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ARBITRATION IS A LEGAL MEASURE IN RESOLUTION OF INTERNATIONAL TRADE DISPUTES

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ABSTRACT

The purpose of this research is to determine the advantages and disadvantages of resolving problems through arbitration and how the dispute resolution process through arbitration works. Using normative juridical research methods, it can be concluded that: 1. Arbitration is a method of resolving civil disputes outside of general courts, based on a written arbitration agreement between the disputing parties. 2. The existence of a written agreement eliminates the right of the parties to submit disputes or differences of opinion contained in the agreement to a state court.

INTRODUCTION

International trade law is a rapidly developing field of law. Its scope is quite broad. Cross-border trade relationships can encompass many forms, from simple bartering and the sale and purchase of goods or commodities to complex trade relationships or transactions. The complexity of these international trade relationships or transactions is due in part to the availability of technological services (particularly information technology), which allows trade transactions to proceed more quickly. National borders are no longer an obstacle. Transactions. There are several motives or reasons why countries or legal entities (trading actors) engage in international trade transactions. The need for international trade has long been recognized by traders in Indonesia, dating back to the 17th century. One such example was Amanna Gappa,

a Bugis tribal chief who recognized the importance of trade (shipping) for the prosperity of his tribe. The Bugis' superiority in sailing, using only small Bugis boats, enabled them to navigate the vast oceans as far as Malaya (now Singapore and Malaysia).

The essence of trade transactions is the philosophical basis for the emergence of trade. As previously stated, trade is a "fundamental freedom." With this freedom, everyone should have the freedom to trade. This freedom should not be limited by differences in religion, ethnicity, beliefs, political system, legal system, or other factors. The Charter of Economic Rights and Duties of State also recognizes that every state has the right to engage in international trade.

a. Writing Method

1. To understand the implementation of national/international arbitration awards.
2. To understand the differences between national/international arbitration awards.
3. To understand how to reject the execution of an arbitration award
4. To understand the definition of arbitration

b. Definition of Arbitration

Arbitration comes from the Latin word arbitrase, which means the power to resolve something according to one's own discretion. The association of arbitration with discretion can give the impression that an arbitrator or arbitration panel, in resolving a dispute, disregards legal norms and relies solely on discretion. This impression is incorrect, because the arbitrator or panel also applies the law, similar to that of a judge or court. According to Law No. 30 of 1999, arbitration is a method of resolving civil disputes outside the general courts, based on a written arbitration agreement made by the disputing parties.According to Sidik Suraputra, S.H. In his essay entitled "Several Problems Obstacles to the Implementation of International Arbitration" published by the Center for Law and Economic Studies, Faculty of Law, University of Indonesia, 1977, citing the definition given by Frank Elkouri and Edna Elkouri in their book "Home Arbitration Works, Washington, D.C., 1974," the definition of arbitration is as follows: "Arbitration is a simple proceeding voluntarily chosen by parties who want a dispute determined by an impartial judge of their own mutual selection, whose decision is based on the merits of the case."They agreed in advance to accept it as final and binding.

c. Differences Between National Arbitration Awards and International Arbitration Awards

The procedures for enforcing arbitration awards in Indonesia are differentiated based on the type of award, namely whether the award is a national or international arbitration award. Law No. 30 of 1999 does not provide a clear distinction between national and international arbitration awards. However, the difference between national and international arbitration awards can be seen in the definition of an international arbitration award stipulated in Article 1 number (9) of Law No. 30 of 1999 below. An international arbitration award is a decision rendered by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision by an arbitration institution or individual arbitrator that, under the laws of the Republic of Indonesia, is considered an international arbitration award.

This provision is not much different from the regulation regarding what is meant by international arbitration in article i paragraph (1) of the 1958 New York Convention: This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the regulation and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the state where recognition and enforcement are sought.

Advantages and Disadvantages of ArbitrationA request for annulment must be submitted in writing within thirty (30) days to the court in the jurisdiction where the arbitration decision was made.based on the requirements of a foreign (international) arbitration decision, which if the application is granted, then within 30 days the chairman of the district court will determine further the consequences of the cancellation of all or part of the arbitration decision. 10 To provide legal certainty to the opposing party, based on the provisions of Article 72 paragraph (4) of the Arbitration Law, it is stated that against the cancellation decision from the district court, an appeal can be submitted to the Supreme Court which decides in the first and final instance. However, the Arbitration Law does not regulate provisions regarding the time limit for submitting appeals and appeal memorandums, so this must be based on the provisions of the applicable procedural law, which states that the submission of an appeal memorandum by the appellant must be submitted within a period of 14 days

after the appeal request is recorded in the register book. From the time the appeal request is received, a decision must be made no later than thirty days later. For international arbitration decisions, as stated in Article 70, Article 71, Article 72 of the Arbitration Law, only the Indonesian court is authorized to cancel arbitration decisions made in Indonesia. This can be interpreted as meaning that the annulment provisions are not a basis for Indonesian courts to annul international arbitration awards. This is evident from the use of the term "international arbitration award" in Articles 65 to 69 of the Arbitration Law, which is distinguished from the term "arbitration award" as stated in Article 70 of the Arbitration Law. Therefore, the District Court does notcan annul international arbitration awards, while domestic arbitration awards can only be annulled by considering the limiting requirements in Article 70 of the Arbitration Law.The panel of judges at the Central Jakarta District Court held that, in principle, only Article VI in conjunction with V (1) (e) of the 1958 New York Convention refers to one competent authority. Only one court has the authority to annul international arbitration awards, namely the court where the arbitration award was made

METHOD

This research uses a qualitative normative legal approach. This method is chosen because the study focuses on legal norms, concepts, and preventive strategies related to cybercrime among adolescents rather than on statistical measurement of behavior. Normative legal research is appropriate to examine how law functions as a preventive instrument and how legal awareness can be developed through educational mechanisms such as legal clinics (Soemitro, 1990).

The normative legal approach views law as a system of rules and principles that regulate social behavior. In this study, the analysis focuses on cyber law regulations, child protection norms, and policies related to digital literacy. To strengthen the analysis, the research also applies a conceptual approach by using theories of preventive law, legal awareness, and responsive law. These theories are used to explain the importance of early legal education and institutional involvement in preventing cybercrime among adolescents (Rahardjo, 1980).

The type of research conducted is Normative Juridical legal research which is about what the concept of the criminal system is in criminal law in Indonesia, namely

by collecting normative data and what is in the laws related to criminal law.Data analysis is carried out using descriptive and analytical methods. Descriptive analysis is used to explain existing legal regulations and institutional practices related to cybercrime prevention. Analytical interpretation is then applied to assess the meaning, scope, and function of legal norms in preventing cybercrime among adolescents. The analysis also involves comparison with previous research to identify similarities, differences, and the contribution of this study to existing scholarship (An Nisya Nursabilah et al., 2025).

To ensure reliability and consistency, the analysis is conducted by cross-referencing legal regulations, academic literature, and policy documents. Although this research does not involve fieldwork or human participants, methodological rigor is maintained through systematic document analysis and critical engagement with authoritative legal sources.

RESULTS AND DISCUSSION

RESULTS

1. National Implementation of Arbitration Award Decisions

Final and Binding Arbitration Award. The arbitration award is final and has permanent legal force and is binding on the parties. Finality means that the arbitration award cannot be appealed, cassated, or reviewed. Enforcement of the award must be carried out within 30 days from the date the award is issued. The original or an authentic copy of the arbitration award must be submitted and registered by the arbitrator or his/her attorney with the clerk of the district court, and the clerk shall provide a record, which constitutes a deed of registration.The arbitrator or his/her attorney must submit the award and the original appointment as arbitrator or an authentic copy to the clerk of the district court. If the arbitrator or his/her attorney fails to submit these two documents, then, based on Law No. 30 of 1999, the award cannot be enforced. [19] Regarding the issuance of an order inFor implementation, the Chief Justice of the District Court must first examine whether the arbitration award meets the following criteria:

a. The parties agree that the dispute between them will be resolved through arbitration.

b. The agreement to resolve disputes through arbitration only concerns disputes in the commercial sector and those concerning rights stipulated by law and regulations.
c. Disputes that may be resolved through arbitration only concern disputes in the commercial sector and those concerning rights stipulated by law and regulations.
d. Other disputes that may be resolved through arbitration are those that do not conflict with morality and public order.The enforcement of the arbitration award will only be carried out if the arbitration award complies with the arbitration agreement and meets the requirements set out in Law No. 30 of 1999, and does not conflict with morality and public order.

2. Regulations on the Enforcement of International Awards in Law No. 30 of 1999

Regulations regarding international arbitration in Indonesia are contained in Articles 65 to 69 of Law No. 3 of 1999. Among other things, these provisions state that an international arbitration award is only recognized and enforceable within the jurisdiction of the Republic of Indonesia if the award is rendered by an Indonesian arbitration panel in accordance with a bilateral or multilateral agreement on the recognition and enforcement of international arbitration awards. As previously explained, an international arbitration award is an arbitration award thatThe award was decided outside the jurisdiction of the Republic of Indonesia. This award must be registered with the Central Jakarta District Court. The Central Jakarta District Court is authorized by Law No. 30 of 1999 to handle the recognition and enforcement of international arbitration awards. If an international arbitration award concerns the Republic of Indonesia, the court authorized to issue an exequatur is the Supreme Court. International arbitration awards can be enforced in Indonesia after obtaining an exequatur from the Head of the Central Jakarta District Court, and this decision cannot be appealed or cassated. However, if the Head of the Central Jakarta District Court refuses to recognize and enforce an international arbitration award, a cassation appeal may be filed. 23 on 3. Presidential Decree No. 34 of 1981 concerning the ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Regulation No. 1 of 1990 concerning the Procedures for Enforcing Foreign Arbitration Awards.Regulation No. 1 of 1990 concerning the Procedures for Enforcing Foreign

Arbitration Awards is the primary regulation regarding the enforcement of foreign (international) arbitration awards. The importance of this regulation is because even though the government has ratified Law No. 5 of 1968 concerning the settlement of disputes between the State and foreign citizens regarding investment and joining the convention on the settlement of investment disputes between states and nationals ofIn practice, the enforcement of foreign arbitral awards by the International Court of Justice (ICSID) continues to fail. The ratification of ICSID membership has placed Indonesia, as a binding State, in the position of recognizing and enforcing every foreign arbitral award. However, in practice, many foreign arbitral awards fail before the courts. The courts' primary reasons for refusing recognition and enforcement are, for example, stated in Supreme Court Decision No. 2944 K/Pdt/1983, dated November 29, 1984. 25 The reasons for refusing enforcement included, among others, Presidential Decree No. 34 of 1981. According to the Indonesian Supreme Court, in accordance with prevailing legal practice, implementing regulations concerning exequatur procedures are needed. Furthermore, the Supreme Court maintains that without implementing regulations, Indonesian courts cannot assess and consider whether a decision violates the law or public order applicable in Indonesia.

Discussion

1. Enforcement of International Arbitration Awards (Provisions of the 1958 New York Convention)

Meaning of International Arbitration Awards. The definition of an international arbitration award, as formulated in Article 1, paragraph (1) of the 1958 New York Convention, is as follows: This convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought. 26 This article explains what is meant by an arbitration award.International arbitration awards are awards rendered in a country other than the country where recognition and enforcement of the arbitral award is sought. Based on this article, the primary requirement for an arbitral award to be considered an international arbitration award is that it be rendered outside the country where recognition and enforcement are sought. Furthermore, another requirement for determining such an award is that it must concern a dispute arising between individuals or legal entities. In this regard, it

should be emphasized that differences in nationality are not absolute.In addition to the matters stated above, international arbitration awards, according to Article 1 paragraph (2) of the 1958 New York Convention, include not only awards rendered by ad hoc arbitration bodies or arbitrators appointed for each case, but also any award rendered by a permanent arbitral body, also commonly referred to as institutional arbitration.Refusal of Execution of Arbitration Award In terms of the procedure for rejecting an arbitration award, it has been regulated in Article VI of the 1958 New York Convention, which states: If an application for the setting aside or suspension of the award has been made to a competent authority before which the award is sought to be relied upon, it may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security. In essence, Article VI of the 1958 New York Convention states that the rejection of the enforcement of an arbitration award is submitted to the competent authority, inThe country in which the application for enforcement is filed.Article 60 of the Arbitration Law states that the arbitration award is final and has permanent legal force and is binding on the parties. 27 In theory, once an arbitration award is rendered, no other legal remedies may be sought by the losing party, and the winning party simply has to enforce it. In reality, enforcing an arbitration award is not as easy as turning the palm of the hand. Article 61 of the Arbitration Law states that:

If the parties do not voluntarily enforce the arbitration award, the award shall be enforced based on the order of the head of the district court upon the request of one of the disputing parties.For an arbitration award to be truly beneficial to the parties, it must be enforceable. This enforcement can be carried out by a competent court. The procedures for enforcing an arbitration award are as follows:

1. Voluntary Execution: Voluntary execution is execution that does not require intervention from the head of any district court, but rather requires the parties to voluntarily implement the decisions made by the arbitration.
2. Forced Execution Forced execution of an arbitration decision occurs when the party that must execute the decision voluntarily refuses to carry out the decision. Therefore, coercive measures are necessary. In this case, court

intervention is required, namely by forcing the decision to be enforced.The losing party must enforce the decision. For example, by carrying out seizures.

Furthermore, based on Article 62 paragraph (2) of the Arbitration Law, the Chief Justice of the District Court must first examine the documents, scope, and competence of the selected arbitration, as stated below: 29 Before issuing an enforcement order, the Chief Justice of the District Court, as referred to in paragraph (1), must first examine whether the arbitration decision complies with the provisions of Articles 4 and 5 and does not conflict with morality and public order. The provisions of this article mean that the District Court is not permitted to reexamine the underlying case; its duty is only to permit or reject enforcement. The competent court may reject a request for enforcement of an arbitration decision if there are grounds for doing so. A cassation appeal is available against such a rejection, whereas no legal remedy is available against a decision by the Chief Justice of the District Court recognizing and implementing an arbitration decision.As stipulated in Article 62 paragraph (2) of the Arbitration Law, the reasons that a court (in this case, the chief justice) can use to refuse to enforce an arbitration award, which are limited by the provisions, are as follows:

1. The arbitrator's decision exceeds the authority granted to him
2. The arbitration award is contrary to morality.
3. The arbitration award is contrary to public order.
4. The decision does not meet the following requirements.

The dispute is not about trade.The dispute does not concern rights that, according to law, are fully controlled by the disputing parties.The dispute does not concern matters that, according to law, can be subject to conciliation.Furthermore, Article 62 paragraph (3) states that: If the arbitration award does not meet the requirements referred to in paragraph (2), the Chief Justice of the District Court shall reject the request for enforcement, and no legal remedy shall be available against the decision of the Chief Justice of the District Court.

3. Intellectual Property Rights Arbitration and Mediation Board

Arbitration dispute resolution at BAM HAKI is a method for resolving civil disputes in the intellectual property rights sector based on a written agreement between the parties and resolved according to the provisions and procedures of BAM

HKI and Law Number 30 of 1999 concerning arbitration and alternative dispute resolution. The first stage of the dispute resolution procedure is the submission of a request for dispute resolution, after which the administrator reviews whether the request meets civil requirements. "The application is communicated with the opposing party, and then the parties select an arbitrator. Areas handled by BAM HKI include Patents, Trademarks, Geographical Indications, Copyright, Industrial Designs, Integrated Circuit Layout Designs, Trade Secrets, Plant Varieties, and other areas related to IPR.

Legal Basis

Legal Basis for IPR Dispute Resolution at BAM HKI:

a. Law No. 7 of 1994 concerning the ratification of the Agreement Establishing the World Trade Organization.
b. Law No. 30 of 1999 concerning arbitration and alternative dispute resolution.
c. Law No. 29 of 2000 concerning the Protection of Plant Varieties.
d. Law No. 30 of 2000 concerning trade secrets.
e. Law No. 31 of 2000 concerning industrial designs.
f. Law No. 32 of 2000 concerning integrated circuit layout designs.
g. Law No. 14 of 2001 concerning patents.
h. Law No. 15 of 2001 concerning trademarks.
i. Law No. 19 of 2002 concerning copyright.

4. Objectives of BAM HK

The objectives of BAM HKI include the following: a. To organize the fair and expeditious resolution of adjudicative civil disputes or disputes in the field of Intellectual Property Rights.

b. To organize outreach, training, and education in the field of IPR in line with the aims and objectives of the establishment of BAM HKI.

c. To organize other activities related to arbitration and mediation that do not conflict with the main activities.As with general arbitration procedures at BANI, BAM HKI arbitration can only be conducted if the parties are bound by an arbitration agreement. An arbitration agreement is defined

as an agreement in the form of an arbitration clause contained in a written agreement made by the parties before the dispute arises, or anA separate arbitration agreement entered into by the parties after a dispute arises.The existence of an arbitration agreement eliminates the parties' right to bring a dispute to court, and the court has no authority to adjudicate disputes between parties already bound by the arbitration agreement.The arbitration agreement is then registered with the court. The winning party can request a bailiff to compel the losing party to comply with the award. With the power of the court, a party can compel the other party to comply with the award. An alternative to institutional arbitration is ad hoc arbitration. In this sense, ad hoc arbitration is arbitration that is not conducted or conducted through a specific arbitration body or institution (Institutional Arbitration).3 According to Alan Redfern, ad hoc arbitration is: Arbitration without designating any arbitral institution and without referring to any particular set of institutional rules

CONCLUSION

Arbitration is a method of resolving civil disputes outside of the general courts, based on a written arbitration agreement made by the disputing parties (Law No. 30 of 1999).Article 7 of Law No. 30 of 1999 stipulates that the parties may agree to a dispute that has arisen or will arise between them to be resolved through arbitration through a written agreement mutually agreed upon by the parties. The existence of a written agreement eliminates the parties' right to file a dispute or disagreement contained in their agreement with a state court.

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