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Dynamics of Arbitration Choice as an Alternative Dispute Resolution for Business Disputes

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ABSTRACT
The arbitration mechanism as an alternative dispute resolution for business in Indonesia offers advantages such as speed, confidentiality, and specialization of the arbitrator. However, its effectiveness is hindered by various factors, including non-compliance with arbitration awards and the varying quality of arbitrators. This research employs a normative legal research method, analyzing applicable regulations and legal doctrines related to arbitration in Indonesia, particularly Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Findings indicate that while arbitration is preferred due to its efficiency, challenges such as low compliance with awards, concerns about arbitrator quality, and complexities in the selection process persist. Additionally, legal culture and issues like corruption significantly affect the choice of arbitration. To enhance the effectiveness of arbitration, regulatory reforms, improvements in the quality of arbitration institutions, and education for business actors are essential. Strengthening the relationship between arbitration and the judiciary is also crucial for fostering trust in this mechanism. In conclusion, improving arbitration as a dispute resolution method in Indonesia requires a comprehensive approach, including regulatory enhancements, better education, and quality assurance for arbitrators. By addressing these challenges, arbitration can become a more reliable choice for business actors, supporting sustainable economic growth in Indonesia.

Keywords: arbitration; business dispute resolution; effectiveness

INTRODUCTION
The resolution of disputes in business is a crucial aspect that cannot be overlooked, given the complexities and dynamics involved in various commercial transactions (Petzold-Bradley, 2024). In the business world, conflicts can arise from various sources, such as unmet agreements, disagreements over contract interpretation, or violations of intellectual property rights (Katz-Lavigne, 2019). The uncertainty arising from these disputes can disrupt the smooth operation of a company, damage its reputation, and even threaten its business continuity. Therefore, having an effective mechanism for dispute resolution is crucial to allow the parties involved to refocus on their core business activities.

Efficient dispute resolution not only saves time and costs but also enables business actors to maintain good relationships among parties, especially in the context of business involving long-term cooperation (Pablo, 2024; Shamir, 2016). When disputes are not handled properly, prolonged tensions can arise, disrupting the business networks that have been established. Arbitration is one form of alternative dispute resolution (ADR) that involves the appointment of a neutral third party, called an arbitrator, to listen to the arguments from both sides and provide a binding decision (Blake et al., 2016; Nwakoby & Nwakoby, 2022). In the arbitration process, the disputing parties agree to submit the decision of the dispute to the arbitrator, who typically has expertise in the field relevant to the dispute. The decision made by the arbitrator is known as an award and is usually final and legally enforceable (Bentolila, 2017; Sabater & Rezende, 2019). This is one of the main attractions of arbitration for business practitioners, as it provides legal certainty without having to go through a lengthy and costly litigation process.

The role of arbitration in resolving business disputes is very significant, especially in the international context (Durosaro, 2014; Nigmatullina, 2016). In the era of globalization, where companies are often engaged in cross-border transactions, arbitration provides a neutral and independent forum for resolving disputes, thereby reducing the risks associated with differences in legal systems and cultures. Additionally, arbitration is generally faster than litigation, where court proceedings can take years. With more flexible and efficient procedures, arbitration allows for quicker and more affordable dispute resolution, which is crucial for companies looking to minimize disruptions to their operations. Through arbitration, companies not only obtain solutions to the legal issues they face but also maintain good business relationships, which are vital in today's commercial world (Moses, 2017; Rubino-Sammartano, 2014).

One of the increasingly popular and desirable methods of dispute resolution is arbitration. Among developed countries, business relationships are usually accompanied by arbitration agreements, which are seen as an executive court for resolving business disputes as an alternative to formal litigation that often takes a long time. In the business world, disputes between involved parties are always possible. When disputes arise, parties tend to seek quick solutions. Delays in resolving commercial disputes can result in inefficiencies in economic development, decreased productivity, and increased production costs. This not only hinders the welfare and progress of workers but also harms consumers (Broughel & Thierer, 2019; Stiglitz, 2015, 2019).

In an effort to resolve business disputes, parties have the freedom to choose their dispute resolution forum. This freedom is recognized in the Indonesian legal system, as outlined in the Civil Code. Article 1338 states that every agreement made lawfully applies as law for the parties involved. Theoretically, there are two forums that can be chosen for dispute resolution, namely through the courts (litigation) or outside the courts (non-litigation) (Hakim et al., 2024; Siregar, 2023; Vonna et al., 2019). The legal basis for selecting a dispute resolution forum is governed by the Law on Judicial Authority, which states that civil disputes can be resolved outside of court through arbitration or other alternative dispute resolution methods.

The alternative of dispute resolution through arbitration has emerged in response to the growing criticism of the judicial institutions. Many business practitioners, academics, and the public perceive that the judicial system has been burdened by an increasing number of cases, resulting in their ability to resolve disputes being disproportionate to the volume of incoming cases. Complicated and bureaucratic judicial processes often result in high time, energy, and cost expenditures. This contradicts the principle that judicial proceedings should be conducted simply, quickly, and at a low cost. By choosing arbitration, parties can experience benefits such as a faster process and confidentiality in decision-making, especially for cross-border business disputes. The absence of a supranational court to settle international disputes makes arbitration an appropriate choice to avoid unfair treatment by national judicial institutions.

In addition to the good faith of the disputing parties in choosing arbitration, the role of national legislation is also crucial in supporting the development of arbitration. As a private dispute resolution mechanism, arbitration is conducted based on private agreements, carried out in a closed setting, with decisions entrusted to an arbitrator or an arbitration tribunal. Arbitration decisions have public effects equivalent to court judgments. Arbitration is not a new concept in the Indonesian legal system. Although it has been regulated in older regulations, such as the Rechtreglement voor de Burgelijke Stand, attention to arbitration at that time was relatively low. Today, arbitration is increasingly viewed as an important legal institution, in line with the increase in commercial transactions at both national and international levels. The existence of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution further underscores the importance of arbitration as an alternative dispute resolution mechanism. In Indonesia, the National Arbitration Board of Indonesia (BANI) plays a role as an institution that supports the existence of arbitration, although this institution is still relatively unknown to the public, resulting in its use as a dispute resolution mechanism being infrequent.

The dynamics of dispute resolution through arbitration reflect significant evolution in how business and law interact. In an era of globalization characterized by increased cross-border transactions, the challenges faced by companies in resolving disputes have become more complex. Therefore, arbitration has emerged as an attractive alternative because it offers a process that is faster, more flexible, and more efficient compared to litigation in court. In this context, the dynamics of arbitration not only relate to changes in legal mechanisms but also to the needs and expectations of business practitioners who wish to resolve disputes in a more affordable and less bureaucratic manner.

One key aspect of this dynamic is the growing interest and adoption of arbitration among business practitioners, particularly in developing countries. Many companies now realize that the arbitration process allows them to avoid challenges often encountered in court, such as delays, high costs, and lack of confidentiality. As a result, an increasing number of business agreements now include arbitration clauses as a dispute resolution requirement. This trend is also driven by legislation increasingly supportive of arbitration, providing clarity and legal certainty for parties choosing this mechanism. The existence of organized arbitration bodies, such as the National Arbitration Board of Indonesia (BANI), also contributes to increased trust and utilization of arbitration as a dispute resolution forum.

The dynamics of arbitration are also evident in the adaptation to changing market needs and technology. In recent years, there has been a shift toward using technology in the arbitration process, such as video conferencing and digital platforms for documents and evidence. This not only enhances efficiency but also broadens access for the parties involved, allowing dispute resolution from different locations without the need for physical meetings. Additionally, adjustments to international practice standards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), indicate that arbitration is increasingly recognized as a global solution that can bridge legal differences across various jurisdictions. However, despite the many advantages that arbitration offers, the dynamics are also faced with challenges that need to be addressed. For example, there are concerns about the quality of arbitrators, potential biases, and difficulties in enforcing arbitration awards in certain jurisdictions. Furthermore, there are questions regarding the openness and accountability of the arbitration process, which is sometimes perceived as less transparent compared to public litigation processes. In this context, the need for reforms and better oversight of arbitration institutions becomes increasingly important to maintain the integrity and public trust in this dispute resolution mechanism.

RESEARCH METHODS

The normative legal research method is the approach used to analyze and understand the legal norms applicable within a legal system. In this context, the researchers focus on applicable regulations, court decisions, and legal doctrines to explore how these norms are applied in practice and the legal implications that may arise. This research aims to provide a deep understanding of how law functions in a specific context, such as dispute resolution through arbitration. By utilizing this method, the researchers can explore various relevant legal aspects, including the positive law governing arbitration, the procedures to be followed, and the rights and obligations of the parties in the arbitration process.

The legislative approach in normative legal research emphasizes the analysis of various regulations related to arbitration, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Through this approach, the researchers will examine the legal substance, existing provisions, and how these regulations may influence arbitration practices in Indonesia. Meanwhile, the conceptual approach will be used to examine various concepts and theories underlying arbitration practices, such as the principle of freedom of contract, legal certainty, and justice. This approach allows researchers to delve deeper into the legal thinking that forms the normative framework of arbitration and to explore how these concepts are translated into legal practices and dispute resolution policies in Indonesia. By combining these two approaches, the research is expected to provide a comprehensive picture of the dynamics and challenges faced in dispute resolution through arbitration.

RESULTS AND DISCUSSION

1. The Effectiveness of the Arbitration Mechanism in Resolving Business Disputes in Indonesia

In selecting a dispute resolution forum, business actors consider various factors, including the governing law and the application of each forum. The law comprises a set of norms and processes encompassing the legal structure and legal culture. These components of the legal system affect business actors' decisions in choosing a dispute resolution method. Alternative dispute resolution out of court, such as arbitration, offers several advantages compared to litigation. One of the primary benefits of arbitration is the expertise of the arbitrator appointed by the parties. Arbitrators are usually experts in the relevant field, enabling them to deeply understand the issues at stake. This provides assurance to the parties regarding the credibility of the dispute resolution process. Another advantage of arbitration is the confidentiality it possesses. Arbitration procedures are private, meaning that information revealed during the process will not be publicly disclosed. This is crucial for companies that want to safeguard sensitive business information from competitors. In arbitration, dispute resolution tends to be faster than litigation, as there are time provisions that must be adhered to by the arbitrator, both in selecting the arbitrator and in resolving the dispute itself. By complying with the agreed-upon time provisions, the arbitration process can be more efficient. Furthermore, the arbitration mechanism does not prioritize adversarial attributes as in litigation, but rather focuses on efforts to maintain business relationships in the future.

This is essential in the business world, where long-term relationships are often prioritized over merely winning or losing a dispute. Openness and agreements forged between the parties during the arbitration process can help maintain good relationships even after preceding conflicts. In Indonesia, arbitration is regulated under Law No. 30 of 1999, which asserts that arbitration is a dispute resolution outside the court based on a written agreement between the parties. Three key elements must exist for arbitration: an arbitration agreement, the written form of that agreement, and dispute resolution outside of the general court. In practice, arbitration agreements can be made before or after a dispute arises, through arbitration clause in the main contract or through a separate agreement after the dispute occurs. The arbitration agreement serves as the primary foundation for the arbitration process and must meet the requirements for a valid agreement, such as mutual consent of the parties, capacity to enter into agreements, a clear subject matter, and lawful cause. With the existence of an arbitration agreement, the parties agree to submit the dispute to an arbitrator, making the arbitrator's decision binding and legally enforceable. Additionally, this agreement also reinforces that the court has no jurisdiction to adjudicate disputes that have been submitted to arbitration. In dispute resolution through arbitration, the legal provisions governing arbitration bind arbitrators, but the parties have the freedom to choose the procedural rules stipulated by specific arbitration institutions.

Arbitration as a dispute resolution mechanism is privatized and requires consensus among the parties regarding the selection of the arbitrator. The arbitrator can be a single person or a panel of arbitrators (tribunal). If the parties agree to use a panel, each party usually nominates one arbitrator, who then selects a third arbitrator to serve as the chair of the panel. This process of selecting arbitrators does not always run smoothly, so Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and various procedural rules provide solutions if deadlock occurs in the selection process. To address potential difficulties in arbitrator appointments, UNCITRAL rules grant parties the freedom to determine who will act as the appointing authority. If the designated party cannot or refuses to appoint an arbitrator within the specified time, the parties may request assistance from the Secretary-General of the Permanent Court of Arbitration in The Hague to appoint an appointing authority. This is also governed by ICC regulations, where if the parties fail to reach an agreement regarding the arbitrator, the ICC arbitration body will carry out the appointment of the arbitrator. In practice, dispute resolution through arbitration can occur in two forms: ad hoc arbitration and institutional arbitration. Ad hoc arbitration is incidental and not tied to a specific institution, where the arbitrator is directly appointed based on the agreement of the parties to handle a particular case. Conversely, institutional arbitration is a more permanent form of resolution, conducted under the supervision of a structured and established arbitration institution.

The jurisdiction of institutional arbitration can be national, regional, or international, providing flexibility for the parties in selecting suitable locations and rules. Choosing institutional arbitration has several advantages. First, arbitration institutions usually provide model arbitration clauses that can be adopted by the parties, essential for ensuring clarity and consensus in formulating arbitration clauses. Second, each arbitration institution has clear procedural rules governing how arbitration will proceed from start to finish. These rules become binding for parties agreeing to follow those procedures, allowing them to forecast how the process will unfold and in some cases, predict the desired outcomes. Another benefit of institutional arbitration is the availability of a roster of arbitrators with diverse expertise, facilitating parties in selecting arbitrators best suited to the nature and complexity of the dispute at hand. Moreover, arbitration institutions generally have administrative staff to support the arbitration process, assisting in the delivery of documents, scheduling hearings, and preparing minutes of meetings, which can all streamline the arbitration process. However, in the practice of arbitration, if there are delays in issuing a decision, the arbitrator may face sanctions in the form of a requirement to pay compensation to the parties due to the delay. This is based on the principle that the arbitrator has been compensated to deliver a decision within the agreed time.

Therefore, they are expected to fulfill this commitment as promised. This sanction serves to encourage arbitrators to perform their duties efficiently and according to the expectations of the parties who have entrusted the dispute resolution to them. Although arbitration is often regarded as an effective alternative for resolving business disputes, several factors contribute to the ineffectiveness of this mechanism within the Indonesian context. One of the main issues is the low level of compliance by parties with arbitration awards. Despite the fact that arbitration awards are governed by Law No. 30 of 1999 and hold final legal force, there is often resistance from the losing party to voluntarily implement those decisions. This non-compliance can stem from various factors, including dissatisfaction with the process undertaken, differing interpretations of the substance of the award, or even attempts to evade legal responsibilities arising from the award. This creates challenges for the party entitled to the arbitration award, who must then go through additional processes in the court to enforce the award. Additionally, there are also concerns related to the quality and integrity of the arbitrators. Although arbitration is designed to provide quick and efficient solutions, the quality of the decisions rendered significantly depends on the competence of the chosen arbitrators.

In some cases, there are complaints about arbitrators who lack experience or do not possess adequate expertise in the contested field. Discontent over the quality of these awards can diminish business actors' trust in arbitration mechanisms. Furthermore, issues surrounding potential bias or conflict of interest may also compromise the integrity of the arbitration process. If parties feel that the arbitrator is not neutral or has personal interests in the outcome of the decision, this can lead to doubts about the legitimacy of the arbitration award. The process of selecting an arbitrator can also be a source of ineffectiveness in dispute resolution. When parties fail to reach an agreement in selecting an arbitrator, it can lead to delays and deadlocks in the arbitration process. Although there are mechanisms established to address this situation, such as appointing an arbitrator by a third party or arbitration institution, the uncertainty and complexity involved in the selection process may still hinder efficient dispute resolution. Lack of clarity in the provisions governing the arbitration process, as well as differences in interpreting procedural rules, can further complicate dispute resolution. Additionally, the necessity for a robust legal system to integrate arbitration with the judicial process remains a challenge. In Indonesia, there is still a perception that arbitration is a less recognized alternative by the courts, which affects the acceptance of arbitration awards. Some courts sometimes display scepticism towards arbitration awards and tend to prioritize traditional court decisions. This creates legal uncertainty for business actors, which potentially decreases their interest in using arbitration as a dispute resolution means.

2. Factors Influencing the Parties' Choice to Opt for Arbitration and Gaps in Business Dispute Resolution in Indonesia

Arbitration is a method of resolving disputes outside the court, based on the agreement between the disputing parties to submit their issues to one or more arbitrators. This process is regarded as a more efficient alternative compared to litigation in court, as it is generally quicker, private, and allows the parties to choose arbitrators with specialized knowledge relevant to the dispute faced. In other words, arbitration provides flexibility for parties to determine the rules and procedures to be applied, so that the dispute resolution process can be tailored to the specific needs of each party. Additionally, the decisions produced through arbitration are final and binding, providing legal certainty for the parties involved. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates the legal basis for arbitration in Indonesia. This law establishes a clear legal framework regarding arbitration procedures, arbitration agreements, as well as the authority and power of arbitrators. In its provisions, this law emphasizes that arbitration can be conducted based on an agreement made in writing by the parties, whether before or after a dispute arises. Furthermore, the law also provides regulations regarding other alternative dispute resolution methods, such as mediation and conciliation, thus creating a comprehensive legal environment for various forms of out-of-court dispute resolution. Arbitration offers several advantages over resolving disputes in court. One of the main advantages is the speed of the process. In many cases, arbitration can resolve disputes much faster than litigation processes that are often hindered by various procedures and queues in the courts. Additionally, arbitration offers confidentiality, which is essential for many companies. In litigation, court processes are open to the public, and sensitive information can become public. In contrast, the arbitration process occurs privately, allowing the parties to maintain confidentiality regarding their business information. The expertise of the arbitrator is also another advantage; in arbitration, parties can choose an arbitrator with specialization in the relevant field of the dispute, resulting in decisions that are more knowledge-based and informed regarding the contested issues.

The legal and cultural conditions in Indonesia significantly influence arbitration choices. Many business actors feel that the formal judicial system in Indonesia faces various challenges, including issues of corruption and delays in processes. In this regard, arbitration emerges as a more attractive alternative. However, even though arbitration offers a more efficient process, practices in the field are often affected by the existing legal culture. For example, uncertainties in the application of law and potential political interventions could affect parties' trust in the outcome of arbitration. Moreover, social and political conditions in Indonesia, such as the prevalence of corrupt practices, also weigh on the considerations of business actors when deciding to choose arbitration as a dispute resolution forum. The type of dispute faced and the characteristics of the parties involved heavily influence the decision to opt for arbitration. Commercial or international disputes are often more complex and require quick and efficient resolutions, making arbitration an attractive choice. On the other hand, larger companies with resources and experience are more likely to select arbitration, while smaller companies may feel they do not have the same power in the process. Previous business relationships also play a role; if parties have had a good relationship, they may be more inclined to resolve disputes through arbitration to preserve that relationship. Conversely, if the relationship has already deteriorated, they may feel more comfortable resorting to litigation.

The availability of arbitration institutions that can provide the necessary administrative support and facilities is also an important factor. Established and reputable arbitration institutions can provide additional reassurance to the parties that the process will precede fairly and smoothly. Furthermore, considerations of costs also greatly influence the decision to choose arbitration. Although the costs of arbitration may be higher than those of litigation, many business actors see value in the speed and confidentiality offered. The costs involved in arbitration, including the arbitrator's fees and the administrative fees of the arbitration institution, need to be compared to the potential losses faced due to delays or the disclosure of information in court. Thus, a thorough cost analysis often becomes key in the decision-making process.

While arbitration offers many benefits, significant gaps exist in its implementation, particularly related to the level of compliance with arbitration awards. One major issue is the non-compliance of the losing party in implementing the arbitration award. This can stem from a lack of understanding of the mechanism for executing awards or insufficient law enforcement to ensure that arbitration decisions are recognized and enforced. Such non-compliance can diminish the credibility of arbitration as a dispute resolution method, causing parties to hesitate to choose arbitration in the future. Other challenges facing the arbitration mechanism include the quality and integrity of the arbitrators. In some cases, there are concerns regarding potential bias or lack of expertise of the arbitrators in handling complex disputes. This can affect the quality of decisions made and in some cases may raise doubts about the fairness and objectivity of the arbitration process. Therefore, it is critical to ensure that the arbitrators involved in the arbitration process possess adequate backgrounds and high integrity to maintain the parties' trust in the results achieved.

The complex process of selecting an arbitrator also becomes an obstacle in dispute resolution through arbitration. Lack of clarity in the selection process can lead to delays in appointing arbitrators, which in turn delays the overall dispute resolution process. Moreover, if a deadlock occurs during the arbitrator selection, this can lead to frustration and increased uncertainty for the involved parties. Thus, it is crucial to create clearer and more efficient procedures in the selection of arbitrators to expedite the arbitration process. The perception of business actors towards arbitration also influences the adoption level of this method in dispute resolution. Many business actors still hold sceptical views regarding the effectiveness of arbitration, especially if they have encountered obstacles in the process previously. If business actors believe that arbitration does not yield fair or effective results, they may prefer to bring their disputes to court. Hence, it is important to change these perceptions through education and socialization regarding the benefits and advantages of arbitration as a valid dispute resolution method. The gap between business actors' expectations of arbitration and the current legal support in Indonesia also needs to be addressed. Many business actors feel that the existing legal system does not sufficiently support arbitration, especially regarding the recognition and enforcement of arbitration awards. To improve the effectiveness of arbitration, collaborative efforts between the government, arbitration institutions, and business actors are needed to create a better legal framework and ensure that arbitration awards are recognized and enforced effectively throughout the judicial system. To enhance the effectiveness of arbitration, one important step is to improve regulations. This can include revising Law No. 30 of 1999 to strengthen provisions that support arbitration and facilitate the dispute resolution process. Such changes could also include adding clearer provisions on the selection of arbitrators, the execution of awards, and the recognition of arbitration awards by the courts. With a stronger and clearer legal framework, business actors can feel more confident in choosing arbitration as a dispute resolution method. Education and socialization about arbitration are also very important. Business actors need to understand the benefits and procedures of arbitration so that they can effectively utilize this mechanism. Training programs and seminars can be held to provide better insights into how arbitration works and to share successful experiences from other business actors who have used arbitration. With better knowledge, it is hoped that business actors will be more inclined to select arbitration as an alternative dispute resolution method.

Next, it is necessary to ensure the quality of arbitrators and arbitration institutions. This can be accomplished through training programs and certification for arbitrators, as well as regular assessments of arbitration institutions to ensure that they meet the required standards. Additionally, arbitration institutions need to improve transparency in the arbitrator selection process and provide clear information regarding the qualifications and experiences of involved arbitrators. Thus, the parties' trust in the quality of the arbitration process can be enhanced. Strengthening the relationship between arbitration and the judiciary system is also necessary. This can be achieved by enhancing the recognition and support for arbitration awards by the courts, as well as creating better communication channels between arbitration institutions and the courts. Such efforts will not only enhance the legitimacy of arbitration but also ensure that arbitration awards can be implemented more efficiently. By reinforcing this relationship, arbitration can become a more effective and reliable solution in resolving business disputes in Indonesia.

CONCLUSION

The mechanism of arbitration in resolving business disputes in Indonesia demonstrates that although arbitration offers various advantages, such as speed, confidentiality, and the ability to choose specialized arbitrators, there are still numerous challenges that need addressing. Non-compliance with arbitration awards, the quality and integrity of arbitrators, and complexities in the arbitrator selection process are some of the issues that hinder the effectiveness of this mechanism. Additionally, the perception of business actors towards arbitration and the legal support system also play crucial roles in their decisions to choose arbitration as an alternative dispute resolution method.

Therefore, to improve the effectiveness of arbitration as a dispute resolution method in Indonesia, a series of strategies are required, including regulatory improvements, education and socialization regarding the benefits of arbitration, enhancing the quality of arbitrators and arbitration institutions, and reinforcing the relationship between arbitration and the courts. Through these measures, arbitration is expected to become a more attractive and reliable choice for business actors while addressing the existing gaps in the dispute resolution system in Indonesia. This will not only increase business actors' trust in arbitration but also contribute to a better investment climate and promote sustainable economic growth.

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