



## Arbitration as an Alternative to Dispute Resolution in the Indonesian Legal System Analysis of Legal Effectiveness and Certainty

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| Article Info                                                                                                                                                                                                        | Abstract                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Article History</b><br>Received : 2024-07-19<br>Revised: 2024-07-22<br>Published: 2024-09-30<br><br><b>Keywords:</b><br><i>Arbitration; Dispute Resolution; Legal Certainty; Alternative Dispute Resolution.</i> | The increase in the complexity of business relationships requires a dispute resolution mechanism that is able to provide legal certainty quickly, efficiently, and fairly. Dispute resolution through litigation often faces obstacles in the form of lengthy procedures, high costs, and the potential to disrupt the business relationship of the parties. In this context, arbitration is present as an alternative form of dispute resolution that has gained recognition in the Indonesian legal system through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This study aims to analyze the position of arbitration as an alternative solution to dispute resolution, its implementation mechanism, and the legal force of arbitration awards in ensuring legal certainty for the parties. The research uses a normative juridical method with a legislative approach and a conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials that are analyzed qualitatively descriptively through deductive reasoning. The results of the study show that arbitration has advantages in the form of flexible procedures, faster dispute resolution, relatively efficient costs, confidentiality of the examination process, and freedom of the parties in choosing arbitrators who have competence in the field of dispute. In addition, final and binding arbitration awards provide legal certainty while ensuring the effectiveness of dispute resolution, although its implementation still faces challenges in the form of low utilization of arbitration and obstacles to the execution of awards in practice. Therefore, arbitration is an effective dispute resolution instrument to support a conducive business climate, increase legal certainty, and realize fast, efficient, and fair dispute resolution. |

### I. INTRODUCTION

The development of modern trade, investment, and business relations activities has increased the complexity of civil disputes that occur in society. Increasingly dynamic legal relationships give birth to various forms of agreements with increasingly complex characteristics so that the potential for default and legal disputes is inevitable. In such conditions, fast, effective, and legal certainty dispute resolution is a very important need, especially for business actors who prioritize the continuity of business activities. However, the dispute resolution mechanism through the courts (litigation) is often considered not to be able to fully meet these needs because the procedure is formal, requires a relatively long time, costs are not small, and the possibility of tiered legal remedies that cause legal certainty to only be obtained after a long process (Kurniawan, 2024).

This condition encourages the development of out-of-court dispute resolution mechanisms (*Alternative Dispute Resolution* or ADR) as part of the modernization of the dispute resolution system. Historically, the development of ADR has received serious attention since it was introduced by the Chief Justice of the United States, Warren Burger, in 1976 in response to the increasing burden of litigation in the courts and the need for more efficient dispute resolution mechanisms. Since then, arbitration has evolved to become one of the most widely used forms of ADR in national and international business transactions because it offers a more flexible, confidential settlement process and results in a final and binding award (*Final and binding*) (Hamzana, 2018).

In Indonesia, arbitration has gained juridical legitimacy through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The presence of these regulations shows the state's commitment to providing a

dispute resolution mechanism that is not only oriented towards conflict resolution, but also on legal certainty, economic efficiency, and protection of the interests of the parties. Arbitration is even the main choice in various business contracts, especially those related to investment, construction, international trade, financial services, and other commercial transactions because it is considered more able to maintain the confidentiality of business relationships than the litigation process in court (Riza & Abduh, 2019).

Nonetheless, the effectiveness of arbitration as an alternative to dispute resolution still faces various challenges in practice. On the one hand, arbitration offers advantages in the form of procedural flexibility, the freedom of the parties to choose arbitrators who have competence according to the field of dispute, and awards with permanent legal force. But on the other hand, the implementation of arbitral awards still often faces obstacles, especially at the execution stage which still requires the involvement of the court. In addition, there are still applications for the annulment of the arbitration award, differences in interpretation regarding the scope of arbitration authority, and the low use of arbitration by some national business actors who still prefer settlement through the courts. This condition shows that the existence of arbitration as a dispute resolution institution has not been able to completely eliminate the problem of legal certainty in the practice of business relations (Baharuddin, 2024).

This problem shows a paradox in the dispute resolution system in Indonesia. Arbitration is designed as a fast, simple, and final mechanism, but its effectiveness is still influenced by a variety of factors, including the parties' compliance with the arbitral award, the effectiveness of the enforcement mechanism, and the institutional relationship between the arbitration and the court. As a result, the main purpose of arbitration is to provide efficient dispute resolution and legal certainty has not always been optimally realized.

Various previous studies generally discuss arbitration from the aspects of its definition, legal basis, and settlement procedure. However, there is still a need for a study that comprehensively analyzes the effectiveness of arbitration as a dispute resolution mechanism from the perspective of legal certainty and its relevance to the needs of the modern business world. The study is important considering the increasing

complexity of business relationships that demands a dispute resolution system that not only provides legally valid judgments, but is also able to guarantee efficiency, certainty, and fairness for the parties.

Based on this background, this study aims to analyze the effectiveness of arbitration as an alternative dispute resolution in the Indonesian legal system, identify various advantages and obstacles to its implementation, and evaluate the extent to which arbitration is able to realize legal certainty and provide protection for the interests of the parties in resolving business disputes.

## II. RESEARCH METHODS

This research is a normative legal research that focuses on the analysis of arbitration arrangements as an alternative to dispute resolution in the Indonesian legal system. The approach used includes the legislative approach (*Statute approach*) and conceptual approaches (*conceptual approach*). The statutory approach is carried out by examining various legal provisions governing arbitration, especially Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and other relevant laws and regulations, while the conceptual approach is used to analyze legal doctrines, principles, and theories related to out-of-court dispute resolution (Rizkia & Fardiansyah, 2023).

The data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, while secondary legal materials are in the form of scientific books, legal journals, research results, and expert opinions related to arbitration and dispute resolution. The tertiary legal materials include legal dictionaries, encyclopedias, and other literature sources that support the discussion.

The collection of legal materials is carried out through library *research* by examining various literature that is relevant to research problems. Furthermore, all legal materials are analyzed using qualitative descriptive methods to identify, interpret, and evaluate arbitration arrangements in the perspective of legal certainty and dispute resolution effectiveness. Drawing conclusions is carried out deductively, namely drawing conclusions from general legal provisions towards an analysis of the specific problems that are the object of research.

### III. RESULTS AND DISCUSSION

#### A. The Philosophical and Juridical Foundations of Arbitration as an Alternative to Dispute Resolution

The development of economic activities and modern business relations has changed the paradigm of dispute resolution from one that was originally oriented towards settlement through judicial institutions to a more flexible, efficient, and interest-oriented settlement of the parties. The complexity of business transactions, increasing investment, and the demand for legal certainty cause litigation mechanisms to not always be able to provide solutions that suit the needs of the business world. Formal, open to the public, time-consuming, and the availability of various legal remedies often result in protracted dispute resolution, reducing legal certainty and increasing the economic costs that must be borne by the parties. Under such conditions, arbitration develops as a dispute resolution mechanism that places the autonomy of the parties as the main principle in determining how their disputes are resolved (Mangei, 2020).

Philosophically, arbitration was born from the principle of freedom of contract (*freedom of contract*) which gives the parties the authority to determine for themselves the dispute resolution mechanism that is considered most in accordance with their interests. The principle reflects respect for the will of the parties (*Party Autonomy*), where the state does not impose that any civil dispute must be resolved through the courts. As long as the dispute concerns civil rights that are wholly within the control of the parties, the resolution may be left to an arbitrator chosen by mutual agreement. Thus, arbitration is a manifestation of individual freedom in exercising legal relations as well as a form of state recognition of private dispute resolution (Muskibah & Hidayah, 2021).

From a juridical perspective, the existence of arbitration in Indonesia gained legitimacy through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law defines arbitration as a means of resolving civil disputes outside of the common courts that is based on an arbitration agreement made in writing by the parties. The arrangement shows that the authority to arbitrate was not born by designation of the state, but rather came from the agreement of the parties who voluntarily chose not to settle their disputes through the courts. Therefore, the existence of an arbitration agreement is a legal basis as well as a source of

arbitrator authority in examining and deciding disputes.

The main character of arbitration lies in the final and binding nature of its award (*Final and binding*). Unlike court decisions that still open the possibility of appeal, cassation, or review, arbitration awards in principle cannot be submitted as ordinary legal remedies so as to provide faster legal certainty for the parties. These characteristics make arbitration have strategic value in the business world, because certainty regarding dispute resolution is an important factor in maintaining the stability of commercial relations and the sustainability of business activities (Sari, 2019).

The advantage of arbitration lies not only in the efficiency of time, but also in the flexibility of the procedure that allows the parties to choose an arbitrator based on a particular expertise according to the character of the dispute at hand. In disputes involving technical aspects, such as construction, energy, banking, investment, and international trade, the competence of arbitrators is an added value that is difficult to obtain through conventional litigation mechanisms. In addition, the closed nature of the arbitration trial provides protection against the confidentiality of business information so that the reputation and commercial interests of the parties are maintained (Sari, 2019).

However, arbitration is not a dispute resolution mechanism that is completely free from legal issues. The effectiveness of arbitration is still influenced by various factors, including the quality of the arbitration clause in the contract, the compliance of the parties with the arbitrator's award, and the effectiveness of the execution of the arbitral award through the court. Therefore, the success of arbitration as an alternative dispute resolution is not only determined by the existence of laws and regulations, but also by the legal culture of business actors and the consistency of judicial institutions in respecting the principle of finality of arbitration awards. In this context, arbitration is not only understood as a dispute resolution procedure, but also as a legal instrument that aims to realize legal certainty, economic efficiency, and fairness in modern business relationships.

#### B. Arbitration in an Alternative Dispute Resolution Framework in Indonesia

The development of the modern legal system shows that dispute resolution is no longer

monopolized by the judiciary. The complexity of legal relations, especially in the fields of trade and business, demands the availability of a more flexible, efficient, and able dispute resolution mechanism that is able to provide legal certainty in a relatively short time. This condition gave birth to the concept *Alternative Dispute Resolution* (ADR) as a complement to the litigation system that gives the parties the freedom to choose a dispute resolution mechanism according to the character of the legal relationship they have built (Asis, 2024).

In Indonesia, the existence of ADR obtained a legal basis through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law not only regulates arbitration as a dispute resolution mechanism that results in final and binding awards, but also recognizes various other forms of dispute resolution, such as consultation, negotiation, mediation, conciliation, and expert judgment. The arrangement shows that the Indonesian legal system has adopted a more modern approach by providing space for dispute resolution that prioritizes the agreement of the parties without always having to resort to the litigation process in court.

The main principle underlying the entire ADR mechanism is the settlement of disputes based on agreement (*Consensual Dispute Resolution*). Unlike litigation that results in a decision through state authority, ADR relies on the free will of the parties to determine the process and form of dispute resolution. Therefore, all ADR mechanisms can only be implemented if there is agreement between the parties, both before the dispute occurs and after the dispute arises. Consequently, every agreement that has been made has the same binding force as agreements in general are based on the principle of *Pacta Sunt Servanda*, so that it must be carried out in good faith (Menkel-Meadow, 2015).

Among the various forms of ADR, arbitration occupies a different position because it produces an award that has final and binding legal force (*Final and binding*). While negotiation, mediation, and conciliation focus more on reaching a mutual agreement through the deliberative process, arbitration gives the arbitrator or arbitration tribunal the authority to examine and decide disputes independently. This character makes arbitration have a function that almost resembles a judicial process, but still maintains the principle of autonomy of the parties and procedural flexibility that are the main characteristics of

dispute resolution outside of court (Pulungan & Nuroni, 2023).

The position of arbitration in the Indonesian legal system is further strengthened through the recognition of the executory power of arbitral awards. Law Number 30 of 1999 stipulates that arbitral awards must be registered with the District Court within a maximum period of thirty days from the date of the award being pronounced as an administrative condition for the execution of execution. Although the execution process still involves the court, the court's authority is limited to granting an order for the implementation of the judgment and is not allowed to reassess the subject matter or the arbitrator's legal considerations. The arrangement is a form of respect for the principle of finality of the arbitration award as well as providing legal certainty for the parties.

Nevertheless, the effectiveness of arbitration as part of ADR still faces various challenges in practice. Not a few arbitration awards have experienced obstacles at the implementation stage due to the low compliance of the losing party and the application to the court to cancel the arbitration award. In addition, the understanding of the public and business actors regarding the ADR mechanism is still relatively limited, so dispute resolution through litigation remains the main choice in many cases. These conditions show that the success of arbitration is not only determined by the completeness of normative arrangements, but also influenced by the legal culture, professionalism of the arbitration institution, and the consistency of the judicial institution in respecting the authority of arbitration as an independent dispute resolution mechanism.

### C. Dispute Resolution Mechanism Through Arbitration and Its Legal Implications

Arbitration is a dispute resolution mechanism that can only be used for certain disputes that meet the requirements as specified in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Not all civil disputes can be resolved through arbitration, but only disputes relating to the field of trade or civil rights that are completely under the control of the parties. The limitation shows that arbitration is built on the principle of the autonomy of the parties (*Party Autonomy*), so that the state only provides space for the settlement of disputes concerning rights that can be controlled and

transferred by the parties themselves (Harahap, 2022).

The authority of the arbitrator to examine a dispute is not born automatically, but comes from the existence of an arbitration agreement made in writing by the parties. The agreement may be in the form of an arbitration clause (*Pactum de Compromittendo*) before the dispute occurred or was made after the dispute arose (*Compromise Act*). Thus, the consent of the parties is the main basis that gives legitimacy to the arbitrator to replace the court's authority in examining and deciding disputes. In the absence of an arbitration agreement, dispute resolution remains the authority of the general court (Latief et al., 2023).

If efforts to resolve the dispute through negotiation, consultation, mediation, conciliation, or other alternative forms of dispute resolution do not result in an agreement, the parties may continue to resolve the dispute through arbitration based on written agreement as stipulated in Article 6 of Law Number 30 of 1999. The provision shows that arbitration is not a competitor to litigation, but part of a dispute resolution system that provides stages of settlement in stages in accordance with the wishes of the parties.

The examination process in arbitration is designed to be simpler compared to the litigation process in court. The parties are given the flexibility to determine the procedure for the examination, choose arbitrators who have competence according to the nature of the dispute, determine the place of arbitration, and use mutually agreed language. The arbitration trial is also closed so that it is able to maintain the confidentiality of business information and legal relations of the parties. This characteristic is one of the main reasons why arbitration is more in demand in the resolution of commercial disputes that require protection of the company's strategic information (Rafika, 2022).

In examining the dispute, the arbitrator assesses all the evidence submitted by the parties, including written evidence, witness statements, expert opinions, and legal facts revealed during the trial. The assessment of evidence is carried out independently based on the principles of objectivity and professionalism of the arbitrator. Once the examination is declared complete, the arbitrator renders a decision which is in principle final and binding (*Final and binding*), so that there is no ordinary legal remedy as it is known in the general justice system. The character of finality

provides faster legal certainty and avoids the parties from a protracted judicial process (Diansari, 2021).

Although the arbitral award is final, its implementation still requires certain legal mechanisms. For national arbitration awards, the award must be registered with the District Court as an administrative requirement for the execution of the execution. As for international arbitration awards, the authority of recognition and enforcement lies with the Central Jakarta District Court in accordance with the provisions of Law Number 30 of 1999. At this stage, the court is not authorized to reassess the subject matter of the dispute or the arbitrator's legal considerations, but only to ensure the fulfillment of the formal requirements for the implementation of the decision. The arrangement reflects respect for the independence of arbitration while maintaining the relationship between the arbitration system and the national judicial system.

The effectiveness of arbitration is also influenced by the existence of an arbitration agreement that remains binding on the parties despite certain changes in circumstances, such as the death of one of the parties, bankruptcy, novation, or inheritance. The provision provides legal certainty that a change in the legal status of the parties does not necessarily remove the obligation to resolve disputes through arbitration in accordance with the agreement that has been made (Sari, 2019).

From the financing aspect, Law Number 30 of 1999 gives the arbitrator the authority to determine arbitration fees which include arbitrator fees, administrative fees, witness or expert fees, and other costs required during the examination process. In principle, the fee is charged to the losing party, unless the arbitrator determines the proportional division of costs according to the level of success of each party. Although the cost of arbitration in some cases is relatively higher than the cost of registering cases in court, the faster settlement process, the lack of legal remedies, and the maintenance of business confidentiality make arbitration still have high economic value, especially for business actors who prioritize efficiency and legal certainty (Diansari, 2021).

Thus, the arbitration mechanism not only provides an alternative to dispute resolution through litigation, but also offers a settlement system that prioritizes the autonomy of the

parties, the professionalism of the dispute examiner, the confidentiality of the process, and the finality of the award. These characteristics make arbitration an important instrument in supporting legal certainty and creating a conducive business climate in Indonesia.

#### **D. The Effectiveness and Binding Power of Arbitral Awards in Ensuring Legal Certainty**

One of the main characteristics that distinguishes arbitration from dispute resolution through the courts is the legal force of the arbitral award which is final and binding (*Final and binding*). This principle provides legal certainty to the parties because the decision handed down by the arbitrator basically cannot be submitted by ordinary legal remedies, such as appeals, cassation, or review. The finality of the arbitration award is a logical consequence of the agreement of the parties who voluntarily submit the resolution of the dispute to the arbitrator. Therefore, since the arbitration agreement was agreed, the parties have in essence also agreed to accept and implement the award to be handed down (Latief et al., 2023).

The position of arbitral awards in the Indonesian legal system gained legitimacy through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law affirms that arbitral awards have legal force that is binding on the parties and must be implemented voluntarily. This arrangement reflects respect for the principle of *pacta sunt servanda*, that is, every agreement made legally shall be binding on the parties making it. Thus, the binding power of an arbitral award does not solely come from the provisions of the law, but also comes from the agreement of the parties who choose arbitration as a dispute resolution forum (Syafira, 2021).

Although the implementation of the arbitration award is in principle voluntary, Law Number 30 of 1999 still provides an execution mechanism if the losing party does not implement the award voluntarily. In this case, the arbitrator or his or her proxy is obliged to register the arbitral award with the Registrar of the District Court no later than thirty days after the award is pronounced as stipulated in Article 59. The registration is an administrative requirement that provides a basis for the Chief Justice of the District Court to issue an execution order. If the registration obligation is not fulfilled, the arbitration award loses its enforceability so that its enforcement cannot be enforced through legal mechanisms.

The involvement of the District Court in the execution stage cannot be interpreted as a form of intervention against the independence of the arbitration. The court's authority is limited to the granting of an order for the implementation of the judgment and does not include reexamination of the subject matter of the dispute or the arbitrator's legal considerations. The restriction is a form of respect for the principle of finality of arbitral awards while maintaining a balance between the arbitration system and the national judicial system. Thus, the court functions as a state instrument that ensures the effectiveness of the implementation of the arbitral award, not as an institution that corrects the substance of the award (Harahap, 2022).

From the perspective of business practice, the legal force of an arbitration award provides a variety of advantages that cannot always be obtained through litigation mechanisms. Relatively faster dispute resolution, flexible procedures, trial secrecy, and freedom to choose arbitrators who have competence in the field of dispute are factors that increase business actors' confidence in arbitration. In addition, the finality of the decision also provides certainty regarding the end of the dispute so that the parties can immediately resume business activities without having to face a protracted judicial process.

Nevertheless, the effectiveness of arbitration in practice still faces a number of challenges. Not all arbitration awards can be implemented easily because there are still parties who do not have good faith to fulfill the content of the award voluntarily. In addition, the application for annulment of the arbitration award submitted based on certain reasons as stipulated in Law Number 30 of 1999 shows that the principle of finality still has limitations determined by law. Other obstacles also arise in the form of a low understanding of the function of arbitration by some people and the lack of optimal use of arbitration as a dispute resolution mechanism outside the court.

Therefore, the legal force of arbitration is determined not only by the final and binding nature of its award, but also by the effectiveness of its implementation in practice. Legal certainty can only be realized if the arbitral award is respected by the parties, supported by an effective enforcement mechanism, and obtains consistency from the judicial institution in respecting the authority of arbitration. With the fulfillment of these three aspects, arbitration not only functions

as an alternative dispute resolution, but also becomes a legal instrument that is able to realize a fast, efficient, legally certain, and fair dispute resolution for the parties.

#### IV. CONCLUSIONS AND SUGGESTIONS

##### A. Conclusion

Arbitration is one of the out-of-court dispute resolution mechanisms that has an important position in the Indonesian legal system, especially in the settlement of civil disputes in the fields of trade and business. The existence of Law Number 30 of 1999 provides a clear legal basis for the implementation of arbitration through the principles of freedom of contract, finality of judgment, and binding nature for the parties. Compared to settlement through litigation, arbitration offers simpler procedures, relatively quick resolution, more efficient costs, and confidentiality guarantees which are the main needs in the business world. However, the effectiveness of arbitration still faces challenges in the form of low public understanding of arbitration, the lack of optimal use of arbitration clauses in business contracts, and obstacles in the implementation of the award if there is no good faith from the losing party. Therefore, arbitration is not only an alternative to litigation, but also a legal instrument that is able to provide legal certainty, efficiency, and justice as long as it is supported by consistent arrangements, compliance of the parties, and synergy between the arbitration institution and the judiciary in the implementation of its award.

##### B. Suggestions

The government and arbitration institutions need to increase socialization and education on the use of arbitration as an effective dispute resolution mechanism, especially for business actors. In addition, it is necessary to strengthen the implementation of arbitration awards through better coordination between the arbitration institution and the court so that legal certainty and public trust in dispute resolution through arbitration increases.

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