

ARBITRATION AS A DISPUTE RESOLUTION EFFORT

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Abstract: Dispute resolution outside the court is an alternative choice for the disputing parties. One of the dispute resolutions outside the court is through an arbitration forum. Arbitration dispute resolution is a form of private court. The significant core in sorting out the court or arbitration is that if the court is usually adversarial or can be called fighting each other, causing new problems, slow, the costs are also quite expensive, unresponsive and when it has been decided, hostility can arise although not all cases are like that. While arbitration seeks a joint solution, guaranteed confidentiality of data or cases and certainly saves time and costs. In the settlement of this arbitration, to make a decision the arbitrator has an important role as a judge.

Keywords: Arbitrase, Penyelesaian, Sengketa.

Introduction

In ancient times, disputes were usually resolved in stages, initially the parties' disputes resolved themselves without the participation of other parties in interfering in their disputes. Compared to current conflict resolution methods, this could be the same as negotiation. If the first method does not work, the parties can involve their family or extended family by asking for help from a respected extended family who acts as a neutral arbitrator for one of the parties. This could be similar to mediation with an intermediary commonly called a mediator. If the dispute cannot be resolved peacefully, the dispute is referred to the customary leaders. Perhaps now it is a mediator who has more authority. The customary leader is an official with independent rights to decide matters both in terms of disputes and so on within their jurisdiction (Dewa Nyoman Rai Asmara Putra and I Putu Rasmadi Arsha Putra, 2020).

In the implementation of trade or business agreements, both nationally and internationally, it is known that the parties must agree on a mechanism if a dispute arises in the future, although it is not certain that a dispute will arise. Preventive efforts to eliminate the possibility of such a dispute are in the agreement that is on the side should include a dispute resolution clause. The clause entitled "Dispute Resolution" contains an agreement on a forum that can later resolve disputes between the two parties, either through the courts or arbitration (Cut Memi, 2017). In relation to the above, out-of-court dispute resolution is an alternative choice for the disputing parties. One of the out-of-court dispute resolutions is through an arbitration forum. Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the AAPS Law) states that the arbitration decision is final and has permanent legal force and is binding on the parties.

Literature Review

1. Regulations Relating to Arbitration

Based on the provisions of Article 59 numbers (1) and (4) of the AAPS Law, the final and binding nature of the arbitration award is dependent on the obligation to register the arbitration award with the District Court so that the award can be implemented. Then based on the provisions of Article 70 of the AAPS Law, an arbitration award that is final and binding can

still be filed for cancellation if the arbitration award contains elements that have been regulated, including the following:

- a. Letters or documents submitted in the examination, after the decision is rendered, are recognized as false or declared false;
- b. After the decision is rendered, a document is found that is decisive, which is hidden by the opposing party; or
- c. The decision is made from the results of a trick carried out by one of the parties in the dispute examination.

The provisions of Article 70 of the AAPS Law are not in line with its explanation, because in the explanation of Article 70 of the AAPS Law it is stated that the reasons for cancellation set out in Article 70 of the AAPS Law must be proven by a court decision. The court decision can be used as a basis for the judge's consideration to grant or reject a request for cancellation of the arbitration award. The explanation of Article 70 of the AAPS Law was then revoked based on the Decision of the Constitutional Court No. 15/PUU-XII/2014, which states that the Explanation of Article 70 of the AAPS Law is contrary to the 1945 Constitution and has no binding force. Based on the Constitutional Court's decision, the reasons for the request for cancellation of arbitration do not have to be proven in court.

The final and binding arbitration decision is in fact not yet a final and binding decision, because the final and binding arbitration decision can only be implemented after being registered with the court. In the event that the parties are unwilling to fulfill the implementation of the decision voluntarily, the decision can be implemented based on the order of the Head of the District Court at the request of one of the disputing parties. On the other hand, the arbitration decision can also be requested to be canceled to the District Court (Article 60, Article 61, and Article 70 of the AAPS Law).

Method

A study cannot be said to be research if it does not have a research method (Koto & Faisal 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto & Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

Registration of an arbitration decision to the District Court to obtain binding force and efforts to cancel the arbitration decision indicate a deviation from the final and binding principles stipulated in Article 60 of the AAPS Law and the principle of freedom of contract contained in Article 1338 of the Civil Code. The parties who have agreed to enter into an arbitration agreement and submit the dispute resolution process through arbitration are bound to obey and implement the arbitration decision without having to wait for execution from the court. The opportunity to file an objection through efforts to cancel the decision to the District Court ultimately creates uncertainty in resolving disputes through arbitration. Arbitration is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.

Then in Article 1 number (3) it is explained that what is meant by an arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by

the parties before the dispute arises, or a separate arbitration agreement made by the parties after the dispute arises. The arbitration agreement as a whole does not at all question the implementation of the agreement, but only questions the system with the ruling institution, when a dispute arises between the two parties, any party can resolve what is promised. What is meant by "arbitration clause" in the arbitration agreement is only for the purpose of resolving disputes in the emergence of the agreement stated. Thus, the existence of the main points of the agreement does not mean that it is a unity of the arbitration agreement, but only an attachment to the main agreement, which is referred to as an additional agreement. The implementation of the term "arbitration clause" in the Master Agreement means that the Master Agreement is complied with or terminated. with an arbitration agreement. Based on various sources of law, international rules and guidelines, two methods of arbitration agreements or arbitration clauses can be found, commonly known as compromise deeds, namely agreements and peaceful settlements outside the court that are reached (Hasnan Hasbi, 2019).

In essence, arbitration is a form of private court. The significant core in sorting out the court or arbitration is that if the court is usually adversarial or can be called fighting each other, causing new problems, slow, the costs are also quite expensive, unresponsive and when it has been decided it can cause hostility although not all cases are like that. While arbitration seeks a joint solution, guaranteed confidentiality of data or cases and certainly saves time and costs. In the completion of this arbitration, to make a decision the arbitrator has an important role as a judge.

The mechanism for resolving construction service disputes through arbitration is as follows:

1. Notification stage, The first stage to start arbitration is the submission of written notification by one party in the construction contract (called the Applicant) to the other party (called the Respondent), that the terms of settlement through arbitration have been applied, in this case if the parties agree to ad hoc arbitration. However, if the parties choose institutional arbitration, the arbitration request is sent to the selected institutional institution, for example through BANI, to then be submitted to the other party. The date of receipt of the notification or arbitration request is considered the start of the arbitration stage. The notification letter which is a request to hold the arbitration according to Article 8 paragraphs 1 and 2 of Law Number 30 of 1999;

Arbitrator Selection and Appointment Stage, The arbitrator is a judge chosen by the disputing parties. Based on Article 12 paragraph (1) of Law Number 30 of 1999, those who can be appointed or appointed as arbitrators must meet the following requirements: Capable of carrying out legal actions, At least 35 years old, Not having a blood or marriage relationship up to the second degree with one of the disputing parties and Not having a financial or other interest in the arbitration decision. 3. Dispute Examination and Decision Stage, In the dispute examination, if the parties do not determine or do not choose certain institutional arbitration procedural rules, then the dispute examination by either the arbitrator or the arbitration panel is carried out according to the provisions of Law Number 30 of 1999. In the event that the parties determine their own institutional arbitration institution, whether to use a national or international arbitration institution, then the dispute resolution is based on the procedural rules of the institutional arbitration institution, both national and international, such as BANI, ICC, AAA, LCIA, and UNCITRAL.

Conclusion

Arbitration dispute resolution is a form of private court. The significant core in sorting out the court or arbitration is that if the court is usually adversarial or can be called fighting

each other, causing new problems, slow, the costs are also quite expensive, unresponsive and when it has been decided it can cause hostility although not all cases are like that. While arbitration seeks a joint solution, guaranteed confidentiality of data or cases and certainly saves time and costs. In the settlement of this arbitration, to make a decision the arbitrator has an important role as a judge.

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