



The Role of Arbitration in Resolving Industrial Relations Disputes in Indonesia: A Case Study of Employment

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Abstract

In employment relationships, industrial relations conflicts are common and require efficient, fair, and effective resolution mechanisms. This study examines how arbitration institutions function in resolving industrial relations disputes and evaluates their advantages, disadvantages, and shortcomings within the Indonesian legal system. This study examines arbitration as an alternative dispute resolution method outside the Industrial Relations Court using a normative juridical approach based on laws, legal literature, and scientific studies. The results indicate that arbitration plays a significant role in encouraging conflict resolution through deliberation and agreement between disputing parties. Arbitration offers several advantages compared to litigation, such as faster dispute resolution, lower costs, confidentiality, procedural flexibility, and greater legal certainty through final and binding decisions. By encouraging agreed solutions, arbitration can also help maintain healthy relationships between employers and employees. However, the mechanism has disadvantages. These include limited opportunities for appeal, the possibility of arbitrator bias, ambiguity, and dependence on the arbitrator's ability and honesty. Despite these shortcomings, arbitration remains a useful means of resolving industrial relations conflicts when conducted with professionalism, impartiality, and good faith from all parties involved. Therefore, arbitration helps build a fair, stable, and productive industrial relations system.

I. INTRODUCTION

In the employment relationship between workers and employers, disputes are an unavoidable situation in industrial relations. Disputes in industrial relations often arise due to differences in interests, rights, and company policies. Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI) establishes procedures for resolving various disputes arising from industrial relations, both in court and out of court, to provide legal certainty in resolving these disputes. In fact, the parties must first resolve the disputes out of court to reach a consensus based on the principle of deliberation (Gultom et al., 2023).

Industrial relations disputes are currently typically resolved through litigation or the courts. The litigation process, on the other hand, is often considered time-consuming, costly, and procedurally complex. This situation has

encouraged the emergence of various out-of-court dispute resolution methods, which are considered more efficient. Arbitration, one type of alternative dispute resolution recognized by the Indonesian legal system, is a dispute resolution mechanism conducted outside the courts with a written agreement between the parties to submit the dispute to one or more arbitrators, whose decisions are final and binding (Gultom et al., 2023). However, various weaknesses of arbitration remain. In general, the aggrieved party cannot appeal the arbitration decision. Furthermore, the transparency aspect and the potential bias of the arbitrators are often the subject of criticism during the closed-door arbitration process. Therefore, to determine the effectiveness of arbitration in resolving industrial relations disputes in Indonesia, it is important to examine its role, advantages, and disadvantages (Gultom et al., 2023).

In some cases, Law Number 2 of 2004 regulates regret in industrial relations. This law regulates how disputes arising from industrial relations conflicts can be resolved through mechanisms outside the court or special courts that handle such disputes. Before entering the final process of industrial relations, all parties are required to resolve the industrial relations dispute outside the court. The principle of deliberation to reach consensus is the basis of non-judicial settlement (Santoso (2017)). Disputes usually arise due to dissatisfaction of one of the parties. Employers may have provided their wisdom in a way that is not in accordance with a professional perspective, which causes differences of opinion and consideration among employees. As a result, different results will be produced as a result of the employer's policy. A worker who is very diligent in his work has higher morale, while a worker who lacks enthusiasm will have a worse graph, which can ultimately lead to conflict (Mustafa, 2022).

According to Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI), there are several types of disputes in industrial relations that are related, namely (a) conflicts of rights, (b) conflicts of interest, (c) disputes regarding termination of employment (PHK), and (d) disputes between trade unions that occur in a company. In accordance with the provisions of the law, all disputes between workers and employers must be resolved directly between them without interference from other parties. According to Pujiyo (2012), this approach is considered the most accurate because the ideal dispute resolution is to reach a mutually beneficial agreement before seeking other solutions. So that conflicts can be resolved well, stakeholders must collaborate (Abdussalam, 2009). services to community workers or employers and their employees. To assist in dispute resolution, the government employs mediators who are responsible for reaching an agreement between the interests of both parties. Public order in resolving industrial relations disputes through

negotiation, conciliation, or arbitration is very important in the era of broad democracy.

II. RESEARCH METHODS

In this study, normative juridical research is the primary approach used to investigate the role of arbitration in resolving industrial relations disputes. Sunaryati Hartono stated that normative legal research is conducted daily, making it highly accurate because the researchers have studied and understood legal science in a disciplined manner. Furthermore, normative and social research can be used together (Hartono, 2006).

According to Marzuki (2019), this method involves searching for various secondary materials. These secondary materials include laws and regulations, legal records, past research results, articles, and other legal information related to the subject under study. The primary legal materials used in this study include Law Number 22 of 1957 concerning the Settlement of Labor Disputes, Law Number 13 of 2003 concerning Manpower, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI).

In this study, two approaches are used: the statute approach and the conceptual approach. The statute approach analyzes all laws and regulations related to the legal issue under study, while the conceptual approach examines new theories and perspectives in legal science, particularly those related to law enforcement mechanisms.

Literature review, or legal material collection, is conducted by collecting, identifying, and analyzing various relevant legal materials. Next, using legal interpretation techniques, these legal materials are analyzed qualitatively. The goal is to gain a better understanding of the implications, benefits, and shortcomings of arbitration in resolving industrial relations disputes in Indonesia (Marzuki, 2019).

III. RESULTS AND DISCUSSION

A. Implications of Arbitration in the Settlement of Industrial Relations Disputes

Employers often ignore the rights of workers, especially those related to wages, in the context of employment relationships and agreements. Therefore, to protect the rights of workers, the government has established various laws, one of which is the Labor Law. Labor Law is a collection of laws, both written and unwritten, that regulate situations in which a person works for another person for wages. The purpose of this law is to provide legal protection for workers and defend them legally. Komar Kantaatmadja divides dispute resolution into three main categories. The first is negotiation, either directly or with a third party; the second is litigation, either at the national or international level; and the last is arbitration, either ad hoc or through an established institution.

Thus, these methods can be used to resolve disputes according to the circumstances and needs of each case (Adolf, 1993). In general, dispute resolution is usually achieved through litigation or court settlement. However, litigating in court is difficult and can pose new challenges for those seeking justice because the process is time-consuming and expensive. Furthermore, formal justice has weaknesses that make the process more difficult and inefficient. As a result, all parties involved in the dispute usually suffer losses (Sherly et al., 2021). In most cases, people prefer to resolve their disputes through the courts. However, there are many disadvantages to resolving disputes through the courts, such as a. the time required for the trial; b. the costs involved; c. the time required to resolve disputes from the District Court, High Court, Cassation, and Judicial Review levels to the Supreme Court; d. Judges do not have adequate knowledge of the matter; and d. others are privy to the process. For example, a dispute over a house occupied without the right of another party was processed in the District Court from 1972 to 2000. For 28 years, no final decision had been made. If it were then decided to execute the

case, it would require a lot of time and money (Priyatna Abdurrasyid, 2002:5).

However, it is important to remember that there are other ways to resolve industrial relations disputes outside the industrial relations court. These out-of-court settlements have the same legal force as decisions made by the industrial relations court. In general, dispute resolution can be carried out through litigation or non-litigation. According to Mila Karmila Adi (2002), non-litigation dispute resolution occurs outside the judicial system. Litigation dispute resolution is usually carried out in the General Court, especially in cases related to rights. The process of resolving labor disputes appears to have become more complex since the enactment of Law No. 2 of 2004 on the Settlement of Labor Relations Disputes and its regulations. This complexity lies in the fact that there are two different ways to resolve disputes. First, through the general court system, where industrial relations disputes are resolved at two levels: the first instance and the cassation level. In addition, out-of-court dispute resolution can be carried out through conciliation, arbitration, and mediation (Yunarko, 2011).

According to Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, out-of-court settlement efforts can be carried out through bipartite processes (negotiation), mediation, conciliation, and arbitration (Bambang Ali Kusuma & Heru Suprpto, n.d.). There are two ways to resolve disputes in industrial relations: in court or out-of-court. This article will emphasize out-of-court settlement efforts.

B. Dispute Resolution Mechanism through Arbitration

Arbitration, according to Article 1 number 16 of Law No. 2 of 2004, is carried out outside the relevant court to resolve the interests and disputes of workers' unions or labor unions that arise in a company. According to Husni (2004), the arbitration process begins with a written agreement between the disputing parties, in which they agree to submit their

dispute to an arbitrator. "Arbitration" comes from several languages, such as "arbitrage" (English), "schirdspruch" (German), and "arbitare" (Dutch). Arbitration is a term that refers to the right of an arbitrator or arbitrator to resolve a problem or dispute with a wise or friendly approach (Subekti & Nasional, 1981).

In addition, the subject defines arbitration as the settlement or determination of a dispute by a judge or panel of judges based on an agreement in which each party submits to and complies with the decision of the judge or panel of judges they have chosen or determined. Arbitration is a method of resolving civil cases outside the general courts based on a written agreement between the disputing parties to submit the dispute to an arbitrator, whose decision is binding on both parties and is final. Although the Arbitration Institution has existed for a long time in Indonesia, its benefits are still not optimal. Arbitration is a method of resolving disputes outside the courts that relies on the agreement of both parties to choose a third party, also known as an arbitrator, to resolve their dispute and state that they will comply with the arbitrator's decision.

According to Bambang Ali Kusuma and Heru Suprpto and others, the decision made by the judge is final and binding. Essentially, arbitration is a means of resolving conflicts in business relationships. Effective since 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law) regulates various mechanisms available for resolving disputes between entrepreneurs outside the primary courts. Prior to that, arbitration had existed in Indonesia since the Dutch East Indies era and was regulated by the Statute of Het Herzienien Indonesiach, Staatsblad 1941 44 (HIR). The HIR was a law enacted by the Dutch East Indies government to regulate arbitration in the Java region. Furthermore, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law), which regulates various non-litigation dispute

resolution mechanisms related to business and commercial matters in Indonesia, is derived from the HIR (Gultom et al., 2023). To further explain arbitration, Abdul Kadir Muhammad stated that it is a private judicial institution that functions outside the jurisdiction of general courts. Arbitration is better known in the business context. The disputing parties choose and agree to a legal process known as arbitration. The disputing parties freely choose to resolve disputes outside the District Court.

The parties can reach this decision in the form of a written agreement before or after a dispute occurs, in accordance with the principle of freedom of contract in civil law (Muhammad, 1991). According to Law no. 2 of 2004, an arbitrator is one or more people selected by the disputing parties from a list of arbitrators determined by the Minister to provide decisions regarding disputes of interest and disputes between trade unions or labor unions in only one company. Settlement is provided through arbitration, the decision of which is binding on all parties and is final (Article 1 point 16). In terms of arbitration, Law no. 2 of 2004 is the *lex specialis* which replaces the *lex generalis* of Law no. 30 of 1999; in other words, more specific and more important regulations are included in Law no. 2 of 2004 rather than the legal provisions in force since 1999. Articles 4–3 and Articles 29–54 cover these specific provisions. Furthermore, the law specifically limits the authority of the Labor Dispute Settlement Commission to two types of disputes. In employment relations, disagreements, including differences of opinion, arise regarding the establishment or amendment of the terms of a collective agreement. Furthermore, it also covers trade union conflicts or trade union conflicts occurring within the same company (Gultom et al., 2023).

The arbitrator initiates the settlement of an employment dispute by attempting to reduce tensions between the disputing parties. After the peace efforts are completed, the arbitrator or arbitration panel must create a peace

document signed by the arbitrator or arbitration panel and all disputing parties. Next, the Peace Law is formalized through registration at the regional industrial relations court, where the arbitrator serves as an intermediary. If the settlement efforts fail, the arbitrator or arbitration panel will continue the arbitration (Article 44 of the Industrial Relations Law). The Industrial Relations Law Regulations require a written agreement from the disputing parties to submit the dispute resolution to a third party (arbitrator) and accept the party's decision as binding and final and irrevocable. In addition, dispute resolution is resolved through arbitration based on the agreement of the disputing parties. In triplicate, the arbitration agreement must be confirmed in writing and each party will receive one copy with the same legal force (Article 32(1)(2) of the Industrial Relations Law). The arbitration agreement must include the following important information: (a) the full names and addresses of the disputing parties; (b) the main issues that give rise to the dispute and have been submitted to the Arbitration Panel to be resolved and decided; (c) the number of arbitrators must be agreed upon by the parties; (d) declaration of the disputing parties regarding compliance with and implementation of the arbitration decision; (e) place and date of preparation of the mediation document and signatures of all disputing parties (Article 32(3) of the PPHI Law). In order to carry out their duties properly, the Arbitrators must carry out the following obligations (Munir Fuady, 2000:79): (1) The Arbitrators must uphold the integrity and fairness of the arbitration process; (2) The Arbitrators must disclose all interests or specific relationships that may impact the arbitrator's bias towards one of the parties, or whose decision is biased; (3) In communicating with the parties, the arbitrators must avoid inappropriate matters; (4) The arbitrators must carry out procedures diligently and fairly; (5) Arbitrators must make decisions that are fair, independent and based

on careful consideration; (6) Arbitrators must be trusted with confidential matters; (7) Several other ethical considerations specifically apply to arbitrators appointed by one of the parties. If efforts to mediate between the parties in an employment court hearing are unsuccessful, the arbitrator will issue a final decision.

The arbitrator's decision is legally binding and must be followed by all disputing parties as a formal peace effort. This decision cannot be appealed to the court. With this arbitrator's decision, it is hoped that the dispute can be resolved fairly and completely without having to undergo a lengthy court process. According to Budiono (2013), this decision is the final point in the settlement of industrial relations disputes and must be respected by all disputing parties. The arbitration decision must be registered with the Industrial Relations Court domiciled in the jurisdiction where the arbitrator issued the decision. Within 30 (thirty) working days from the date of the decision, the plaintiff who is being sued has the right to file an annulment request with the Supreme Court for dissatisfaction if he or she suspects that: (a) the following letters or documents sent to the court are recognized or found to be forged after the decision is made; (b) the opposing party discovers that important documents are hidden after the decision is made; or (c) the judgment is based on fraud. The Supreme Court will determine the consequences of annulling the arbitration decision in whole or in part if the above annulment request is accepted. The Supreme Court will issue a decision on the cancellation request within a maximum of 30 (thirty) working days from the date of receipt of the request (Article 52 of the PPHI Law).

C. Benefits of Arbitration in Resolving Industrial Relations Disputes

With industrial relations, arbitration offers many advantages to the parties involved in a dispute.

In the business sector, the process of resolving disputes through arbitration is more

often chosen by entrepreneurs because of several advantages and conveniences associated with it (Priyatna Abdurrasyid, n.d.): (1) The disputing parties can choose their own arbitrators, and for this, of course, they will be chosen those who are believed to have integrity, honesty, expertise, and professionalism in their respective fields (although they do not represent the disputing parties who chose them); (2) The arbitration panel operates in secret, which allows for confidentiality and non-publication; (3) The arbitration decision, which is in accordance with the wishes of both parties, is a final decision that binds both parties to the dispute, unlike a court decision which is open to time-consuming review; (4) Because the decision is final and binding, the process can be fast, cheap, and much lower than the costs required to handle the dispute. First and foremost, arbitration reduces costs compared to conventional court channels. The parties involved may not have to spend a lot of money if legal fees and the arbitration process are simpler. In addition, the arbitration process resolves disputes more quickly than court proceedings, where cases often take a long time.

Confidentiality enhances the value of arbitration. Arbitration proceedings offer a high degree of privacy, allowing details and information about the dispute and its resolution to be kept secure. This may be attractive to high-profile individuals or companies conducting confidential business (Gultom et al., 2023). Compared with traditional court proceedings, decisions made by arbitrators in arbitration typically have greater legal certainty. In arbitration, there are typically limited appeal rights, meaning the arbitrator's decision is final and non-appealable, providing a final decision for all parties involved. One feature of arbitration that appeals to disputants is its flexibility. Parties have the ability to modify and agree to the arbitration process, giving them greater control over its course. This makes the

resolution process more effective and tailored to each party's needs and desires. Finally, it's important to remember that decisions made by arbitrators are usually final and non-appealable. Unless certain circumstances meet the criteria for annulment, the arbitral award is binding on the parties involved as the end of the dispute resolution process (MacDonald, n.d.).

D. Weaknesses of Arbitration in Resolving Relationship Disputes

While industrial relations arbitration has several advantages, there are some drawbacks worth noting. The main drawback is the limited opportunity to appeal the arbitrator's decision. Arbitration decisions are typically non-appealable and final. As a result, parties dissatisfied with the decision do not have the option to appeal or request a review. Furthermore, arbitration is a private and less transparent process than court proceedings, which can raise concerns about the fairness and transparency of decision-making.

Furthermore, less formal arbitration processes can also be problematic because the claims submitted may be weaker or less structured. In industrial relations arbitration, there are also concerns about the potential for arbitrator bias. Arbitrators may have prior relationships with one of the parties involved, which could unfairly influence their decisions. This can threaten the integrity of the arbitration process and public trust (Gultom et al., 2023). Bambang Yunarko stated that the arbitration process has several weaknesses. First, only honest and trustworthy parties are required. In industrial relations disputes, only parties with credibility, integrity, and full compliance with existing agreements can benefit from arbitration. Second, industrial relations arbitrators significantly influence the decisions made by the arbitral tribunal. Although arbitrators possess high professional competence, the decisions made by the arbitral tribunal always depend on the arbitrator's technical expertise to make a correct and fair decision for the parties. However, it is difficult

for an arbitral tribunal to meet and fulfill the wishes of the disputing parties. The winning party may argue otherwise, but the losing party often considers the arbitral award unfair. Because arbitration lacks an appeals process to determine cases, relying entirely on the arbitrator can be detrimental. Third, there is no precedent for previous cases because arbitral opinions are kept confidential and will not be made public.

Therefore, previous arbitration decisions are considered independent and separate from other cases. In other words, an arbitration decision in a dispute does not bring any future benefits, even though it may contain important and valuable arguments from renowned judges in their fields (Yunarko, 2011).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Arbitration is an alternative form of dispute resolution that plays a crucial role in resolving industrial relations disputes. Compared to court proceedings, arbitration offers a simpler, faster, and more efficient process, both in terms of time and cost. Furthermore, arbitration decisions are final and binding, providing legal certainty for the disputing parties.

However, the application of arbitration to resolve industrial relations disputes still faces several obstacles, such as the limited scope of disputes that can be resolved through arbitration and issues of trust in the professionalism of arbitrators. Therefore, improving the quality and competence of arbitrators is crucial to supporting the effectiveness of dispute resolution through this mechanism.

On the other hand, brand image on e-commerce platforms is significantly influenced by the promotional strategy implemented. Effective, transparent, and aligning promotions with brand values can increase consumer trust, strengthen customer loyalty, and drive sales. Utilizing social media and influencers has also been shown to help build

closer relationships between consumers and brands.

However, excessive use of promotions can negatively impact product quality perceptions and brand value. Therefore, a balance is needed between attracting consumers through promotions and maintaining a strong brand image in the long term. With the right strategy, both arbitration in dispute resolution and promotions in e-commerce can provide optimal and sustainable benefits.

B. Suggestion

Based on the discussion, efforts are needed to increase the effectiveness of industrial relations dispute resolution through arbitration by enhancing the professionalism of arbitrators and expanding public awareness of the benefits of arbitration. Furthermore, e-commerce platforms need to design promotional strategies that focus not only on increasing sales but also consider the long-term impact on brand image. Therefore, both in dispute resolution and in business activities, a balance is needed between implementation effectiveness, stakeholder trust, and the achievement of long-term goals to ensure optimal and sustainable benefits.

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