



The Effectiveness of The Use of Arbitration as an Alternative to Dispute Resolution in Indonesia

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Abstract

Background. Dispute resolution is a crucial element in the Indonesian legal system, with arbitration as an alternative that offers flexibility and efficiency. However, public interest in arbitration remains low, despite its regulation in Law Number 30 of 1999.

Aims. This study aims to identify the factors that contribute to the low use of arbitration and propose solutions to enhance public preferences.

Methods. The research method used is normative juridical, with data collection through literature studies that include legal documents, books, and academic articles.

Result. The results show that the limited public understanding of the benefits of arbitration, the perception of high costs, and doubts about the independence and transparency of arbitrators are the primary factors hindering public interest.

Conclusion. To build public trust, intensive socialization and education efforts, clearer cost management, and increased regulations related to arbitrators' independence are needed.

Implementation. Thus, arbitration is hoped to be a more competitive and desirable option for dispute resolution in Indonesia.

Keywords: Dispute Resolution, Arbitration, Effectiveness



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INTRODUCTION

Dispute resolution is a crucial component of the legal system, playing a vital role in maintaining order and justice in society. In Indonesia, dispute resolution is typically

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handled through the courts, although this process often faces various challenges, including lengthy resolution times and high costs. In this context, arbitration emerged in response to the need for more flexible and affordable solutions for parties involved in disputes, as the law has evolved to create a fair and efficient mechanism for dispute resolution (Abdurasyid, 2022).

According to Article 1, Number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is defined as a way of resolving disputes outside of court that is carried out based on an agreement between the parties. Subekti states that arbitration is the settlement or termination of a dispute by a neutral third party, with the parties agreeing to submit to or obey the decision of the arbitrator of their choice (Thing, 1992).

The Indonesian National Arbitration Board (BANI) was established to ensure the fair and speedy settlement of civil disputes related to trade, industry, and financial matters (Winarta, 2013). Increased awareness of the benefits of arbitration, particularly among business actors, has also contributed to the growth of this practice. However, public preference for this method is still relatively low. Some studies show that people tend to prefer the litigation path in court. This view is influenced by several factors, including a lack of understanding of the arbitration process, as well as a level of confidence in the independence of arbitrators and the transparency of the process. The limited information about arbitration often raises doubts among the public, leading to a preference for sticking to judicial channels.

Based on the background that has been explained earlier, the author formulates the problem as follows: "What are the factors that cause the low public interest in using arbitration as an alternative to dispute resolution in Indonesia?"

RESEARCH METHODS

This research employs a normative juridical method, with an emphasis on analyzing laws, regulations, and legal principles that govern arbitration mechanisms as an

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alternative dispute resolution mechanism in Indonesia. The normative juridical research method is a legal research approach that focuses on studying literature materials or secondary data as the primary source of analysis (Soekanto & Mahmuji, 2023). Data was collected through a literature review that included legal documents and closely related academic books and articles. This research employed a descriptive approach to describe the current conditions and practices of arbitration, as well as to identify the factors that influence the low interest in using arbitration as an alternative dispute resolution method in Indonesia.

The theory related to this study is the theory of legal effectiveness. This research is expected to provide an understanding of the various obstacles faced by the community in utilizing the arbitration mechanism delivered by Soerjono Soekanto. In this theory, the term "effective" refers to the level of achievement of goals by a group. The law is considered adequate if it has a positive impact, enabling it to achieve its goal of guiding or changing individual behavior under legal norms (Rosidah & Maviana, 2020). This theory explains the low use of arbitration in Indonesia, emphasizing the need for public trust to move from litigation to arbitration.

DISCUSSION

The development of arbitration in Indonesia cannot be separated from the emergence of various challenges. One challenge often encountered is the emergence of lawsuits against the arbitration award submitted by the losing party to the court, which is why the community prefers dispute resolution through litigation (Siplawfirm, 2004). Professor Takdir Rahmadi, Chairman of the Supreme Court (MA) Development Chamber, assessed that implementing arbitration and alternative dispute resolution in Indonesia faces various challenges because aggrieved parties tend to litigate in court. One of the objectives of the arbitration mechanism and alternative dispute resolution mechanism is to enable the community, especially business actors, to resolve disputes effectively (Thea, 2003).

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The low public interest in choosing arbitration as an alternative dispute resolution method in Indonesia can be attributed to three key factors: limited public understanding of the benefits of arbitration, perceptions of high costs, and doubts about the independence and transparency of arbitrators. Each factor contributes to the low interest in arbitration, which is essentially designed as a more efficient and flexible method of dispute resolution than litigation.

First, the lack of public understanding of the benefits and procedures of arbitration is a big challenge. The legal understanding of the importance of arbitration as an alternative to litigation remains uneven among the public and businesspeople. Although Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution has established arbitration as a faster and more efficient process than litigation in court, information related to this is not widely known. Most people tend to opt for the courts due to the lack of socialization about the advantages of arbitration. This is due to the lack of public access to comprehensive information about the arbitration procedure and its advantages, such as confidentiality and greater control by the parties throughout the proceedings. In the business environment, this understanding may be more common, but many parties still doubt the effectiveness of arbitration outside the sector. Many parties still doubt the effectiveness of arbitration.

Sudikno Mertokusumo's view emphasizes the importance of public understanding and acceptance of a legal institution, so that the institution can be utilized to its maximum potential (Mertokusumo, 2020). The level of public awareness and understanding of arbitration also needs to be improved through socialization related to the process's benefits, processes, and positive impacts (Siplawfarm, 2024). Therefore, intensive socialization and education are needed at various levels of society about arbitration, including legal education programs and public seminars. The government, legal institutions, and arbitration organizations, such as the Indonesian National Arbitration Board (BANI), can collaborate to raise public awareness about the benefits of arbitration

through campaigns, workshops, and publications. In this way, the public will gain a better understanding of arbitration as an equal option to the courts in resolving disputes.

Second, the sometimes high costs are another inhibiting factor in arbitration. In theory, arbitrage is often considered a more cost-effective alternative. However, in reality, especially in complex cases, the cost of arbitration can be very high if it involves senior arbitrators or requires repeated meetings, limited facilities, and resources to support the arbitration process, including uneven inter-regional arbitration bodies. This makes it difficult for the parties involved to resolve disputes through arbitration, thereby placing a burden on the public and companies that rely on cost efficiency as a key reason for choosing arbitration (Online Law, 2023). In Indonesian society, out-of-court dispute resolution typically involves community leaders, religious leaders, or other parties who often undertake this process voluntarily without charging fees. This habit creates a cultural challenge, where the role of an arbitrator has not been fully viewed as a profession worthy of professional appreciation (Thea, 2023).

In Satjipto Rahardjo's view, justice must be accessible to all levels of society, and high costs often serve as a barrier to achieving equitable access (Rahardjo, 2014). Although Law No. 30 of 1999 aims to make arbitration a simpler and more efficient alternative, arbitration costs can sometimes be higher than litigation, especially in cases with a small dispute value. To address this issue, governments and arbitration bodies may consider clearer regulations regarding cost caps or setting cost standards for specific instances, particularly those of low value. Additionally, subsidies or cost support for underprivileged communities can be considered to make arbitration more accessible to a broader audience. These efforts will help make arbitration a more affordable and competitive option.

Third, doubts about arbitrators' independence and transparency are often why people are reluctant to choose arbitration. Many parties believe that the court process is more legitimate and reliable because it is supervised by an official judicial institution and has transparent procedures. Meanwhile, in the arbitration process, the arbitrator is chosen

by the parties to the dispute, which sometimes raises suspicions about the neutrality of the resulting decision. Although Law No. 30 of 1999 has stipulated that the arbitration process must be conducted fairly and based on the agreement of the parties, the absence of stricter regulations regarding the standards of arbitrator independence and its oversight mechanisms raises concerns in the community and its implementation may still be difficult, for example if one of the parties refuses to comply with the decision. In cases like this, enforcing an arbitral award in a local court can also be complicated and time-consuming (Online Law, 2023).

Munir Fuady stated that public trust in the neutrality of the arbitration institution is crucial to encourage the public to choose arbitration as an alternative to dispute resolution (Fuady, 2003). As a solution, regulations governing the independence and transparency of the arbitration process need to be improved, for example, by establishing a code of ethics and a strict supervisory mechanism for arbitrators. Arbitration institutions can also enhance transparency in the process of selecting and appointing arbitrators, thereby building public trust. Clear grievance and sanction mechanisms for arbitrators who violate the principle of independence can also be concrete steps to ensure the integrity of the arbitration process.

Overall, to increase public interest in arbitration as a dispute resolution method, concerted efforts to enhance public understanding, cost efficiency, and arbitrator independence are necessary. The government, arbitration institutions, and related stakeholders have a significant role in realizing arbitration as a competitive and trusted alternative for the Indonesian people.

CONCLUSION

Research indicates that the interest of the Indonesian people in arbitration as an alternative to dispute resolution remains low. This is due to a limited understanding of the benefits and procedures of arbitration, as well as perceptions of high costs and doubts about the independence and transparency of arbitrators. Although arbitration offers

advantages in speed, flexibility, and confidentiality over litigation, many are not yet aware of the potential. Therefore, to increase interest in arbitration, governments, arbitration institutions, and other stakeholders need to engage in intensive socialization and education on the advantages and procedures of arbitration. Cost reduction through precise regulation and subsidy schemes for low-value cases is also urgently needed. Additionally, ensuring the transparency and independence of arbitrators through strict regulation and oversight mechanisms is crucial for increasing public trust. Through the steps- bottom of the form.

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LAWS & REGULATIONS

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution