



Legal Certainty on Business Dispute Resolution Through Arbitration

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ABSTRACT

Arbitration has increasingly become the preferred method for resolving business disputes, offering an alternative to the often lengthy and complex litigation process. It presents several advantages, such as expedited proceedings, confidentiality, and final, binding decisions. This article explores how legal certainty is upheld within the arbitration process and evaluates its effectiveness in resolving commercial disputes in Indonesia. The research adopts a normative juridical method, utilizing qualitative analysis of legislation, legal doctrines, and case studies of arbitration awards. The findings indicate that Indonesia's arbitration framework, governed by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, provides a solid legal foundation for arbitration proceedings. The final and non-appealable nature of arbitration decisions enhances legal certainty for the disputing parties. Nevertheless, challenges remain in the enforcement phase, particularly in the execution of arbitral awards through the district courts. These issues highlight the need for better coordination between arbitration institutions and the judiciary, along with improved legal awareness among law enforcement officials regarding the role of arbitration. In conclusion, arbitration continues to play a vital role in ensuring legal certainty and promoting the efficient resolution of business disputes in today's legal landscape.

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INTRODUCTION

In the context of a rapidly globalizing economy, both international and domestic business relations have undergone significant transformations in terms of intensity, complexity, and the accompanying legal risks. The growth in cross-border trade, investment, and partnerships has led to the emergence of more intricate legal relationships, multinational contracts, and a higher likelihood of disputes. Business conflicts may arise from various issues, including breaches of contract, disagreements in commercial collaborations, shareholder disputes, profit-sharing conflicts, and violations of intellectual property rights (Sulaiman, 2019).

The conventional court system, although fundamental, often falls short in meeting the demands of the modern business environment. Formal legal procedures, lengthy resolution times, high litigation costs, and public hearings are frequently seen as inefficient and incompatible with the confidentiality and expedience valued in the corporate world. Furthermore, uncertainty surrounding the duration of litigation and the potential for appeals or cassation makes businesses hesitant to rely on litigation as the primary means of dispute resolution (Sri Warjiyati, 2018).

As a more adaptable alternative, arbitration has gained prominence as a non-litigation dispute resolution mechanism, grounded in the principle of party autonomy. Through arbitration agreements, parties voluntarily consent to resolving potential disputes via arbitration, a process that can be tailored to suit the specific needs and nature of their business relationship. Arbitration is also favored for its confidentiality,

impartiality, neutrality, and finality, as arbitral awards are binding and not subject to appeal (Yanti et al., 2022).

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution serves as the principal legal framework governing arbitration in Indonesia. This legislation not only legitimizes arbitration as a formal dispute resolution method but also grants legal recognition to both domestic and international arbitral awards. A key principle embedded in arbitration law is legal certainty a condition wherein legal norms are predictable, consistently applied, and offer fair protection of parties' rights (Arrizal, 2020). This principle is particularly vital in commercial contexts, where stability and legal clarity are prerequisites for sound business decision-making.

Despite a well defined normative framework, the implementation of arbitration in Indonesia continues to face several challenges that may undermine the guarantee of legal certainty. Issues such as limited understanding among court officials regarding arbitration procedures, difficulties in enforcing arbitral awards, judicial interference during arbitration proceedings, and institutional weaknesses within arbitration bodies remain critical obstacles (Manullang, 2019). Moreover, many business actors still perceive arbitration as a secondary option, often resorted to only after litigation has failed to produce satisfactory outcomes.

On the international front, Indonesia's alignment with the global arbitration regime particularly as a signatory to the 1958 New York Convention, ratified through Presidential Decree No. 34 of 1981 requires the country to harmonize its national arbitration practices with international standards. This includes recognition and enforcement of foreign arbitral awards, which is crucial in creating a favorable investment climate and fostering legal certainty for foreign investors (Bianti, 2023).

Given these issues and complexities, a comprehensive legal analysis is necessary to assess the effectiveness of arbitration as a tool for resolving business disputes and to what extent it ensures legal certainty in practice. Such an analysis is essential to uncover the normative strengths of arbitration within Indonesia's legal system, evaluate practical barriers to its implementation, and propose recommendations to enhance a dispute resolution mechanism that responds to the evolving needs of modern business.

Therefore, this article aims to thoroughly examine how the principle of legal certainty is embedded within Indonesia's arbitration framework and evaluate its practical effectiveness in resolving business disputes. This study adopts a normative juridical approach, analyzing relevant laws, legal doctrines, and case studies to provide a holistic understanding of arbitration practices and their challenges in the Indonesian context.

RESEARCH METHODOLOGY

This study employs a normative juridical approach, which focuses on the analysis of written legal norms found in statutory regulations and other relevant legal sources. The normative juridical method is a legal research approach used to examine legal doctrines, principles, statutes, and jurisprudence. Its primary aim is to assess the extent to which existing legal norms are capable of addressing the legal issues under consideration. In the context of this research, this method is utilized to explore how legal certainty is regulated and implemented in the resolution of business disputes through arbitration mechanisms in Indonesia (Tan, 2021).

The research relies on qualitative data derived from three types of legal materials: primary, secondary, and tertiary sources. Primary legal materials include statutory laws related to arbitration most notably, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. It also encompasses jurisprudence and arbitral decisions issued by both domestic arbitration bodies, such as BANI (Indonesia National Arbitration Board), and international arbitration awards recognized under the framework of the 1958 New York Convention, ratified by Presidential Decree No. 34 of 1981. Secondary legal materials serve to support the analysis of primary sources and consist of legal textbooks, scholarly journal articles, research reports, and expert legal opinions that provide theoretical and contextual perspectives on arbitration and legal certainty. These materials help deepen the theoretical framework of the study. Tertiary legal materials, such as legal dictionaries, encyclopedias, and legal indexes, function as supplementary tools to clarify legal terms and support the interpretation of core legal concepts (Rahayu, 2020).

Data collection in this study is conducted through library research, which is the primary method in normative legal studies. This technique involves examining and interpreting legal documents, including relevant legislation, business contracts containing arbitration clauses, arbitral decisions, and legal doctrines related to the concept of legal certainty. Additionally, relevant national and international legal journals discussing the effectiveness of arbitration in resolving commercial disputes are reviewed to provide a broader analytical perspective.

The data collected are analyzed using a qualitative analysis method, which does not involve statistical or mathematical calculations. Instead, it focuses on interpreting the content and substance of the collected legal materials. The analysis is carried out descriptively and analytically, aiming to answer the central research question: how is legal certainty ensured in resolving business disputes through arbitration in Indonesia? During the analysis, the researcher compares the provisions of statutory regulations with their

practical implementation, assesses the consistency of arbitral decisions with the principles of finality and binding force, and evaluates the practical obstacles that may affect the effectiveness of arbitration as a dispute resolution mechanism.

DISCUSSION

The Role of Arbitration within the Indonesian Legal Framework

Arbitration holds a significant and strategic position within Indonesia's legal system as a recognized method of dispute resolution outside the court system (non-litigation). Its legal foundation is explicitly outlined in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Law). Article 1(1) of this law defines arbitration as a civil dispute resolution method carried out beyond the jurisdiction of general courts, based on a written agreement between the disputing parties. This agreement commonly referred to as an arbitration clause or a submission agreement serves as the legal basis authorizing an arbitral tribunal to resolve disputes arising between the parties.

This legal construct underscores that arbitration, as an alternative adjudicative mechanism, is firmly rooted in constitutional principles and has formal legal recognition. It also aligns with the civil law principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code, which states that legally binding agreements act as law for the parties involved. Accordingly, once parties mutually agree to settle disputes through arbitration, state courts lose jurisdiction over such matters except in cases explicitly allowed by law, as emphasized in Article 3 of the Arbitration Law (Aini & Millati, 2021).

Arbitral decisions are characterized by their final and binding nature, meaning they cannot be appealed, reviewed, or brought before the Supreme Court, in accordance with Article 60 of the Arbitration Law. This finality is one of arbitration's most valued advantages, offering a fast and legally certain resolution for commercial parties. Nonetheless, despite this finality, the law permits a limited challenge to arbitral awards through annulment petitions submitted to the district court. As stated in Article 70, such petitions may only be filed under exceptional circumstances namely, when the award is believed to be based on falsified documents, fraud, corruption, or the discovery of concealed documents that could have materially affected the outcome. This provision reflects Indonesia's commitment to procedural fairness, while still upholding the principle of finality that defines arbitration.

In practice, arbitration in Indonesia is facilitated by formally recognized institutions. The most prominent among them is the Indonesian National Board of Arbitration (BANI), which has been operating since 1977 and plays a key role in handling various commercial disputes, both domestically and in cross-border contexts. Other arbitration institutions include the Capital Market Arbitration Board (BAPMI), along with the recognition of foreign arbitral awards under the framework of the 1958 New York Convention, which Indonesia ratified through Presidential Decree No. 34 of 1981. This demonstrates that Indonesia's arbitration system has adopted international norms, particularly regarding the enforcement and recognition of arbitral decisions.

Despite its normative strength, the enforcement of arbitral awards in Indonesia still encounters practical obstacles particularly during execution via the district courts. Although the courts are, in principle, obliged to grant exequatur and facilitate enforcement, delays or refusals have occurred in certain cases. Such inconsistencies undermine the core purpose of arbitration: providing legal certainty and swift resolution. While courts serve an important supervisory function over arbitration, their involvement must remain minimal to preserve the integrity and finality of arbitral awards (Baharuddin, 2024).

Legal Certainty Assurance through Arbitration

Legal certainty is a cornerstone of any modern legal system, aimed at fostering order, clarity, and protection of the rights and obligations of individuals and institutions. Within the sphere of commercial dispute resolution, legal certainty plays a critical role, as it supports the continuity of business relationships, enhances investor confidence, and ensures the enforceability of contractual agreements. Arbitration, as an alternative to litigation, offers a relatively stronger guarantee of legal certainty compared to traditional court proceedings. This is largely due to its inherent procedural characteristics, which are designed to bypass the lengthy and complex processes often associated with the formal judicial system.

One of the clearest manifestations of legal certainty in arbitration is the final and binding nature of arbitral awards. Once an award is issued by the arbitral tribunal, the disputing parties are barred from pursuing any appeals or cassation, unlike in the conventional court system. This principle is codified in Article 60 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which explicitly states that arbitral awards are conclusive and enforceable, without the possibility of further legal remedies. The absence of appellate procedures allows disputes to be resolved more swiftly, enabling business actors to resume operations without being entangled in prolonged legal battles. According to Taolin et al. (2024), this finality is a vital element in guaranteeing legal certainty, as it provides a definitive conclusion to the dispute resolution process.

In addition to finality, the enforceability of arbitral awards is a critical component of legal certainty. The Arbitration Law provides a clear legal framework for the enforcement of both domestic and international arbitral awards. Under Articles 59 and 60, domestic arbitral decisions can be enforced by submitting a request to the head of the competent district court. Meanwhile, enforcement of foreign arbitral awards requires recognition (*exequatur*) from the head of the Central Jakarta District Court, as stipulated in Article 66. This mechanism ensures that arbitral outcomes are not merely declarative but possess full legal force. It reflects the broader principle of legal certainty not only in terms of clear legal rules but also in the ability to implement those rules effectively (Rifa'i et al., 2023).

Another significant guarantee of legal certainty lies in the neutrality and expertise of arbitrators. The ability of parties to select their arbitrators based on professional qualifications and integrity ensures an impartial and informed adjudication process. Arbitrators with specific expertise whether in commercial law, construction, finance, or other relevant sectors are better positioned to understand the nuances of complex business disputes than generalist judges. This procedural flexibility enhances trust in the arbitration process and reduces the potential for judicial error or bias. Additionally, ethical standards established by national and international arbitration institutions, such as BANI, the International Chamber of Commerce (ICC), and the Singapore International Arbitration Centre (SIAC), further safeguard the impartiality and professionalism of arbitral tribunals.

Nonetheless, despite these structural guarantees, the practical realization of legal certainty in arbitration still faces challenges. A common issue arises when the losing party refuses to voluntarily comply with the arbitral award. In such cases, the winning party must seek enforcement through the courts an often difficult process that may encounter bureaucratic delays or judicial resistance. In some instances, district courts have either postponed or outright rejected enforcement without providing adequate justification, thereby undermining the principles of finality and efficiency that are fundamental to arbitration. Wagianto (2020) highlights that such practices introduce a new layer of legal uncertainty, which ultimately contradicts the very purpose of choosing arbitration as a dispute resolution method.

The Effectiveness of Arbitration as a Business Dispute Resolution Mechanism

In the realm of commercial dispute resolution, arbitration is often regarded as a more effective alternative compared to litigation in the formal court system. Its effectiveness is largely attributed to procedural flexibility, speed, confidentiality, and the ability to tailor the process to the specific needs of the disputing parties. One of the key strengths of arbitration lies in its procedural adaptability, allowing parties to determine essential elements of the process such as the choice of arbitrators, the venue of arbitration, the language to be used, and even the substantive law governing the dispute. This level of customization promotes greater procedural justice and convenience, which contrasts sharply with the rigid and bureaucratic nature of conventional litigation (Born, 2020).

Another major factor that contributes to the perceived efficiency of arbitration is the expedited resolution process. Whereas litigation may take several years owing to multiple levels of appeal such as appellate and supreme court reviews arbitration typically resolves disputes within a shorter time frame, generally ranging from six months to one year depending on case complexity. This speed is particularly valuable for business entities that require quick resolution to prevent disruptions to operations. Anwar (2022) emphasizes that such time efficiency enhances productivity and economic activity, contributing positively to a stable and reliable business environment.

An equally important advantage of arbitration in commercial contexts is its confidential nature. Unlike court proceedings, which are generally open to the public, arbitration hearings are held in private, ensuring that sensitive business information and the details of the dispute remain confidential. This is especially appealing for companies seeking to preserve their corporate reputation and protect proprietary information during a legal conflict. Many large corporations and foreign investors favor arbitration precisely because it shields them from the negative publicity often associated with public trials. According to Hukumonline.com (2023), a key reason businesses opt for international arbitration is the efficiency and reputation of those institutions in resolving cross-border disputes discreetly and effectively.

Despite these advantages, arbitration is not without its challenges. One frequent criticism concerns the high costs associated with arbitral proceedings, particularly when international arbitral institutions or foreign arbitrators are involved. These costs include arbitrators' fees, administrative expenses, and travel or accommodation expenses, which can be prohibitive especially for small and medium sized enterprises (SMEs). Another barrier is the limited awareness and understanding of arbitration among business actors and the public in general. Due to unfamiliarity with arbitral procedures and their benefits, many still prefer traditional litigation despite its slower and more public nature.

To address these obstacles, concerted efforts are required from various stakeholders including the government, arbitration institutions, and professional legal associations to promote greater awareness and education on arbitration. Strengthening the institutional capacity of bodies such as the Indonesian National Arbitration Board (BANI) and establishing sector-specific arbitration forums could better serve the diverse

needs of the business community. In addition, the government could consider policy support or incentives to reduce arbitration costs, particularly for low- to medium-value disputes, thereby encouraging wider use of arbitration among businesses. In the long run, such initiatives are expected to improve the overall effectiveness of arbitration while reinforcing legal certainty within Indonesia's commercial landscape.

CONCLUSION

Arbitration offers an effective alternative to litigation in resolving business disputes, providing several key advantages that align with the needs of commercial actors. As outlined in the discussion, arbitration ensures a high degree of legal certainty through its defining characteristics namely, the final and binding nature of its decisions, the speed of proceedings, and the confidentiality of the process. These elements are firmly supported by Law No. 30 of 1999, which explicitly states that arbitral awards are not subject to appeal or judicial review, thereby reinforcing their legal finality and reliability for disputing parties.

The effectiveness of arbitration as a dispute resolution mechanism is further enhanced by its procedural flexibility, the ability to appoint neutral and skilled arbitrators, and the efficiency of the process, all of which are particularly well suited to the fast paced nature of modern business. However, in practice, several challenges still hinder its full potential. These include high arbitration costs, limited public awareness, and resistance to enforcement by losing parties, as well as inconsistent responses from domestic courts when handling enforcement requests.

To optimize both the effectiveness and legal certainty of arbitration, continuous efforts are necessary. These include strengthening arbitration institutions, improving public and business sector education on arbitration procedures, and fostering greater judicial support for the enforcement of arbitral awards within the national legal framework. By taking these steps, arbitration can more fully serve as a strategic and reliable solution for promoting a business environment grounded in fairness and legal integrity.

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