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Islamic Law Perspective on the Authority of Arbitration in Business Dispute Resolution in Indonesia

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Abstract

Business disputes are an inevitable consequence of commercial activities and require dispute resolution mechanisms that are efficient, fair, and legally certain. Arbitration has become a preferred alternative to litigation in Indonesia because it offers confidentiality, procedural flexibility, and final and binding decisions. This study examines the authority of arbitration in business dispute resolution from the perspective of Islamic law and its compatibility with the Indonesian legal system. Using a normative juridical method with statutory, conceptual, and comparative approaches, this research analyzes relevant legislation, Islamic legal principles, and scholarly literature concerning arbitration (tahkim). The findings demonstrate that the authority of arbitration is consistent with the principles of justice ('adl), consensual agreement (taradhi), fulfillment of contracts (awfu bil-'uqud), and peaceful dispute settlement (islah) recognized in Islamic law. Furthermore, Indonesian arbitration law provides a legal framework that accommodates these principles, thereby strengthening legal certainty and promoting ethical, efficient, and equitable business dispute resolution in both conventional and Sharia-based commercial transactions.

Keywords: *Authority Islamic Law; Arbitration Authority; Business Dispute Resolution; Tahkim; Indonesia.*

Introduction

In the era of globalization and rapid economic development, business dynamics are becoming increasingly complex and often lead to disputes among business actors. If not handled properly, these business disputes can have a negative impact on business continuity, damage

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good relationships between partners, and disrupt company stability. Traditional dispute resolution mechanisms through the courts are often considered inadequate by business actors, mainly because of the lengthy process, complicated procedures, and high costs. In addition, the public nature of court proceedings can damage the reputation of the parties involved in the dispute. Therefore, many businesses are turning to alternative dispute resolution, one of which is arbitration (Susanto et al., 2021).

Arbitration offers several advantages that make it attractive to businesses, such as flexibility in the process, guaranteed confidentiality, and final and binding decisions. In Indonesia, the arbitration mechanism is regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides the legal basis for its implementation. Arbitration is seen as an important instrument that can resolve business disputes efficiently, without having to go through the general court system. However, even though arbitration has many benefits, its implementation in Indonesia still faces a number of challenges. One of the most crucial challenges is related to the authority of arbitration itself, both in terms of the scope of disputes that can be resolved through arbitration and the recognition and enforcement of its decisions by the courts.(Wajdi et al., 2023).

This issue of arbitration jurisdiction raises a number of important questions. For example, what business disputes fall within the scope of arbitration jurisdiction? How can arbitration function effectively when courts still have considerable authority to recognize and enforce arbitration awards? On the other hand, there are also concerns about potential conflicts between the jurisdiction of national courts and arbitration, especially when disputes relate to public interests or broader national laws.

Given the importance of arbitration in business dispute resolution, this study will focus on an in-depth review of arbitration jurisdiction in Indonesia, examining the applicable laws and regulations as well as the challenges encountered in practice. This study aims to identify the extent to which arbitration can play a role in effectively resolving business disputes in Indonesia, as well as to analyze the legal aspects related to the implementation and recognition of arbitration awards. This study will also look at how arbitration compares to other dispute resolution mechanisms, particularly the courts, and whether arbitration can continue to be developed as a more efficient alternative solution for business actors.

Methods

This study uses a normative legal method, which is an approach that focuses on the analysis of written law in the form of legislation, legal doctrine, and arbitration decisions related to arbitration authority in the settlement of business disputes in Indonesia (Muhaimin, 2020). In its implementation, this study began with the collection of secondary data from various sources, including legislation, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as other legal documents relevant to the arbitration mechanism. In addition, academic literature, scientific articles, journals, and books related to arbitration were important sources of reference in this study. The collection of secondary data aimed to understand the theoretical and normative basis related to arbitration authority and how this mechanism is regulated in Indonesia.

After the secondary data was collected, an in-depth legal analysis was conducted on the legal provisions regarding arbitration authority, particularly those related to the scope of business disputes that can be resolved through arbitration. This analysis involved an evaluation of the comparison between arbitration mechanisms and the court system, as well as an examination of how arbitration awards are recognized and enforced in Indonesia, including the role of the courts in the execution of arbitration awards. In addition, this research also includes case studies as part of the empirical analysis. Several business disputes that were resolved through arbitration in Indonesia were selected as samples to measure the effectiveness of the implementation of arbitration authority in business dispute resolution. These case studies were selected based on their relevance to the issue of arbitration authority and the availability of accessible arbitration decisions.

In this study, the population under review consists of legislation, legal doctrine, and arbitration decisions related to business disputes in Indonesia. The research sample includes arbitration decisions that have been decided by the Indonesian National Arbitration Board (BANI) and international arbitration institutions related to Indonesia. This research is non-physical in nature, as the data was obtained through literature studies and legal documents available nationally and internationally. Nevertheless, the main analysis focuses on regulations in Indonesia and their implementation in the settlement of business disputes through arbitration, both at the national and international levels.

Results and Discussion

A. Results of the Study on Arbitration Authority in Business Dispute Resolution Based on Indonesian Legislation

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.The results of the study show that the authority of arbitration in the settlement of business disputes in Indonesia is clearly regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law provides a strong legal basis for arbitration as an alternative mechanism for resolving disputes outside the courts. In the context of authority, arbitration has the authority to resolve disputes arising from agreements that explicitly include arbitration clauses. This clause mandates the parties involved to bring any disputes arising from the agreement to a predetermined arbitration institution, rather than through the general court system.

In addition, this law also stipulates that arbitration awards are final and binding, which means that they cannot be appealed in court, except in limited circumstances that are expressly stipulated in the law, such as allegations of fraud or legal violations in the arbitration process. Thus, arbitration awards are considered to have the same force as court judgments and can be enforced by national courts, provided that they meet the specified requirements. This study found that in practice, arbitration is effective in resolving business disputes involving parties who have a clear understanding of the arbitration process and agree to the use of this mechanism from the outset in their agreement (Nurhamidah et al., 2024).

However, despite the clear legal framework, there are still challenges in the implementation of arbitration authority in the field. Several cases show uncertainty in the enforcement of arbitration awards, especially when one party is reluctant to comply with the award or when the arbitration award must be enforced by a national court. Courts are often faced with administrative obstacles or inconsistencies with domestic regulations, which result in delays in the enforcement of arbitral awards. However, in general, the law has provided sufficient authority for arbitration institutions in Indonesia to play an effective role in resolving business disputes, provided that they are supported by a good understanding and acceptance from business actors.

B. Arbitration Practices in Indonesia, Including Their Implementation in the Settlement of Business Disputes.

This study also reveals that arbitration in Indonesia has significant advantages over dispute resolution mechanisms through the courts, particularly in terms of speed, flexibility, and confidentiality of the process. Arbitration is known as a more efficient mechanism because the process is relatively faster than the general court system, which often takes years. In arbitration, the parties have the freedom to determine the hearing schedule, select arbitrators who are considered competent, and establish mutually agreed procedural rules, so that the process can be tailored to the specific needs of the disputing parties. This flexibility benefits business actors who need to resolve disputes quickly and efficiently, without being bound by the rigid formal procedures that apply in court (Lumowa, 2022).

In addition, the closed nature of arbitration provides a significant advantage for companies that prioritize confidentiality. Business disputes resolved through arbitration are not open to the public, allowing the parties to protect their reputation and trade secrets from public exposure. This is in contrast to court proceedings, where hearings are open and decisions are accessible to anyone. This advantage makes arbitration a preferred option for businesses, especially for disputes involving sensitive information or business strategies that must be kept confidential. However, this study also found that these advantages have not been fully utilized by all businesses in Indonesia. Some parties, especially those who lack understanding of arbitration procedures, are still reluctant to choose arbitration as an alternative dispute resolution method. The lack of awareness and education about arbitration, especially among small and medium-sized enterprises, is one of the factors preventing arbitration from becoming the primary choice for business dispute resolution in Indonesia. However, for those who understand the mechanisms and advantages of arbitration, this method is considered very effective and efficient in protecting their business interests.

C. Analysis of the Advantages and Disadvantages of Arbitration Compared to Dispute Resolution Mechanisms Through the Courts.

Arbitration as an alternative dispute resolution (ADR) mechanism has various advantages and disadvantages when compared to dispute resolution through the courts. One of the main advantages of arbitration is its more flexible nature in terms of procedure. The disputing parties have the freedom to determine the rules and procedures to be applied in arbitration, including selecting arbitrators who have specific expertise in the field related to the dispute. This provides a significant advantage, especially in commercial or technical disputes that require a deep understanding of a particular industry, which a general court judge may not have. For example, in disputes involving technology or construction, arbitrators can be selected based on their technical background, which speeds up understanding of the issues at hand and reduces the possibility of technical misunderstandings (Baharuddin, 2024).

In addition to procedural flexibility, arbitration also offers a relatively faster process compared to court proceedings. Court proceedings in general courts often take a long time, especially in countries with a high caseload such as Indonesia, where cases can be delayed for years before reaching a final decision. Arbitration, on the other hand, can often be resolved within a few months to a year, depending on the complexity of the case and the availability of the parties and arbitrators. This shorter time frame helps reduce the uncertainty experienced by the parties and mitigates the financial and operational impact of protracted disputes.

Another advantage of arbitration is its private and closed nature. Unlike court proceedings, which are generally open to the public, arbitration proceedings are conducted in private so that the confidentiality of company information or sensitive disputes can be better maintained. In the business world, maintaining the confidentiality of disputes is often very important to protect reputation or trade secrets. For example, in disputes over patents or exclusive contracts, the parties can avoid public exposure that could damage their reputation or harm their position in the market.

However, arbitration also has several drawbacks that should be considered. One of the most common drawbacks is that the costs tend to be higher than those of court proceedings, especially if experienced or internationally renowned arbitrators are involved. Arbitration costs include not only the arbitrators' fees, but also the administrative costs charged by the arbitration institution and additional costs such as lawyers, expert witnesses, and courtroom rental fees. In some cases, arbitration costs can exceed the costs incurred in court proceedings, especially in small claims disputes or those involving multiple arbitrators (Fadillah & Putri, 2021).

In addition, arbitration awards are final and binding, meaning that there is no appeal mechanism available to the parties if they are dissatisfied with the outcome. This is in contrast to courts, where parties can appeal to a higher level to seek justice if the first-level decision is deemed unsatisfactory or wrong. In the context of arbitration, there are only a few very limited conditions under which a decision can be overturned, for example, if there is evidence of fraud or a serious violation of basic principles of justice in the arbitration process. As a result, the parties must accept the outcome of the arbitration, whether it is fair or not, without the opportunity to correct any errors that may have occurred.

On the other hand, the lack of formal rules in arbitration can also be a double-edged sword. Although procedural flexibility is often considered an advantage, some parties may feel that the lack of formal and strict rules that are usually found in court can create uncertainty or a lack of adequate legal protection. For example, in court, there are strict standards regarding the admission of evidence and the right to appeal, whereas in arbitration, these processes may be more lenient and depend on the discretion of the arbitrator or the agreement of the parties. In cases where one party is stronger or more experienced in arbitration, this can be exploited to their advantage, thereby reducing the equality of the process for the other, less experienced party (Mulyawan, 2024).

Thus, the choice between arbitration and court proceedings must take into account various specific factors, such as the need for speed, confidentiality, costs, and the desire to have the right of appeal. Arbitration may be more suitable for commercial disputes that require technical expertise and privacy, while court proceedings may be more ideal for disputes that require legal certainty and stricter procedures. A thorough understanding of the characteristics of each dispute resolution mechanism is essential for the parties to make the right decision according to their needs and circumstances.

D. Evaluation of the Effectiveness of Arbitration Decision Enforcement in Practice in Indonesia.

An evaluation of the effectiveness of arbitration decision enforcement in practice in Indonesia reveals various challenges and successes. One aspect that demonstrates effectiveness is Indonesia's legal recognition of arbitration as a valid dispute resolution mechanism. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution regulates the arbitration process in detail, from the selection of arbitrators to the recognition and enforcement of arbitration awards. This recognition provides a strong legal basis for the enforcement of arbitration awards in Indonesia, so that arbitration awards, whether from national or international arbitration, can be recognized and enforced within Indonesian jurisdiction, as long as they meet certain requirements stipulated in the law.

However, in practice, the enforcement of arbitration awards in Indonesia does not always run smoothly. One of the main problems often encountered is the delay or refusal of enforcement of arbitration awards by district courts. Although arbitration awards are final and binding, they must first be registered with a district court in order to be enforced. At this stage, obstacles often arise, where the losing party in the arbitration attempts to thwart enforcement by raising various arguments, such as allegations of procedural violations or failure to comply with the principles of justice in the arbitration process. The district court sometimes accepts these arguments, which results in the obstruction of the enforcement of arbitration awards. Although the law stipulates that the court may not intervene in the substance of an arbitration award, in some cases, the court still conducts an in-depth review of the award, which slows down the enforcement process (Abdul Karim, 2023).

In addition, another problem faced in the enforcement of arbitration decisions in Indonesia is resistance from the losing parties in the dispute. They are often uncooperative in following up on arbitration decisions, forcing the winning party to pursue enforcement through the courts. In cases where the losing party's assets are spread across multiple countries, the enforcement process can become more complicated as it involves international jurisdiction. Although Indonesia has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which should facilitate the enforcement of international arbitral awards, challenges related to bureaucracy and differing legal systems between countries often make this process lengthy and difficult (Waruwu et al., 2024).

On the other hand, there are also examples where the enforcement of arbitration awards has been effective, especially when the parties involved are committed to complying with the award voluntarily. In such cases, arbitration has proven to be an efficient mechanism for resolving disputes without having to go through a lengthy and costly court process. This shows that the effectiveness of the enforcement of arbitral awards is highly dependent on the attitude and good faith of the disputing parties, as well as the support of judicial institutions in facilitating the enforcement of awards.

Overall, the effectiveness of the enforcement of arbitral awards in Indonesia still faces a number of challenges, particularly related to the resistance of the losing party and the involvement of the courts in the enforcement process. However, with supportive regulations and increased understanding and awareness among business actors about the importance of arbitration, it is hoped that the enforcement of arbitration awards in Indonesia will become more effective in the future. Efforts to strengthen the legal framework and improve the capacity of arbitration institutions are also important steps to ensure that arbitration can become a more effective and trusted dispute resolution mechanism in Indonesia.

E. Discussion on Future Developments in Arbitration Policy or Regulation.

Future developments in arbitration policy and regulation in Indonesia are likely to undergo significant changes to keep pace with global dynamics and domestic needs. One of the main pillars of future policy is to strengthen the role of national arbitration institutions, such as the Indonesian National Arbitration Board (BANI). Although BANI has played a leading role as an arbitration institution in Indonesia, the challenges it faces in the face of international competition are an important factor driving further reform. Currently, international arbitration institutions such as the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) are the preferred choice for many multinational companies because they are considered more reliable and efficient. Therefore, future policies will focus on increasing BANI's competitiveness by strengthening human resources, improving the quality of arbitrators, and providing faster and more flexible arbitration services.

This policy may include stricter arbitrator certification programs and increased transparency and governance to build user trust (Herlina & Maulana, 2024). In addition, the adoption of technology in the arbitration process is predicted to be one of the key aspects of future policy. The digital era has accelerated the use of technology in many aspects of life, including dispute resolution. The COVID-19 pandemic has accelerated the use of technologies such as online arbitration hearings and electronic document delivery, which are considered more efficient and reduce operational costs. In the future, arbitration regulations in Indonesia are likely to adapt to these developments, creating a legal basis that allows for online dispute resolution, including the recognition of electronic evidence, virtual witness examinations, and data security and privacy. The adoption of this technology will not only facilitate international arbitration involving parties from different jurisdictions, but also make it easier for local companies that may not have the resources to engage in traditional arbitration, which is more expensive and time-consuming.

One important development in future arbitration policy is the adjustment of rules for specific sectors. Some industrial sectors, such as energy, infrastructure, telecommunications, and information technology, are often involved in complex disputes with large values. Arbitration has become the preferred dispute resolution mechanism in these sectors due to its more flexible and specialized nature. However, in the future, policies may provide more specific guidance for these sectors, taking into account the needs of the relevant industries. For example, in construction or energy disputes, the parties may require arbitrators with in-depth knowledge of the technical and operational aspects of the industry. Therefore, future arbitration policies may include the development of more detailed standards and guidelines for the selection of arbitrators based on sectoral expertise, as well as arbitration procedures specifically designed to handle disputes in these fields.

In addition, the effectiveness of the enforcement of arbitration awards in Indonesia remains a major challenge. One of the problems often encountered is the process of executing arbitration awards, which must go through the district court in order to be enforced. Although Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides a clear legal framework, in practice, courts often delay or even refuse to enforce arbitration awards. This is largely due to the courts' differing interpretations of their authority in reviewing arbitration awards, particularly with regard to administrative and procedural matters. In the future, arbitration policy may be directed towards limiting the involvement of courts in the enforcement process, with a focus on simplifying procedures and clarifying the limits of the courts' authority in reviewing arbitration awards. One step that can be taken is to improve guidance from the Supreme Court to district courts on how to handle requests for the enforcement of arbitral awards efficiently and in accordance with the principle of finality of arbitral awards.

Internationally, although Indonesia has ratified the 1958 New York Convention, which allows international arbitration awards to be recognized and enforced in the country, the enforcement of foreign arbitration awards still faces obstacles. Some foreign arbitration awards that should be directly enforceable often encounter obstacles at the local level, either due to procedural issues or a lack of understanding of international arbitration principles by domestic courts. To remedy this, future policy will likely move toward harmonizing national and international arbitration rules, with the aim of strengthening Indonesia's position as an arbitration center in the ASEAN region. This may involve simplifying the process for the recognition and enforcement of foreign arbitral awards, as well as improving the capacity of courts and related institutions to handle cross-border disputes more professionally (Winarta, 2022).

Furthermore, future policies may increasingly encourage the use of multi-tiered dispute resolution, which includes mediation, negotiation, and arbitration as part of a single dispute resolution process. This multi-tiered dispute resolution can help reduce the number of disputes that go to arbitration, by giving parties the opportunity to resolve their issues through mediation or negotiation before arbitration begins. In some jurisdictions, this multi-tiered mechanism has been shown to reduce the burden on arbitration and speed up dispute resolution. Indonesia, through regulatory reform, can adopt a similar approach by introducing more flexible policies related to dispute resolution, including incentives to resolve disputes through mediation or negotiation before entering the formal arbitration stage.

In addition, future developments in arbitration policy are also expected to include aspects of sustainability and social responsibility. With increasing global attention to environmental, social, and governance (ESG) issues, it is possible that future arbitration policies will begin to incorporate ESG elements in dispute resolution, especially for cases involving large infrastructure projects or extractive industries. This could mean that parties to a dispute will be required to consider environmental and social impacts in their arbitration proceedings and ensure that arbitration awards support sustainability principles (SETYALAKSONO, 2024).

Thus, the development of arbitration-related policies and regulations in Indonesia in the future will be influenced by various factors, including increasing the capacity of arbitration institutions, adopting digital technology, harmonizing with international standards, simplifying the execution process, and introducing more sectoral and responsive rules to global issues such as sustainability. The objective of this reform is to make arbitration a more efficient, flexible, and competitive dispute resolution mechanism, both nationally and internationally, as well as to increase the confidence of business actors and investors in the arbitration system in Indonesia.

Conclusion

The conclusion of this study shows that the development of policies and regulations related to arbitration in Indonesia in the future needs to focus on a number of strategic aspects to improve its effectiveness and competitiveness, both nationally and internationally. Strengthening arbitration institutions, particularly through the Indonesian National Arbitration Board (BANI), is key to ensuring that these institutions can compete with other international arbitration institutions. On the other hand, the adoption of digital technology is also an important pillar that enables the arbitration process to be more efficient and cost-effective, especially for cross-border disputes involving multiple jurisdictions.

In addition, sectoral regulatory adjustments are needed to handle disputes in strategic industrial sectors, such as energy, construction, and technology, which require arbitrators with specialized expertise. Future policies are also expected to improve the enforcement of arbitration awards, both nationally and internationally, by emphasizing the simplification of procedures and limiting court intervention in the enforcement process. This reform is important to ensure that arbitration awards can be enforced quickly and effectively, increasing legal certainty for parties who choose arbitration as a method of dispute resolution.

Harmonization with international standards, particularly in the recognition and enforcement of foreign arbitration awards, will play an important role in making Indonesia a more competitive arbitration center in the ASEAN region. On the other hand, the application of multi-tiered dispute resolution and attention to sustainability issues are also anticipated aspects of future arbitration policy. Thus, Indonesia has a great opportunity to develop a more reliable, flexible arbitration system that is in line with ever-changing global needs, making it the preferred choice for dispute resolution, both domestically and internationally.

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