



The Role of Arbitration Institutions in Resolution of Investment Disputes in Indonesia (Case Study on PT Ferrostaal AG Against PT. Nusantara III regarding Violation of Joint Venture Agreement)

Nanda Utama

Universitas Andalas, Padang, Sumatera Barat, Indonesia

Corresponding Author: nanda.oetama@gmail.com

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Abstract

Arbitration comes from the word "arbitrare" which means "the power to resolve a case according to policy. From the definition of arbitration, it is a policy indicating that there is a forum for resolving business disputes for parties who are wiser in finding a fair solution. H. M. N Poerwosutjipto uses the term arbitration which can be interpreted as a peace court, where the parties agree that disputes regarding personal rights that they can fully control are examined and tried by an impartial judge and the decision is binding on both parties. On the other hand, the speed and effectiveness of dispute resolution through arbitration can also be done simply and informally, meaning it can only be determined by the parties to the dispute. The role of arbitration in carrying out legal functions and ensuring justice is seen in its authority, such as its ability to make decisions and encourage peace. The effectiveness of making decisions in dispute resolution through arbitration has been tested and is able to provide a meeting point to reach an agreement without having to sacrifice one of the parties to the dispute. Optimizing the success of dispute resolution through arbitration requires the parties to have a sense of good faith. The results of this study explain that, first, the role of arbitration in business investment disputes can be carried out in the realm of losses from one party in civil law in terms of lost profits and return those profits through the imposition of penalties to pay losses from the respondent itself. Second, the effectiveness of dispute resolution through arbitration forums is able to prove legal facts quickly and accurately so that PTPN III as a local Indonesian company is not proven guilty. In this regard, the arbitration forum is independent and cannot be intervened by any other party except the disputing parties. The author recommends the need for other legal guarantees. Therefore, in relation to this matter, legal, political, and security guarantees must be provided to the maximum by the Indonesian government because these guarantees are what the Indonesian government should offer if there is a desire to attract as many investors as possible.

Introduction

Interactions in social life produce dynamics among members of society as a reflection of the diversity of human interests in living their lives.¹In this context, there is a possibility of conflict, differences of opinion and disputes between these individuals due to the variations in interests that exist.²These varying interests sometimes create conflict or disputes, requiring the parties to accept the risks. The increasing number of disputes has led to the development of legislation to establish dispute resolution mechanisms that stem from these various interests, one of which is Law Number 30 of 1999 concerning Arbitration. Arbitration law plays a crucial

¹ Muhammad Yasril Ananta Baharuddin, "The Role of Arbitration Law in Resolving National Business Disputes". Notary Publication Journal Volume 5, No. 2, July-December 2024. pp. 311-320

² Ibid. Muhammad Yasril Ananta Baharuddin, "The Role of Arbitration Law.....pp.311-320

role in resolving national business disputes. The crucial role of dispute resolution through arbitration is that many parties in Indonesia have resolved their disputes through arbitration. Arbitration provides a faster and more effective dispute resolution process than judicial proceedings.

In arbitration, the parties involved can choose an arbitrator or panel of arbitrators who have expertise and experience in the field related to the business dispute being contested. The use of dispute resolution through arbitration is often used by parties, especially in trade or business cases between local and foreign parties, which naturally have different legal regulations. Both local businesses now have a greater understanding and reliance on arbitration as a means of resolving their trade disputes.³ One example is that entrepreneurs and businesspeople often use arbitration to resolve disputes, as evidenced by the existence of a "settlement through arbitration" clause in their agreements. However, resolving trade or business disputes through arbitration is still limited to business activities with significant or high commercial value.

On many occasions, Priyatna Abdurrasyid has revealed that disputes resolved through Arbitration currently involve economic issues.⁴ The rapid development of the role of arbitration has drawn widespread attention to this legal institution. Alan Redfern and Martin Hunter describe the various parties involved in arbitration. They highlight this legal institution in the following terms:⁵

"States have modernised their laws so as to be seen to be 'arbitration friendly'; firms of lawyers and accountants have established dedicated groups of arbitration specialists; conference and seminars proliferate, and the distinctive law and practice of international arbitration has become a subject of study in universities and law schools alike."

On the other hand, the speed and effectiveness of dispute resolution through arbitration can also be achieved simply and informally, meaning it can be determined solely by the parties to the dispute. Arbitration's role in carrying out legal functions and ensuring justice is evident in its authority, such as its ability to make decisions and promote peace.⁶ The effectiveness of decision-making in dispute resolution through arbitration has been proven and is able to provide common ground for reaching an agreement without sacrificing either party. Optimizing the success of dispute resolution through arbitration requires that the parties demonstrate good faith. First, good faith is crucial. As is known, settlement through arbitration begins with an agreement, which is based on good faith.⁷ This good faith reflects the desire of the parties to comply with the agreement with mutual trust and commitment in carrying out the rights and obligations arising from the agreement.⁸

In some cases, there is still a lack of good faith in complying with the arbitration agreement.⁹ Such as filing a case in court or attempting to annul an arbitration decision. The weakness in dispute resolution through arbitration is that often some parties fail to fulfill their obligation to comply with arbitration decisions by canceling them in court. One example of a case of resolving a business investment dispute through arbitration is the case of Oleovest and PT. Nusantara III regarding a Violation of the Joint Venture Agreement. This case occurred

³ Adolf, H. 2015. Basics, Principles & Philosophy of Arbitration, 2nd Edition. Bandung: KENI Media, p. 1

⁴ Abdurrasyid, P. 2011. Arbitration and Alternative Dispute Resolution, 2nd edition. Jakarta: Fikahati, p. 2.

⁵ Blackaby, N, et. Al. 2009. Redfern and Hunter on International Arbitration, New York: Oxford U.P, hlm.2

⁶ Sudiyan. (2017). Empowering the Role of Arbitration Institutions in Resolving Business Disputes in Indonesia. Padjajaran Journal of Legal Studies, Vol. 4 No. 1, p. 131.

⁷ Article 1338 paragraph (3) of the Civil Code

⁸ Anggraeni Kolopaking, Anita D. 2013. The Principle of Good Faith in Resolving Contract Disputes Through Arbitration. Bandung: Alumni, p. 90

⁹ Harisa, N. (2018). The Principle of Good Faith in Arbitration Agreements as a Dispute Resolution Method. Jurnal Aktualita, Vol. 1 No. 1, p. 265.

where one party in an investment cooperation between a local company and a foreign company did not comply with or even violated the agreed clauses, resulting in unfairness in the implementation of the business investment cooperation.

Therefore, the author will analyze through this article the Role of Arbitration Institutions in Resolving Investment Disputes in Indonesia in the case study of PT Ferrostaal AG. against PT. Nusantara III for violating the investment business cooperation agreement (*Joint Venture Agreement*).

Research Methods

In this research, the author uses the legal research method (*doctrinal research*) or called normative legal research. In the analysis process, the research focuses attention on 2 (two) aspects of the approach through the statutory approach (*statues approach*), and conceptual approach (*conceptual approach*). Thus, these two research approaches are used by the author as a way to solve legal problems by prioritizing legal suggestions and/or solutions or what is called prescriptive research.

Discussion

The Role of Law Number 30 of 1999 Concerning Indonesian Arbitration in the Settlement of Investment Disputes

Arbitration comes from the word "arbitrare" which means "the power to resolve a case according to the law".¹⁰ From the definition of arbitration, it is a policy that shows there is a forum for resolving business disputes for parties who are wiser in finding a fair solution. H. M. N Poerwosutjipto uses the term arbitration which can be interpreted as a peace trial, where the parties agree that disputes regarding personal rights that they can fully control are examined and tried by an impartial judge and the decision is binding for both parties.¹¹ Legally, Indonesia has regulations governing Arbitration in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law).¹²

Article 1 number 1 of the Arbitration Law states that the method of resolving a civil dispute outside of the general courts is based on an arbitration agreement made in writing by the disputing parties.¹³ Based on history, the existence of Arbitration in Indonesia has long been recognized with the provisions regulated in Article 377 HIR or Article 705 Rbg which states that if an Indonesian and a foreign Easterner want their dispute to be decided by an arbitrator, then they must comply with the court regulations that apply to European nations.¹⁴ There are two types of arbitration recognized in Indonesia: ad hoc arbitration and institutional (permanent) arbitration. Both have the authority to hear and decide disputes. Ad hoc arbitration is arbitration established by the disputing parties, while institutional arbitration is arbitration established by an arbitration institution.¹⁵

For domestic dispute resolution practices, Indonesia established the Indonesian National Arbitration Board (BANI) on December 3, 1977, which aims to be an autonomous and independent commercial dispute resolution institution.¹⁶ Arbitration institutions are

¹⁰ Anik Entriani, "Arbitration in the Indonesian Legal System," An-Nisbah Journal, Vol. 03, No. 02, 2017, p. 3

¹¹ H. M. N Poerwosutjipto, Principles of Commercial Law, Refereeing, Bankruptcy and Postponement of Payment, (Jakarta: Djambatan, 1992) p. 1

¹² King William and Moody Rizqy Syailendra, "Settlement of Foreign Investment Disputes through International Arbitration". Journal of Education Research.4(4).2023. hlm.1982-1990

¹³ Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

¹⁴ *Op.Cit.* H. M. N Poerwosutjipto, Principles of Lawp.5

¹⁵ Rachmadi, Usman, Options for Dispute Resolution Outside the Court, (Bandung: PT Citra Aditya Bakti, 2013), p. 165

¹⁶ Frans Hendra Winata, Dispute Resolution Law, (Jakarta: PT Sinar Grafika, 2013), pp. 96-98.

autonomous because they create independence in resolving business disputes through the realm of arbitration. The high interest of the disputing parties to be resolved through arbitration shows that its implementation is in accordance with the definition of arbitration itself, namely providing wise decisions. The nature of arbitration decisions cannot be contested or even canceled unilaterally by the parties without going through applicable legal procedures. The author emphasizes that, Arbitration decisions must be implemented in accordance with applicable legal procedures in the court that has jurisdiction over the decision. Arbitration decisions cannot be contested and must be implemented.¹⁷

Regarding the International Arbitration Award in Article 66 of Law 30/1999, the International Arbitration Award recognized in Indonesia must be based on a bilateral or multilateral agreement that is binding on Indonesia and in quotation marks, the award must not be contrary to public order in Indonesia.¹⁸ The recognition of international arbitration awards in Indonesia provides a sense of confidence to the parties when one of the parties, a foreign national, can resolve disputes through an arbitration forum and can be complied with in Indonesia. However, there are still shortcomings in the execution of arbitration awards, which are rarely carried out voluntarily. The weakness in executing arbitration awards in Indonesia indicates the existence of an unfriendly arbitration state, which makes it difficult for one party to comply with a final and binding arbitration award. With an international arbitration award having binding legal force, good faith, which is the most important principle, should be...*super eminent principle* must be carried out by the bound parties¹⁹. However, in reality, the parties continue to try to avoid what should be done. Also, the principle of good faith is not comprehensively stated in Law No. 33/1999, which is only found in Article 6 paragraphs (1) and 7.²⁰

On the other hand, under Indonesian arbitration laws, if one party fails to voluntarily implement a decision, enforcement can be enforced against the other party. In the concept of business dispute resolution, investment is part of the arbitration forum, which can be used by the parties who have agreed. The arbitration forum is limited to resolving disputes in the civil realm and is not intended for non-civil disputes. Continuous human interaction occurs to meet the necessities of life.²¹ As social beings, humans live in communities. However, given the vast and diverse range of human interests, in interacting with one another, humans are always faced with the potential for disputes. This can occur because human interests often conflict with one another. Disputes usually begin in a situation where one party feels disadvantaged by another. One case in the investment cooperation business between local and foreign companies certainly begins with one party being disadvantaged. The consequences of this loss stem from one party not complying with or violating the clauses or contents of the cooperation agreement.

Law Number 8 of 1995 concerning Capital Markets, contains provisions regarding prohibited acts in capital market activities, which in principle can be grouped into 3 (three) large groups, namely:²²

a. Market Manipulation;

The capital market is also not immune to abuse by certain parties to enrich themselves unlawfully. Criminal acts in the capital market are quite complex and difficult to prove, let

¹⁷ Indah Sari, "The Advantages of Arbitration as a Dispute Resolution Forum Outside the Courts," Scientific Journal of Aerospace Law, Vol. 9, No. 2, 2019, p. 2

¹⁸ Article 66 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution,

¹⁹ *Op.Cit.* King William and Moody Rizqy Syailendra, "Investment Dispute Settlement.....pp. 1982-1990

²⁰ *Ibid.* King William and Moody Rizqy Syailendra, "Investment Dispute Settlement.....pp. 1982-1990

²¹ Melinda Lumowa, et al., "LEGAL ASPECTS OF THE ROLE OF ARBITRATION INSTITUTIONS IN RESOLUTION OF CAPITAL MARKET DISPUTES ACCORDING TO LAW NUMBER 8 OF 1995 CONCERNING CAPITAL MARKETS".

[file:///C:/Users/Denny%20Azany/Downloads/hsm_administratum,+Melinda+Lumowa+\(1\).pdf](file:///C:/Users/Denny%20Azany/Downloads/hsm_administratum,+Melinda+Lumowa+(1).pdf) pp. 1-15

²² See Law Number 8 of 1995, Chapter IX Articles 90-99

alone prosecute in court, considering the nature of the capital market which is very sensitive to material facts or news related to the course of the judicial process in the form of information related to the capital market. Based on the explanation above, it can be concluded that market manipulation is a series of actions carried out by a person as the perpetrator with the intention of creating a false, false or misleading picture about the trading or transaction of securities, market conditions or the price of a security on the stock exchange to a third party, so that the third party conducts the transaction of securities at the price desired by the perpetrator.

b. Criminal Act of Fraud;

There are several types of crimes that generally occur in the capital market, including fraud, market manipulation, and insider trading. The relationship with the occurrence of fraud in the Capital Market is that the perpetrator commits a criminal act of fraud, by making false statements regarding material facts, or refusing to disclose material facts so that investors do not know the true situation with the intention of benefiting themselves and others, or avoiding losses for themselves or others, or with the aim of influencing others to buy or sell securities.

c. Insider Trading

The legal subjects in the Capital Market Law, in this case insider trading perpetrators, are two: natural persons (*naturelijke person*) and corporations (*recht person*). This is in accordance with the provisions of Article 1 number 23 of the Capital Market Law, "Parties are individuals, companies, joint ventures, associations, or organized groups." Then, in the provisions of Article 95, Article 96, Article 97 paragraph 1 and Article 98 of the Capital Market Law, which state that "insider", every "Party and "Securities Company" are perpetrators of insider trading crimes.

The role of arbitration in business investment disputes can be carried out in the realm of losses from one of the parties in a civil manner in terms of lost profits and returning those profits through the imposition of a penalty to pay the losses from the respondent itself. Therefore, the role of the arbitration forum in resolving business disputes is limited to material and immaterial losses in a civil manner and the restitution of losses through a penalty against the respondent to pay the applicant based on the decision made by the arbitrator himself.

Effectiveness of Business Investment Cooperation Dispute Resolution (*Joint Venture Agreement*) through the Arbitration Forum in the case of Oleavest and PT. Nusantara III

The effectiveness of resolving business investment cooperation disputes is highly dependent on **selected method**, with **non-litigation channels (arbitration and mediation)** It is generally considered more effective than litigation (court) because it offers greater speed, confidentiality, and flexibility. The majority of business dispute resolutions frequently used by disputing parties are conducted through non-litigation channels such as arbitration. Indonesia has entered into Bilateral Investment Treaties with 67 countries starting in 1972 with Belgium, which are still in effect today. The status of these agreements is divided into three categories: unratified, terminated, and still in effect. Indonesia's agreements with 20 countries are still unratified, 22 are terminated, and 24 are still in effect.²³

The World Trade Organization, hereinafter referred to as the WTO, as stated in Article II of the Understanding on Rules and Procedures Governing the Settlement of Disputes WTO Agreement in 1994, has two roles, namely the legislative role, in which there are various agreements signed by its members and the adjudication role, where the adjudication role is for consultation and adjudication of problems between member countries related to regulations in

²³ Administrator. 2018. International Agreement. <http://www2.bkpm.go.id/id/outwardinvestment/perjanjian-international>, accessed on June 2, 2018.

agreements within the scope of the WTO.²⁴ According to Adolf in Sari (2019) the main reasons for the increasing use of this arbitration institution in resolving business disputes are: Arbitration is relatively short and fast because the arbitration decision is final and binding; Decisions can be kept confidential; The parties are free to choose a judge (arbitrator) who they consider neutral²⁵.

An arbitration agreement is considered fundamental because it not only determines the effectiveness of the arbitration dispute resolution but also determines how the arbitration will be conducted. Arbitration agreements are governed by the principle of party autonomy, meaning that all aspects of the arbitration are determined and agreed upon by the parties themselves.²⁶ According to Schroeter (2017), there are several advantages to choosing institutional arbitration.²⁷ First, each arbitration institution provides a model arbitration clause that the parties can use as a reference in drafting their arbitration clause.²⁸ It is not always easy for employers to find agreeable language, so providing these model clauses can be very helpful compared to drafting them yourself. Second, all institutional arbitrations have procedural rules (*rules*) which outlines how an arbitration based on institutional arbitration will proceed from the initial stage of the arbitration to the final stage of the arbitration. These rules are binding if the parties agree to comply with them. Therefore, the availability of these procedural rules allows the parties to predict how the arbitration process will proceed and, in some cases, predict the desired outcome. Third, institutional arbitration provides a list of arbitrators with varying levels of expertise. Therefore, this list will help the parties choose an arbitrator who will be selected according to the interests of the dispute at issue. Fourth, an organized arbitration system. Arbitration has administrative staff to assist the parties with matters such as sending subpoenas, correspondence, and other documents, and can also support the mediation process such as preparing minutes of negotiations, sending subpoenas, and so on.²⁹

Arbitration is a very popular method among countries that have a lot of foreign investment, including Indonesia.³⁰ This method was chosen because it is considered faster, cheaper, and more flexible than resolving the matter through the courts.³¹ Arbitration provides more freedom for the parties to choose an arbitrator who has expertise in the area being disputed, so that the results obtained are fairer and based on in-depth consideration of the issues being faced.

For example, in the case of Perkebunan Nusantara (PTPN) III, which won an arbitration lawsuit against the German company PT Ferrostaal AG, the lawsuit resulted in the cancellation of a joint venture agreement to build an oleochemical plant in Seimangke, North Sumatra. State-Owned Enterprises Minister Dahlan Iskan stated that the lawsuit began when he appointed PTPN III to build the plant. *oleochemicals*. "Because at that time there were no state-owned plantation companies in the downstream sector, I appointed PTPN III to build it in Semangkai." The reason the German company sued PTPN III through an arbitration forum was

²⁴ Fries Melia Salviana and Desy Nurkristia Tejawati, "EFFECTIVENESS OF BILATERAL INVESTMENT TREATY IN RESOLUTION OF INVESTMENT DISPUTES". STHG LAW JOURNAL. pp. 71-89

²⁵ Ado Sadroi, et al., "EFFECTIVENESS OF BUSINESS DISPUTE RESOLUTION THROUGH NATIONAL ARBITRATION AS A SOLUTION TO PROBLEMS IN THE GLOBALIZATION ERA". TAMBUSAI HEALTH JOURNAL. Volume 5, Number 4, December 2024. p. 13420- 13431

²⁶ Baharuddin, M. Y. A. (2024). The Role of Arbitration Law in Resolving National Business Disputes. *Journal of Notary Affairs*, 5(2), 114–121

²⁷ *Op.Cit.* Ado Sadroi, et al., "EFFECTIVENESS OF DISPUTE RESOLUTION.....p. 13420- 13431

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Marulak Pardede, "Investment Regulatory Reform in Indonesia," *De Jure Legal Research Journal* 23, no. 2 (2023): 231.

³¹ Sastra Dinata, "Reconstruction of Foreign Investment Dispute Settlement in Indonesia". Yustisia Tirtayasa. [Vol. 5 Issue 1, Jan-Mar 2025.hlm.29-47

because "PTPN III's obligation to deliver raw materials in the form of crude palm oil (*crude palm oil*) to Ferrostaal. In addition, PTPN III is also required to collaborate with PTPN IV in the development. This, according to Dahlan, cannot be justified, because fellow PTPNs cannot bind each other. Ultimately, PTPN III refused the obligation to deliver raw materials in the form of crude palm oil and collaborate with PTPN IV in the downstream development. PTPN III's refusal of the obligations in the contract resulted in the German company suing through an arbitration forum.

In this case of a dispute over a cooperation agreement/contract between PTPN III and the German company PT Ferrostaal AG, it is demonstrated that resolution through an arbitration forum can accommodate disputes between foreign companies and local companies in Indonesia. Furthermore, there is the effectiveness of dispute resolution through an arbitration forum, which is able to prove legal facts quickly and accurately so that PTPN III, as a local Indonesian company, is not proven guilty. This means that the arbitration forum is independent and cannot be intervened by other parties except the disputing parties.

The problem of investment business disputes, as in the case above, requires legal guarantees in the creation of a contract that will not harm either party in the future in business cooperation. The legal guarantees offered by the Indonesian government are actually quite adequate, but because the current situation in Indonesia is different from the past, other legal guarantees are needed. Therefore, in this regard, legal, political, and security guarantees must be provided optimally by the Indonesian government because these guarantees are what the Indonesian government should offer if there is a desire to attract as many investors as possible. Therefore, dispute resolution through an arbitration forum can provide legal protection for the disputing parties, especially business investments between foreign and local parties.

Conclusion and Suggestions

Conclusion

The role of arbitration in business investment disputes can be carried out in the realm of losses from one of the parties in a civil manner in terms of lost profits and returning those profits through the imposition of a penalty to pay the losses from the respondent itself. Therefore, the role of the arbitration forum in resolving business disputes is limited to material and immaterial losses in a civil manner and the restitution of losses through a penalty against the respondent to pay the applicant based on the decision made by the arbitrator himself.

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Suggestions

Other legal guarantees. Therefore, in this regard, the Indonesian government must provide maximum legal, political, and security guarantees, as these are the guarantees it should offer if it wishes to attract as many investors as possible.

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