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The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution

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ABSTRACT

Background. In the era of globalization, the speed of economic activities fosters free markets and intense competition. Agreements play a crucial role in facilitating transactions, but disputes often arise due to differing interpretations or alleged breaches. Resolving these disputes efficiently and justly is essential to maintain trust and economic stability.

Purpose. This research aims to determine the legal certainty and position of arbitration awards as a means of legal protection in out-of-court dispute resolution.

Method. The study employs normative legal research with a focus on statutory and conceptual approaches. It analyzes laws and regulations related to arbitration, particularly Article 60 and Article 70 of the Arbitration Law.

Results. Arbitration awards, as regulated in Article 60, are considered final, binding, and have permanent legal force. However, Article 70 allows parties to challenge arbitration awards by filing annulment requests, which undermines their finality. This duality creates ambiguity in the enforcement of arbitration awards.

Conclusion. Although arbitration awards are designed to be final and binding, the provision for annulment in Article 70 diminishes their definitive status. Legal reforms are needed to enhance the finality of arbitration awards to strengthen their role in dispute resolution.

KEYWORDS

Agreements, Arbitration, Dispute Resolution, Final Awards, Legal Protection.

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INTRODUCTION

The advancement of the economy has positive and negative impacts on business actors. Differences in understanding, disagreements, conflicts, and disputes can occur if one party defaults on the contract or agreement that has been made (Alias et al., 2024). No one wants a dispute with another party. However, in the context of business, each party must be prepared to anticipate the possibility of future disputes.

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Arbitration rules were originally intended for Europeans through the Reglement op de Burgerlijke Rechtsvordering (RV) (Associate Professor of International Law at Ho Chi Minh City University of Law, Vietnam. B.A./LL.M. & Long, 2021). However, Article 377 of the Herziene Inlandsch Reglement (HIR) states, "If natives and easterners wish to settle their disputes through bailiffs or arbitrators, they shall be subject to the judicial rules applicable to Europeans". The validity of the arbitration agreement is based on the principle of agreement in Article 1338 of the Civil Code (KUHPerdata) (Bernaciński, 2020). Dispute resolution through arbitration must be based on an arbitration agreement either in the form of an arbitration clause contained in a written agreement made by business actors before the dispute arises, or a separate arbitration agreement made by the parties after the dispute arises.

In an agreement, usually a provision has been formulated regarding the choice of dispute resolution forum, namely the method taken by the parties when a conflict or dispute occurs between them in the future (Boram Kim, 2023), so the inclusion of an arbitration clause in a comprehensive choice of dispute resolution forum is very important in agreements made between business actors, so that possible disputes in the future can be resolved quickly, precisely and provide solutions that can benefit business actors.

Arbitration clauses should be expressed clearly, simply and concisely. A clear, detailed and complete arbitration clause, as explained by Erman Radjagukguk, includes comprehensive arbitration terms. The clause specifies whether the arbitration will be conducted, the process by which it will be conducted, the applicable law and other aspects (Bradney & Cownie, 2020). The formulation of a comprehensive arbitration clause can prevent various obstacles in the conduct of arbitration. A comprehensive arbitration clause includes the following: a). Commitment of the parties to arbitrate; b). Scope of arbitration; c). The chosen form of arbitration; d). Applicable procedural rules; e). Place and language used; f). Choice of applicable substantive law; g). Stabilization and immunity clauses.

In reality, formulating an arbitration clause in an agreement is not easy. The inclusion of an incomplete arbitration clause may hinder its implementation and not be in accordance with the parties' objectives. The inclusion of an incomplete arbitration clause can hinder its implementation, so that it does not achieve the objectives desired by the parties (Bremus & Kliatskova, 2020). In addition, there are often problems in the implementation or execution of arbitration awards, even though the dispute resolution must be based on the agreement of the parties. Problems arise not only because of the general court system, but also because of the unclear formulation of the arbitration clause made by the parties.

Such clauses may not be simple or comprehensive in the agreements made. This situation can be detrimental to business actors because their disputes can drag on until both parties find a way out of the ambiguity in the agreement (Channak & Amuda, 2024). Arbitration has its own jurisdiction, which is the authority to examine and decide disputes independently. Therefore, the district court does not need to be involved in the arbitration process which is in accordance with the procedures of the law (Dansholm, 2022). This is because the parties do not intend to take the case to court. The arbitration jurisdiction provision is binding on the parties who have signed the arbitration agreement.

Based on Article 3 of Law No. 30/1999 on Arbitration, the District Court is not authorized to resolve disputes stipulated in the arbitration agreement (Fatenkov, 2022). The court is obliged to

reject the claim and not engage in dispute resolution, except in situations provided for in the law, as stated in Article 11 paragraph 2 of the Arbitration Law.

Arbitration as a form of contractual dispute resolution, the first and main requirement that must be met is the existence of an arbitration agreement. (Galiot & Brizić Bahun, 2021)The function of the arbitration agreement according to Alan Redfern and Martin Hunter is: "An agreement by the parties to submit any dispute between them to arbitration is the foundation stone of modern international commercial arbitration."

The function of the written requirement for an arbitration agreement, apart from proving the parties' agreement to settle the dispute through arbitration, is also to avoid settlement in court (Griller & Lentsch, 2021). In other words, that the arbitration clause gives birth to absolute competence to arbitration which is also contained in Article 3 and Article 11 paragraph 1 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that the District Court is not authorized to hear the parties who have been bound in an arbitration agreement.

There are many factors that are usually considered when choosing a dispute resolution forum, including the governing laws and processes of each forum. Law is a collection of rules that also encompasses the entire legal process including legal structure and legal culture. These components of the legal system will influence a businessperson's choice of the dispute resolution forum to use (Jayus, 2020). Alternative out-of-court dispute resolution has advantages over litigation. Some of the advantages that can be mentioned are: a). The arbitrators selected by the parties are experts in their field so that they understand the ongoing dispute. b). The element of specialization plays an important role in arbitration, and expertise is one of the guarantees of trust, the second being Confidentiality.

As mentioned earlier, arbitration is a private dispute resolution forum. Generally, parties do not want their business secrets to be known by the public or competitors as this may damage the reputation of the company concerned (Jiroušek & Rauchová, 2020). In addition to the above benefits, some other advantages of dispute resolution through arbitration are, first, dispute resolution through arbitration tends to be faster than through the courts. (Kasakowskij et al., 2021)Provisions regarding timeframes such as those in the arbi ter arbitration selector and dispute resolution agreed upon by the parties or those specified in the institutional arbitration rules to which the parties have submitted, are binding on the arbitrator or arbitrators because devotion to these timeframes is being disputed by the aggrieved party, Dispute resolution mechanisms through the courts put the two parties against each other (adversarial).

Dispute resolution through arbitration emphasizes the importance of maintaining business relationships in the future (Kharb, 2021). One of the advantages of dispute resolution through Arbitration is the guarantee of confidentiality. The nature of verification in arbitration procedures is known as the "right to privacy". This confidentiality defense applies not only to ad hoc arbitration, but also to institutional arbitration, as Michael Collins Q says: "It is usually provided by institutional arbitration rules that an arbitration conducted under those rules must be conducted in private." Parties should have an obligation not to disclose to strangers what happened during the arbitration proceedings. Based on the nature of arbitration explained earlier, dispute resolution through arbitration is conducted behind closed doors and the decision is not made public (Khoir, 2022). This is in contrast to dispute resolution through the courts which is conducted in public.

Based on the above explanation, it can be expected that business actors will choose laws that are more beneficial to them, by avoiding dispute resolution through the courts (Labuschaigne et al., 2023). This urge is even stronger in Indonesia given the poor condition of the judiciary, which is riddled with Corruption, Collusion and Nepotism. According to Article 1 of Law No. 30/1999 on

Arbitration and Alternative Settlement, Arbitration is a method of resolving civil disputes outside the public courts based on a written arbitration agreement by the disputing parties.

Based on the definition mentioned by Article 1 point 1 of Law No. 1999, there are three main things that constitute the elements of arbitration, namely arbitration is a form of agreement (Linden & Muschalla, 2024). The arbitration agreement must be made in writing, and the agreement is a dispute resolution agreement outside the public courts. If we look at Law No. 48/2009 on Judicial Power, specifically Article 59 paragraph (1), Arbitration is a method of resolving civil disputes outside the court based on an arbitration agreement made in writing by the parties to the dispute. Article 59 paragraph (2) states that the arbitration award is final and has permanent legal force and is binding on the parties.

Article 59 paragraph (3) states that if the parties do not comply with the arbitral award voluntarily, the award shall be enforced by order of the chairman of the district court at the request of one of the parties to the dispute. Article 60 paragraph (1) states that Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment (Martin, 2021). Dispute resolution through alternative dispute resolution as referred to in paragraph (1) the results are set forth in a written agreement (Article 60 paragraph (2). The written agreement as referred to in paragraph (2) shall be final and binding on the parties to be implemented in good faith.

In general, the process of arbitration, mediation, or other methods of out-of-court dispute resolution can be equivalent to having the dispute examined by experts on the object in dispute with a quick turnaround time, low cost, and the parties can resolve the dispute without the risk of reputational publicity (Maliqi & Nimani, 2023). Arbitration or other methods of out-of-court dispute resolution aim to resolve disputes, not simply decide cases or disputes. Both judicial bodies and arbitration institutions or other methods of out-of-court dispute resolution are ways of resolving a dispute or disagreement. Therefore, it is important to understand the approach, both etymologically and terminologically, related to such disputes. Accidental incidents can happen without warning due to seemingly trivial and overlooked situations.

In addition, they usually arise suddenly and unexpectedly, or can occur without being calculated in advance. Disputes may generally relate to rights, status, lifestyle, reputation or other aspects of commercial activity or personal conduct, including facts that may arise from the credibility of the parties themselves, or from data provided by third parties including explanations of the facts of such data (Mat Salleh et al., 2021), legal issues that generally result from opinions or interpretations of dispute resolution provided by relevant legal experts, technical differences including differences in opinions of technical experts and professionalism of the parties, technical differences including differences in opinions of technical experts and professionalism of the parties.

Differences in interpretation may arise, such as in the use of ambiguous wording or differences in assumptions (Mityureva, 2023). Usefulness of Publishing: Facts that may arise from the credibility of the parties themselves, or from data provided by third parties including explanations of the facts of such data; Legal issues that generally result from dispute resolution opinions or interpretations provided by relevant legal experts;

Technical differences include differences in the opinions of technical experts and the professionalism of the parties; differences in understanding of the issues involved, for example in the use of confusing words or different assumptions; differences in perceptions of fairness, concepts of justice, and cultural morality, values and attitudes. Every dispute is different, not only in terms of its specific content, the parties and the issues in dispute, but also in terms of the general

characteristics of the dispute (Muda, 2020). Therefore, we will find a variety of ways to resolve disputes, both in the method of settlement and the resulting impact. The general statements and what is mentioned above also apply in the business world. The business world is all about efficiency and effectiveness. (Nader, 2023) Therefore, for business people, consideration of the factors of time, cost, and accuracy of targets becomes very important, including in choosing a dispute resolution forum that is in accordance with the character of the business world.

From the above background, the problem formulation in this research is How is the Authority of Arbitration in Dispute Resolution Outside the Court? And how can the position of arbitration become a legal umbrella in dispute resolution outside the court?

RESEARCH METHODOLOGY

This research uses qualitative research that is library in nature, so the data from this research is library data (Nie & Bagheri, 2021). The sources of legal materials used in this research are primary legal materials and secondary legal materials (Pelu & Dakhoir, 2021). Through qualitative research methods, researchers conduct descriptive analysis carried out by the process of pouring explanations and descriptions that are as clear as possible in an integrated, critical, objective and analytical manner.

RESULT AND DISCUSSION

Arbitration comes from the Latin word "arbitrare" which means the authority to resolve something with wisdom. Arbitration according to Black's Law Dictionary is: "a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding" (Phan et al., 2022). This definition contains four elements, namely: a). A method of dispute resolution; b). Involve one or more 3rd parties who are neutral, independent and impartial; c). The third party is chosen by the parties to the dispute; d). The decision is binding.

Article 1 paragraph 1 of Law of the Republic of Indonesia Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution states that "Arbitration is a method of resolving civil disputes outside the public courts based on an Arbitration agreement made in writing by the parties to the dispute."

The definition of Arbitration is divided into two groups: First, Arbitration in the narrow sense is a dispute resolution institution that specifically handles disputes in the field of trade. This arbitration is subject to the UNCITRAL rules. The applicable rules include the UNCITRAL Model Law on International Commercial Arbitration (1985 and 2006) or the UNCITRAL Arbitration Rules (1976 and 2010). Both of these instruments are soft law, meaning that they do not have the force of law binding on countries or parties. However, both have become standards in the regulation of Arbitration, both in material and formal aspects. These two instruments are dubbed as standards because the contents in them are considered as regulations that reflect the latest developments in the practice of Arbitration.

Both instruments emphasize that the regulated subject is trade dispute settlement. At the National level, Arbitration in the narrow sense is regulated by Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (Plonsky et al., 2023). Article 5 of the law states: "Disputes that may be resolved through Arbitration are only disputes related to trade and rights that are fully owned by the parties to the dispute according to applicable laws and regulations." "Disputes that cannot be resolved through Arbitration are disputes that cannot be resolved based on applicable regulations."

Arbitration in a broad sense is Arbitration as a dispute resolution institution to resolve all disputes (Rabinská, 2022). An example of this broad authority is the legal basis of Arbitration in the constitution of International law, namely the UN Charter Article 33 Paragraph (1) of the UN Charter states: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

Article 33 paragraph (1) of the Charter states Arbitration as a means of dispute settlement (between states). The dispute that can be resolved by Arbitration, as seen at the beginning of the sentence of this article, is any dispute or any or all disputes. In this category, the meaning of Arbitration in the UN Charter is Arbitration in a broad sense. Arbitration Bodies in the broadest sense whose authority is to resolve disputes outside trade disputes.

Jurisdiction is an important issue in arbitration. It will be a priority for the arbitral institution, arbitral tribunal or arbitral panel before examining and deciding a dispute (Reverdin, 2021). The arbitral body that establishes jurisdiction will determine the next steps in dispute resolution. Conversely, when the arbitral body decides that it does not have authority, it will immediately refuse to hear the dispute.

The jurisdiction or legal authority of an arbitral body born from either international or national legal instruments is the main prerequisite for the birth of legal authority or arbitral jurisdiction. For national legal instruments, the limits of the arbitral body's authority are set by the decision of the legislative body that makes laws and regulations on arbitration (Scott, 2020). For example, Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. Article 5 of the Arbitration Law confirms that disputes that can be resolved by arbitration are disputes in the field of trade and disputes that according to laws and regulations can be held in peace. The scope of trade law includes activities in the fields of commerce, banking, finance, investment, industry, and intellectual property rights.

The agreement of the parties is a subsidiary prerequisite for the birth of the legal authority (body) of arbitration. According to Redfern and Hunter in the book Huala Adolf stated: "An arbitral tribunal may only validly resolve those disputes that the parties have agreed that it should resolve. This rule is an inevitable and proper consequence of the voluntary nature of arbitration. In consensual arbitration, the authority or competence of the arbitral tribunal comes from the agreement of the parties; indeed, there is no other source from which it can come."

To resolve a dispute using the Rules of Procedure of the Indonesian National Arbitration Board, the dispute will be resolved under the administration of BANI based on these rules. In order for a dispute to be submitted for examination and resolution to BANI, the agreement made by the parties must contain an article containing an arbitration clause. The clause states: "All disputes arising from this agreement will be resolved and decided by the Indonesian National Arbitration Board (BANI) according to the BANI arbitration rules, whose decisions are binding on both parties to the dispute as decisions in the first and final level."

It is important to note that the arbitration/BANI decision is binding on both parties as the first and last decision that cannot be compared to the Supreme Court. Comparing the nature of arbitration as a voluntary or extra judicial institution with the position and existence of the judiciary as an official body given the function and authority to hear and decide cases, whether the arbitration clause agreed by the parties can exclude the jurisdiction of the court body to hear and adjudicate disputes. Arbitration authority is the absolute authority and general principle of arbitration.

Absolute Authority of Arbitration

If it has been agreed by the parties in the agreement to bring a civil case to arbitration, then the dispute must be resolved through the arbitration forum, this is as stipulated in Article 3 of the Arbitration Law which reads: "The District Court is not authorized to hear disputes between parties who have been bound by an arbitration agreement" (Šimunović, 2024). The existence of an arbitration agreement eliminates the right of the parties to the agreement to submit dispute resolution related to the agreement to the District Court.

Consideration of the arbitration agreement or clause is fundamental to arbitration, which confirms the contract law principle of pacta sunt servanda has important significance in arbitration regarding the characteristics of the arbitration agreement or clause. (Harahap) The arbitration agreement is absolutely binding on the parties If a dispute arises from what they have agreed, the authority to resolve and decide the dispute "absolutely" belongs to the arbitration authority. The court has no authority to examine and adjudicate the dispute absolutely. The invalidity of an arbitration clause only occurs if it is expressly withdrawn in accordance with the agreement of the parties. The law of tacit or unilateral withdrawal is unacceptable. The District Court must refuse and not intervene in cases that have stipulated arbitration as the forum for dispute resolution, in accordance with Article 11 of the Arbitration Law. 1). The existence of a written arbitration agreement negates the right of the parties to submit the settlement of disputes or disagreements included in the agreement to the District Court. 2). The District Court shall refuse and shall not intervene in a dispute settlement that has been determined through arbitration, except in certain cases stipulated in this law.

In arbitration, the agreement of the parties in the agreement or arbitration clause is also binding on third parties, especially courts or institutions authorized in the judiciary. Another implication of pacta sunt servanda in the provisions of Article 3 and Article 11 of the Arbitration Law somewhat deviates from one of the widely recognized principles, namely that an agreement is only binding on the parties that make it (Slinko, 2022). The absolute authority of arbitration is still affirmed in the enforcement of arbitration awards by the District Court as stated in Article 62 paragraph (4) of the Arbitration Law, namely "The President of the District Court does not examine the reasons or considerations of the Arbitration award." Thus, the Chairman of the District Court does not have the authority to review an arbitral award materially".

General Principles of Dispute Resolution Through Arbitration

Principle of Competence

This principle has been commonly accepted in international commercial arbitration. One of the doctrines that has become an important principle in arbitration regarding the jurisdiction of arbitral bodies is the doctrine of the competence-competence principle. Under this principle, the arbitral body has the authority to determine for itself whether it has jurisdiction to hear and decide disputes relating to the validity of an agreement or arbitration clause.

Based on the above description, according to the author, if there are parties who doubt the validity of an arbitration clause, the one who has the right to determine the authority is not the District Court or other judicial bodies, but the arbitration body. According to Huala Adolf, Law No.30/1999 on Arbitration and Alternative Dispute Resolution does not directly regulate the principle of competence because the provisions related to arbitration authority do not directly determine the authority of arbitration with jurisdiction. However, the vacuum regarding the principle of competence in the Arbitration Law does not apply to the BANI Procedural Rules, as seen in Article 18 paragraph (1) which reads: "The Tribunal shall have the right to object to any

assertion that it has no jurisdiction, including objections relating to the existence or validity of the arbitration agreement if there are grounds for doing so."

Final and Binding Principles

The legal effect or impact of an arbitration award for the parties is final and binding. This principle is reflected in Article 60 of the Arbitration Law which states "Arbitration awards are final and have permanent legal force and are binding on the parties". The meaning of final is that the decision of the Arbitration Court is a decision of the first and last level. This means that no appeal, cassation, or judicial review can be filed against the arbitral award. The meaning of the binding nature of the award is that the award is directly binding on the parties after it is rendered. Final and binding arbitration decisions provide benefits to parties involved in disputes using arbitration institutions, which can reduce time, costs, thoughts, and energy.

Decision-Making Principles Based on Fairness and Appropriateness

In a court, the examination, trial, and decision are based on the applicable law. This means that when the decision is based solely on the law, the result will be a loser and a winner (win-lose). Meanwhile, dispute resolution based on the principles of justice and propriety and by looking at the interests of the parties to the dispute will result in a win-win solution (Van Walt Van Praag, 1993). Employers and litigants usually want to maintain their business relationships so that a win-win solution is a decision that both parties want.

Principle of Closed Session to the Public

The occurrence of the above circumstances, one of the tips taken by business people is to resolve disputes through non-litigation channels, one of which is dispute resolution through arbitration. The principle of examination closed to the public is regulated in Article 27 of Law No.30 of 1999 which reads "All dispute examinations by arbitrators or arbitral tribunals are conducted in private" In the business world, reputation is an important determinant of whether a business will succeed or fail. They will be successful when they have good value in the eyes of society, and vice versa.

To prevent such situations, employers may resolve disputes in a non-litigation manner, such as through arbitration. The principle of hearing closed to the public is stipulated in Article 27 of Law No. 30/1999 which states that all hearings of disputes by arbitrators or arbitral tribunals shall be conducted in private. Arbitration hearings are always held in a closed room, which means they are not open to the public, and the decisions pronounced in such hearings are rarely made public (Xu et al., 2021). Thus, settlement through arbitration is expected to maintain the confidentiality of the parties to the dispute.

The principle that the examination is conducted behind closed doors at every stage can also be seen in Article 14 paragraph (5) of the BANI Procedural Rules which reads: "All examinations are conducted behind closed doors." This principle must not be violated, the consequences can be fatal. All examinations and decisions that are null and void or invalid result in the dispute having to be re-examined with closed doors. All of these impacts can be overcome by seeking the consent of both parties.

Sources of Arbitration Law The sources of law governing Arbitration are grouped into: (ولی صادقی, & زاده 2021) The main and most important source of Arbitration law is the Arbitration clause or agreement made by the parties. As we can understand, the agreement is the law for the parties who make it. Steven C. reveals that: "Arbitration is creature of contract. The power of arbitrators to conduct arbitration, and the terms under which an arbitration is to be conducted, are generally governed by the agreement of the parties."

It can also be argued that the trade actors or stake-holders can conduct trade transactions, pouring them into a written agreement. Therefore, the agreement acts as a source of law that they need and first make reference to in carrying out their rights and obligations. The Arbitration Clause or Arbitration Agreement made by the parties to submit any dispute to Arbitration is the legal basis for the existence of Arbitration. Arbitration will only exist if there is an Arbitration agreement or clause.

National Law as a source of law in Arbitration Law becomes relevant because legal events or relationships occur and take place in the territory of a state. The main principle regarding state territory is the state's authority to regulate everything that occurs within its territory, including events or legal relationships regarding Arbitration. In the theory of Arbitration, the law governing Arbitration that takes place within a state territory is called Lex Arbitri. Lex Arbitri regulates, among other things, how Arbitration is conducted within the territory of the state. Usually, Lex Arbitri also regulates the rules of law that are coercive in nature, the law of Arbitration procedure, etc. The compelling provisions of Lex Arbitri are usually binding for the substance of national (domestic) Arbitration.

International Treaties International Treaties are legal instruments written in the first order as a source of international law in Article 33 of the UN Charter. International treaties are taken to express the agreement of countries in the world to regulate various matters, including economic agreements, lending and borrowing, peace agreements, to the rules of dispute resolution, including arbitration. Like international treaties as a source of international law, International Treaties in the field of Arbitration are also the most important source of law.

International treaties are divided into two traits in terms of their binding force. First, International Agreements that are binding or Hard-Law. Second, International Agreements that are not binding or Soft Law. Both of these International Agreements are still relatively few in number. The Hard Law International Agreements are the New York Convention 1958 and the Washington Convention 1965 while the Soft Law ones are the UNCITRAL Arbitration Rules 1976 and the UNCITRAL Model Law 1985.

Customary law as a source of law for Arbitration is an important source of law. Arbitration was born and developed because of the need of businessmen to resolve their trade disputes from time to time. The normative rules of Arbitration that exist today were born because of practices derived from customs in the field of Arbitration in various places, regions or countries in the world. Unfortunately, the customs that develop and are then considered 'binding' by the people in the world are only a few or even not recorded or written in the literature. That the customary laws that are still relevant in resolving disputes through Arbitration are: the principle of autonomy of the parties, for example, although the law regulates the length of the Arbitration hearing, the parties can still agree on a longer time or an extension of time (longer). Another example is the autonomy of the parties to appoint the arbitrators, determine the place where the Arbitration will take place, the law that will be applied by the Arbitral Tribunal to resolve the dispute, and others.

General Legal Principles There is no widely accepted definition of general legal principles. The role of this source of law is usually believed to be born from national legal systems in the world. This source of law will begin to function as an additional source of law when previous sources of law do not provide answers to a problem. Some examples of these general legal principles include the principle of good faith, the principle of pacta sunt servanda, and the principle of compensation.

Another essential principle in Arbitration law (procedure) is the principle of audi alteram partem. This principle obliges the arbitral tribunal to hear the testimony of both sides of the case,

which is very weak ("The ICRC's Legal and Policy Position on Nuclear Weapons," 2022). The main reason is the confidential nature of the Arbitration proceedings and the award. Indeed, this confidentiality seems to make the Arbitration award rarely or not possible to be a legal source that can enrich the Arbitration law. Although it is a weakness from the aspect of legal sources. But this confidentiality is precisely one of the strengths and reasons why entrepreneurs or choose Arbitration.

Merchant doctrine Doctrines, theories or opinions of scholars in the field of Arbitration are additional sources of law. This source of law is relevant when the sources of law mentioned above cannot or do not provide a satisfactory answer to a particular problem. Not all scholars' opinions can be called theories let alone doctrines.

Arbitration as stipulated in Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution is one way of resolving a dispute outside the public court based on a written agreement from the disputing parties. However, not all disputes can be resolved through Arbitration, only disputes regarding rights that according to the law are fully controlled by the parties to the dispute on the basis of their agreement. When viewed from the perspective of the Arbitration and Alternative Dispute Resolution Law, there are at least several requirements for Arbitration. Among them are as follows:

In Civil Law Disputes resolved by the Arbitration institution are disputes in civil law, especially law in cases in the field of trade and regarding rights that according to laws and regulations are controlled by the parties to the dispute. The scope of trade includes commerce, banking, finance, investment, industry, and intellectual property rights. However, it should be noted that there are disputes that are deemed unable to be resolved through Arbitration, namely disputes that according to the laws and regulations cannot be reconciled as stipulated in the Civil Code Book III chapter eighteen (18) Articles 1851 to 1854.

Arbitration Agreement Arbitration Agreement is an agreement of clauses listed arbitration in the form of a written agreement made by the parties before a dispute arises, or a separate Arbitration Agreement made by the parties after a dispute arises. The Arbitration Agreement becomes the basis for the arbitration institution to help resolve a dispute. The Arbitration Agreement is made based on the agreement of the parties to the dispute that they have chosen an agreed arbitration institution to help resolve their dispute. This agreement is made in writing.

Thus, it can be seen that in Arbitration, the disputing parties agree to resolve their dispute to a neutral party that they choose to make a decision. Basically, Arbitration is a form of private adjudication. In some ways, Arbitration is similar to public adjudication and both have some advantages and disadvantages.

The difference between Arbitration and Litigation The difference between Arbitration and litigation is the privatization (closed) of the settlement. ("The Legal Position Of The Trustee And The Terms Of Succession To Familial Fideicommissa In Light Of The Litigation Surrounding The Radziwiłł Princes' Entailed Estates During The Interwar Period," 2023) This is different from litigation which is open, so that Arbitration provides advantages for the parties in resolving their disputes. Compared to litigation, Arbitration provides freedom, choice, autonomy, and confidentiality to the parties that are not found in litigation institutions.

The parties in Arbitration also have the right of freedom to choose the Judge (Arbitrator) who will help decide the dispute faced by the parties. This will ensure the neutrality of the Judge in helping to resolve the dispute to be decided ("The Legal Position of Digital Forensic Experts in the Settlement of Information Technology Crime Cases," 2024). In addition, the parties also have the freedom to choose the law that will be the basis for deciding the disputed matter. Michael B.

Metzger, et.al., suggests several advantages of dispute resolution through arbitration, namely: "As compared with the court system, the main advantages claimed for arbitration are: 1) Quicker resolution of disputes, 2) Lower costs in time and money to the parties, and 3) The availability of professionals who are often experts in the subject matter of the dispute.

The parties in resolving Arbitration disputes will be assisted by a third party called the Arbitrator. Who is an Arbitrator? An arbitrator is one or more persons chosen by the parties to the dispute or appointed by the District Court or by the Arbitration Institution who gives an award regarding a particular dispute submitted for settlement through Arbitration.

CONCLUSION

The legal position of an arbitral award as stipulated in Article 60 of the Arbitration Law is that the arbitral award is final and has permanent legal force and is binding on the parties. However, in reality, the award cannot yet be considered final (inkracht van gewijsde) because Article 70 of the Arbitration Law still provides an opportunity for a legal remedy, namely a request for annulment of the arbitral award.

The advantage of Arbitration as an out-of-court dispute resolution is that it is an independent forum. The author can describe these advantages as follows: The Arbitration settlement process is closed so that the confidentiality of the parties to the dispute is guaranteed. The purpose of settlement by means of Arbitration is to achieve a win-win solution, not a win-lose so that the Arbitrator or Arbitral Tribunal must prioritize peace for the disputing parties.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.
Author 2: Conceptualization; Data curation; In-vestigation.

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