other hand, there are also concerns about potential conflicts between the jurisdiction of national courts and arbitration, especially when the dispute is related to the public interest or broader national law.

Given the importance of arbitration in resolving business disputes, this study will focus on an in-depth study of the authority of arbitration in Indonesia, by examining the applicable laws and regulations and the challenges faced in practice. This study aims to identify the extent to which arbitration is able to play a role in effectively resolving business disputes in Indonesia, as well as analyzing the legal aspects related to the implementation and recognition of arbitration awards. The study will also look at how arbitration compares to other dispute resolution mechanisms, particularly courts, and whether arbitration can continue to be developed as a more efficient alternative solution for businesses.

The method used in this study is a normative juridical approach, where the focus of the study is directed to the analysis of the laws governing arbitration in Indonesia. In addition, this research will also be complemented by case studies of several business disputes that have been resolved through arbitration, in order to obtain a concrete picture of the implementation of arbitration authority in practice. The results of this study are expected to provide new insights for business actors and policymakers regarding the optimization of arbitration in business dispute resolution, as well as provide recommendations for improving the effectiveness of arbitration mechanisms in Indonesia.

II. RESEARCH METHODS

This research uses a normative juridical method, which is an approach that focuses on the analysis of written law in the form of laws and regulations, legal doctrines, and arbitral awards related to the authority of arbitration in the settlement of business disputes in Indonesia (Muhaimin, 2020). In its implementation, this research began with the collection of secondary data from various sources, including laws and regulations, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as other legal documents relevant to the arbitration mechanism. In addition, academic literature, scientific articles, journals, and books related to arbitration are important sources of reference in this research. The secondary data collection aims to understand the theoretical and normative foundations related to arbitration authority and how the mechanism is regulated in Indonesia.

After secondary data is collected, an in-depth juridical analysis of the legal provisions regarding the authority of arbitration is conducted, especially as regards the scope of business disputes that can be resolved through arbitration. This analysis involves evaluating the comparison between the arbitration mechanism and the court system, as well as examining how arbitral awards are recognized and implemented in Indonesia, including the role of courts in the execution of arbitral awards. In addition, the study also included case studies as part of the empirical analysis. Several business disputes resolved through arbitration in Indonesia were selected as samples to measure the effectiveness of the implementation of arbitration authority in resolving business disputes. The case studies were selected based on relevance to the issue of arbitral authority and the availability of accessible arbitration awards.

In this study, the population that is the object of study is laws and regulations, legal doctrines, and arbitration awards related to business disputes in Indonesia. The research sample includes arbitration awards that have been decided by the Indonesian National Arbitration Board (BANI) and international arbitration institutions related to Indonesia. The research is non-physical in nature, because the data was obtained through literature studies and legal documents that are available nationally and internationally. However, the main analysis focuses on regulations in Indonesia and their

implementation in resolving business disputes through arbitration, both at the national and international levels.

III. RESULTS AND DISCUSSION

A. The results of a study on the authority of arbitration in the settlement of business disputes based on laws and regulations in Indonesia.

The results of the study show that the authority of arbitration in the settlement of business disputes in Indonesia is clearly regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The Act provides a strong legal basis for arbitration as an alternative mechanism for resolving disputes out of court. In the context of authority, the arbitrator has the authority to resolve disputes arising from an agreement that expressly includes an arbitration clause. This clause mandates the parties involved to bring any dispute arising out of the agreement to a predetermined arbitration institution, rather than through the common court.

In addition, this law also provides that the arbitral award is final and binding, which means that it cannot be appealed in court, except in limited conditions expressly provided for in the law, such as the existence of alleged fraud or violation of the law in the arbitration process. Thus, an arbitral award is considered to have equivalent force to a court award and can be enforced by a national court, provided it meets the conditions set out. The study found that in practice, arbitration authority is effective in resolving business disputes involving parties who have a clear understanding of the arbitration process and agree to the use of the mechanism early on in their agreements (Nurhamidah et al., 2024).

However, even though the legal framework is clear, there are still challenges in the implementation of arbitration authority in the field. Some cases show uncertainty in the execution of an arbitral award, especially when one of the parties is reluctant to enforce the award or when the arbitral award has to be enforced by a national court. Courts are often faced with administrative constraints or inconsistencies with domestic regulations, resulting in delays in the execution of arbitral awards. However, in general, the law has provided sufficient authority for arbitration institutions in Indonesia to play a role in resolving business disputes effectively, as long

as it is supported by good understanding and acceptance from business people.

B. The practice of arbitration in Indonesia, including its implementation in the settlement of business dispute cases.

This research also reveals that arbitration in Indonesia has significant advantages compared to dispute resolution mechanisms through the courts, especially in terms of speed, flexibility, and confidentiality of the process. Arbitration is known as a more efficient mechanism due to its relatively faster process compared to common courts, which often take years. In arbitration, the parties have the freedom to determine the schedule of the hearing, choose the arbitrator who is considered competent, and establish mutually agreed rules of procedure, so that the process can be adjusted to the specific needs of the parties to the dispute. This flexibility provides an advantage for businesses that need to resolve disputes quickly and efficiently, without having to be bound by rigid formal procedures such as those in court (Lumowa, 2022).

In addition, the closed nature of arbitration provides a great advantage for companies that prioritize confidentiality. Business disputes resolved through arbitration are not open to the public, so parties can keep their reputations and trade secrets from public exposure. This is in contrast to the courts, where the trial is open and the verdict is accessible to anyone. This advantage makes arbitration the preferred option for business people, especially for disputes involving sensitive information or business strategies that must be kept confidential.

However, this study also found that these benefits have not been fully utilized optimally by all business people in Indonesia. Some parties, especially those who lack understanding of arbitration procedures, are still reluctant to opt for arbitration as an alternative to dispute resolution. The lack of socialization and education about arbitration, especially among small and medium enterprises, is one of the factors that causes arbitration to not be fully the main choice for business dispute resolution in Indonesia. However, for those who understand the mechanisms and advantages of arbitration, this method is considered to be very effective and efficient in safeguarding their business interests.

C. Analysis of the advantages and disadvantages of arbitration compared to the dispute resolution mechanism through the courts.

Arbitration as one of the alternative dispute resolution (ADR) mechanisms has various advantages and disadvantages when compared to dispute resolution through court. One of the main advantages of arbitration is its more flexible nature in terms of procedures. The parties to the dispute have the freedom to determine the rules and procedures to be applied in the arbitration, including selecting arbitrators who have specific expertise in the areas related to the dispute. This provides significant advantages, especially in commercial or technical disputes that require an in-depth understanding of a particular industry, which common court judges may not have. For example, in disputes involving technology or construction, arbitrators may be selected based on their technical background, which speeds up understanding of the issues at hand and reduces the likelihood of technical misunderstandings (Baharuddin, 2024).

In addition to procedural flexibility, arbitration also offers a relatively faster process than courts. Judicial proceedings in general courts are often time-consuming, especially in countries with a high case load such as Indonesia, where cases can be delayed for years before reaching a final verdict. Arbitration, on the other hand, can often be resolved in a matter of months to a year, depending on the complexity of the case and the availability of the parties and the arbitrator. This shorter time helps reduce the uncertainty experienced by the parties and reduces the financial and operational impact of protracted disputes.

Another advantage of arbitration is its private and closed nature. Unlike court proceedings which are generally open to the public, arbitration proceedings are conducted behind closed doors so that the confidentiality of company information or sensitive disputes can be better maintained. In the business world, maintaining the confidentiality of disputes is often very important to protect the reputation or information of trade secrets. For example, in disputes over patents or exclusive contracts, the parties can avoid public exposure that could damage their reputation or harm their position in the market.

However, arbitration also has some drawbacks that are worth considering. One of the drawbacks that often arises is that the costs tend to be higher

than court proceedings, especially if they involve an experienced arbitrator or have an international reputation. The arbitration fee includes not only the arbitrator's honorarium, but also the administrative fees charged by the arbitration institution as well as additional fees such as lawyers, expert witnesses, and courtroom rentals. In some cases, the costs of arbitration may exceed the costs incurred in court proceedings, especially in disputes of minor value or involving multiple arbitrators (Fadillah & Putri, 2021).

In addition, the arbitral award is final and binding, which means that there is no appeal mechanism available to the parties if they are not satisfied with the outcome. This is in contrast to the courts, where the parties can appeal to a higher level to seek justice if the verdict at the first level is deemed unsatisfactory or wrong. In the context of arbitration, there are only a few very limited circumstances under which an award can be set aside, for example if there is evidence of fraud or a serious violation of the principles of basic justice in the arbitration proceedings. As a result, the parties must accept the outcome of the arbitration, whether it is fair or not, without the opportunity to correct any errors that may have occurred.

On the other hand, the lack of formal rules in arbitration can also be a double-edged sword. Although procedural flexibility is often considered an advantage, some parties may feel that the lack of formal and strict rules that usually exist in the courts can create uncertainty or a lack of adequate legal protections. For example, in court, there are strict standards regarding the admissibility of evidence and the right to appeal, whereas in arbitration, this process may be more lax and depend on the arbitrator's discretion or the agreement of the parties. In cases where one of the parties is stronger or more experienced in arbitration, this can be leveraged to their advantage, thereby reducing the level playing field for the other party who is less experienced (Mulyawan, 2024).

Thus, the choice between arbitration and the court must consider a variety of specific factors, such as the need for speed, confidentiality, cost, and the desire to have the right to appeal. Arbitration may be better suited for commercial disputes that require technical expertise and privacy, while courts may be more ideal for disputes that require stricter legal certainty and procedures. An in-depth understanding of the characteristics of each of these dispute resolution

mechanisms is essential so that the parties can make the right decisions according to their needs and circumstances

D. Evaluation of the effectiveness of the implementation of arbitration decisions in practice in Indonesia.

The evaluation of the effectiveness of the implementation of arbitration decisions in practice in Indonesia shows various challenges and successes. One aspect that shows its effectiveness is Indonesia's legal recognition of arbitration as a legitimate dispute resolution mechanism. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates in detail the arbitration process, from the selection of arbitrators to the recognition and enforcement of arbitral awards. This recognition provides a strong legal basis for the implementation of arbitral awards in Indonesia, so that arbitral awards resulting from both national and international arbitrations can be recognized and enforced within Indonesian jurisdiction, as long as certain conditions are met under the law.

However, in practice, the implementation of arbitration decisions in Indonesia does not always run smoothly. One of the main problems that is often faced is the delay or refusal of the implementation of the arbitral award by the district court. Although the arbitral award is final and binding, it must first be registered in the district court for it to be enforceable. At this stage, there are often obstacles, where the losing party in the arbitration tries to thwart the execution by invoking various reasons, such as allegations of procedural violations or the non-fulfillment of the principles of fairness in the arbitration process. District courts sometimes accept such arguments, resulting in the impediment of the implementation of the arbitral award. Although the law has stipulated that courts may not intervene in the substance of an arbitral award, in some cases, courts still conduct in-depth testing of the award, which slows down the execution process (Abdul Karim, 2023).

In addition, another problem faced in the implementation of arbitration decisions in Indonesia is the resistance of the losing parties in the dispute. They are often uncooperative in following up on the arbitration award, which forces the winning party to go through the court of execution. In cases where the losing party's assets are spread across different countries, the

execution process can be more complicated as it involves international jurisdictions. Although Indonesia has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is supposed to facilitate the enforcement of international arbitral awards, the challenges related to bureaucracy and different legal systems between countries often make this process lengthy and difficult (Waruwu et al., 2024).

On the other hand, there are also instances where the enforcement of an arbitral award is effective, especially when the parties involved have a commitment to comply with the award voluntarily. In cases like these, arbitration has proven to be an efficient mechanism for resolving disputes without having to go through lengthy and expensive judicial processes. This shows that the effectiveness of the implementation of the arbitral decision is highly dependent on the attitude and good faith of the parties to the dispute, as well as the support of the judicial institution in facilitating the execution of the award.

Overall, the effectiveness of the implementation of arbitration decisions in Indonesia is still faced with a number of challenges, especially related to the resistance of the losing party and the involvement of the courts in the enforcement process. However, with supportive regulations and increased understanding and awareness among business people about the importance of arbitration, it is hoped that the implementation of arbitration decisions in Indonesia can be more effective in the future. Efforts to strengthen the legal framework and increase the capacity of arbitration institutions are also an important step to ensure that arbitration can become a more effective and trusted dispute resolution mechanism in Indonesia.

E. Discussion regarding future developments in policies or regulations related to arbitration.

Future developments in arbitration-related policies and regulations in Indonesia have the potential to undergo significant changes to adapt to global dynamics and domestic needs. One of the main pillars of future policies is to strengthen the role of national arbitration institutions, such as the Indonesian National Arbitration Board (BANI). Although BANI has played a role as a leading arbitration institution in Indonesia, the

challenges it faces in the face of international competition are an important factor that drives further reforms. Today, international arbitration institutions such as the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) are the top choice for many multinational companies because they are considered more reliable and efficient. Therefore, future policies will focus on increasing BANI's competitiveness through strengthening human resources, improving the quality of arbitrators, and providing faster and more flexible arbitration services.

These policies could include a more stringent arbitrator certification program as well as increased transparency and governance to build user trust (Herlina & Maulana, 2024). In addition, the adoption of technology in arbitration proceedings is predicted to be one of the key aspects in future policies. The digital era is accelerating the use of technology in many aspects of life, including in dispute resolution. The COVID-19 pandemic has accelerated the use of technologies such as online arbitration hearings and electronic filing of documents, which are considered more efficient and reduce operational costs. In the future, arbitration regulations in Indonesia are likely to adapt to these developments, creating a legal foundation that allows for online dispute resolution, including the recognition of electronic evidence, virtual examination of witnesses, and data security and privacy. The adoption of this technology will not only facilitate international arbitration processes involving parties from different jurisdictions, but it can also facilitate access for local companies that may not have the resources to engage in more expensive and time-consuming traditional arbitration.

One of the important developments in future arbitration policy is the adjustment of the rules for certain sectors. Several industrial sectors, such as energy, infrastructure, telecommunications, and information technology, are often involved in complex disputes of great value. Arbitration has become the preferred dispute resolution mechanism in these sectors due to its more flexible and specialized nature. However, going forward, policy may provide more specific guidance for these sectors, taking into account the needs of the relevant industries. For example, in a construction or energy dispute, the parties may need an arbitrator who has in-depth knowledge of the technicalities and operations of the industry.

Therefore, future arbitration policies could include the development of more detailed standards and guidelines for the selection of arbitrators based on sectoral expertise, as well as arbitration procedures specifically designed to handle disputes in those areas.

In addition, the effectiveness of the implementation of arbitration awards in Indonesia is still a big challenge. One of the problems that is often faced is the process of executing an arbitration award, which must go through the district court to be enforceable. Although Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides a clear legal framework, in practice, courts often delay or even refuse the execution of arbitral awards. This is largely due to the court's differing interpretations of its authority to review arbitral awards, particularly with regard to administrative and procedural issues. In the future, arbitration policies may be directed to limit the involvement of courts in the enforcement process of awards, focusing on simplifying procedures and clarifying the limits of the court's authority to review arbitral awards. One of the steps that can be taken is to improve the guidance from the Supreme Court to the district court on how to handle applications for the execution of arbitral awards efficiently and in accordance with the principle of finality of arbitral awards.

On the international side, although Indonesia has ratified the 1958 New York Convention, which allows international arbitral awards to be recognized and enforced in the country, the implementation of foreign arbitral awards still faces obstacles. Some foreign arbitral awards that should have been immediately enforceable often face obstacles at the local level, either due to procedural issues or a lack of understanding of the principles of international arbitration by the district courts. To remedy this, future policies are likely to lead to harmonization between national and international arbitration rules, with the aim of strengthening Indonesia's position as an arbitration center in the ASEAN region. This may involve simplifying the process for the recognition and enforcement of foreign arbitral awards, as well as increasing the capacity of relevant courts and institutions to handle cross-border disputes more professionally (Winarta, 2022).

Furthermore, future policies may further encourage the use of multi-tiered dispute resolution, which includes mediation, negotiation, and arbitration as part of a single dispute

resolution suite. This multi-layered dispute resolution can help reduce the number of disputes that go to the arbitration stage, by providing an opportunity for parties to resolve their issues through mediation or negotiation before arbitration begins. In some jurisdictions, this multi-tiered mechanism has been shown to reduce the burden of arbitration and speed up dispute resolution. Indonesia, through regulatory reforms, can adopt a similar approach by introducing more flexible policies related to dispute resolution, including incentives to resolve disputes through mediation or negotiation before entering the formal arbitration stage.

In addition, future arbitration policy developments are also expected to include aspects of sustainability and social responsibility. With increasing global attention to environmental, social, and governance (ESG) issues, it is likely that future arbitration policies will begin to incorporate ESG elements in dispute resolution, especially for cases involving large infrastructure projects or extractive industries. This could mean that parties to the dispute will be required to consider the environmental and social impacts of their arbitration proceedings, as well as ensuring that the arbitration award supports sustainability principles (SETYALAKSONO, 2024).

Thus, the development of policies and regulations related to arbitration in Indonesia in the future will be influenced by various factors, including increasing the capacity of arbitration institutions, the adoption of digital technology, harmonization with international standards, simplification of the execution process, and the introduction of rules that are more sectoral and responsive to global issues such as sustainability. The purpose of this reform is to make arbitration a more efficient, flexible, and competitive dispute resolution mechanism, both at the national and international levels, as well as to increase the trust of business people and investors in the arbitration system in Indonesia.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The conclusion of this study shows that future policy and regulatory developments related to arbitration in Indonesia need to focus on a number of strategic aspects to improve its effectiveness and competitiveness, both at the national and international levels. Strengthening the arbitration institution, especially through the Indonesian National Arbitration Board (BANI), is

key in ensuring that this institution can compete with other international arbitration institutions. On the other hand, the adoption of digital technology is also one of the important pillars that allows the arbitration process to be more efficient and cost-effective, especially for cross-border disputes involving various jurisdictions.

In addition, sectoral regulatory adjustments are needed to handle disputes in strategic industrial sectors, such as energy, construction, and technology, which require arbitrators with specialized expertise. Future policies are also expected to improve the enforcement process of arbitral awards, both national and international, by emphasizing procedural simplification and limiting court intervention in enforcement proceedings. These reforms are important to ensure that arbitral awards can be implemented quickly and effectively, increasing legal certainty for parties who choose arbitration as a dispute resolution method.

Harmonization with international standards, especially in the recognition and enforcement of foreign arbitral awards, will play an important role in making Indonesia a more competitive arbitration center in the ASEAN region. On the other hand, the implementation of multi-tiered dispute resolution and attention to sustainability issues are also anticipated aspects in future arbitration policies. As such, Indonesia has a great opportunity to develop an arbitration system that is more reliable, flexible, and in line with changing global needs, making it a top choice in dispute resolution, both at the domestic and international levels.

B. Suggestions

Based on this research, some suggestions to improve the effectiveness and competitiveness of arbitration in Indonesia are:

- 1) **Strengthening Arbitration Institutions:** BANI and other national arbitration bodies need to improve service quality, arbitrator certification, and governance to be more competitive with international institutions.
- 2) **Technology Adoption:** There is a need for immediate adoption of digital technologies to facilitate online hearings, electronic document submissions, and digital evidence to speed up the arbitration process.
- 3) **Simplification of Enforcement of Awards:** Regulations should clarify the limits of the court's authority in the execution of arbitral

awards to make the enforcement process faster and more effective.

- 4) Harmonization with International Standards: Arbitration regulations in Indonesia need to be aligned with international standards, especially related to the recognition and enforcement of foreign arbitral awards.
- 5) Development of Sectoral Regulations: Specific regulations for arbitration in sectors such as energy and construction need to be developed to resolve more complex disputes.
- 6) Promotion of Arbitration: Arbitration should be actively promoted as an alternative to efficient and fair dispute resolution.
- 7) Integration of Multi-tiered Mechanisms: It is necessary to adopt multi-tiered dispute resolution to reduce the burden of arbitration and improve the efficiency of dispute resolution.

The implementation of this suggestion is expected to increase user trust and make Indonesia a competitive arbitration center at the global level.

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