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UNCITRAL Model Law on International Commercial Arbitration and the Reform of the Arbitration Evidence Process in Indonesia

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Abstract
Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates the arbitration process in Indonesia, but it does not yet provide an adequate system regarding the evidentiary mechanism. One of its main weaknesses is the absence of authority for either arbitrators or courts to compel third parties to present evidence or give testimony, which may result in arbitral awards that are incomplete and/or do not reflect justice. Therefore, a mechanism is needed to assist in the collection of evidence during the arbitration process. Based on this legal issue, this research aims to offer a normative solution to this weakness. The research method used in this study is legal research, with the approaches employed being the Statute Approach and the Conceptual Approach. The conclusion drawn from this study is that one of the applicable solutions to address the weaknesses in the evidence collection system in arbitration is to adopt Article 27 of the UNCITRAL Model Law on International Commercial Arbitration into the national legal system. This provision allows courts to assist in the collection of evidence within certain limits without interfering with the independence of arbitration. Thus, this adoption is expected to strengthen the legitimacy and effectiveness of arbitration in Indonesia, as well as increase business actors' confidence in this forum as a fair and efficient alternative dispute resolution mechanism.

Introduction

Dispute resolution in the field of civil law is divided into two ways, namely through litigation and non-litigation. Regulations regarding civil procedural law through litigation are regulated in the *Herzien Inlandsch Reglement* (hereinafter referred to as HIR). Law Number 30 of 1999 concerning Arbitration and Alternative conflict settlement (hence referred to as Law No. 30 of 1999) regulates the non-litigation conflict settlement process itself.[1] This mechanism includes expert evaluation, conciliation, arbitration, negotiation, mediation, and consultation. Some of the advantages of non-litigation dispute resolution are that the dispute is confidential; the parties can determine the expert, negotiator, mediator, or arbitrator to be appointed; the parties can determine the choice of law to

[1] Meirina Nurlani, 'Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia' (2021) 3 Jurnal Kepastian Hukum Dan Keadilan 26.

resolve the dispute; the parties can determine the place of implementation; low cost; faster settlement than litigation because the courts are already overloaded in handling cases; and the decision is final and binding on the parties.[2]

Arbitration is defined as a process of settling a civil dispute outside of the general courts on the basis of an arbitration agreement executed in writing by the disputing parties in Law No. 30 of 1999, Article 1 Number 1.[3] Subekti defines arbitration as the resolution of a dispute by a court or judges in accordance with a contract that requires the parties to adhere to or abide by the ruling of the judge they select.[4] Arbitration has some principles, the principle of privacy and confidentiality, the principle of *pacta sunt servanda*, the principle of good faith, the principle of efficiency, the principle of final and binding, the principle of impartiality, and many other principles that exist in arbitration.[5]

The regulation regarding arbitration can also be found in Law No. 8 of 1999 about consumer protection, Law No. 25 of 2007 involving investment, Law No. 28 of 2014 protecting copyright, and others. The difference between Law No. 30 of 1999 and the others is its general nature or *lex generalis*. While the others are more specific or *lex specialis*. This means that arbitration provisions that are *lex specialis* only have coverage in their field. Therefore, Law No. 30 of 1999 becomes the *lex arbitri* or Indonesian arbitration law. The arbitration provisions in Indonesia itself are monistic, meaning that the regulations regarding national and international arbitration are one in Law No. 30 of 1999.[6]

The arbitration system in Indonesia essentially has a sufficiently sound legal basis through Law No. 30 of 1999, but in practice there are still various challenges that affect the effectiveness of fair dispute resolution. One of the main issues is the limited authority of arbitration, particularly in matters of evidence. Unlike litigation in court, arbitration does not have a strong mechanism to compel the presence of third parties or to obtain important documents from them. This becomes a serious problem because it can hinder

[2] Subekti, *Arbitrase Perdagangan* (Bina Cipta 1992) 1.

[3] Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya* (Kencana 2017) 99.

[4] Indah Sari, 'Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan' (2019) 9 Jurnal Ilmiah Hukum Dirgantara 72.

[5] Huala Adolf, *Dasar-Dasar, Prinsip & Filosofi Arbitrase* (Keni Media 2015) 21-30.

[6] ibid.

access to relevant evidence and result in incomplete facts in the arbitration award. Without access to adequate evidence, the arbitration process may lead to decisions that do not fully reflect the truth.

A number of international arbitration laws pertaining to the acceptance and enforcement of foreign arbitral rulings have been ratified by Indonesia. Through Presidential Decree No. 34 of 1981 and Law No. 5 of 1968, respectively, Indonesia has ratified the Washington Convention (Convention for the Settlement of Investment Disputes Between States and Nationals of Other States/ICSID) of 1965 and the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. However, not all international arbitration legal instruments have been adopted by Indonesia's *lex arbitri*, one of which is the UNCITRAL Model Law on International Commercial Arbitration (hereinafter referred to as the UNCITRAL Model Law on ICA), which in fact contains several important provisions that could help improve the weaknesses of the national arbitration system, particularly in the evidentiary aspect. There are several good things in the model law that can be used in the context of renewing national law, especially in the field of arbitration. One thing that can be highlighted is the provisions regarding the evidence process in arbitration.

The UNCITRAL Model Law on ICA essentially prohibits court intervention in the arbitration process and limits judicial involvement in arbitration. However, it provides several exceptions to judicial participation, one of which is in the evidentiary process. It allows courts to summon third parties if those third parties possess evidence necessary for the smooth conduct of arbitration proceedings. Judicial involvement under Law No. 30 of 1999 is indeed broader, so Indonesia does not need to ratify the UNCITRAL Model Law on ICA in its entirety. Nevertheless, the weak evidentiary system discourages the public, especially business actors, from choosing arbitration due to the risk of invalid decisions. Therefore, Indonesia's *lex arbitri* needs to be expanded by referring to the evidentiary system in the UNCITRAL Model Law on ICA.

Based on the explanation above, it can be concluded that the evidentiary system in the arbitration process in Indonesia still has weaknesses. These weaknesses have the potential to hinder the fair and comprehensive resolution of disputes and may reduce

public trust, especially among business actors, in the effectiveness of arbitration as an alternative dispute resolution forum. Therefore, this research aims to offer a normative solution to these weaknesses through a study of the UNCITRAL Model Law on International Commercial Arbitration, particularly the provisions regulating evidence. With this focus, the title of the research is *UNCITRAL Model Law on International Commercial Arbitration and the Reform of the Arbitration Evidence Process in Indonesia*.

Research Method

Legal research was undertaken in connection with academic pursuits. The legal research approach was employed in this study, emphasizing the need to locate legal doctrines, norms, and principles in order to provide answers to the raised legal questions. Therefore, the goal of the legal research technique was to find new legal theories, new arguments, or new notions about topics that were assumed to be established in legal science in order to contribute intellectually to the field's development. The Statute Approach and the Conceptual Approach were the methods employed. The intended statutory regulatory method entails a thorough analysis of statutory regulations, also known as statutes, in the form of legislative products or regulations that are pertinent to the legal questions under consideration.[7] The conceptual approach is an approach that starts from the views and doctrines that develop in legal science.[8]

National Legislative Regulations Regarding Evidence in Arbitration

Parties in trade disputes, especially in trade that is conducted across countries or has international aspects in it, tend to choose arbitration as the institution that resolves the dispute.[9] In general, arbitration has a relatively more efficient nature in the use of time for examining cases, although there are still many opinions that state that the arbitrator's fees and costs are relatively more expensive.[10] The procedure for resolving disputes through

[7] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2013) 137.

[8] ibid 177.

[9] Yohanes Sogar Simamora, Sujayadi, and Yuniarti, 'binding effect of Arbitration Clause to Third Parties: Privity of Contract Doctrine vs Piercing The Corporate Veil' (2018) 33 Yuridika 172.

[10] Thomas J. Stipanowich, 'Arbitration: The New Litigation' (2010) 1 Illinois Law Review 23.

arbitration is basically the same as resolving civil disputes through the District Court.[11] The parties in dispute in the trade sector can resolve disputes through arbitration if there is an agreement or clause in the agreement stating that the parties agree to resolve the dispute through arbitration.[12] Settlement of cases in Court begins with mediation, then, if mediation fails it will be continued with a lawsuit, answer/exception, reply, duplicate, written evidence from the applicant then the respondent, examination of witnesses and/or experts from the applicant then the respondent, conclusions from the applicant and respondent, and decisions, the processes of which are relatively carried out over a long period of time. This is different from the arbitration process regulated in Article 48 paragraph (1) of Law No. 30 of 1999 that every case in arbitration must be resolved within a period of days since the arbitration panel was formed. Furthermore, based on Article 48 paragraph (2), with the agreement of the disputing parties and if necessary, as stated in Article 33, the examination period can be extended more than 180 days. The process of evidence in arbitration trials is not specifically regulated in Law No. 30 of 1999. This can then be found in the Arbitration Regulations & Procedures of the Indonesian National Arbitration Board (BANI) (hereinafter referred to as the Arbitration Regulations & Procedures) which came into effect in 2025. In these regulations and procedures, it is stated through Article 22 which regulates Evidence and Trials consisting of the burden of evidence, summary of evidence, weight of evidence, witnesses and/or experts, costs of witnesses and/or experts, oaths, closing of trials, and reopening of trials.

The parties are obliged to present evidence to prove the claim of the applicant or the response of the respondent. The types and instruments of evidence are regulated in Article 1866 BW and 164 HIR, which consist of: written evidence, evidence with witnesses, allegations, confessions, or oaths.[13] The disputed case in arbitration is a trade or business case as stated in Article 5 of Law No. 30 of 1999, so the evidence that can be presented in an arbitration case is the same as the evidence presented in a civil

[11] Sujayadi dan Yuniarti, 'Pelaksanaan Sita Jaminan Dalam Hukum Acara Arbitrase' (2010) 25 Yuridika 228.

[12] H. Mohammad Saleh, *Perkembangan Hukum Keperdataan Indonesia* (Setara Press 2022) 53.

[13] M. Yahya Harahap, *Hukum Acara Perdata tentang: Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Sinar Grafika 2009) 554.

case in the District Court. Based on the provisions stipulated in Article 22 number 1 of the Arbitration Regulations & Procedures, the parties can present evidence that is considered necessary and can strengthen the position as the applicant or respondent in the arbitration. Furthermore, in Article 22 number 4 letter a of the Arbitration Regulations & Procedures, the Arbitral Tribunal may present witnesses and/or experts deemed necessary and/or based on the request of each party. The Arbitral Tribunal may request the parties to notify the identity of the witness and/or expert to be presented as well as information regarding the testimony or expertise of the witness and/or expert relevant to the dispute in writing. Then, based on Article 22 number 4 letter b of the Arbitration Regulations & Procedures, the Arbitral Tribunal may determine, at its own discretion or at the request of the parties, to determine whether or not the testimony of the witness and/or expert is necessary in the hearing.

The parties' arbitration agreement provides the arbitrator with their authority. As a result, outside of the parties' arbitration agreement, the Arbitration Panel has no jurisdiction over third parties.[14] If either party willingly agrees to be bound by the arbitration, the third party may be subject to the arbitration agreement. This relates to the summoning of witnesses for the trial or other purposes as stated in Article 22 number 4 of the Arbitration Regulations & Procedures. Even when a third party is a crucial witness in the case and provides testimony that can support the prosecution, the Panel of Judges cannot compel a third party who is not bound by the arbitration agreement to testify in court. This can be said to be an obstacle in the arbitration evidence process and which can cause the trial in the arbitration to exceed the time limit specified in Article 48 paragraph (1) of Law 30 of 1999, namely 180 days. In addition, if one party does not present important evidence because it could weaken their position as the applicant or respondent, then the decision to be given by the Arbitration Panel could be detrimental to the opposing party and beneficial to the party who did not present the evidence.

If the arbitration decision given is not based on evidence or incomplete testimony, then the party who feels aggrieved can file for cancellation of the arbitration decision

[14] Sheila Pricilia Surbakti, Hendrik Pondaag, and Kathleen C. Pontoh, 'Suatu Tinjauan Terhadap Kekuatan Eksekutorial Dalam Pelaksanaan Putusan Arbitrase' (2021) 10 Lex Privatum 170.

through the District Court. This is as regulated in Article 70 of Law No. 30 of 1999 as follows:

> *"The parties may submit an application for annulment against an arbitration decision if the decision is suspected of containing the following elements:*
> *a. letters or documents submitted in the examination, after the decision has been rendered, are acknowledged to be false or declared false;*
> *b. after the decision has been rendered, a document of a decisive nature is found, which was hidden by the opposing party; or*
> *c. the decision was rendered as a result of a trick carried out by one of the parties in the examination of the dispute."*

The reason for filing a request for annulment of an arbitration award as regulated in Article 70 of Law No. 30 of 1999, particularly letter b, is a protection mechanism against bad faith in the arbitration process. This provision applies if, after the award is rendered, a decisive document is found that was concealed by the opposing party. Although this provision allows the annulment of an unfair arbitration award, it does not resolve the systemic issue, namely the limited authority of the Arbitral Tribunal to compel the submission of important evidence during the arbitration process. Therefore, even though there is an opportunity to annul an arbitration award based on Article 70, the risk of imbalance in evidence and procedural injustice remains if it is not accompanied by a reform of the evidentiary procedure itself.

A party who feels that the decision rendered by the Arbitration Panel meets one of the elements mentioned in Article 70 of Law No. 30 of 1999 may file a request for annulment of the decision by submitting the request to the Head of the District Court. The Panel of Judges shall then decide whether to approve or deny the request to annul the arbitration ruling, with a maximum of 30 days from the date of submission. If the panel of judges grants the request to have the decision annulled, it will also specify which portions of the ruling are being cancelled. The parties may still file an appeal with the Supreme Court in opposition to the annulment of the arbitration ruling. The Supreme Court will then make its ruling, ideally within 30 days after receiving the request for an appeal.[15]

[15] Mosgan Situmorang, 'Pembatalan Putusan Arbitrase' (2020) 20 Jurnal Penelitian Hukum De Jure 580.

The Arbitration Panel lacks the authority to compel (imperium) any party to carry out the terms of the ruling, as per Law No. 30 of 1999. The parties are not required to provide all relevant evidence in order for the Arbitration Panel to make its decision. Furthermore, third parties who are not bound by the arbitration agreement may not be forced to testify in court by the Arbitration Panel.[16] In relation to arbitration disputes resolved by the Arbitration Panel, the party required to comply with the decision's terms, such as the respondent, may do so voluntarily. However, should the party fail to comply with the terms of the decision right away, the applicant may file a request with the Head of the District Court to compel the respondent to comply with the terms of the decision.[17] This is outlined in Law No. 30 of 1999's Articles 61 and 62, which state that the arbitrator's ruling—for which the execution request would be granted—must be consistent with Articles 4 and 5, as well as not be at odds with morality or public order.[18]

Based on Law No. 30 of 1999, it can be observed that the arbitration system in Indonesia provides protection for the parties against fraud that may occur during the arbitration process, as stipulated in Article 70 regarding the annulment of an award due to forged evidence. Nevertheless, on the other hand, the system itself does not guarantee adequate access to fair and transparent evidence, as during the evidentiary stage, neither the arbitrators nor the courts possess the authority to compel the production of evidence. The system allows for the annulment of an award due to fraudulent evidence, yet it does not provide a robust mechanism to prevent or uncover such fraud from the outset. This potentially undermines the legitimacy of arbitration as a fair and effective forum. Therefore, normative reform is needed to enable collaboration between arbitrators and the judiciary in the evidentiary process, particularly to ensure balanced access to evidence. Without such reform, arbitration risks becoming merely a procedural stage without substantive justice.

[16] Jerina Novita Elpasari, 'Perluasan Keikutsertaan Pengadilan Nasional terhadap Proses Arbitrase di Indonesia: Harmonisasi Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Penyelesaian Sengketa Alternatif dengan UNCITRAL Model Law 1985/2006' (2017) 5 Padjadjaran Law Review 11.

[17] Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya* (Prenada Media Group 2015) 273.

[18] Reza A. Ngantung, 'Eksekusi Putusan Arbitrase Nasional Menurut Undang-Undang Nomor 30 Tahun 1999' (2017) 5 Lex et Societas 62.

The Role of the UNCITRAL Model Law on International Commercial Arbitration in the Indonesian Arbitration Evidence Process

The major legal authority inside the UN system for international trade law is the United Nations Commission on International Trade Law (UNCITRAL).[19] The United Nations General Assembly created UNCITRAL with the goal of advancing the modernization and standardization of international trade law. Creating the UNCITRAL Model Law on International Commercial Arbitration, often known as the UNCITRAL Model Law on ICA, is one of UNCITRAL's initiatives to achieve the harmonization and modernization of international trade law. The Model Law's main goal is to facilitate national arbitration laws' revision and modernization so that they better meet the unique requirements and characteristics of international commercial arbitration.

Model Law itself is a soft law. Soft law is a form of international law that does not directly bind a country (non-legally binding), but it must be used as a guideline to form future law.[20] Soft law is the result of the harmonization of various existing legal systems and reflects general practices and best practices internationally (international common practices and best practices).[21] Therefore, a country is free to determine whether their positive law will adopt the provisions in the model law. Some countries feel that they do not need the UNCITRAL Model Law on ICA because they consider their *lex arbitri* to be relevant to the specific features and needs of international commercial arbitration. Indonesia is one of 33 countries that have not adopted the provisions in the UNCITRAL Model Law on ICA.[22]

The flexible nature of soft law makes it easier for countries to make adjustments to existing obligations when faced with changes in developments and dynamics that occur

[19] United Nations Commission on International Trade Law, 'United Nations Commission on International Trade Law (About UNCITRAL)', (*UNCITRAL Website*, s.a) <https://uncitral.un.org/en/about> accessed 10 May 2023.

[20] Vita Cita Emia Tarigan and Eka NAM Sihombing, 'Kebijakan Pengendalian Pencemaran Di Selat Malaka Yang Bersumber Dari Kecelakaan Kapal' (2019) 19 Jurnal Penelitian Hukum De Jure 484.

[21] IBR Supancana, *Rezim Pengaturan Kontrak Komersial Internasional (Kontribusinya bagi Modernisasi)* (Badan Pembinaan Hukum Nasional Kemenkumham 2016) 32.

[22] United Nations Commission on International Trade Law (n 13).

in the life of the international community.[23] Several model laws produced by UNCITRAL are found in several fields, including:

1. International Commercial Arbitration;
2. International Commercial Mediation;
3. International Sale of Goods (CISG) and Related Transactions;
4. Procurement and Public-Private Partnership;
5. Micro, Small and Medium-sized Enterprises;
6. Electronic Commerce;
7. Insolvency;
8. Security Interest;
9. Online Dispute Resolution;
10. International Payments;
11. International Transport of Goods.

UNCITRAL Model Law on ICA is one of UNCITRAL's good products that can be used by Indonesian arbitrators to resolve disputes submitted to arbitration. The Model Law produced in 1985 and updated until 2016 does not seem to have been harmonized in the arbitration process in Indonesia.[24]

There are parallels between certain clauses in Indonesian national law and arbitration clauses in the UNCITRAL Model Law on ICA. The 1958 New York Convention and the UNCITRAL Model Law on ICA both generally state that any arbitration agreement must be in written if the parties want to bring their dispute to arbitration. These provisions are regulated in Article 7 Paragraphs (3), (4), (5), and (6) which state that:

3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex, or telecopy.
5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange statements of claim and defense in which the existence of an agreement is alleged

[23] Lili Jiang, 'An Evaluation of Soft Law as a Method for Regulating Public Procurement from a Trade Perspective' (DPhil thesis, University of Nottingham 2009) 26.

[24] Herliana, *Harmonization of UNCITRAL Model Law in International Commercial Arbitration as a Legal Protection Towards Tourism Industry* (Atlantis Press now part of Springer Nature, 2022) 2.

by one party and not denied by the other.

6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Related to the previous discussion that there are limitations in arbitration evidence, in the UNCITRAL Model Law on ICA, specifically in Article 27 which states "the arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence." This regulation shows that, in the arbitration evidence process, assistance from the National Court can be requested to take evidence based on the approval of the arbitration panel and the parties. The National Court can carry out the request in accordance with its authority and in accordance with the regulations regarding taking evidence. The authority of the National Court is to be able to force third parties who are not bound by the arbitration agreement and do not want to voluntarily assist the trial by appearing as witnesses or submitting evidence in their possession at the trial.

Basically, the UNCITRAL Model Law on ICA limits court intervention in arbitration except for certain matters that have been specifically stipulated. Article 5 of the UNCITRAL Model Law on ICA states that "in matters governed by this Law, no court shall intervene except where so provided in this Law". This aligns with the principle of *kompetenz-kompetenz*, which grants arbitrators the authority to determine their own jurisdiction, as the parties have already chosen arbitration as their dispute resolution mechanism.[25] It also reflects the principle of arbitral autonomy, which allows the parties to determine the applicable substantive and procedural law, the confidentiality of the arbitration, the seat and language of the proceedings, the selection of arbitrators, and the timeframe for resolving the dispute. Exceptions to court intervention can be seen, among others, in Article 6 of the Model Law on ICA, which limits the court's functions to the appointment of arbitrators (Articles 11(3)–(4)), challenges to arbitrators (Article 13(3)),

[25] Novrieza Rahmi, 'Menuntun Kembali pada Esensi Arbitrase', (*Hukumonline*, 2017) <https://www.hukumonline.com/berita/a/menuntun-kembali-pada-esensi-arbitrase-lt58afcf5929dea/>accessed 31 May 2025.

termination of an arbitrator's mandate (Article 14), determination of arbitral jurisdiction (Article 16(3)), and annulment of the arbitral award (Article 34).

This provision aims to provide protection for the disputing parties in arbitration. Often parties in arbitration take actions that disrupt the course of arbitration, so that coercive power is needed from the court. For example, at the evidence stage, a third party as a witness may refuse to attend the arbitration hearing or one party does not submit evidence in the form of documents. The arbitrator himself does not have coercive power in arbitration hearings because basically there is a voluntary principle in arbitration so that the entire arbitration process is based on the voluntariness of each party. There are exceptions to this that are used in certain conditions as regulated in Article 27 of the UNCITRAL Model Law on ICA.

A case in point is UDP Holdings Pty Ltd v Esposito Holdings Pty Ltd & Ors [2018] VSC 316 (15 June 2018) in Victoria, Australia. The arbitration in this case concerned a dispute arising out of a sale of business. Esposito Holdings Pty Ltd, the seller (the "First Respondent" in this application), had obtained a partial award for the amounts unpaid under the contract of sale, but this was subject to deductions from claims by the purchasers, UDP Holdings Pty Ltd and 5 Star Foods Pty Ltd (the "Applicants" and "Third Respondents" in this application, respectively), and to counterclaims by the Applicants and the Third Respondent. The deductions and counterclaims related to an alleged breach of warranty by the First Respondent. Whether the company had overcharged one of its biggest clients was the main factual question that needed to be answered at the last hearing. Due to the fact that both people had testified concerning purported overcharging at an obligatory hearing before the Supreme Court, it was hoped that their appearance at the arbitration would enable them to be cross-examined regarding that testimony. Murray Jeffrey ("Mr Jeffrey"), an employee of the customer who was alleged to have been overcharged, and Paula Deanne Barry ("Ms Barry"), a former employee of United Dairy Power Pty Ltd, a wholly owned subsidiary of the Third Respondent, was summoned to testify.

The court decided to accept the request of UDP Holdings Pty Ltd in issuing a court summons against Ms Barry and Mr Jeffrey. Australia itself is a common law country, so

in making decisions it prioritizes jurisprudence. The jurisprudence used in the case of Holdings Pty Ltd vs UDP Holdings Pty Ltd is Alinta Sales Pty Ltd v Woodside Energy Ltd [2008] WASC 304 and Aurecon Australasia Pty Ltd v BMD Constructions Pty Ltd (2017) 52 VR 267. However, the legal basis in the form of legislation is also used as a consideration in making decisions. The legal basis used is Article 23 of the International Arbitration Act 1974 which regulates:

Parties may obtain subpoenas

(1) A party to arbitral proceedings commenced in reliance on an arbitration agreement may apply to a court to issue a subpoena under subsection (3).
(2) However, this may only be done with the permission of the arbitral tribunal conducting the arbitral proceedings.
(3) The court may, for the purposes of the arbitral proceedings, issue a subpoena requiring a person to do either or both of the following:
    (a) to attend for examination before the arbitral tribunal;
    (b) to produce to the arbitral tribunal the documents specified in the subpoena.
(4) A person must not be compelled under a subpoena issued under subsection (3) to answer any question or produce any document which that person could not be compelled to answer or produce in a proceeding before that court.
(5) The court must not issue a subpoena under subsection (3) to a person who is not a party to the arbitral proceedings unless the court is satisfied that it is reasonable in all the circumstances to issue it to the person.
(6) Nothing in this section limits Article 27 of the Model Law.

Because the case in Esposito Holdings Pty Ltd vs. UDP Holdings Pty Ltd took place in Victoria, Australia, domestic arbitration was employed, following the guidelines of the Victorian Commercial Arbitration Act of 2011. Sections 27A and 27B of the Victorian Commercial Arbitration Act 2011, which are applicable to domestic arbitration procedures, mirror the terms of Section 23 of the International Arbitration Act 1974.

If an arbitration case such as Esposito Holdings Pty Ltd vs UDP Holdings Pty Ltd occurs in Indonesia, then there is no possibility of using court assistance in collecting evidence. The evidence process will be constrained and has the potential to produce invalid arbitration decisions that are beneficial to the fraudulent party. The consequence of an invalid arbitration decision is an increase in the cancellation of arbitration decisions. If the cancellation of arbitration decisions occurs frequently, public trust in arbitration in Indonesia will decrease. In other words, the public will choose to resolve civil disputes through litigation, thus making the National Court overloaded with cases.

Therefore, the role of the UNCITRAL Model Law on ICA is very much needed to fill the weaknesses in the Indonesian arbitration evidence mechanism. The adoption of Article 27 of the UNCITRAL Model Law into Law No. 30/1999 can provide a feature of assistance from the court to collect evidence, so that a strong evidence system is created in Indonesian arbitration. A strong evidentiary system in arbitration can overcome the problems already explained, such as one party who does not want to show evidence in the form of documents and a third party who can refuse to be a witness in an arbitration trial. In addition, the adoption of Article 27 of the UNCITRAL Model Law into national legislation can increase public trust in the arbitration system, so that the courts do not experience overload with cases.

The adoption of Article 27 of the UNCITRAL Model Law on ICA will not substantively expand court intervention nor threaten the fundamental principle that arbitration is a final and binding dispute resolution forum. On the contrary, judicial assistance in the collection of evidence serves as a facilitative measure that supports the effectiveness of arbitrators in uncovering the truth. This assistance can also be strictly regulated to prevent excessive judicial intervention.

Indonesia does not need to ratify the UNCITRAL Model Law on ICA in its entirety, as Law No. 30 of 1999 already grants considerable authority to courts in supporting the arbitration process. As previously explained, the UNCITRAL Model Law on ICA itself limits court authority by only allowing judicial actions in matters such as the appointment of arbitrators, challenges or termination of arbitrators, jurisdiction over arbitral awards, and annulment of arbitral awards. The Model Law also establishes procedures to be followed for the issuance of awards, their enforcement, and the grounds for challenging such awards. Nevertheless, Indonesia needs to adopt or partially amend by referring to Article 27 of the UNCITRAL Model Law on ICA, because the lack of guaranteed access under Article 70 of Law No. 30 of 1999 makes arbitration forums less attractive to business actors. Thus, strengthening the evidentiary system through selective adoption of Article 27 of the Model Law on ICA will be a concrete solution to the weak coercive power of arbitration in obtaining evidence.

Conclusion

Dispute resolution through arbitration in Indonesia has the advantage of time efficiency due to the relatively faster dispute resolution period compared to court proceedings, as well as its flexibility in determining arbitrators, choice of law, and place of arbitration. However, the evidentiary system in Indonesian arbitration remains weak due to the absence of authority for arbitrators to compel third parties to present evidence or testimony. This may result in incomplete evidence and lead to decisions that do not reflect substantive justice. One solution that can be applied is the adoption of Article 27 of the UNCITRAL Model Law on International Commercial Arbitration into the national legal system. This provision allows courts to assist in the collection of evidence within certain limits without interfering with the independence of arbitration. Thus, this adoption is expected to strengthen the legitimacy and effectiveness of arbitration in Indonesia, as well as increase business actors' confidence in this forum as a fair and efficient alternative dispute resolution mechanism.

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