



The Role of International Arbitration Institutions in Resolving Business Disputes Between Countries

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Abstract: Arbitration is an option that businesses frequently use to resolve conflicts. Arbitration, as an institution in the field of judicial proceedings outside of public courts, is a highly useful way of settling disputes or disagreements that arise in the fulfillment of agreements or contracts, particularly in both national and international private law. This arbitration organization is commonly utilized in commercial and investment transactions. In this research, the approach used is normative juridical, which evaluates and tests secondary facts in the form of positive law. This research is descriptive and analytical in nature. arbitration is a way of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute. Individuals or institutions can settle disputes through arbitration. Arbitration is increasingly being utilized to settle national and international commercial disputes. The role of international arbitration is facilitated by the existence of international arbitral institutions. These bodies include The London Court of International Arbitration, The Court of Arbitration of The International Chamber of Commerce, The Arbitration Institute of The Stockholm Chamber of Commerce, and Indonesian National Arbitration Board.

Keywords: Role; International Arbitration Institutions; Business Disputes; Countries

Introduction

Trade relationships that cross national borders can take many forms, ranging from simple forms such as 'bartering' to complex trade transactions (Adolf, 2011). Countries participate in international commerce for a variety of reasons. International commerce has historically been seen as the 'backbone' of a country's ability to become successful, prosperous, and developed. The grandeur of countries in the globe is inextricably linked to their ability to master international trade (Dewi, 2022). To meet domestic requirements, the government engages in commerce with other nations and businesses from across the world (Pramono, 2006). Companies are the most important players in international trade. Buying and selling things, shipping and receiving commodities, creating items based on contracts, and so on are examples of international commerce transactions (Asikin, 2016). However, international commercial transactions between governments and foreign corporations have the potential to cause problems.

International commercial operations will continue to operate in accordance with human demands and will never cease as long as humans require diverse types of living necessities. With the resources at its disposal, no country can meet its own demands. As a result, businesspeople enter into various types of trade contracts practically every day.

According to the agreement, this commercial activity is meant to benefit the parties (Asril, 2018).

In business, a transaction outlined in a trade contract agreement frequently includes a section outlining how they will settle disputes (Memi, 2017). The manner in which the dispute is to be resolved either states the name of the institution where the dispute is to be resolved or the law to be used in resolving the dispute (Sembiring, 2011).

If the Court method is used, it is because the business connection is a civil relationship, and any violation of contract must also be remedied civilly. This settlement must be preceded by a claim letter to the Court in the defendant's jurisdiction. In general, the court procedure will be settled, first through the judge's peace efforts. Peace can be reached outside of court, and the plaintiff can drop the action with the permission of the defendant. Peace can also be made before the Court, and this can be done at the judge's advice. If the parties achieve an agreeable solution, a deed of peace will be written up in court, and both parties will be bound by it. This act of peace has the same legal weight as a judge's decision (Asril, 2018).

If the parties cannot achieve an equitable solution, the lawsuit will often take a lengthy time. If one of the parties is not pleased with the judgment of the first level (District Court), the procedure is continued at the High Court level, and eventually the process of cassation and Supreme Court review, which takes as long as the first stages. Such circumstances are still widespread in Indonesia. The predicted speed, simplicity, and low cost of the judicial procedure has yet to be achieved (Kusmayanti et al., 2020).

Based on this, another option that businesses may and frequently use to resolve conflicts is arbitration. Arbitration has its unique peculiarities, which are quite important in the commercial sector. However, many entrepreneurs are unaware of the intricacies of using an arbitration institution, despite the fact that historically, arbitration was founded by entrepreneurs themselves to resolve conflicts between them. Entrepreneurs attempted to establish an arbitration organization to address commercial disputes between them during the time because they want a dispute resolution system that was quick and not multileveled like the judicial procedure (Soemartono, 2006).

Arbitration, as an institution in the field of judicial proceedings outside of public courts, is a highly useful way of settling disputes or disagreements that arise in the fulfillment of agreements or contracts, particularly in both national and international private law. This arbitration organization is commonly utilized in commercial and investment transactions. This international arbitration organization has gained popularity, particularly in the corporate sphere. This arbitration institution has been known in Indonesia since the Dutch East Indies era, as was done in the sale of crops according to the provisions of the Indonesian Produce Exporters Organization, and its use continues to grow in accordance with the progress of the business world, which is now growing very rapidly (Winarta, 2012).

Based on data from the Ministry of Trade of the Republic of Indonesia, Indonesia has established non-oil and gas business transaction relationships with more than 50 (fifty) countries, both in the pattern of export (Kementerian Perdagangan, 2023a) and import (Kementerian Perdagangan, 2023b) business transactions, from 2018 to 2023. This

circumstance has the potential to lead to disagreements between business subjects from various nations with distinct legal systems. One way to respond to or anticipate the circumstances described above is to use an arbitration institution as a mechanism of conflict settlement. This will be the subject of more discussion in this article.

Method

The technique utilized in the sphere of business law is normative juridical, which evaluates and tests secondary facts in the form of positive law.

This research is descriptive and analytical in nature, documenting and assessing legal provisions and legal theories linked to the subject under consideration in order to reach a conclusion. The goal of this descriptive research is to provide systematic, factual, and accurate descriptions, images, or paintings of the facts, qualities, and correlations between the phenomena researched (Nazir, 2003, p. 54).

All data gathered was examined using the qualitative normative analysis approach, which is a non-mathematical data analysis method.

Results and Discussion

1. Arbitration

According to Article 1 number 1 of Law Number 30 Year 1999, arbitration is "a way of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute."

Several scholars have also expressed their views on the definition of arbitration from a theological standpoint. Arbitration, according to Priyatna Abdurrasyid (1995), is a type of private adjudication. Arbitration is commonly used to resolve commercial disputes, both simple and complicated.

Arbitration can also be classed, according to Priyatna Abdurrasyid (1995):

- Quality arbitration, which concerns contractual issues (questions of fact) which in itself requires arbitrators with high technical qualifications.
- Technical arbitration, which does not involve factual issues, as is the case with issues arising in the construction of documents or the application of contractual provisions.
- Mixed arbitration, which is for disputes concerning both questions of fact and law.

Arbitration is also explained by Priyatna Abdurrasyid (1995) by comparing it to numerous processes under the umbrella of Alternative Dispute Resolution. The table below outlines the distinctions between conciliation, bargaining, mediation, and arbitration.

The difference between conciliation, negotiation, mediation, and Arbitration according to Priyatna Abdurrasyid (1995):

Conciliation	Negotiation	Mediation	Arbitration
The parties voluntarily wish to settle the dispute	The parties voluntarily wish to settle the dispute	The parties voluntarily wish to settle the dispute	The parties voluntarily wish to settle the dispute

Who decides the parties' disputes.	Who decides the parties' disputes.	Who decides the parties' disputes.	It is the arbitrator agreed by the parties who decides the dispute.
Third party involvement is desired by the parties.	No third party	The involvement of a third party is desirable as an arbiter due to its expertise in the disputed area.	The involvement of a third party is desirable to decide the disputed issue because the arbitrator chosen is an expert in the field concerned.
There are no rules of evidence.	There are no rules of evidence.	There are no rules of evidence.	The rules of evidence are informal.

Some of the reasons why conflict resolution through arbitration is becoming more popular in international trade are as follows (Dewi, 2022):

1. Dispute settlement through arbitration is speedier than litigation in court since there are no legal procedures such as appeal, cassation, and judicial review in arbitration. Furthermore, arbitration rulings are final and binding. This is the type of assurance required by commercial players such as international corporations.
2. Dispute resolution through arbitration ensures the secrecy of the parties, as well as the confidentiality of the procedure and the conclusion. Foreign corporations shun bad media coverage.
3. Dispute resolution through arbitration allows the parties to select the Arbitrator as the arbitral judge. The parties are allowed to select Arbitrators who are objective and truly understand the issues at hand. This is not the same as litigating in court because the majority of judges in court are career judges, not specialists in certain scientific disciplines, like International Trade Law.
4. According to the 1958 New York Convention, arbitral rulings, particularly international arbitration awards, are enforceable in other countries.

2. International Business Dispute Resolution Through Arbitration

Arbitration is described as a method of resolving civil disputes outside of the public courts based on an arbitration agreement executed in writing by the parties to the dispute in Article 1 point 1 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (Kansil & Kansil, 2006, p. 698). Individuals or institutions can settle disputes through arbitration. Arbitration is increasingly being utilized to settle national and international commercial disputes.

Arbitration is separated into two parts in terms of the timing of the settlement selection: arbitration clause and submission agreement. The former is arbitration that was contained in the parties' contract, whereas the latter is an action done by the parties to refer their disagreement to arbitration (Redfern, 2004, p. 131).

There are various prerequisites that must be completed before an arbitration provision may be applied, including (Redfern, 2004, p. 134):

- a. The arbitration agreement must be in writing;
- b. Concerning an existing or contemplated dispute;
- c. The dispute is concerned with the legal relationship between the parties, whether contractual or not;

d. The dispute is a matter that can be resolved by arbitration.

Furthermore, 2 (two) further criteria are added, namely that the parties must be able to select arbitration and that the arbitration provision is authorized by the laws of their respective nations (Gaillard & Bermann, 2017).

Due to advancements in conflict resolution practice, there are currently various reasons why arbitration institutions are increasingly employed to resolve disputes, particularly those in the business sphere, namely (Gunadi, 2013, pp. 108–110).

- a. Dispute settlement is generally faster than judicial litigation. In arbitration, there is no appeal, cassation, or judicial review. The arbitrator's decision is final and binding.
- b. Dispute settlement through arbitration is strictly secret, both in terms of the procedures and the arbitral judgment.
- c. The parties are allowed to select their arbitrators, who they believe are neutral as well as professionals in settling the issue at hand. The parties choose the arbitrators totally at their discretion, and the arbitrators chosen may not be legal specialists, but may be engineers, insurance experts, banking experts, and others.
- d. Allowing the arbitrators to apply the dispute on a reasonable and appropriate basis (if the parties choose).
- e. In the instance of international arbitration, the arbitral award is often more enforceable in other nations than a court-resolved issue.
- f. In arbitration, the parties are also allowed the opportunity to define the procedural law or the parameters on which an award would be based, such as selecting the procedural law and the applicable law in the subject matter of the dispute.

According to Erman Rajagukguk, arbitration is the most popular and often utilized alternative conflict resolution institution when compared to other alternative dispute resolution institutions. This is owing to the numerous benefits that this arbitration provides. These benefits are as follows (Arsil, 2012, p. 22):

- a. Procedures are simple, and decisions can be reached in a relatively short period of time;
- b. Costs are lower;
- c. Decisions can avoid public exposure;
- d. The law on procedure and evidence is more flexible;
- e. The parties can choose which law to apply to the arbitration process;
- f. The parties can choose their own arbitrators;
- g. Arbitrators can be chosen from among experts in their field;
- h. The award can be more relevant to the situation and conditions;
- i. Arbitration rulings are typically final and binding (no need for appeal or cassation);

- j. Arbitral awards are generally enforceable and executable by courts with little or no scrutiny;
- k. The arbitration process (method) is simpler for the general public to grasp.
- l. Preventing "forum shopping" ("forum smuggling" or a poor faith attempt to deflect the topic matter) (Fuady, 2000, p. 40).
- m. Dispute settlement in court will strive to determine who is correct and who is incorrect, which may strain commercial relations between them (the parties to the dispute). Arbitration is thought to result in a compromise award that is agreeable to both parties to the dispute (Rajagukguk, 2001, p. 2).

However, in addition to the positive sides as stated above, it turns out that the arbitration institution is also still considered to have several shortcomings, among others, namely (Rajagukguk, 2001):

- a. In general, legal subjects in the form of nations continue to be hesitant to commit to resolving their conflicts through international judicial authorities, particularly international arbitration bodies. This is in stark contrast to the attitude of legal subjects in the form of commercial organizations such as corporations. Given the benefits of the dispute resolution method stated above, corporate organizations are more likely to desire that the issues they are experiencing be submitted to arbitration to be addressed.
- b. The use of arbitration to resolve disputes does not ensure that the award will be binding. International law does not ensure that a losing or unhappy party would enforce an award.

Although arbitration is not yet completely functioning, it appears that it will be the primary legal alternative for dispute settlement in the future (Oppenheim, 2005).

If the parties want to resolve a disagreement through arbitration, they must specifically indicate so in writing in a dispute resolution clause in a contract (an agreement in writing). The title of the clause is usually stated explicitly as "Arbitration." Other terminology that may be used include "choice of forum" or "choice of jurisdiction." Factum the compromitendo (an arbitration clause inserted in a written agreement established by the parties before a dispute emerges) and deed of compromise (a separate arbitration agreement formed by the parties after a disagreement arises) are the two types of arbitration agreements (Astuti & Tarantang, 2019).

There are now various conventions dealing to or governing arbitration, particularly in terms of award enforcement, like (Gunadi, 2013, pp. 108–110):

- a. The 1958 New York Convention.

In the beginning, the execution of foreign arbitral rulings was based on the 1927 Geneva Convention. However, the 1927 Geneva Convention appears to have produced disagreements over the acceptance and execution of international arbitral rulings. As a result, on June 10, 1958, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

was signed in New York. Through Presidential Decree Number 34 of 1981, Indonesia ratified the 1958 New York Convention.

The 1958 New York Convention controls, among other things, the status of arbitration agreements, their form, and the attitude of courts in member nations regarding arbitration agreements. It also requires that the arbitration agreement be in writing, that the disputants be private and private, and so on.

Although arbitral rulings are supposed to be final and binding, they can be overturned (Article 5(1) of the 1958 New York Convention). The following are the reasons:

- i. The arbitration agreement is null and void.
 - ii. Because one of the parties did not have the opportunity to provide a defense, the arbitration award is deemed arbitrary.
 - iii. The arbitrator in question was not appointed in line with the assignment.
 - iv. The nomination of arbitrators/arbitration method is not in conformity with the parties' agreement.
 - v. The arbitral ruling in question was not binding on the parties or was overturned in the nation where it was made.
- b. The Washington Convention of 1965.

The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States is the name of this treaty. The origins of this agreement were prompted by the global economic crisis at the time, particularly in numerous developing nations who took unilateral action against foreign investors on their territory. The unilateral measure took the shape of nationalization of foreign-owned firms. This unilateral behavior has resulted in economic conflicts, which may escalate into political ones. The World Bank then launched the formation of an international arbitration body on this basis. This organization will resolve investment disputes between international investors and host governments.

These efforts culminated in the creation of the ICSID convention. This convention's goal is to give legal remedies in circumstances involving foreign investment. At the same time, it encourages a bigger flow of private investment to help emerging nations expedite their economic growth.

One of the convention's provisions defines the criteria for resolving a dispute through ICSID arbitration, namely:

- i. There must be legal problems in the sphere of investment that occur directly between the state and foreign investors;
- ii. The topic of the dispute is between a state party and a national of another state party; and
- iii. The parties must agree to settle the disagreement through ICSID.

This agreement is extremely intriguing in that, even if the arbitration result is final and binding or cannot be subject to legal remedies such as appeal, cassation, or judicial review, it can be annulled by constituting a committee. As a result, parties that submit their issues to ICSID arbitration face a lack of legal clarity.

3. The role of the International Arbitration Institution in dispute resolution

The role of international arbitration is facilitated by the existence of international arbitral institutions. These bodies include:

a. The London Court of International Arbitration.

It is sponsored by the London Chamber of Commerce, The City of London Corporation, and the Chartered Institute of Arbitrations. It is open to both members and non-members of the London Chamber of Commerce. Its powers include the enactment, making and performance of contracts which shall be governed by English law and any disputes arising out of such contracts shall be arbitrated under the rules of the London Court of Arbitration, which in the absence of such rules shall apply the rules of UNCITRAL (Dirdjosisworo, 2006, p. 106).

b. The Court of Arbitration of The International Chamber Of Commerce

This arbitral body of the International Chamber of Commerce in Paris applies to both members and non-members of the ICC. In 1976, the ICC established the International Center for Technical Expertise, which is intended to assist in technical matters such as construction and installation contracts, in which case it may appoint a neutral expert.¹⁶ Thus the powers of this arbitral body include all disputes arising out of an applicable contract to be settled according to the conciliation and arbitration rules of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC rules (Nopiandri, 2013).

c. The Arbitration Institute of The Stockholm Chamber of Commerce

The Stockholm Chamber of Commerce (SCC) established the Arbitration Institute in 1917. The SCC rose to prominence on the international scene in the 1970s, when the US and the Soviet Union picked Stockholm as a neutral location to settle East-West trade issues. Around the same time, China recognized the SCC as a venue for addressing international issues. Sweden and the SCC occupy a unique position in the global international framework for bilateral and multilateral investment protection. According to its own regulations, the SCC is now the world's second biggest investment dispute institution. Sweden or the SCC is specified as a forum for dispute settlement between investors and nations in at least 120 bilateral investment treaties (BITs) currently in force.

Through participation in international entities such as UNCITRAL, the SCC focuses on international arbitration policy and growth in general. SCC launched the Stockholm Treaty Lab in 2017, a global competition to create new

international legislation for climate change mitigation and adaptation. The competition's 2017-2018 iteration drew innovators from four continents and more than 25 nations (Campbell-Wilson, 2022).

d. Indonesian National Arbitration Board (Badan Arbitrase Nasional Indonesia (BANI)

BANI is the Indonesian authority responsible for settling both national and international trade disputes. Actually, this arbitration body is very required since, as we all know, settling a lawsuit through the district court takes a significant amount of time and money. As a result, BANI is intended to provide an option in settling conflicts, despite the fact that BANI is less widely recognized in Indonesia (Nopiandri, 2013).

Conclusion

Arbitration is a means of settling a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute. Arbitration is another form of private adjudication. Settlement through arbitration is generally chosen for contractual disputes, both simple and complex in nature.

Settlement through arbitration can be conducted by individuals or institutionally. Today arbitration is increasingly used in resolving national and international trade disputes. In terms of the timing of the settlement, arbitration is divided into 2 (two), namely: arbitration clause and submission agreement. arbitration is the most popular alternative dispute resolution institution and is most often used by people compared to other alternative dispute resolution institutions. This is due to the many advantages possessed by arbitration. The role of international arbitration is facilitated by the existence of international arbitral institutions. These bodies include The London Court of International Arbitration, The Court of Arbitration of The International Chamber of Commerce, The Arbitration Institute of The Stockholm Chamber of Commerce, and the Indonesian National Arbitration Board.

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