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The Comparative of Arbitration Performance and Public Court on Settlement of Civil Disputes in Indonesia

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Abstract

The purpose of this study is to describe the comparison of dispute resolution mechanisms by arbitration and dispute resolution through general courts. This study uses normative juridical, referring to legal norms which include laws and regulations, court decisions and applicable legal rules. Furthermore, this research will answer legal issues regarding dispute resolution through arbitration. Normative legal research is "legal research conducted by examining literature (secondary data). The results of the study indicate that there are two choices of arbitral institutions to resolve disputes, namely arbitration and general courts. Comparison of dispute resolution mechanisms between arbitration and institutional arbitration is that arbitration has the freedom of the parties to determine the arbitrator, guarantees the confidentiality of the parties because dispute resolution is carried out in private, the parties can determine the place of arbitration, choice of law in dispute resolution, and the dispute resolution process is faster, namely can be completed in no more than 180 days. While settlement through a general court requires a relatively long time, is open to the public, and is confrontational in nature, all decisions are final and binding. However, for arbitration, the recognition and implementation of the decision must still be registered with the district court. Weaknesses of arbitration are the emergence of suspicion of each party about the closeness of the arbitrator, given the current sophistication of technology, so that the number of dispute resolution through arbitration in Indonesia is very small. Society prefers litigation over non-litigation

Keywords: *arbitration, court public, disputes, ad-hoc*

1. Introduction

Disputes with differences of opinion regarding civil matters can be carried out at the arbitration or non-litigation level and can also be at the litigation level or general court institutions. This choice depends on the disputing parties. Is the settlement in litigation or non-litigation? If the dispute uses litigation, then in its implementation in the public court. However, it tends to be less efficient and effective because it requires a relatively long time and is confrontational in nature, whereas in arbitration generally the best way is sought in its settlement. (Panjaitan, 2018).

One of the legal issues that has become an actual and interesting phenomenon is the problem of arbitration because the performance of this arbitration has an important role in the business world which is currently experiencing rapid development at the national and international levels. Business people, if they have disputes in their settlement, prefer arbitration when compared to general court

institutions, so arbitration is currently more popular and numerous (Arina, 2022).

Reconsideration is a legal effort from the convicted party to the judge to review a decision that has legal force because of new evidence that is believed to be able to reduce the sentence or even decide to go free. Reconsideration is a legal effort against the court's decision to annul the arbitral award in terms of the principle of access to justice and PK's reasons for the court's decision to cancel the arbitration award in terms of the principle of access to justice. Whereas justice seekers should be given access to PK legal remedies against court decisions that have a permanent legal force that cancels arbitration decisions, so that access to justice is achieved in the process of resolving disputes through the courts (Satrio, 2018). However, according to search results from Google Trends, the difference between litigation and non-litigation dispute resolution is presented in Figure 1 as follows;

Figure 1. Development of dispute resolution through the General Courts in Indonesia
Source: Google Trend,2023

Based on Figure 1 above, disputes handled by the General Court starting from 27 May 2022 to 26 February 2023 have been fluctuating and finally on 25 March 2023 decreased by 0.

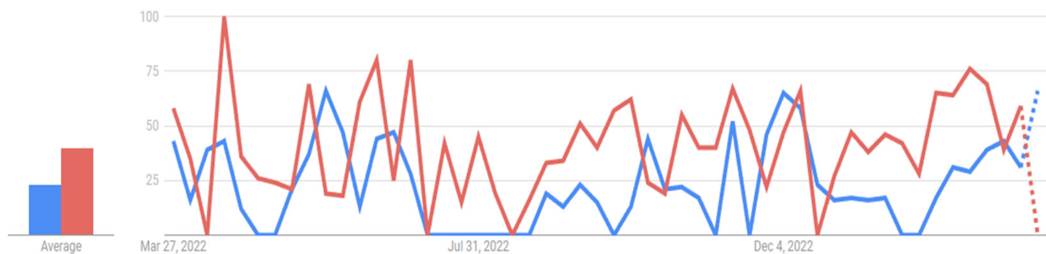

Figure 2: Comparative of Arbitration and Court public
Source: Google Trend, 2022; Blue = Court publict; Red= Arbitration

Figure 2 illustrates that the performance of Arbitration in Indonesia from 27 March 2022 to 31 July 2022 turned out to be public trust in Arbitration, then on 4 December 2022 arbitration activities were still superior to general courts. From 12 to 18 March 2023, Arbitration resolved disputes 59 times and General court 31 times. This fluctuating phenomenon is a gap for further research. An arbitration Institution is an institution formed and elected by two parties in dispute to mediate and provide fair and binding decisions. (Law No. 30 of 1999).

As a social phenomenon, disputes or conflicts will always be found in human life or social life. Several possibilities for resolving a dispute not through a court are actually also regulated in: "Article

6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution." There are also alternative dispute resolution institutions, for example in the law on environmental sustainability, employment, and other fields.The novelty of this research intends to thoroughly describe, the judge's strategy of trying to resolve the amicable process according to: "Article 130 HIR/154, RBG and how to alternative dispute resolution outside the court."(Evi Djuniarti, 2021). HIR is an abbreviation of Herzien Inlandsch Regulation which is often translated into the Revised Indonesian Regulation, which is procedural law in civil and criminal cases that apply to the islands of Java and Madura. This regulation was in force during the Dutch East Indies era, listed in the State Gazette (staatblad) No. 16 in 1848. RBG [an abbreviation of Rechtreglement voor de Buitengewesten which is often translated as Law Regulations for the Opposite Region (outside Java-Madura)], namely the procedural law that applies in civil and criminal trials in courts outside Java and Madura. Listed in Statblad 1927 No. 227.

In people's lives, there has been a growing perception of disputes that are considered to have not achieved justice. Various dispute cases by submission to court forums tend to require quite a long time and are confrontational in nature. Meanwhile, the community prefers arbitration forums which in fact have adequate theoretical foundations and conceptual legitimacy. Especially in conditions where the courts are feeling to be increasingly incapable of listening to problems so that the public feels they do not trust the courts. (Wood, 2017)

The theoretical basis is the belief and the philosophical basis for the implementation of the Arbitration award, the contents of which are good faith to reflect moral values. Morality becomes important in the field of business because the main characteristic of business is trust (Thriyana, 2016).

Oksana Melenko, (2020) conducted research by comparing how dispute resolution of two parties through arbitration (non-litigation) with a general court (litigation). The results of the study show that arbitral settlement is more successful than dispute resolution in common courts in Europe and Ukraine. The same is what results from research. Ortolani, (2019) stated that the settlement of disputes through arbitration using blockchain technology has earned the trust of the parties to the dispute and has indirectly marginalized public courts. However, Alaloul et al., (2019) state that the settlement of disputes through general courts and arbitration has not been able to show success in achieving justice. Arbitration (non-litigation) is a global phenomenon that continues to expand its influence, particularly in relation to the mediation process. Several parties to the dispute are no longer believed in him because they failed to mediate and failed to fulfill justice (Nolan-Haley, 2020; Faure & Ma, 2020).

Several studies on the comparison of the performance of arbitration with general courts in resolving disputes, it is quite diverse. There are those who state that arbitration has been successful in resolving disputes between the two parties, but there are also those whose state that arbitration and general courts have not been successful in resolving disputes between the two parties to the dispute. Therefore, we are trying to do further research. To justify this research discrepancy, the theory of justice is used as a grand theory. The law aims to provide justice, the justice that researchers use is substantive justice and procedural justice. (Ahmad Ali, 2009). As a Middle range theory, legal system theory is used which teaches that the legal system will run smoothly when law enforcement in legal structure, legal substance, and legal culture runs optimally. Then Stufenbau's Theory (Hans Kelsen) Law is a pyramid ladder between superior and inferior laws, so the laws must be in harmony.

Thus, there are two formulations of the problem in this study, namely: What is the mechanism for resolving disputes through arbitration and what is the mechanism for settling through public courts?

2. Literature Reviews

2.1 Arbitration

Arbitration is a way of settling a dispute outside the general court based on a written arbitration agreement by the parties to the dispute. (Constitution No. 30 of 1999)

To resolve a dispute through an arbitration mechanism, an agreement is needed between the two disputing parties (which can be done before or after the dispute occurs). For this reason, a written agreement must be entered into by both parties prior to arbitration. In Indonesia, there are several special bodies that facilitate arbitration processes, namely the Indonesian National Arbitration Board (BANI). Dispute resolution through arbitration can be done with arbitration clauses in the form of a pactum de compromised and arbitration clauses in the form of an act of compromise. several arbitral institutions that already exist and have been legalized, can be appointed by "The parties to resolve disputes consisting of ad hoc arbitration and institutional arbitration." It is known that the process of resolving disputes can start from the notification stage, followed by the response stage, followed by the selection process, and the process of appointing the desired arbiter. this process will end with an arbitration decision. It was explained that "The legal force of an arbitration award is final and binding, however, the recognition and enforcement of the award must still be registered with the District Court." (Muskibah, 2018).

Arbitration comes from the word Arbitrate which is Latin. Other words for arbitration are refereeing or arbitrage (Dutch), Arbitration (English), Schiedsprush (Germany), or Arbitrage (French). These various words contain the same meaning, namely to finish something according to wisdom. The literature explains that the literature explains that the arbitration route is the process of resolving a dispute by a judge by referring to the agreement of the parties in dispute to produce a decision followed by the parties (Subekti, 1992: 1). Another definition explains that, arbitration as a dispute settlement mechanism that is corrected by law and decisions made by judges can be used as a binding legal basis for each party. (Priyatna, 2002).

A more progressive opinion explains that "Arbitration is a court chosen and determined voluntarily by the parties to the dispute." It was explained, "The settlement of disputes outside the district court is the free will of the parties as outlined in the written agreement they made before or after the disputes occurred in accordance with the principle of freedom of contract in civil law." (Muhammad, 1993: 276).). Therefore, "Arbitration is a method of settling civil disputes outside the general court which is based on a written agreement of the parties to the dispute, both before and after the dispute occurs, which was originally regulated in the “Regulation op de Burgelijke Rechtsvordering” (RV) which is a product of the Dutch Government." The European group and its equivalent are regulated by the Regulation op de Burgelijke Rechtsvordering (RV) promulgated by Staatsblad No. 52 of 1847. This law regulates the procedures for civil litigation before the Raad van Justitie and the Residentie-Gerecht

The provisions in the RV are still valid after Indonesia's independence due to transitional regulations in the 1945 Constitution. However, with the enactment of Law Number 30 of 1999 concerning, “Arbitration and Alternative Dispute Resolution, the arbitration provisions in the RV are declared no longer valid, and in accordance with Law Number 30 of 1999, the settlement mechanism through arbitration follows the provisions stipulated in this law.”

The applicable principle is final and binding because the decision is the first and last decision that must be acknowledged by the parties because it is binding. Cassation or review of the final decision is intended to prevent arbitral disputes from being protracted. The arbitral award is also binding, which means it binds the parties as mutually agreed upon (Izaak N, 2015). However, arbitral awards with final and binding principles raise the first few problems, the nature of final decisions as one of the advantages of resolving disputes through arbitration in practice often becomes non-final when confronted with the provisions of Article 70 of the Arbitration The law which regulates the cancellation of awards. Although it is recognized that in any country's arbitration rules, there are provisions for the cancellation of arbitral awards by courts as a form of state supervision.

Table 1. Cases of Annulment of Arbitral Awards

Court ruling	Sit matter	Reason
South Jakarta District Court Decision No.207/Pdt.P/2009/PN. Jkt.Sel between PT. Cipta Kridatama vs BANI and Bulk Trading, SA. Then the South Jakarta District Court granted the request for annulment of the arbitral award.	the existence of a default on the Coal Mining Work Contract No. 01/CK-BT/KON-TAMB/XII/2006	By looking at article 54 paragraph (1) letter e relating to the arbitral award which does not include the address of the arbitrator, and article 57 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, relating to the arbitral tribunal which has rendered an award with a period exceeding 30 (thirty) days after the inspection is closed
South Jakarta District Court Decision No. 301/Pdt.P/2008/PN.JKT.Sel between Gunawan Sukardi vs Cris an Mapaliey granted the cancellation request submitted by Gunawan Sukardi	With the issue of stock disputes	The Petitioner used reasons for the request for annulment in addition to the reasons for the annulment mentioned in Article 70 of the Law on Arbitration and Alternative Dispute Resolution as well as administrative deficiencies.

Source: Result research,2022

2.2 *General Court*

The court is generally accepted as one of the executors of the powers possessed by the judiciary for people who want justice (Article 2 of Law No. 2 of 1986). first class court has the duty and authority to examine a case, then try it, and decide the case. (Article 50 of Law No. 2 of 1986). The general court is tasked with resolving disputes between two parties to the dispute. From the perspective of litigants, there are three important things that must be considered in evaluating the administration of arbitration, namely the speed of disposition, litigation costs, and the quality of justice. Of the three important requirements, it must be managed properly so that it can show the satisfaction of the litigants with the quality of justice provided. From a court perspective, litigants can be resolved and there are many other things that must be considered, namely effective administration is important. because if not managed then administration will affect success and tend to fail. Given the large cost problem in court litigation, arbitration in court is given the opportunity to improve a fair dispute resolution (Levin, 1983)

Litigation is a dispute resolution process by the parties through state court institutions. This means that the dispute is submitted and examined by a court judge in a series of trials. The judiciary is carried out by the Supreme Court and its subordinate bodies which have the authority to accept cases, then examine, and prosecute, as a form of law enforcement."

The advantage of going through Arbitration is that, formally, it is carried out by law enforcement agencies, the process is detailed, so that all parties can follow the judicial process step by step which runs until the final decision and is officially recorded in court.

The decision made by the judge is binding.

3. Research Methodology

3.1 *Types of research*

This study uses normative juridical, referring to legal norms which include laws and regulations, court decisions, and legal rules that apply to the life of society and the state. Furthermore, this research will answer legal issues regarding dispute resolution through arbitration. Normative legal

research is "legal research conducted by examining literature (secondary data). It is called normative legal research or library law research (Muhaimin, 2020)

3.2 Types and Sources of Legal Materials

Primary legal material is the main data that is binding. In this study, the main data used are statutory regulations, namely: the 1945 Constitution of the Republic of Indonesia; Code of Civil Law; Law No. 30 of 1999 concerning arbitration and Alternative Dispute Resolution; Supreme Court Regulation (PERMA) Number 1 of 2006 concerning Procedures for Submitting Objections to Consumer Dispute Settlement Agency Decisions. Secondary legal materials, legal materials consisting of; law books, legal journals containing basic principles, views of legal experts (doctrine), results of legal research, legal dictionaries, and legal encyclopedias. Tertiary Legal Materials, in the form of non-legal materials that provide instructions regarding the two previous materials, namely primary and secondary legal materials originating from the Big Indonesian Dictionary, newspapers, and others

3.3 Legal Substance Tracing Technique

After finding legal issues, the next step is to search for related legal materials that are appropriate for legal issues. The method of collecting data used in this study was carried out by means of a literature study. A literature study is carried out by reviewing written information or looking at library materials in the form of literature, research results, and scientific journals. This literature study identifies sources of legal materials, then takes an inventory of the legal materials needed, writes and quotes legal materials, analyzes the legal materials obtained in accordance with the problems and objectives of the research conducted.

3.4 Legal Material Analysis Techniques

Of the three sources of law, primary, secondary, and tertiary are described and linked to be presented in a more systematic form of writing to answer the problem formulation. The data obtained were analyzed using qualitative methods, by interpreting legal materials with the aim of interpreting the law. Are there void norms, conflicts, or vague norms in legal materials, especially primary legal materials? After that, an analysis of the legal material that has been described and connected will be carried out which will eventually reveal conflicting norms in arbitration dispute resolution regulated in Law Number 30 of 1999 concerning Arbitration & Alternative Dispute Resolution. The steps taken when analyzing this legal material are to identify/determine the legal issues to be raised, collect the three legal materials as previously mentioned, and examine the legal issues based on the materials that have been found so that the final stage is drawing conclusions to answer legal issues (Muhaimin, 2020)

4. Result

4.1 Dispute Resolution Mechanism through the Arbitration Institution

Requirements that must be met before the dispute resolution process begins, firstly there must be a valid arbitration agreement between the parties. The second condition is that the parties to the dispute must be a dispute that can be resolved through arbitration. An arbitration agreement is said to be valid if it fulfills the provisions regarding the terms of the validity of the agreement contained in Article 1320 of the Civil Code, namely: agreement of the parties; ability to make agreements; a certain thing; a lawful reason. The subjective requirements that the arbitration agreement is made by those who by law are considered competent and have the authority to enter into an agreement, while the objective conditions in the arbitration agreement are fully controlled by the disputing parties. The

arbitration agreement must be made before or after the existence of a dispute in written form, including by using telex, telegram, facsimile, e-mail, or other telecommunications facilities as stipulated in Article 4 paragraph (3) of Law Number 30 of 1999 .

This arbitration agreement is subject to the principle of autonomy of the parties as stipulated in Article 1338 paragraph (1) of the Civil Code. The arbitration process is determined and agreed upon by the parties. Priyatna (2002) states that there are three circumstances that cause an arbitration agreement to become valid and enforceable if the agreement is written. The parties are able to close and implement the agreement they signed. The agreement must clearly spell out the intent and agreement of the parties to the agreement, what issues are agreed upon, and are prohibited from containing provisions directed at rejecting the power of arbitration law. This mechanism can be reached through two steps as follows.

4.2 Notification Stage

The first stage to initiate arbitration is the delivery of written notification by one of the parties to the construction contract (called the Petitioner) to the other party (called the Respondent), that the terms of settlement through arbitration have been in force, in this case, if the parties agree to an ad hoc arbitration. However, if the parties choose institutional arbitration, then the request for arbitration is sent to the selected institutional institution, for example through the Indonesian National Arbitration Board (BANI), to then be submitted to the other party. The date of receipt of the notification or request for arbitration shall be deemed to be the date of commencement of the arbitral stage. The notification letter which is a request to hold arbitration according to Article 8 paragraphs 1 and 2 of Law Number 30 of 1999, must clearly contain the identity of the parties, references to the arbitral award, the issues in dispute, the desired solution, the agreement of the parties, and the number of judges must be odd. When the parties determine arbitration after a dispute has occurred, then an agreement regarding this matter needs to be made and stated in a written agreement on work signed by the parties or it can also be made by a notary in the form of a deed.

Article 9 paragraph (3) of Law Number 30 of 1999 explains that the agreement must contain the problem, identity, address, handling council, secretary, place of execution, and statement of the parties to be willing to submit to the decision, and willing to bear the costs. A written agreement that does not comply with the provisions of Article 9 paragraph (3) mentioned above is null and void. The written arbitration agreement serves as proof that there is an agreement between the parties to resolve disputes through arbitration, as well as setting aside the authority of the court to adjudicate the dispute in question. With regard to the notice or request for arbitration, the party complained against can submit a response and or counterclaim to the applicant. The response or counterclaim according to Law Number 30 of 1999 can be submitted 14 days after the copy of the request for arbitration was received by the respondent.

Regarding the contents of the answers and or counterclaims from the respondent, there is no regulation in Law Number 30 of 1999, therefore the contents of the answers and or demands follow the form and content of the notification or request for arbitration submitted by the applicant. Stage of Selection and Appointment Arbitrators are judges who are chosen by the parties to the dispute. Based on Article 12 paragraph (1) of Law Number 30 of 1999, the arbitrator must fulfill all requirements, have no family relationship to the second degree, be over 35 years old, have no financial connection; and be active in the field for 15 years or more.

Judges, prosecutors, clerks, and other judicial officials cannot be appointed or appointed as arbitrators with the intention of guaranteeing objectivity in the examination and awarding of decisions by the arbitrators. Provisions on the number of arbitrators are one or more persons selected by the parties to the dispute or appointed by a district court or by an arbitration institution, to render a decision regarding certain disputes that are submitted for settlement through arbitration. The appointment of the arbitrator is carried out based on the agreement of the parties, either through a

"pactum de compromittendo" or a deed of compromise.

If the parties have not determined how to appoint an arbitrator, either before or after the dispute occurs, the parties are still given the opportunity to choose an arbitrator directly. The head of the District Court may appoint an arbitrator or arbitral tribunal. Likewise, in ad hoc arbitration, when there is a difference of opinion when appointing a judge, the chairman of the district court may appoint one or more assigned judges.

The Arbitration Rules issued by BANI explained that the arbitrator must be an expert who is registered as an arbitrator at BANI and has a certificate recognized by BANI, and other people who meet the requirements." Then explicitly in the BANI Rules of Procedure, it is also stated that if the arbitration agreement or arbitration clause designates BANI as the arbitration body that will decide on disputes, or if it is expressly stated that the settlement of disputes will be carried out by an arbitration body "based on the BANI Rules of Procedure for dealing with disputes and disputes will be examined and decided according to the provisions of BANI.

In examining disputes, if the parties do not determine or do not choose certain institutional arbitration procedural rules, then the dispute examination by either the arbitrator or the arbitral tribunal is carried out according to the provisions in Law Number 30 of 1999. In the event that the parties determine their own institutional arbitral institution, whether to use national or international arbitration institutions, the resolution of disputes is based on the procedural rules of these institutional arbitration institutions, both national and international, such as from BANI, *International Criminal Court* (ICC), American Arbitration Association (AAA), London Court of International Arbitration (LCIA), and United Nations Commission On International Trade Law (UNCITRAL).

The dispute examination process is carried out in writing and the oral examination is approved by the parties, and the place of implementation can also be agreed upon by the parties, as explained in Article 37 paragraph (1) of Law Number 30 of 1999. Provisions regarding the place of arbitration is especially important if there are elements of foreign law and the dispute becomes an international private law dispute. If the parties do not determine the place of arbitration themselves, the arbitrator can determine the place of arbitration. The place where the arbitration is carried out can determine the law that must be used to examine the dispute. However, if the parties to the arbitration agreement have determined the choice of law from a particular country as the law to be used in the settlement, then the law chosen by the parties will apply. In accordance with Article 27 of Law Number 30 of 1999,

All examination of disputes by the arbitrator or arbitral tribunal is carried out behind closed doors. The closed nature is to emphasize the confidential nature of dispute resolution through arbitration, namely that everything that occurs during an arbitration examination may not be broadcast to the public or the press by each party. This is different from the civil procedural provisions that apply in district courts, which are open to the public in principle. This means that in the examination of civil cases in district courts, everyone is allowed to be present to participate in the proceedings.

Formally this principle provides an opportunity for social control and provides protection of human rights in the field of justice, and this principle aims to guarantee a fair and objective impartial judicial process and the realization of fair judge decisions (Muhammad Nasir, 2005: 13). Then, in Article 28 of Law Number 30 of 1999 it is stated that "the language used in all arbitral proceedings is Indonesian, except with the agreement of the arbitrator or arbitral tribunal the parties may choose another language to be used". Furthermore, in Article 29 of Law Number 30 of 1999, it is states: "(1) Disputing parties have equal rights and opportunities in expressing their respective opinions (2) Disputing parties can be represented by a proxy with a special power of attorney."

Thus, the provisions in Article 28 and Article 29 of Law Number 30 of 1999 require that the language used in the arbitration hearing be Indonesian, the use of other languages is possible but with the approval of the arbitrator or arbitral tribunal. And the parties to the dispute have the same right to express opinions and can be represented by their attorney. To guarantee the certainty of the

completion of the arbitral examination, Article 48 of Law Number 30 of 1999 stipulates that basically the examination of disputes in arbitration must be carried out within 180 days of the arbitrator or arbitral tribunal being formed. With the agreement of the parties and if necessary, this period can be extended. In Article 33 of Law Number 30 of 1999 it is emphasized that the arbitrator or arbitral tribunal has the authority to extend the term of office if:

First, an application is submitted by one of the parties regarding certain special matters, for example, due to an intermediate lawsuit or an incidental lawsuit outside the subject matter of the dispute, such as an application for guarantees as referred to in the civil procedural law."

Second, as a result, a provisional decision or other interlocutory decision is stipulated.

Third, "If the judge deems it necessary to be in the examination process, then a third party who is outside the agreed agreement, referring to Article 30 of Law Number 30 of 1999, can join this process. Thus, parties joining as a third party can occur, as long as all parties agree."

During the examination process, the panel of judges may bring in witnesses to be heard for their testimony and expertise. The duration of the inspection is 30 days after the inspection is closed. and within 14 days the parties may submit corrections. Provisions regarding the place of arbitration are regulated in Article 37 paragraph (1) of Law Number 30 of 1999. Provisions regarding the place of arbitration are especially important if there are elements of foreign law and the dispute becomes an international private law dispute. If the parties do not determine the place of arbitration themselves, the arbitrator can determine the place of arbitration.

The following is an example of a decision through arbitration that already has legal force.

Table 2. An example of legal disputes resolved through arbitration

Disputing Parties	legal disputes	Decision
Indonesia Arbitration with IMFA (Indian Metal Ferro & Alloys Limited)	There is an overlapping problem in the granting of mining permits from Indonesia to mining companies. PT SRI made an acquisition promise to IMFA for the production operation mining business permit it had obtained in Central Kalimantan. Then PT SRI learned that the area was overlapping with other mining companies. PT SRI filed a lawsuit to international arbitration on behalf of the IMFA. The IMFA considered this problem to have violated a bilateral investment agreement.	Finally, in 2019, the arbitration was won by Indonesia because the problem of overlapping areas was known to PT SRI before it was acquired by the IMFA
Ministry of Défense arbitration with Avanti Communication	The Ministry of Défense entered into a contract with Avanti Communication Ltd to fill the void in managing satellites in space. This is because if the management slot is not filled, then the state's right to the slot will automatically fall. Meanwhile, creating a new satellite takes three years. Starting November 12, 2016, Avanti Communication has placed the Artemis satellite in the orbital slot of 1230 East Longitude. Then, there was a problem that the Ministry of Defense was unable to fulfill the satellite lease payments from the end of 2016 to 2017 according to the agreement with Avanti Communication. There were attempts to negotiate on this issue but failed	Finally, Avanti Communication filed a lawsuit in 2017 through the London Courts of International Arbitration. Furthermore, in November 2017, Avanti ejected the Artemis satellite from the orbital slot. Until June 2018, it was decided that the Ministry of Defense must pay Avanti US$20,075 million by an arbitration court..
Samawa Ethnic Community Arbitration with PT. Newmont Nusa Tenggara	There is a dispute between the Samawa ethnic community and PT Newmont Nusa Tenggara. The factors that cause disputes vary. These factors include the unfulfilled request for compensation and the unclear legal status of the Elang Dodo area, Ropang District, Sumbawa Regency. The Indonesian government filed a lawsuit against PT Newmont Nusa Tenggara through the UNCITRAL arbitration institution in New York.	The decision of the arbitration session on March 31 2019 namely PT. Newmont Nusa Tenggara is required to guarantee that the shares to be transferred/sold to the Government of Indonesia require PT. Newmont Nusa Tenggara to divest shares to the Provincial Government of West Nusa Tenggara, West Sumbawa Regency, and Sumbawa Regency.
Indonesian Government Arbitration with Churchill Mining Plc and Planet Mining PTY Ltd	The Indonesian government is fighting multinational companies in an international arbitration court, namely the International Centre for Settlement of Investment. The company accused Indonesia, namely the Regent of East Kutai, of violating the bilateral investment agreement between Indonesia and the UK and Indonesia and Australia. They stated that the violation caused investment losses in Indonesia, so they filed a lawsuit. However, the evidence provided is not strong enough. So that in 2019, since the case six years earlier, Indonesia finally won the arbitration case.	Indonesia does not need to make compensation like what has been sued by the multinational company

Disputing Parties	legal disputes	Decision
The arbitration of the Palu City Government with PT Global Daya Manunggal	On October 23, 2003 a chartering agreement was signed to carry out the construction of the Ponulele Bridge, which was funded through the Palu City APBD. During the course of PT Global Daya Manunggal stated that they paid for additional workers, and bear the increase in material prices. This eventually led to a dispute between the two parties. PT Global Daya Manunggal submitted a request for arbitration to BANI.	Then BANI stated that the Palu City Government was expected to pay additional work along with operational costs and fines to PT Global Daya Manunggal.
Arbitration of Hesham Al Warraq with Indonesia	In 2014, one of Bank Century's shareholders, namely Hesham Al Warraq, sued the Indonesian government for compensation for the expropriation of shares in the bank.	The ICSD arbitration party rejected the lawsuit and won the Indonesian government over the dispute so that it does not need to pay compensation as expected
DKI Jakarta Government with PT Ifani Dewi	PT Ifani Dewi is the winner of the TransJakarta procurement tender. He submitted an arbitration request to BANI because the DKI Jakarta government was suspected of having defaulted because it did not pay for 161 bus units.	In 2016, by BANI as an arbitration body where the arbitration decision was final, the DKI Jakarta government did not want to pay the compensation and continued the case to the cassation level. Upon this refusal, PT Ifani Dewi asked for another arbitration to be held.
1. Arbitration of PT Medco Energi Internasional Tbk with Singapore Petroleum Ltd	Medco Energi participated in the Jeruk Field development project. The project did not go well. MSS as a subsidiary of Medco Energi withdrew from the joint venture and withdrew its funds. However, Singapore Petroleum does not want to return compensation to Medco Energi.	Until finally in 2014, the arbitral tribunal decided on guidelines for calculating refunds according to the agreement

Source: https://dosenppkn.com/contoh-arbitrase/

Weaknesses of arbitration, namely that it is very possible for the parties to the dispute behind the ongoing process to communicate with the arbitrator so that the results of the decision are not independent. The second weakness is the suspicion of each party so that this non-litigation process does not get a better place than the litigation process. Arbitration is more common and tends to be in family companies that have been divided and in conflict so that each party agrees to be resolved through a non-litigation route.

The final and binding principle in an arbitral award should be the first and last decision and binding on the parties and is also closed to appeal cessation or review of the final decision. However, arbitral awards in practice often become non-final when faced with the provisions of Article 70 Arbitration. That the state can supervise arbitration decisions in the form of annulment of arbitral awards by courts. This is what also triggers disputing parties not to choose the non-litigation route, because it can still be canceled by the court, so what should be shorter, cheaper, becomes longer and more expensive.

Managerial implications for policy makers should continue to uphold justice, both through litigation and non-litigation, in order to create legal certainty for all people, and the law is able to uphold justice properly, not crooked, and not blunt when dealing with state apparatus, and only sharp when it comes to the common people.

The state must always update the law so that the law continues to develop following developments in people's lives which are closely related to developments in science and technology. The law must not be left behind compared to the development of society so that there are legal guarantees for society in the nation and state in a fair, transparent and accountable manner.

Parties who have chosen and agreed to take the zero-litigation route should remain submissive and obedient to the results of the decisions made by the arbitrator.

5. Conclusion

Settlement of disputes through arbitration is one way of resolving disputes outside the court. The mechanism begins with the stage of notification and response to the parties, then the selection and appointment of arbitrators, and ends with an examination and decision. The advantages of resolving disputes through arbitration are the freedom of the parties to determine the arbitrator, the

confidentiality of the parties is guaranteed because the dispute resolution is carried out in private, the parties can determine the place of arbitration, the choice of law in resolving disputes, and the process of resolving disputes is faster, i.e., it can be resolved in no more than 180 days. Arbitration decisions are final and binding, but the decisions must still be registered with the District Court with the aim that the decisions are not ignored and cannot be set aside. The court has the obligation to execute the arbitral award in accordance with the law, but the law does not contain sanctions if the court does not carry out the execution.

The process of resolving disputes in court or litigation must go through several procedures, the first to be carried out is the registration of dispute cases with case fees being charged to the plaintiff. After that, all parties involved must wait for a court summons. Prior to the trial, the court asked all parties involved to provide an opportunity for a mediation hearing to be preferred over by a mediation judge. However, if the mediation trial is not successful, then the court hearing is continued. Therefore, the provisions regarding the recognition and enforcement of arbitral awards should only be provisions that are permissible, not mandatory, while the process of resolving disputes through state courts is carried out openly and is confrontational in nature, the dispute resolution time is quite long. Therefore, the settlement of disputes through arbitration is different from the settlement of disputes through the courts.

The findings of this study are that Law Number 30 of 1999 states that the arbitral award is declared final and remembers that however, the District Court annulled the decision on the grounds that it refers to Article 54 paragraph (1) of Law No. 30 of 1999 in its decision not including the identity of the arbitrator.

Reference

Abdurrasyid, Priyatna. 2002, Arbitrase & Alternatif Penyelesaian Sengketa Suatu Pengantar [Arbitration & Alternative Dispute Resolution An Introduction], Jakarta: Fikahati Aneska

Achmad ali,(2009) Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence), Termasuk Interpretasi Undang-Undang (Legis prudence) [Revealing Legal Theory (Legal Theory) and Judicial Theory (Judicial Prudence), Including Interpretation of Laws (Legis prudence)], Jakarta: Prenada Media Group

Adolf, Huala (2005) Hukum perdagangan internasional [International trade law], cetakan. 1. 2005. Jakarta: Raja Grafindo.

Redfem, A And Hunter, M. (1996) Law And Practice Of International Commercial Arbitration, London: Sweet & Maxwell, 1996

Alaloul, W. S., Hasaniyah, M. W., & Tayeh, B. A. (2019). A Comprehensive Review Of Disputes Prevention And Resolution In Construction Projects. Matec Web Of Conferences, 270, 05012. Https://doi.org/10.1051/matecconf/201927005012

Constitution no 30 tahun 1999, pub. L. No. 30, 1 (1999). Www.hukumonline.com

Dwi Bintang Satrio, E. L. F. (2018). Upaya hukum peninjauan kembali terhadap putusan pengadilan yang membatalkan putusan arbitrase nasional dihubungkan dengan prinsip access to justice [The legal effort to review the court decision that canceled the national arbitration award is linked to the principle of access to justice] . Jurnal bina mulia hukum, 2(2), 1–13. Https://doi.org/10.23920/jbmh.v2n2.14

Djuniarti, E. (2021). Mediasi solusi penanganan perkara perdata di pengadilan [Mediation solutions for handling civil cases in court]. In M. S. Okky Chahyo Nugroho, (ed.), balitbangkumham press (pertama, issue 10).

Faure, M., & Ma, W. (2020). Investor-state arbitration: economic and empirical perspectives. Michigan journal of international law, 41(41.1), 1. Https://doi.org/10.36642/mjil.41.1.investor-state

Izaak N, K. (2015). Arbitrase sebagai mekanisme pilihan hukum para pihak dalam penyelesaian sengketa bisnis [Arbitration as a mechanism of choice of law for the parties in resolving business disputes]. Lex privatum, iii(4), 2–9.

Levin, a. L. (1983). Court-annexed arbitration. University of michigan journal of law reform, 16. Https://repository.law.umich.edu/mjlr/vol16/iss3/8

Muhaimin. (2020). Metode penelitian hukum [Legal research methods] Mataram university press. Website: www.uptpress.unram.ac.id.

Muskibah, m. (2018). Arbitrase sebagai alternatif penyelesaian sengketa. Jurnal komunikasi hukum (jkh), 4(2), 150. Https://doi.org/10.23887/jkh.v4i2.15450

Nolan-Haley, J. (2020). International dispute resolution and access to justice : comparative law perspectives. Journal of dispute resolution, 2020(2), 391. Https://scholarship.law.missouri.edu/jdr
Oksana Melenko. (2020). Mediation as an alternative form of dispute resolution: comparative-legal analysis. 7(2), 46–63. Https://doi.org/https://doi.org/10.18662/eljpa/7.2/126
Ortolani, P. (2019). The impact of blockchain technologies and smart contracts on dispute resolution: arbitration and court litigation at the crossroads. Uniform law review, 24(2), 430–448. Https://doi.org/10.1093/ulr/unz017
Panjaitan, H. (2018). Pelaksanaan putusan arbitrase di indonesia [Implementation of arbitral awards in Indonesia] . To-ra, 4(30), 29–34. Http://repository.uki.ac.id/1843/1/pelaksanaan putusan arbitrase di indonesia.pdf
Thriyana, D. (2016). Categorical imperative immanuel kant sebagai landasan filosofis pelaksanaan putusan arbitrase. Padjadjaran jurnal ilmu hukum (journal of law), 3(1), 83–96. Https://doi.org/10.22304/pjih.v3n1.a5
Wood, J F. (2017). The mediation process: practical strategies for resolving conflict. In iequinox publishing (2.i, vol. 40, issue 2). Equinox publishing. Https://doi.org/https://doi.org/10.1558/mtp.33140
Constitution:
Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution
Law number 2 of 1986 concerning general justice.