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Aspects of Arbitral Awards in the Indonesian Justice System: Historical and Theoretical Review

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Abstract

This study aims to analyze aspects of arbitral awards in the Indonesian justice system from historical and theoretical perspectives. The Arbitration Law confirms that arbitral awards have the same legal force as court decisions. The method used in this research is normative legal method. This legal method focuses on the analysis of existing legal norms, including statutory regulations, court decisions, legal principles, and other legal documents in this context, namely, aspects of arbitral awards in the Indonesian justice system. The results of the study show that the implementation of the arbitral award by the parties must be seen as a consequence of choosing arbitration to resolve the dispute, it is the parties who choose their own judges, even for their choice of law, then the implementation of the arbitral award is consciously a necessity of the parties themselves. Arbitration awards can be annulled in the justice system in Indonesia as a form of protection for justice and legal order. Grounds for annulment of an arbitral award, as provided for in the Arbitration Act, may include a breach of procedure, the incompetence of the arbitrator, or an award that violates decency or public decency. Arbitration awards are an important tool in the dispute resolution system in Indonesia, especially in the business and investment sphere.

Keywords: Arbitration Decisions; Indonesian Courts; Legal Dispute Resolution; Legal Certainty

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INTRODUCTION

In Indonesia, the arbitration justice system is regulated by Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution ("Arbitration Law"). Arbitration is a dispute resolution method outside the general court which involves parties who agree to submit their dispute to an arbitrator or a panel of arbitrators who have the authority to issue a decision (Harmon, 2003). Dispute resolution in Indonesia has traditionally been known and practiced by all groups in Indonesia (Noel et al., 2006). Even though arbitration dispute resolution has been regulated long before in Indonesia through the provisions of Articles 615 to 651 of the Civil Procedure Regulations (Rv), its implementation in the field is less popular as an alternative dispute resolution (Hasyim, 2021). With economic development through the world of industry and trade, it demands a faster dispute resolution compared to dispute resolution through the general court (Kesuma & Triputra, 2020). Business people think that the settlement of business disputes that have occurred so far tends to be protracted and costs quite a lot, this situation is considered less efficient for the development of the business world (Walde, 2008).

The presence of arbitration in Indonesia is still relatively new and has not been well socialized after its establishment by KADIN (Hasbi et al., 2022). Arbitration and alternative dispute resolution have only just begun to be known and socialized quite well after being regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Suadi, 2018). However, dispute resolution through arbitration and alternative dispute resolution have not been thoroughly conveyed (Shavell, 1995), so that many people and legal practitioners are still unfamiliar with arbitration. Arbitration is widely used to resolve disputes that arise, especially in the field of trade between parties bound in an agreement (Chan & Suen, 2005). The idea is that disputes are resolved out of court (non-litigation) (Jamal et al., 2021). However, the reality shows that disputes resolved through the courts (litigation) take a long time and cost a lot. According to Law No.30/1999 concerning Arbitration (Arbitration Law), article 1 paragraph (1): "Arbitration is a method of settling a civil dispute outside of general court based on an arbitration agreement made in writing by the parties to the dispute".

Before the Arbitration Act came into effect, provisions regarding arbitration were regulated in articles 615 to 651 of the Civil Procedure Regulations (Rv) (Mills, 2002). In addition, the elucidation of Article 3 paragraph (1) of Law No. 14 of 1970 concerning Principles of Judicial Power states that settlement of cases outside the court on the basis of peace or through an arbiter (arbitration) is still permitted.

The arbitral award has legal continuity and must be recognized by a district court. In this case, the Arbitration Law confirms that arbitral awards have the same legal force as court decisions. The district court can issue an execution decision on an arbitration award that has been declared valid. Courts have a limited role in correcting arbitral awards. Parties who feel aggrieved by the arbitral award can only submit very limited legal remedies to cancel the award. Grounds or reasons that can be used to annul an arbitration award are regulated in the Arbitration Law and generally cover matters such as violations of procedure, incompetence of the arbitrator, or the content of the award that violates decency or public decency. An arbitration award that has been declared valid by a court can be enforced by a district court. This implementation process is often referred to as execution. If one of the parties does not comply with the arbitral award, the party who feels aggrieved can submit a request for execution to the competent court. Arbitration is an out-of-court dispute resolution institution that has long been known in Indonesia and has long had an arbitration institution, namely the Indonesian National Arbitration Board (BANI), whose existence is still recognized today (Kasim, 2021).

Technological advances have had an impact on all fields including the field of contract law (Li-Hua & Khalil, 2006). Today we recognize a new form of agreement, namely an electronic agreement, which is often used in the fields of banking, capital markets and various business transactions. Technological advances are currently starting to explore the field of arbitration dispute resolution, namely an online dispute resolution through arbitration. The problems that arise in online arbitration are the same as in electronic business transactions, namely validity and

verification. There are some circumstances where an arbitral award is not valid, such as if the award violates public order, or if one party is proven not to have the legal capacity to bind himself or herself to arbitration.

The Arbitration Law also regulates the recognition and enforcement of foreign arbitral awards in Indonesia (Adiasih & Simanjuntak, 2023). Foreign arbitral awards that have been declared valid in their country of origin can be recognized and enforced in Indonesia in accordance with the provisions of the Arbitration Law. The arbitral justice system provides legal certainty and security for parties wishing to invest in Indonesia. With the existence of an arbitration mechanism, investors can feel safer because they have an alternative dispute resolution that is independent and neutral.

RESEARCH METHODS

The normative legal method is one of the approaches in scientific research that is widely used in legal studies and the science of law (Karmel & Yunanto, 2022). This approach focuses on an analysis of existing legal norms, including laws and regulations, court decisions, legal principles, and other legal documents in this context, namely, aspects of arbitration awards in the Indonesian justice system. The normative legal method seeks an in-depth understanding of law by interpreting and analyzing existing legal norms (Ali, 2018). The normative legal method focuses on the analysis and interpretation of written legal norms, such as statutes, regulations, conventions and court decisions. This method will investigate the meaning, purpose, and implications of these norms. Normative legal methods often make comparisons between various legal norms, either within one jurisdiction or between different jurisdictions. They can also examine the correlations between different legal norms to understand how they influence one another. This research also involves the development of solid and systematic legal arguments based on an analysis of legal norms (Christiani, 2016). Researchers will build legal arguments supported by normative interpretation and analysis. Throughout this research, researchers tend to be neutral and objective, avoiding excessive or biased interpretations. The main goal is to understand and explain legal norms as accurately as possible. The normative legal method requires rigor, analytical skills, and an in-depth understanding of relevant laws relating to aspects of arbitration awards in the Indonesian justice system (Negara, 2023). In addition, it should be remembered that the results of normative legal analysis can provide a strong view of the interpretation of legal norms, but may not include the practical implications or social impacts that may arise from the application of these norms.

RESULTS AND DISCUSSION

A Brief History of Arbitration in the Indonesian Judicial System

The history of arbitration in the judicial system in Indonesia has a fairly long development. The practice of arbitration has existed in Indonesian territory since the Dutch colonial period. At that time, the Netherlands implemented an arbitration system to resolve trade and financial disputes with the government and native traders. Arbitration is regulated in the *Hoge Raad van Nederlandsch-Indië*, namely the Dutch East Indies Supreme Court (Karel et al., 2008). After Indonesia became independent in 1945, the Dutch legal system was replaced by the Indonesian legal system (Damian & Hornick, 1972). However, the practice of arbitration did not develop much in this early period of independence.

During the reign of President Soeharto (New Order), the Indonesian government tried to build a more centralized legal and judicial system (Fikri & Hasudungan, 2022). Arbitration at that time was still limited and not very popular in business dispute resolution. After the fall of the New Order regime in 1998, Indonesia underwent significant legal reforms. In 1999, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was promulgated, which became the legal basis for the practice of arbitration in Indonesia. This law adopts the principles of international arbitration law and provides the basis for dispute resolution arrangements through arbitration (Stipanowich, 2004).

Since the ratification of the Arbitration Law, awareness of the benefits of arbitration in resolving business disputes has increased among companies and legal practitioners in Indonesia.

Several arbitral institutions were also established, such as the Indonesian National Arbitration Board (BANI), which has become one of the most well-known and active arbitral institutions in Indonesia. Over time, the practice of arbitration is growing in Indonesia. Many national and international companies include arbitration clauses in their business contracts as a way to avoid lengthy disputes in public courts.

Indonesia has also signed bilateral and multilateral investment agreements that include a mechanism for resolving investor-state disputes through international arbitration (Price, 2017). This is part of efforts to provide legal guarantees to foreign investors who wish to invest in Indonesia. The legal concept that arbitration as an alternative form of dispute resolution has absolute competence that is beyond the jurisdiction of the courts has always faced stumbling blocks. Issues related to the absolute authority of this arbitration institution, in many cases, turn out to be a separate problem that never goes away. Starting from not recognizing or not accepting absolute competence by the district court, which brings legal consequences that the court is also authorized to handle cases or disputes that have been delegated their authority to arbitral institutions, so that the implementation of arbitral awards that have been handed down by arbitration institutions (or ad-hoc arbitration), especially foreign arbitral awards.

The acknowledgment of the existence of other dispute resolution institutions outside the district courts in Indonesia has actually existed for a long time, even the provisions of Article 134 of the revised Indonesian Regulation *(Ilel Herziene Indonesich Reglement, Staatsblad 1941:44-1 fIR)* or Article 160 of the Program Regulation for Regions Outside Java and Madura *(Rechtsreglement Buitengewesten, Staatsblad 1927:227-Rbg.)*. expressly ordered the district court to declare its non-authority. The settlement of disputes brought to a special refereeing forum can be found in the provisions of Article 615 to Article 651 of the Civil Procedure Code *(Reglement op de Burgerlijke Rechtvordering or abbreviated as Rv).* As an institution that is absolutely outside the district court, it is clear that dispute resolution which is the competence of arbitration as long as it is agreed is the absolute authority of arbitration. It is not possible to submit an appeal against an arbitral award that has a value of more than f 500 to the Supreme Court (at that time) it does not fall under the jurisdiction of the district court, even the high court.

Arbitration Decisions in the Indonesian Justice System

Another thing that until now still surprises the international community is the issue of recognition and enforcement of foreign or international arbitral awards. The existence of the 1958 New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) which was ratified by Presidential Decree No. 34 of 1981, State Gazette 1981 No. 40 dated 5 August 1981) apparently did not have any effect on the implementation of foreign arbitral awards in Indonesia. South Jakarta District Court in its Decision No. 64/Pdt/G/1984 has declared Award of Arbitration No. 2282 dated 8 September 1984 spoken in London by the Federation of Oils, Seeds and Fats Association (FOSFA) against PT. Bakrie and Brothers Jakarta as "unenforceable and unenforceable."

In fact, it is not only the issue of acknowledging the award and the implementation of the foreign arbitration that is being questioned, in the contents of the decision of the South Jakarta District Court, all agreements related to decisions that have been handed down by the arbitration forum are reassessed. The Supreme Court itself in one of its decisions expressly stated that Presidential Decree No. 34 of 1981 has not or cannot be implemented just like that, but requires implementing regulations. This continued until the issuance of Supreme Court Regulation No. 1 of 1990 concerning Procedures for Implementing Foreign Arbitration Awards. One of the foreign arbitral awards that has received the RI Supreme Court Decree No. l/Pen/Bx'r/Arb.Int/Pdt/1991 dated March 1, 1991 against the decision of The Queen's Council of the English Bar in London, November 17, 1989, it turned out to be countered again by the Supreme Court in Supreme Court Cassation Decision No. 1203 K/Pdt/1990, regarding the E.D. & F. Man (Sugar) Ltd. vs. Yani Ilaryanto. The Supreme Court in its decision stated, among others, the following:

1. The Supreme Court relates this issue to the Decree of the Supreme Court of the Republic of Indonesia No. l/Pen/Ex'r/ Arb.Int/Pdt/1991 dated March 1, 1991, which although this case was not mentioned, this matter is closely related to the case;
2. Whereas the aforementioned stipulation regarding granting the exequatur's request to the decision of The Queen's Council of the English Bar in London, 17 November 1989;
3. Whereas an exequatur stipulation is only prima facie, so the stipulation does not constitute a legal assessment of the contents of the agreement made;
4. Whereas an exequatur Determination only gives an executorial title for said Foreign Arbitration Award, the implementation of which is subject to the Indonesian Law of Procedure;
5. Whereas because of this, with the Supreme Court Decision in this case, the Indonesian Supreme Court Decree No. l/Pen/Lx'r/Arb.Int/Pdt/l 991 dated March 1, 1991, became irrelevant for implementation.

Thus it can be seen that however an arbitral award which has permanent legal force, which has been approved for its execution by the Supreme Court, its implementation is reversed, with instead that the main agreement underlying the birth of the arbitral award has been cancelled, and therefore everything that follows and is related to the agreement becomes worthless in the eyes of the law. Up to this point, actually the Supreme Court has also forgotten the absolute nature of the competence or authority of the arbitral institution. The arbitration institution has the right to assess whether or not the agreement is cancelled, because it has been agreed upon in the main agreement in the form of an arbitration clause. So in this case, the court has absolutely no authority to try him. The principle of separability plays a key role in this regard.

Arbitration awards in Indonesia are the end result of a dispute resolution process outside the general court (Hansen, 2019), in which the disputing parties agree to submit their dispute to an arbitrator or panel of arbitrators who have the authority to issue a decision. This arbitral award has legal force and is recognized by law in Indonesia. The arbitration process is designed to be independent and neutral. Arbitrators involved in dispute resolution must be parties who have no personal interest in the dispute, so that they can provide an objective decision.

Arbitration awards in Indonesia are made based on applicable laws and regulations. The parties involved in arbitration usually determine the law that will be used as a basis in deciding their dispute. This can be national law, international law, or special rules related to a particular case. After the arbitrator or panel of arbitrators has reached a decision, the decision is conveyed in writing to the parties to the dispute. This decision must contain the reasons that support the decision.

The arbitral award must be submitted to the district court for ratification. The court will examine the arbitral award to ensure that it complies with applicable law and procedure. After a decision is declared valid by a court, the decision has the same legal force as a court decision. If one of the parties does not comply with the arbitration award which has been declared valid, the party who feels aggrieved can submit a request for execution to the court. The court will issue an execution decision to enforce the arbitral award.

There is a procedure for canceling an arbitral award under certain conditions. Grounds for annulment of an arbitral award, as provided for in the Arbitration Act, may include a breach of procedure, the incompetence of the arbitrator, or an award that violates decency or public decency. Arbitration awards are an important tool in the dispute resolution system in Indonesia, especially in the business and investment sphere. This helps parties involved in disputes to avoid lengthy and formal proceedings in public courts, while still ensuring legal certainty and fairness in dispute resolution.

Arbitration institutions in the Indonesian justice system refer to entities that have a role in providing facilities and services for dispute resolution through arbitration. This is different from the general justice system which is run by state courts. This arbitration institution provides an alternative for parties who wish to resolve their dispute outside the general court. Some of the arbitral institutions that have a role in the justice system in Indonesia include:

1. Indonesian National Arbitration Board (BANI): BANI is the leading arbitral institution in Indonesia. This institution provides facilities for the resolution of business disputes through arbitration, mediation, and other alternative processes.
2. Indonesian Mediation and Arbitration Institute (LEMAI): LEMAI is an institution established by the Indonesian Chamber of Commerce and Industry (KADIN) and focuses on resolving business disputes through arbitration and mediation.
3. Arbitration and Mediation Institution (LAM) Chamber of Commerce and Industry (KADIN): LAM KADIN is an arbitration institution linked to KADIN and provides business dispute resolution services through arbitration and mediation.
4. Mining and Energy Arbitration and Dispute Settlement Institution (LAPS) KADIN: Mining and Energy LAPS is an institution that specializes in resolving disputes in the mining and energy sectors through arbitration.
5. Sharia Mediation and Arbitration Institution (LMAS): LMAS is an institution that focuses on settling disputes related to sharia law through mediation and arbitration.
6. Indonesian Construction and Infrastructure Arbitration Institute (LAKI): LAKI is an institution that focuses on settling disputes in the field of construction and infrastructure through arbitration.
7. Indonesian Arbitration Institution (LAI): LAI is an arbitration institution that also provides dispute resolution services through arbitration.

These institutions have internal rules and procedures that govern how the arbitration will be conducted, including the selection of arbitrators, the stages of the proceedings, and the enforcement of awards. Parties wishing to use arbitration as a means of settling disputes must follow the rules and procedures established by the arbitral institution they choose. The role of arbitration institutions in the Indonesian justice system is to provide a faster and more specific alternative in dispute resolution, especially in the business and commercial world.

Arbitration awards can be annulled in the justice system in Indonesia as a form of protection for justice and legal order. While arbitration has many advantages, there are certain situations in which a party may want or need to apply for an annulment of an arbitral award. Some of the reasons why arbitral awards can be overturned in the Indonesian justice system include:

1. Violation of Procedure
   If the procedures followed in the arbitral proceedings are not in accordance with the rules and conditions agreed upon by the parties or if there are significant procedural errors, the arbitral award may be voided. The arbitration process must be in accordance with the rules that have been set and follow the principles of justice.
2. Incompetence of the Arbitrator
   If the arbitrator appointed does not meet the requirements or if there is evidence that the arbitrator does not have the requisite ability or expertise to decide the dispute in question, the arbitral award may be voided. The existence of an incompetent arbitrator can undermine the integrity of the award.
3. Content of the Decision Violates Decency or Public Decency
   If the contents of the arbitral award are considered to violate the moral or ethical norms in force in society (decency or public decency), the award may be cancelled. This aims to ensure that the decisions issued do not conflict with the values recognized by society.
4. Lawlessness
   If the arbitral award is contrary to the laws or regulations in force in Indonesia, the court may cancel the award. Applicability of the law is an important factor in maintaining consistency with the national justice system.
5. Inability of One Party
   If it turns out that a party involved in the arbitration does not have the legal capacity to engage in arbitral proceedings, the award may be reversed. For example, if the party does not have the legal capacity to enter into a binding contract, the award resulting from the arbitration may be voidable.

6. Invalidity of Court Decisions for Ratification of Decisions
   After an arbitral award has been recognized by a court, in some cases the party who feels aggrieved may file a claim for annulment of the ratification. If the court decides to cancel the endorsement, the arbitral award will also be affected and may be voided.

It is important to remember that the process of annulment of an arbitral award has strict requirements and cannot be done haphazardly. A party wishing to submit an application for annulment must meet the criteria set by law and must prove sufficiently strong reasons to cancel the decision.

CONCLUSION

The Arbitration Award has now been viewed as so important and powerful. The nature of decisions that are final and binding is the reason why international business actors choose arbitration in resolving disputes because by not opening up opportunities for appeals and cassation, legal certainty is evident in decisions. The implementation of the arbitral award by the parties must be seen as a consequence of choosing arbitration to resolve the dispute, it is the parties who choose their own judges, even for their choice of law, then the implementation of the arbitral award is consciously a requirement of the parties themselves. Because the good faith of the parties to carry out the contents of the arbitral award is a major factor in resolving business disputes. In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is determined that the procedure for an arbitral award can be implemented (executed) in Articles 59 to 69. This arbitral award which is final and binding in nature, is indeed an excuse for international business actors choose arbitration in the resolution of the dispute. However, in practice, if there is no voluntary desire to implement the results of the award, then the issue of executing the arbitral award will become a complicated matter. The implementation (execution) of foreign arbitral awards is very complicated, because it is not only a matter of simply carrying out the award as is the case with decisions from conventional courts or domestic arbitral awards. The ability to be executable for a foreign arbitral award must first meet various requirements, because in this case it will involve several countries, only then will the execution process also become part of a separate problem. Arbitration awards can be annulled in the justice system in Indonesia as a form of protection for justice and legal order.

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