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Juridical Review of The Determination of National Territorial Boundaries According to The Provisions of International Law

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Abstrak: *The increasing complexity of business activities in the era of globalization has heightened the potential for disputes among business actors. Business disputes may arise from breaches of contract, violations of agreements, differences in contractual interpretation, or conflicts related to the implementation of legal relationships in trade and investment activities. Dispute resolution through litigation is often considered less effective due to its lengthy process, high costs, and relatively complicated procedures. Therefore, a dispute resolution mechanism that can provide legal certainty, efficiency, and protection for the interests of the parties involved is needed. One of the most widely used mechanisms is arbitration. Arbitration is a method of resolving civil disputes outside the general court system based on a written agreement between the disputing parties. In Indonesia, arbitration is regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration offersseveral advantages, including a faster resolution process, confidentiality of disputes, the freedom to choose arbitrators with expertise in the relevant field, and decisions that are final and binding. This article aims to analyze the position of arbitration within the Indonesian legal system, examine its effectiveness as an alternative method of business dispute resolution, and identify the various challenges encountered in its implementation. The study employs a normative legal research method through statutory and conceptual approaches. The findings indicate that arbitration plays an important role in supporting effective and efficient business dispute resolution, although several obstacles remain in the implementation and enforcement of arbitral awards.*

Keywords: Arbitration, Business Disputes, Dispute Resolution

INTRODUCTION

The development of business activities in Indonesia shows a significant increase in line with the progress of globalization, information technology, trade, and investment. The increase in business activities not only has a positive impact on economic growth, but also increases the potential for disputes among business actors. Business disputes may arise due to default, breach of contract, differences in interpretation of the content of the agreement, or inconsistency in the exercise of the rights and obligations of the parties.[1] In practice, resolving disputes through litigation is often considered less effective because it takes a long time, relatively high costs, and complex procedures.[2]

[1] Huala Adolf, *The Basics of International Contract Law* (Bandung: Refika Aditama, 2008), pp. 25–28.

[2] M. Yahya Harahap, *Civil Procedure Law: About Lawsuits, Trials, Confiscation, Proof, and Court Decisions* (Jakarta: Sinar Grafika, 2017), pp. 23–25.

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This condition encourages business actors to look for a dispute resolution mechanism that is faster, more efficient, and able to provide legal certainty. One of the mechanisms that is widely used in business dispute resolution is arbitration. Arbitration is seen as able to meet the needs of the business world because the process is closed, flexible, and produces a final and binding award for the parties to the dispute.[3]

The existence of arbitration as an alternative to business dispute resolution has a strong legal foundation in the Indonesian legal system. The main regulation regarding arbitration is contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 1 of the law states that arbitration is a way of resolving civil disputes outside the general courts based on an arbitration agreement made in writing by the parties to the dispute.[4] In addition, the legal basis of arbitration is also related to Article 1338 of the Civil Code which affirms that every legally made agreement is valid as law for the parties who make it.[5] Thus, the arbitration clause included in an agreement has binding force and must be complied with by the parties.[6] At the international level, the existence of arbitration is also supported by recognition of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which strengthens the position of arbitration in the settlement of cross-border business disputes.[7]

Despite having a clear legal basis, the application of arbitration in business dispute resolution still raises several legal issues. The legal issues that can be found in this study are in the form of ambiguity of norms (*vague norm*) relating to the limits of authority between the arbitration and the court in dealing with disputes that have been bound by the arbitration clause. On the one hand, Law No. 30 of 1999 affirms that the court is not authorized to examine disputes to which the parties have been bound by an arbitration agreement.[8] However, in practice, it is still found that the party who files the lawsuit to the court even though there is an arbitration clause in the agreement.[9] This condition creates uncertainty regarding the limits of court intervention in disputes that should be resolved through arbitration. Therefore, it is necessary to conduct a legal analysis of the position of arbitration in the Indonesian legal system, its effectiveness as an alternative to resolving business disputes, and the various obstacles faced in its application so that it can be known to what extent arbitration is able to provide legal certainty, justice, and benefits for business actors.[10]

METHOD

This study uses normative legal research methods with a statute approach and a conceptual

[3] Priyatna Abdurrasyid, *Arbitration and Alternative Dispute Resolution* (Jakarta: Fikahati Aneska, 2002), pp. 15–18

[4] Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 number 1.

[5] Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 number 1.

[6] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*, New York, 10 Juni 1958.

[7] Gunawan Widjaja and Ahmad Yani, *Arbitration Law* (Jakarta: RajaGrafindo Persada, 2003), pp. 39–42.

[8] Indonesia, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 3 and Article 11

[9] Suyud Margono, *ADR (Alternative Dispute Resolution) and Arbitration: The Institutional Process and Legal Aspects* (Bogor: Ghalia Indonesia, 2004), pp. 129–132.

[10] Munir Fuady, *National Arbitration: Alternative Business Dispute Resolution* (Bandung: Citra Aditya Bakti, 2003), pp. 5–9

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approach. The data used is in the form of secondary data obtained through literature studies, including laws and regulations, law books, scientific journals, academic articles, and judgments related to arbitration. The analysis was carried out qualitatively to gain an understanding of the position, effectiveness, and constraints of arbitration as an alternative to resolving business disputes in Indonesia.

DISCUSSION

A. *Arbitration as an Alternative to Business Dispute Resolution*

The development of the business world in the era of globalization has brought very significant changes in the pattern of legal relations in the fields of trade, investment, services, and industry. Advances in information and communication technology have expanded the scope of business transactions which are no longer limited to the territory of a country, but have developed into *cross-border business transactions*. This condition has led to an increase in the intensity of legal relations between business actors, both by individuals and legal entities. On the other hand, the increasingly complex legal relationship also increases the likelihood of disputes arising related to the exercise of the rights and obligations of the parties in a business agreement.[11]

Basically, every business activity is always based on a contractual relationship that contains rights and obligations for each party. The agreement is the legal basis for the parties in carrying out business cooperation and becomes a guideline in resolving any problems that may arise in the future. However, in practice, not all agreements can run according to what has been agreed. Various factors, such as defaults, delays in the implementation of achievements, changes in economic conditions, differences in interpretation of the content of contracts, and force *majeure*, are often the cause of business disputes.[12] that are not resolved immediately have the potential to cause economic losses, disrupt the sustainability of business relationships, and can even hinder the investment climate if there is no dispute resolution mechanism effective.

So far, dispute resolution through litigation is still a commonly used mechanism by the community. However, in the practice of resolving disputes through the courts, it often faces various obstacles, including the examination process that takes a relatively long time, considerable case costs, formal procedures, and the existence of stages of legal remedies in the form of appeals, cassation, and review that cause the decision to gain permanent legal force in a short.[13] time. In addition, court hearings are generally open to the public so that information about disputes can be known to the wider community. For business actors, these conditions often pose risks to the company's reputation, investor trust, and business relationships with business partners.

Based on these conditions, various out-of-court dispute resolution mechanisms or *Alternative Dispute Resolution* (ADR) have developed. One of the most widely used forms of dispute resolution in the business world is arbitration. Arbitration is a mechanism for resolving civil disputes outside the general judicial environment that is carried out based on the agreement of the parties through an arbitration agreement. Unlike mediation or negotiation which emphasizes the achievement of mutual agreement, arbitration produces a final and binding award so that it has legal force that must be complied with by the parties.[14]

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[11] Huala Adolf, *Fundamentals of International Contract Law* (Bandung: Refika Aditama, 2008),
pp. 25–30

[12] Munir Fuady, *Business Law in Theory and Practice* (Bandung: Citra Aditya Bakti, 2018), pp. 187–192

[13] M. Yahya Harahap, *Civil Procedure Law* (Jakarta: Sinar Grafika, 2017), pp. 22–30

[14] Priyatna Abdurrasyid, *Arbitration and Alternative Dispute Resolution* (Jakarta: Fikahati Aneska, 2002), pp. 15–23

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Therefore, arbitration is often chosen as a dispute resolution forum in business contracts that are of high value or that have certain technical characteristics.

In the Indonesian legal system, the existence of arbitration is expressly recognized through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Based on Article 1 number (1), arbitration is a way of resolving civil disputes outside the general court based on an arbitration agreement made in writing by the parties to the dispute. The provision indicates that the existence of arbitration is entirely dependent on the agreement of the parties (*consensual dispute settlement*). In the absence of an arbitration agreement, disputes in principle remain the authority of the District Court to be examined and decided in accordance with the provisions of the civil procedure law.[15]

An arbitration agreement can be made before a dispute occurs or after a dispute arises. If made before the dispute arose, the provision is known as an arbitration clause (*pactum de compromittendo*), which is a clause contained in the principal contract and states that if a dispute arises in the future, the settlement will be done through arbitration. On the other hand, if an agreement is made after the dispute has occurred, it is known as a compromise deed (*compromise deed*), which is a separate agreement made by the parties to submit the dispute resolution to the arbitrator. Both forms are recognized as long as they meet the legal requirements of the agreement as specified in the Civil Code.[16]

The philosophical basis of arbitration is also closely related to the principle of freedom of contract. Article 1338 paragraph

(1) of the Civil Code affirms that all agreements made legally shall be valid as laws for those who make them. This provision gives the parties the freedom to determine the content of the contract, including choosing a dispute resolution forum in the event of a dispute. Therefore, the arbitration clause contained in a contract has the same legal force as any other contractual provision and must be complied with by the parties as a consequence of the principle of *pacta sunt servanda*.[17] This principle is the main foundation for the development of arbitration in modern business practice because it provides respect for the will of the parties without excessive state interference.

In addition to providing legal certainty, arbitration also has characteristics that distinguish it from dispute resolution through the courts. One of these characteristics is the freedom of the parties to determine the arbitrator who will examine and decide the dispute. Arbitrators are generally selected based on their expertise, experience, and competence in a particular field so that the resulting award is expected to be more in accordance with the characteristics of the dispute at hand. For example, disputes in the field of construction can be examined by arbitrators who have a background in civil engineering or construction law, while international trade disputes can be examined by arbitrators who understand global trade practices. Thus, the quality of an arbitral award is not only based on legal aspects, but also considers technical aspects related to the object of the dispute.[18]

One of the main reasons why arbitration is increasingly chosen in business dispute resolution is that it is able to provide a relatively faster dispute resolution process than settlement through court. In the litigation process, it is still possible for a case to go through various legal remedies, such as appeals, cassation, and even review, so that dispute resolution can last for many years. On the other hand, in arbitration,

[15] Indonesia, **Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Article 1 number (1)

[16] Gunawan Widjaja and Ahmad Yani, *Arbitration Law* (Jakarta: RajaGrafindo Persada, 2003), pp. 44–49

[17] Indonesia, **Civil Code**, Article 1338 paragraph (1)

[18] Suyud Margono, *ADR (Alternative Dispute Resolution) and Arbitration* (Bogor: Ghalia Indonesia, 2004), pp. 84–91

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the decision rendered is in principle final and binding, so there is no legal remedy for appeal or cassation on the subject matter. This provision provides faster legal certainty for business actors so that they can immediately exercise their rights and obligations based on the arbitration award.[19]

The speed of dispute resolution has an important meaning in the business world because any dispute that lasts for a long time has the potential to cause economic losses.

Prolonged disputes can hinder the execution of contracts, disrupt the company's cash flow, reduce investor confidence, and even lead to lost business opportunities. Therefore, arbitration is seen as a mechanism that is more in accordance with the character of the business world that demands certainty, efficiency, and sustainability of business relationships. In modern commercial practice, prompt dispute resolution is often as important as the substance of the award itself because it is directly related to the stability of the parties' business activities.[20]

In addition to providing legal certainty through a final decision, arbitration also has advantages in the form of the principle of *confidentiality*. Unlike court hearings which are generally open to the public, dispute examination through arbitration is carried out behind closed doors so that it can only be attended by the parties, arbitrators, legal representatives, and other interested parties.

This confidentiality is one of the main reasons arbitration is widely used in business disputes because it is able to protect strategic company information, such as financial statements, production technology, trade secrets, customer data, and marketing strategies. The protection of this information is very important considering that the disclosure of business information to the public can affect the company's competitiveness in the market and cooperation with business partners.

Another advantage lies in the flexibility of the dispute resolution procedure. In arbitration, the parties are given the flexibility to determine various procedural aspects according to their agreement, including the seat *of arbitration*, the language used during the examination, applicable law, the number of arbitrators, and the procedure for proof. Such flexibility is not found in litigation proceedings where all procedures have been strictly determined by the civil procedure law. Thus, arbitration is able to provide space for the parties to adjust the dispute resolution process to the characteristics of the business relationship they are running.[21]

In business practice in Indonesia, the administration of arbitration is carried out both through ad hoc arbitration and institutional arbitration. Ad hoc arbitration is an arbitration that is specifically formed only to resolve certain disputes and ends after a judgment is rendered. On the other hand, institutional arbitration is carried out by an arbitration institution that already has an organization, rules of procedure, secretariat, and a list of arbitrators that can be chosen by the parties. One of the most well-known arbitration institutions in Indonesia is the Indonesian National Arbitration Board (BANI) which since its establishment has handled various disputes in the fields of trade, construction, services, financing, banking, insurance, and investment. The existence of BANI provides convenience for business actors because it has provided a more structured dispute resolution procedure and is supported by arbitrators who have competence in various business fields.[22]

In international business transactions, arbitration is even the most widely used dispute resolution mechanism. This is because business

[19] Indonesia, **Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Article 60

[20] Munir Fuady, *National Arbitration: Alternative Business Dispute Resolution* (Bandung: Citra Aditya Bakti, 2003), pp. 68–75

[21] Priyatna Abdurrasyid, *Arbitration and Alternative Dispute Resolution* (Jakarta: Fikahati Aneska, 2002), pp. 51–58

[22] Gunawan Widjaja and Ahmad Yani, *Arbitration Law* (Jakarta: RajaGrafindo Persada, 2003), pp. 112–120

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actors from different countries often do not want dispute resolution through the national court of one party because it is feared that it will cause non-neutrality. Arbitration is considered to be more able to provide a balanced position for the parties because they can choose a neutral arbitration venue, appoint an independent arbitrator, and determine the law to be used in dispute resolution. Therefore, most international trade contracts almost always include arbitration clauses as a form of anticipation in case a dispute arises in the future.

The recognition of international arbitration was further strengthened through the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 1958. The Convention is one of the most important international legal instruments in the development of arbitration because it requires participating countries to recognize and enforce foreign arbitral awards in accordance with applicable provisions. Indonesia became a participating country after ratifying the convention through Presidential Decree Number 34 of 1981. With this ratification, foreign arbitral awards can in principle be applied for in Indonesia as long as they meet the requirements as stipulated in laws and regulations.[23] The ratification also shows Indonesia's commitment to providing legal certainty to foreign investors and supporting the creation of a conducive investment climate.

Nonetheless, arbitration is not a dispute resolution mechanism that is completely free of flaws. One of the obstacles that is still often encountered is the relatively high cost of arbitration, especially for disputes with large object values. These costs include arbitrator honorarium, administrative costs of the arbitration institution, examination fees, and legal assistance costs. For small and medium business actors, the amount of arbitration fees is sometimes a consideration to still choose to resolve disputes through the courts. In addition, the success of arbitration also depends heavily on the good faith of the parties in implementing the award voluntarily. If the losing party refuses to implement the arbitration award, the winning party must still submit an application for execution through the District Court as stipulated in Law Number 30 of 1999.[24]

Another obstacle is the limited understanding of the public, especially small and medium-scale business actors, about the functions and benefits of arbitration. Not a few business actors still think that dispute resolution can only be done through the courts, so arbitration clauses have not been widely included in domestic business contracts. In fact, the selection of a dispute resolution forum from the beginning is a very important preventive step to avoid legal uncertainty if disputes arise in the future. Therefore, it is necessary to increase socialization regarding arbitration, strengthen the capacity of arbitration institutions, and improve the quality of arbitrators so that public trust in the arbitration mechanism increases.

Based on this description, it can be understood that arbitration has a very strategic position as an alternative to resolving business disputes in Indonesia. The advantages of a fast process, confidentiality, procedural flexibility, freedom of choice of arbitrators, and final and binding awards make arbitration a mechanism that is able to meet the needs of the modern business world. Although there are still various obstacles in its implementation, the existence of arbitration still has excellent prospects for continued development along with the increase in trade, investment, and international business

[23] **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)**, New York, 10 Juni 1958; Indonesia, **Keputusan Presiden Nomor 34 Tahun 1981** tentang Pengesahan *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*

[24] Indonesia, **Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Articles 59–69

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relations. Therefore, strengthening regulations, improving the professionalism of arbitration institutions, and the awareness of business actors to use arbitration as a dispute resolution forum are steps that need to be encouraged in order to realize a business dispute resolution system that provides legal certainty, justice, and utility.

B. *Legal Analysis of Arbitration as an Alternative to Business Dispute Resolution*

Arbitration as one of the mechanisms for resolving disputes outside the courts has an important position in the Indonesian legal system, especially in the field of business law. The existence of arbitration is not only seen as an alternative dispute resolution, but also a form of respect for the freedom of the parties in determining the dispute resolution mechanism that is considered most effective in accordance with their interests. From a civil law perspective, freedom is an implementation of the principle of *freedom of contract* which gives the parties the authority to determine the content, form, and procedures for the implementation of an agreement, including determining a dispute resolution forum if a dispute occurs in the future.[25]

The principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code has the consequence that every agreement made legally applies as a law for the parties who make it. This norm shows that the state respects the will of the parties as long as it does not conflict with the law, public order, or morality. Thus, if the parties have knowingly and voluntarily included an arbitration clause in the business contract, then the clause has binding legal force and must be enforced like the other provisions of the contract.[26]

The existence of an arbitration clause also reflects the applicability of the principle of pacta sunt servanda, which is a principle that requires that every legally made agreement must be fulfilled by the parties in good faith. This principle is one of the fundamental principles in treaty law which aims to create legal certainty and ensure the balanced implementation of the rights and obligations of the parties. In the context of arbitration, the application of the principle *of pacta sunt servanda* means that the parties are not allowed to ignore the arbitration clause by submitting a dispute to the District Court if it has previously agreed to submit the dispute resolution to the arbitrator. Therefore, the existence of an arbitration clause is not only morally binding, but also has legal force that must be respected by the parties as well as by the judicial institution.[27]

From the point of view of legal norms, the arbitration regulation in Law Number 30 of 1999 shows that the Indonesian legal system adheres to pluralism in the settlement of civil disputes. The state does not position the courts as the only forum for dispute resolution, but rather provides the public with the opportunity to choose other mechanisms that are considered more effective as long as the choice is based on the agreement of the parties. The policy shows that Indonesian law recognizes the existence of Alternative Dispute Resolution (ADR) as part of the modern judicial system that aims to create simple, fast, and low-cost dispute resolution without compromising legal certainty.[28]

The principle that is the basis for the development of arbitration in international practice is party autonomy or the autonomy of

[25] Suyud Margono, *ADR (Alternative Dispute Resolution) and Arbitration: The Institutional Process and Legal Aspects* (Bogor: Ghalia Indonesia, 2004), pp. 189–198

[26] Indonesia, **Civil Code**, Article 1338 paragraph (1)

[27] Subekti, *Treaty Law* (Jakarta: Intermasa, 2005), pp. 13–17

[28] Huala Adolf, *Fundamentals of International Contract Law* (Bandung: Refika Aditama, 2008), pp. 34–38

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the parties. This principle gives the parties the freedom to determine almost all aspects of the arbitration process, starting from the selection of arbitrators, the law to be applied, the language used, the place where the arbitration is held, to the dispute examination procedure. This freedom is the main characteristic of arbitration that distinguishes it from litigation proceedings in courts whose entire examination procedures have been strictly regulated by procedural law. In international business relations, the principle *of party autonomy* is even one of the main factors that cause arbitration to be chosen more than dispute resolution through national courts.[29]

The position of arbitration in the Indonesian legal system is further strengthened through the provisions of Article 3 of Law Number 30 of 1999 which emphasizes that the District Court does not have the authority to adjudicate disputes between parties who have been bound by an arbitration agreement. This provision is a mandatory legal norm, so it does not provide room for the court to examine the subject matter that has been agreed to be resolved through arbitration. The main purpose of the arrangement is to provide legal certainty to the parties so that the dispute resolution forum they have chosen cannot be unilaterally changed by one of the parties who feel aggrieved.[30]

In addition to Article 3, the strengthening of the arbitration position is also contained in Article 11 of Law Number 30 of 1999 which states that the existence of an arbitration agreement removes the right of the parties to submit dispute resolution to the District Court. The provision indicates that since the arbitration clause was agreed, the absolute authority to examine and decide the dispute passes to the arbitrator or arbitral institution chosen by the parties. Thus, the filing of a lawsuit to the District Court against a dispute that has been bound by an arbitration clause is in principle contrary to the provisions of the law and can be declared unacceptable (*niet ontvankelijke verklaard*).[31]

According to the author, the arrangements in Article 3 and Article 11 of Law Number 30 of 1999 have reflected the existence of legal protection for the freedom of the parties in determining dispute resolution forums. The arrangement also provides legal certainty for business actors because they obtain guarantees that the arbitration agreement that has been made cannot be unilaterally ignored. This legal certainty is very important in the business world because the success of a business relationship is not only determined by the content of the contract, but also by the guarantee that the agreed dispute resolution mechanism will be respected by all parties, including by the state through judicial institutions. Therefore, the existence of these norms can be seen as a form of protection for the principle of autonomy of the parties as well as an effort to create an investment climate that provides a sense of security for business actors.[32]

Although the regulation regarding arbitration has been clearly regulated in Law Number 30 of 1999, in practice there are still various legal issues related to the relationship of authority between arbitration and the court. The problem arises when one of the parties still files a lawsuit to the District Court even though there is an arbitration clause in the agreement. This situation shows that there is still a difference of understanding regarding the scope of arbitration authority and the court's authority in resolving business disputes. On the one hand, the law gives exclusive authority to arbitration, but on the other hand the courts still have certain roles given by the law. This condition is often seen as a form of Ambiguity of Norms

[29] Suyud Margono, *ADR (Alternative Dispute Resolution) and Arbitration: Institutional Process and Legal Aspects* (Bogor: Ghalia Indonesia, 2004), pp. 18–27

[30] Indonesia, **Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Article 3

[31] Gary B. Born, *International Commercial Arbitration*, 3rd ed. (Alphen aan den Rijn: Kluwer Law International, 2021), Vol. I, hlm. 83–95

[32] Indonesia, **Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Article 11

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(*vague norm*), in particular regarding the limits of court intervention in the arbitration process.

Normatively, Article 3 and Article 11 of Law Number 30 of 1999 have provided that the District Court is not authorized to adjudicate disputes that have been bound by the arbitration agreement. However, in the same law, it is also stipulated that the court has authority in the process of registration, execution (execution), and annulment of arbitral awards. These provisions are regulated in Articles 59 to 72 of Law Number 30 of 1999. Thus, it can be systematically understood that the court's authority is not at the stage of examining the subject matter of the dispute, but is only limited to the administrative functions and supervisory functions expressly provided by law.[33]

According to the author, the existence of the court's authority cannot be interpreted as a form of interference with the independence of arbitration. Rather, this authority is a control mechanism that is necessary so that the implementation of arbitral awards remains within the corridor of national law. As a state of law (*rechtstaat*), any decision that will be implemented through coercive mechanisms still requires state legitimacy. Therefore, the involvement of the District Court in the process of executing the arbitral award is a logical consequence of the state's function as the executor of judicial power, not as an institution authorized to reassess the subject matter that has been decided by the arbitrator.[34]

When analyzed using the theory of legal certainty put forward by Gustav Radbruch, the regulation of arbitration has basically provided certainty to the parties because from the beginning they have known the dispute resolution forum to be used in the event of a dispute. Legal certainty is one of the main goals of law formation because society needs clear, consistent, and predictable rules in every legal relationship. In the context of arbitration, legal certainty is reflected through the applicability of arbitration clauses that are binding on the parties and the final and binding nature of the arbitral award. However, the legal certainty will be reduced if there is still a practice of examining cases by the court on disputes that should be the authority of arbitration.[35]

In addition to legal certainty, arbitration can also be analyzed based on the *utility theory* put forward by Jeremy Bentham. According to this theory, the law should be able to provide the greatest benefits to society. In the business world, these benefits are reflected in faster dispute resolution, more efficient costs in the long run, and maintained business relationships between the parties.

Arbitration provides space for business actors to obtain dispute resolution without having to go through a long and convoluted litigation process. Thus, arbitration not only provides benefits to the parties to the dispute, but also contributes to the creation of certainty in trade and investment activities which ultimately has an impact on national economic growth.[36]

From the perspective of legal justice, arbitration also reflects respect for the right of the parties to determine for themselves the dispute resolution mechanism that they deem most appropriate. This freedom is a form of respect for the principle of *party autonomy* that has long developed in international trade practices. As long as the agreement is made legally, without coercion, omission, or fraud, the state is obliged to respect the legal choices made by the parties. Therefore, court intervention on the subject matter of disputes

[33] Munir Fuady, *National Arbitration: Alternative Business Dispute Resolution* (Bandung: Citra Aditya Bakti, 2003), pp. 55–63

[34] Indonesia, **Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**, Articles 59–72

[35] M. Yahya Harahap, *Arbitration: Reviewed from the Civil Procedure Regulations and Law No. 30 of 1999* (Jakarta: Sinar Grafika, 2004), pp. 215–223

[36] Gustav Radbruch, *Legal Philosophy*, translated by Kurt Wilk (Cambridge: Harvard University Press, 1950), hlm. 107–109

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that have been agreed to be resolved through arbitration has the potential to reduce the sense of justice because it is contrary to the will of the parties that have been stated in the agreement.

Nevertheless, the author argues that the effectiveness of arbitration does not only depend on the quality of the regulation in Law Number 30 of 1999, but is also influenced by the consistency of law enforcement officials in implementing these provisions. Judges as executors of judicial power need to understand that the existence of an arbitration clause is not just one of the contents of the contract, but is the basis that determines absolute competence in dispute resolution. Therefore, if a lawsuit is found related to a dispute that has been bound by the arbitration clause, the court should from the beginning declare that it is not authorized to examine the subject matter in accordance with the provisions of the law.

In addition, improving the quality of the arbitration institution and the professionalism of arbitrators are also important factors in increasing public trust in arbitration. A qualified, independent, and comprehensive legal adjudication will further strengthen the legitimacy of arbitration as a forum for resolving business disputes. On the other hand, the government also needs to continue to socialize the benefits of arbitration to business actors, especially micro, small, and medium enterprises (MSMEs), so that the use of arbitration is not only dominated by large companies or international business actors. Based on the overall analysis, it can be concluded that arbitration has a very strategic

CONCLUSION

Arbitration is one of the alternative business dispute resolution that has an important position in the Indonesian legal system. Its existence is specifically regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a legal basis for the parties to resolve civil disputes out of court based on arbitration agreements. In addition, the binding power of arbitration clauses is also based on the principle of *Pacta Sunt Servanda* as stipulated in Article 1338 paragraph (1) of the Civil Code.

Arbitration provides various advantages over dispute resolution through litigation, including faster processes, flexible procedures, closed nature of examinations, and final and binding awards. This advantage makes arbitration a mechanism that is able to provide legal certainty while supporting the efficiency of dispute resolution in the business world, both at the national and international levels.

However, the effectiveness of arbitration still faces several obstacles in practice, such as low public understanding of arbitration, relatively high settlement costs in certain cases, and there are still parties who submit disputes to court even though they have been bound by arbitration clauses. This condition shows that although the legal norms regarding arbitration are quite clear, their implementation still needs to be strengthened, especially in respect of the authority of arbitration and the implementation of its award. Therefore, it is necessary to increase legal awareness, strengthen coordination between arbitration institutions and courts, and improve the implementation of regulations so that arbitration can function optimally as a means of resolving business disputes that are effective, efficient, and provide legal certainty.

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The author realizes that this article still has limitations. Therefore, constructive criticism and suggestions are highly expected for the improvement of this scientific work in the future. Hopefully this article can provide benefits and add insight for readers, especially in understanding arbitration as an alternative to resolving business disputes in the Indonesian legal system.

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