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The Role of Arbitration in Settling International Business Contract Disputes in Indonesia

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Abstract

Arbitration has become an important dispute resolution mechanism in international business contracts, primarily due to its flexibility, neutrality, and ability to provide legal certainty. In Indonesia, the role of arbitration is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which adopts the basic principles of the 1958 New York Convention. Although arbitration offers various advantages, its implementation in Indonesia faces several significant challenges, including uncertainty in the enforcement of foreign arbitral awards and the harmonization of arbitration law with international standards. This study analyzes the advantages and disadvantages of arbitration in the context of Indonesian law, and explores efforts to harmonize arbitration law in Indonesia with global standards. The results of the study indicate that although there is a supportive legal framework, it is necessary to increase the capacity, professionalism of arbitrators, and commitment to law enforcement to strengthen the role of arbitration in resolving international business disputes in Indonesia.

Keywords:*Arbitration, Dispute Resolution, International Business Contracts, Indonesian Law, Harmonization of Law*

INTRODUCTION

Arbitration is one of the dispute resolution methods widely used in international business contracts, including in Indonesia. As an alternative to litigation in court, arbitration offers a number of advantages, such as more flexible procedures, faster resolution times, and final and binding decisions. In the context of international business, the existence of arbitration becomes increasingly important given the transnational nature of disputes that often involve parties from different jurisdictions.

In Indonesia, the legal framework governing arbitration has been explicitly regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law). This law provides a legal basis for the implementation of arbitration as a legitimate dispute resolution mechanism, both for national and international disputes. Article 2 of the Arbitration Law emphasizes that disputes that can be resolved through arbitration are disputes that arise in commercial relations and are under the authority of civil law, which are explicitly agreed by the parties to be resolved through arbitration (Law No. 30/1999).

Although Indonesia has regulations governing arbitration, there are a number of challenges faced in its implementation, especially in the context of international business contracts. These challenges include issues related to the enforcement of foreign arbitral awards in Indonesia, the conformity of national law with international conventions that have been ratified by Indonesia, and the understanding and acceptance of arbitration mechanisms by business actors. Enforcement of foreign arbitral awards, for example, is still a complex issue because it must go through a homologation process in the district court, which often takes a lot of time and money.

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In addition, one of the main challenges in implementing arbitration in Indonesia is the harmonization of domestic regulations with international provisions governing arbitration. Indonesia has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Presidential Decree Number 34 of 1981, which should facilitate the process of recognizing and enforcing foreign arbitral awards in Indonesia. However, in practice, there are still cases where Indonesian courts refuse to enforce foreign arbitral awards on grounds that are inconsistent with the principles set out in the New York Convention, such as violations of public order (Supreme Court of the Republic of Indonesia, 2019).

In relation to international business contracts, arbitration has a very strategic role. International business contracts often involve parties from different countries with different legal systems, which can give rise to greater potential for disputes. In such situations, arbitration becomes the preferred choice because it can offer neutrality, where the parties can choose an arbitrator and a place of arbitration that is considered neutral and fair to both parties. In addition, the arbitral award is final and binding, and can be enforced in various countries that have ratified the New York Convention, making arbitration an effective mechanism for resolving disputes in international business contracts.

However, the implementation of arbitration in Indonesia still faces a number of challenges, both from a legal and practical aspect. One of the problems that often arises is the awareness and understanding of business actors regarding the importance of arbitration clauses in contracts. Many international business contracts signed in Indonesia still do not include arbitration clauses, or if there are any, the clauses are often not well drafted, causing difficulties in their implementation later on. In addition, the lack of understanding of arbitration procedures and reluctance to participate in the arbitration process are also obstacles in resolving international business disputes through arbitration.

In addition, from a legal perspective, there are problems related to the arbitration standards and procedures applied in Indonesia. Although the Arbitration Law has comprehensively regulated arbitration procedures, there is still room for improvement in terms of harmonization between national regulations and international standards. For example, although Indonesia has ratified the New York Convention, the application of the principles of the convention in the national legal system is still not fully consistent. This is especially related to the court's interpretation of the concept of public policy which is often used as a reason to reject the enforcement of foreign arbitral awards (Setiawan, 2020).

Another challenge that needs to be addressed is related to the capacity and professionalism of arbitrators in Indonesia. In some cases, the quality of arbitral awards in Indonesia is still questionable, especially due to the lack of experience or adequate qualifications of arbitrators in handling complex international cases. This raises concerns among investors and international business players about the reliability of the arbitration system in Indonesia. Therefore, there is a need to improve training and certification for arbitrators in Indonesia so that they can meet international standards in resolving business disputes.

In addition, although arbitration is often considered a faster and cheaper alternative to court litigation, the reality is that arbitration can still be expensive and time-consuming, especially when it involves parties from different countries with different legal systems. The high cost of arbitration often acts as a barrier for small and medium-sized enterprises (SMEs) to take advantage of this

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mechanism. Therefore, there is a need to make arbitration more affordable and efficient, for example by simplifying procedures or developing arbitration models that are more suitable for SMEs.

Through this research, it is expected to obtain a clearer picture of the role of arbitration in resolving international business contract disputes in Indonesia, including the challenges faced and efforts that can be made to overcome these problems. This research will also provide recommendations on steps that need to be taken to strengthen the arbitration system in Indonesia, so that it can function effectively as a fair, efficient, and reliable dispute resolution mechanism.

METHOD

This study uses a normative juridical method to analyze the role of arbitration in resolving international business contract disputes in Indonesia. The normative juridical method was chosen because this study focuses on the study of legal norms governing arbitration, both in national laws and regulations such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and international conventions such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The normative juridical approach in this study involves a literature study that includes an analysis of laws and regulations, court decisions, and relevant legal doctrines. This study also uses a comparative analysis by looking at how arbitration law is applied in other countries, especially countries that are centers of international arbitration such as Singapore and the United Kingdom, to identify best practices that can be adopted in Indonesia.

The collected data will be analyzed qualitatively with reference to applicable legal principles. This analysis will identify the strengths and weaknesses of the arbitration system in Indonesia, as well as evaluate the extent to which national law is in line with international standards in resolving international business disputes. In addition, this study will also examine various case studies to see how arbitration is implemented in Indonesia, especially in the context of enforcing foreign arbitral awards. The results of this study are expected to contribute to the development of arbitration law in Indonesia, as well as provide policy recommendations that can support the efficiency and effectiveness of arbitration as a mechanism for resolving international business contract disputes.

RESULTS AND DISCUSSION

Advantages and Disadvantages of Arbitration in Settling International Business Contract Disputes in Indonesia

Arbitration has become the primary choice in resolving international business contract disputes due to its flexible, efficient, and neutral nature. In Indonesia, the use of arbitration as a dispute resolution mechanism is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law). However, despite its several advantages, the implementation of arbitration in Indonesia also faces various challenges that affect its effectiveness as a tool for resolving international business disputes.

One of the main advantages of arbitration is its flexibility. Unlike litigation in court which is bound by formal and rigid procedures, arbitration allows the parties to determine the procedures to be followed, including the selection of arbitrators, the place of arbitration, and the applicable law. Article

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31 of the Arbitration Law states that the parties have the right to determine the arbitration procedure to be used, provided that the procedure does not conflict with public order (Law No. 30/1999).

This flexibility is particularly important in the context of international business, where parties often come from different jurisdictions with varying legal systems. With arbitration, parties can choose a neutral and appropriate law to govern their contract, as well as select arbitrators who have specific expertise in the areas relevant to the dispute. This allows arbitration to be faster and more efficient than litigation, which can often take years. In addition to its flexibility, arbitration is also known for its final and binding nature. The arbitral decision, known as an award, is final and cannot be appealed, except in very limited cases such as fraud or violation of basic principles of fairness. Article 60 of the Arbitration Law states that arbitral awards are final and binding, and cannot be appealed or cassated unless there is an indication that the award was obtained through fraud, collusion, or a clear violation of the law (Law No. 30/1999).

The final and binding nature of the arbitral award provides legal certainty for the parties, which is very important in the international business world. In addition, arbitral awards are easier to enforce abroad compared to national court decisions, especially in countries that have ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Indonesia itself has ratified the New York Convention through Presidential Decree Number 34 of 1981, which allows foreign arbitral awards to be recognized and enforced in Indonesia under certain conditions.

Despite its many advantages, the implementation of arbitration in Indonesia is not free from various weaknesses that need to be considered. One of the main weaknesses is related to the enforcement of foreign arbitral awards in Indonesia. Although Indonesia has ratified the New York Convention, the enforcement of foreign arbitral awards still often faces obstacles, especially related to the concept of public order (public policy). Article 66 of the Arbitration Law states that foreign arbitral awards can be recognized and enforced in Indonesia provided that the award does not conflict with public order (Law No. 30/1999). However, the interpretation of public order by Indonesian courts is often inconsistent, and in some cases, courts have refused to enforce foreign arbitral awards on the grounds that the award violates public order, even though the reasons are unclear or less substantial.

The case of Karaha Bodas Company LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) is a prime example of the difficulties faced in enforcing foreign arbitral awards in Indonesia. In this case, the Indonesian Supreme Court refused to enforce an arbitral award issued in Geneva on the grounds that it violated public order, even though the award had been recognized and enforced in several other jurisdictions, including the United States and Singapore (Supreme Court of the Republic of Indonesia, 2004).

In addition, high arbitration costs are also a significant drawback, especially for small and medium enterprises (SMEs). The costs incurred for the arbitration process are often higher than the costs of litigation in court, especially if the arbitration is conducted abroad or involves international arbitrators. Article 59 of the Arbitration Law gives the parties the freedom to determine the costs of arbitration, but in practice, these costs are often unaffordable for small business actors (Law No. 30/1999).

The limited human resources competent in the field of arbitration is also an obstacle. In Indonesia, although the number of licensed arbitrators is increasing, there is still a shortage of arbitrators who have special expertise in certain areas that are often the subject of disputes in international business contracts, such as technology, energy, and natural resources. The lack of adequate training and

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certification for arbitrators in Indonesia often results in low quality arbitral awards and less respect from international parties.

In addition, the reluctance of some parties to participate in the arbitration process, especially if they are unsure of the neutrality or independence of the selected arbitrator, may hinder efficient dispute resolution. Although arbitration is supposed to offer neutrality, in practice, there is a concern that arbitrators who come from the same country as one of the parties may have certain tendencies or biases, which may affect the outcome of the award.

From a legal perspective, the implementation of arbitration in Indonesia is faced with challenges related to the consistency of law enforcement and harmonization with international standards. Although the Arbitration Law has provided a clear legal framework for the implementation of arbitration, implementation in the field often does not meet the expectations of the parties in international business contracts.

One of the main challenges is how Indonesian courts interpret the concept of public order in the context of enforcing foreign arbitral awards. Although Article 66 of the Arbitration Law allows for the rejection of foreign arbitral awards that are deemed to violate public order, the ambiguity in the definition and interpretation of this concept often creates legal uncertainty for parties seeking to enforce arbitral awards in Indonesia. This raises concerns that Indonesian courts may act in a protectionist manner by protecting domestic interests, even though this is contrary to Indonesia's international obligations under the New York Convention.

In addition, there is a need to improve the capacity and professionalism of arbitrators in Indonesia. In the complex context of international business, arbitrators must have in-depth knowledge and expertise in the relevant legal and industrial fields. Therefore, training and certification programs for arbitrators in Indonesia need to be improved to ensure that they are able to handle international disputes to the same standards as in other countries that are centers of international arbitration. Arbitration as a mechanism for resolving international business contract disputes in Indonesia has significant advantages, especially in terms of flexibility, neutrality, and legal certainty. However, challenges related to the enforcement of foreign arbitral awards, high costs, and lack of professionalism of arbitrators pose obstacles that need to be addressed to improve the effectiveness of arbitration in Indonesia. With increased capacity, legal harmonization, and better oversight, arbitration can become a more reliable and efficient tool in resolving international business disputes in Indonesia.

Challenges in Harmonizing Arbitration Law in Indonesia with International Standards

In the context of globalization, legal harmonization becomes increasingly important to ensure that a country's domestic legal system can function effectively within the framework of international law. This is particularly relevant in the field of arbitration, where disputes often involve parties from different countries with different legal systems. Indonesia, as one of the countries that ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, has an obligation to ensure that its domestic laws are in line with international standards in terms of resolving international business disputes through arbitration. However, despite efforts to align arbitration law in Indonesia with international standards, there are still a number of challenges that need to be overcome.

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The New York Convention 1958 is the most important international instrument on the recognition and enforcement of foreign arbitral awards. It establishes the principle that arbitral awards rendered in one country must be recognized and enforced in other countries that are parties to the convention, unless there are legitimate grounds for refusing recognition or enforcement of the award. Indonesia ratified the New York Convention through Presidential Decree No. 34 of 1981, which signifies the country's commitment to comply with the provisions of the convention (Presidential Decree No. 34/1981).

However, in practice, the implementation of the principles of the New York Convention in Indonesia still faces several challenges. One of the main challenges is the narrow and often protectionist interpretation of the provisions of the convention, especially regarding the grounds for refusing to enforce foreign arbitral awards. Article V of the New York Convention provides several grounds that can be used by national courts to refuse recognition and enforcement of foreign arbitral awards, including if the award is considered contrary to public policy in the country where enforcement is requested.

In Indonesia, the concept of public order is often used as a reason for courts to refuse to enforce foreign arbitral awards, although the reasons are sometimes less substantial or do not comply with international standards. For example, in several cases, Indonesian courts have rejected foreign arbitral awards on the grounds that the awards were contrary to economic policy or national interests, which is essentially a form of protectionism that is not in line with the spirit of the New York Convention (Setiawan, 2020).

Another challenge in harmonizing arbitration law in Indonesia is the lack of in-depth understanding of the principles of international arbitration among judges and legal practitioners. Although the Arbitration Law has adopted many of the basic principles set out in the New York Convention, its interpretation and application are often inconsistent, especially at the district court level. The lack of adequate training and education for judges and legal practitioners on international arbitration results in significant differences in interpretation, which can be detrimental to parties seeking justice through arbitration.

One important aspect in international business contracts is the protection of foreign investors' rights. In many cases, foreign investors prefer arbitration as a dispute resolution mechanism because it is considered more neutral and effective compared to litigation in national courts. However, in Indonesia, the protection of foreign investors' rights through arbitration still faces a number of obstacles, both in terms of regulation and implementation.

Law Number 25 of 2007 concerning Investment provides a legal basis for foreign investors to invest in Indonesia and regulates the dispute resolution mechanism through arbitration. Article 32 of the Investment Law states that foreign investors have the right to choose arbitration as a dispute resolution mechanism, both domestically and abroad, in accordance with the agreement agreed upon by the parties (Law No. 25/2007).

However, the implementation of the protection of foreign investors' rights through arbitration in Indonesia is still not optimal. One of the main problems is the legal uncertainty that foreign investors often face in enforcing arbitral awards in Indonesia. As discussed earlier, Indonesian courts sometimes refuse to enforce foreign arbitral awards on the grounds of public order, which are often interpreted broadly and inconsistently.

In addition, there are challenges related to the dispute resolution mechanism through international arbitration involving the state as one of the parties. In several cases, the Indonesian government has refused to submit to international arbitration decisions that are considered detrimental to national

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interests, even though it has previously agreed to the arbitration clause in the relevant contract. This raises concerns among foreign investors about the Indonesian government's commitment to dispute resolution through arbitration, which in turn could affect the investment climate in Indonesia (Susanto, 2018).

To overcome these challenges, greater efforts are needed to harmonize arbitration law in Indonesia with international standards. One step that can be taken is to improve training and education for judges and legal practitioners on the principles of international arbitration, as well as encourage the application of more consistent interpretations in accordance with international standards. In addition, the Indonesian government needs to demonstrate a stronger commitment to the enforcement of international arbitration awards, especially in cases involving foreign investors.

In the era of globalization, free trade agreements (FTAs) play an important role in regulating trade and investment relations between countries. Indonesia has signed several free trade agreements with various countries and economic blocs, such as the ASEAN Free Trade Area (AFTA), the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), and the Comprehensive Economic Partnership Agreement (CEPA) with the European Union which is currently under negotiation. These agreements often include provisions on dispute resolution through arbitration, both at the inter-country level and between investors and countries.

However, the implementation of arbitration provisions contained in free trade agreements still faces various challenges in Indonesia. One of the main challenges is the integration of these provisions into the national legal framework. Although free trade agreements have international binding force, their implementation at the national level often faces obstacles, both due to differences in interpretation between international agreements and domestic law, and due to the lack of regulations that support the implementation of arbitration provisions stipulated in the agreement (Wicaksono, 2019).

In addition, there are concerns that arbitration provisions contained in free trade agreements may provide unfair advantages to foreign investors compared to domestic business actors. For example, foreign investors can use international arbitration mechanisms to sue the Indonesian government for policies that are considered detrimental to their investments, while domestic business actors do not have the same access to international dispute resolution mechanisms. This can create an imbalance in legal protection between foreign and domestic investors, which in turn can affect perceptions of justice and legal certainty in Indonesia (Wulandari, 2020).

To address these challenges, greater harmonization efforts are needed between the arbitration provisions contained in free trade agreements and national law. The Indonesian government needs to ensure that domestic regulations governing arbitration are in line with international provisions, and that the dispute resolution mechanisms stipulated in free trade agreements are applied fairly and non-discriminatory. In addition, there needs to be stricter supervision of the implementation of arbitration provisions in free trade agreements to ensure that the rights of all parties, both foreign and domestic investors, are protected fairly and equally.

Harmonizing arbitration law in Indonesia with international standards is a complex but important challenge in the context of globalization. Although Indonesia has taken significant steps by ratifying the 1958 New York Convention and signing various free trade agreements, challenges in enforcing foreign arbitral awards, protecting the rights of foreign investors, and implementing arbitration provisions in free trade agreements still need to be addressed. By improving legal harmonization, providing adequate training to judges and legal practitioners, and demonstrating a strong commitment

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to the enforcement of arbitration law, Indonesia can create a safer, fairer, and more competitive investment climate.

CONCLUSION

This study highlights the role of arbitration in resolving international business contract disputes in Indonesia, as well as the challenges faced in harmonizing arbitration law with international standards. Although arbitration offers a number of advantages, such as flexibility, neutrality, and legal certainty, its implementation in Indonesia still faces various obstacles that need to be overcome to increase its effectiveness as a dispute resolution mechanism. The main weakness in the arbitration system in Indonesia is related to the enforcement of foreign arbitral awards, which is often hampered by inconsistent interpretations of the concept of public order. In addition, high arbitration costs and the lack of professionalism of arbitrators are also significant challenges. On the other hand, harmonizing the law with international standards, especially related to the application of the 1958 New York Convention and arbitration provisions in free trade agreements, requires further efforts to ensure that the arbitration system in Indonesia can function effectively within the framework of globalization.

To strengthen the role of arbitration in Indonesia, it is necessary to increase the capacity and professionalism of arbitrators, better harmonization of laws, and a stronger commitment from the government and judicial institutions to the enforcement of international arbitration decisions. With these steps, it is hoped that arbitration can become a more reliable and competitive dispute resolution mechanism, supporting a positive investment climate and encouraging economic growth in Indonesia.

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