

## INTERNATIONAL LEGAL APPROACHES TO DISPUTE RESOLUTION IN GLOBAL BUSINESS ACTIVITIES

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### Abstract

International disputes often arise due to inconsistencies in the interpretation or implementation of international agreements. The two main issues raised are: 1) how to arrange the settlement of international business disputes according to international law? and 2) what are the forms of dispute resolution? This study adopts a normative legal method with a legislative approach. In the context of international business disputes, international law distinguishes between legal and political disputes, with solutions offered through courts such as the International Court of Justice (ICJ) or alternative settlement methods (ADR) such as arbitration, mediation, and conciliation. In Indonesia, arbitration, regulated by Law No. 30 of 1999, is a popular choice due to the final and binding nature of the decision, as well as the efficiency and flexibility it offers. Both methods, namely arbitration and mediation, are recognized in Indonesia, with arbitration providing legal certainty and mediation offering a cost-effective collaborative approach. In order to manage the risk of disputes and maintain good business relationships, governments need to strengthen regulations and infrastructure for international business dispute resolution and improve business people's understanding of these two methods, including integrating arbitration clauses in contracts.

**Keywords:** Dispute Resolution, Global Business, International Law

### INTRODUCTION

Disputes are social phenomena that arise due to differences in views, interests, or assessments among two or more parties (Huala Adolf, 2020, p. 3). Dissatisfaction experienced by one party regarding actions or decisions taken by another party often serves as the initial trigger for a dispute. In this context, the aggrieved party tends to express its dissatisfaction directly to the party concerned. This communication process becomes a key element in dispute resolution, where various strategies may be employed, ranging from simple negotiations to formal mediation, depending on the complexity of the issue and the interests involved.

In the legal sphere, disputes are generally associated with breaches of contract, property rights issues, or disagreements between individuals, corporations, or other legal entities. The legal dispute resolution process involves judicial proceedings in which both parties present arguments and evidence to defend their respective interests before a judge or arbitrator (Sudargo Gautama, 1987, p. 38). Final decisions are typically based on legal interpretation and the evidence presented during the proceedings. Therefore, court-based dispute resolution constitutes an important mechanism for upholding justice.

In contract law, disputes arise as a consequence of disagreements between parties bound by a contractual agreement. Such disputes may occur when one party fails to fulfill

the agreed terms and conditions, either partially or entirely. The term breach of contract is used to describe situations in which a party fails to perform its contractual obligations, whether directly or indirectly. In this regard, a thorough understanding of contractual provisions is essential to prevent the emergence of disputes.

Contractual disputes may be triggered by various factors, ranging from a lack of understanding of the contract's contents to differing interpretations of contractual clauses (Hikmahanto Juwana, 2002, p. 32). For example, a dispute may arise when one party believes that the other has failed to meet an agreed deadline or when the goods or services delivered do not conform to the agreed standards. Dispute resolution efforts generally begin with negotiations between the parties aimed at reaching a mutually beneficial agreement. However, if negotiations fail to produce a satisfactory solution, the parties may pursue further legal action by bringing the dispute before a court or an alternative dispute resolution institution, such as arbitration, to obtain a fair and final decision.

Disputes are universal phenomena that may occur to anyone, anywhere, and in various contexts (Ida Bagus Wyasa Putra, 2000, p. 11). Within social dynamics, disputes may take various forms, including conflicts between individuals, between individuals and groups, or between different groups. Disputes may also involve business entities, whether in the form of disagreements between companies, between companies and states, or within international relations involving two or more states. Consequently, disputes may vary significantly in form and context, encompassing both public and private legal matters.

Public disputes generally involve issues related to the interests of society or the state as a whole. These may include political conflicts, human rights violations, or challenges in law enforcement. In contrast, private disputes focus on matters of a personal or commercial nature, such as contractual disagreements, debt repayment issues, and property ownership claims. Both types of disputes are subject to different resolution mechanisms depending on the nature and context of the disagreement.

Disputes are not confined to local or national levels; they may also transcend international boundaries. Differences in interests among states can give rise to disputes in various contexts, including international trade, border disputes, and diplomatic conflicts. Therefore, it is important to recognize that disputes are not limited by geographical boundaries and may constitute complex challenges requiring careful management and comprehensive approaches. Based on the background described above, the research questions of this study are as follows:

1. How is the resolution of international business disputes regulated from the perspective of international law?
2. What forms of international business dispute resolution mechanisms are available?

## **RESEARCH METHOD**

This study employs a normative legal research approach to analyze legal issues (Waluyo, Bambang, 1996, p. 13). This approach involves the examination of legal

documents, including legislation, court decisions, and legal doctrines, to understand and address the legal issues under investigation. The primary focus of the research is on relevant legal norms and principles in order to identify appropriate solutions to the issues discussed (Muhaimin, 2020, p. 52). Various methods are also utilized, including statutory analysis and case studies, to enhance understanding of the subject matter.

Furthermore, this research relies on a variety of legal sources as the basis for analysis, including legislation, legal textbooks, and legal dictionaries. The method applied in this study systematically organizes legal rules and regulations through classification, documentation, and archival procedures (Bachtiar, 2018, p. 30). This approach enables the researcher to examine how legal norms are interpreted and analyzed within a broader legal context.

To support the analysis, the researcher utilizes academic sources, including books, lecture materials, and scholarly opinions in the field of law. These sources provide deeper and more comprehensive insights into the issues under examination and facilitate a better understanding of the nuances and complexities of the legal framework involved.

## **RESULTS AND DISCUSSION**

### **INTERNATIONAL BUSINESS DISPUTE RESOLUTION REGULATIONS FROM THE PERSPECTIVE OF INTERNATIONAL LAW**

International business involves collaboration among companies from different countries engaging in transactions such as the sale and purchase of goods, investments, and cooperation in specific projects (Endang Purwaningsih, 2010, p. 200). Achieving success in the global business environment requires a comprehensive understanding of cultural, legal, and economic differences. Contracts are concluded between the parties to establish mutual expectations, and in the event of a dispute, resolution may be pursued through negotiation, legal proceedings, or arbitration. Furthermore, marketing strategies play a crucial role, as companies must adapt their products to local preferences while addressing various challenges, including language barriers and applicable trade regulations.

Disputes in the context of international business frequently arise from disagreements between individuals or corporations originating from different countries, often triggered by differences in language, culture, legal systems, and business practices (Suyud Margono, 2004, p. 10). Such conflicts commonly occur when one party fails to comply with the terms of an agreed contract, creating an urgent need for dispute resolution to prevent further complications. Ensuring that all parties understand and comply with the applicable laws in each jurisdiction is therefore essential in preventing larger disputes.

In the business world, differences of opinion are common given the volume of interactions and transactions that occur daily. However, emerging conflicts must be addressed promptly to maintain operational continuity. As business activities increase, the likelihood of disputes also rises, particularly due to differences in contractual compliance, communication practices, and cultural norms. Consequently, understanding and respecting contractual obligations are key to preventing conflict. In international

business, factors such as language barriers, cultural differences, and legal disparities may give rise to disputes. Therefore, these differences must be managed effectively through mechanisms such as negotiation, mediation, arbitration, and litigation, with arbitration and mediation increasingly preferred because of their more peaceful and equitable approaches.

When parties are unable to resolve disputes directly, they often resort to litigation as a last resort (Fred B.G. Tumbuan, 1998, p. 26). However, court proceedings are frequently time-consuming and costly. Moreover, the enforcement of court judgments in foreign jurisdictions may present significant challenges. As a result, many parties prefer alternative methods such as arbitration or mediation. In Indonesia, arbitration constitutes a form of out-of-court dispute resolution and is divided into two categories: Institutional Arbitration and Ad Hoc Arbitration. Institutional Arbitration is administered by permanent organizations that possess established procedures and regulations, such as the Indonesian National Arbitration Board (BANI), which provides experienced arbitrators and structured dispute resolution processes. In contrast, Ad Hoc Arbitration offers greater flexibility, allowing parties to determine procedural rules according to their specific needs.

Established in 1977, BANI plays a significant role in non-litigation dispute resolution in Indonesia. It has become a preferred institution for parties seeking efficient and expeditious dispute resolution. Arbitrators appointed by BANI possess expertise across various sectors, enabling them to render fair and appropriate decisions. In addition, BANI provides administrative support to ensure the smooth conduct of arbitration proceedings, allowing parties to resolve disputes privately without undergoing complex court procedures.

From the perspective of international law, disputes may generally be categorized into legal disputes, which can be resolved through international judicial mechanisms, and political disputes, which are more closely associated with state policy considerations (Joni Emirzon, 2000, p. 96). Although the distinction appears clear in theory, it is often difficult to differentiate between the two in practice. Some scholars argue that every dispute contains political elements, while others contend that the classification is relative and dependent upon the perspectives of the parties involved. Wolfgang Friedman maintains that legal disputes concern the application of established and internationally recognized legal rules, whereas political disputes are more closely related to national policy interests. Ultimately, the resolution of international disputes frequently depends upon the consent of the parties to submit their cases to international adjudicative bodies.

Legal disputes involve conflicts concerning vital state interests, such as territorial integrity, and may be resolved through existing principles of international law (R. Subekti, 1995, p. 182). Although resolving such disputes may sometimes require legal reforms to achieve justice, parties generally tend to favor negotiation over judicial settlement. Whether a dispute is classified as legal or political depends largely on the parties involved, and resolution may be pursued through litigation or alternative methods. Arbitration, as a form of alternative dispute resolution, involves a neutral arbitrator rendering a binding decision based on the parties' agreement, whereas

mediation and conciliation seek to facilitate mutually acceptable settlements.

Alternative Dispute Resolution (ADR) mechanisms offer advantages such as speed, lower costs, flexibility, and confidentiality compared to litigation. To reduce court case backlogs, alternatives including arbitration, mediation, and negotiation can be effectively utilized. In arbitration, parties must execute a written agreement consenting to resolve disputes outside the courts, thereby waiving their right to litigate the matter. Although contracts do not always contain arbitration clauses, parties may subsequently agree in writing to submit disputes to arbitration institutions. In Indonesia, arbitration institutions have existed since the Dutch colonial period and are now increasingly incorporated into business contracts to ensure faster and more secure dispute resolution, in accordance with Law No. 30 of 1999.

### **FORMS OF INTERNATIONAL BUSINESS DISPUTE RESOLUTION**

In contractual relationships, parties possess the right to determine both the applicable law and the forum for dispute resolution, which should be expressly stipulated to avoid future conflicts (Mertokusumo, S., 2012, p. 27). The chosen law should primarily govern the rights and obligations of the parties rather than the validity of the contract itself. Party autonomy allows contracting parties to select the legal framework most relevant to their transaction, while dispute resolution clauses, particularly arbitration clauses, play a vital role in both domestic and international contracts. Accordingly, understanding the various dispute resolution methods is essential for legal practitioners and business actors operating globally, as arbitration offers flexibility by permitting the appointment of arbitrators with specialized expertise. International arbitration institutions also provide neutral forums for resolving disputes between parties from different legal systems.

Arbitration is a dispute resolution mechanism involving a neutral third party outside the court system, offering a more private and flexible process than traditional litigation (Sukayadi, 2013, p. 62). Through arbitration, parties agree to be bound by the rules and procedures specified in the arbitration agreement. The advantages of arbitration include procedural flexibility, shorter resolution periods, and the ability to appoint arbitrators with expertise in specific subject matters. In Indonesia, arbitration institutions play a significant role in enforcing agreements between parties engaged in business disputes. However, arbitration can only function effectively when both parties consent to its use. Therefore, contracting parties should carefully review and understand all contractual provisions, including arbitration clauses.

Arbitration clauses are increasingly incorporated into business contracts, providing parties with the option of resolving disputes outside the courts through arbitration institutions (Maqdir Ismail, 2007, p. 74). This mechanism, commonly referred to as Alternative Dispute Resolution (ADR), is voluntary and requires the consent of both parties. The Permanent Court of Arbitration in The Hague facilitates the appointment of arbitrators by states to resolve disputes in accordance with agreed procedures. Within international law, arbitration involves the settlement of disputes pursuant to international agreements, and the resulting awards are legally binding. Parties retain the freedom to select arbitrators and design arbitration procedures according to their

specific requirements, making arbitration an effective mechanism for resolving civil and commercial disputes.

Mediation is another form of ADR that originated in the United States and offers a non-litigious approach to dispute resolution. In Indonesia, similar practices are commonly associated with deliberation and consensus-building mechanisms and are frequently utilized within judicial settings. Mediation is voluntary and collaborative in nature, involving a neutral mediator who facilitates communication between disputing parties and assists them in reaching a mutually satisfactory agreement. The process emphasizes confidentiality and provides a more flexible and cost-effective alternative to formal litigation.

In the context of international dispute settlement, peaceful approaches such as dialogue and international adjudication are preferred in order to avoid violence and the escalation of conflict. Such approaches encourage sustainable solutions and foster an environment conducive to dispute resolution without the use of force. By emphasizing cooperation and mutual understanding, mediation and arbitration provide effective means of resolving conflicts in a constructive manner that benefits all parties involved.

Disputes may also be resolved through several non-judicial methods, including negotiation, mediation, conciliation, and fact-finding. Negotiation involves direct communication between the parties with the objective of reaching an agreement without third-party intervention. Mediation, by contrast, involves a mediator who assists the parties in achieving a mutually beneficial settlement. Various mediation models exist, each characterized by different approaches and mediator roles, including settlement-oriented mediation, which focuses on outcomes, and facilitative mediation, which emphasizes communication processes. Understanding these models is essential for both students and practitioners seeking to manage disputes effectively.

Within mediation practice, transformative mediation focuses on improving interpersonal relationships as a means of resolving conflict, whereas evaluative mediation emphasizes legal rights and seeks settlements based on legal analysis. Nevertheless, mediation is not suitable for all disputes and requires certain conditions to function effectively, including a balance of bargaining power and a relatively low level of hostility between the parties. Through mediation, a neutral third party facilitates communication and collaboration in order to identify solutions beneficial to all participants.

The mediation process consists of several stages governed by different procedural models. The mediator plays a crucial role in facilitating negotiations between disputing parties by proposing solutions and fostering a constructive atmosphere. Mediators assist parties in clarifying their interests, establishing negotiation agendas, facilitating problem-solving efforts, and guiding decision-making processes toward mutually acceptable outcomes. Through these efforts, mediators seek to minimize differences, encourage cooperation, and ensure active participation by all parties in achieving a resolution.

## **CONCLUSION AND RECOMMENDATIONS**

Based on the findings of this study, it can be concluded that international law distinguishes between legal disputes and political disputes in the resolution of international business conflicts. Legal disputes are generally submitted to international judicial bodies such as the International Court of Justice (ICJ), although states often choose not to pursue this avenue for various reasons. Parties may consent to the jurisdiction of a court through treaties or contractual clauses, or alternatively opt for Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and conciliation to achieve greater flexibility and efficiency. Arbitration, regulated in Indonesia under Law No. 30 of 1999, remains a preferred option because arbitral awards are final and binding, enabling faster dispute resolution. Furthermore, arbitration provides flexibility regarding the selection of applicable law and dispute resolution forums. Mediation, meanwhile, offers a cost-effective and collaborative approach emphasizing confidentiality and conflict reduction. The success of mediation depends largely on the active participation of the parties involved and may serve as a peaceful, efficient, and equitable alternative for resolving disputes while preserving relationships and promoting sustainable solutions.

It is recommended that the government strengthen regulations and institutional infrastructure for the resolution of international business disputes in accordance with global standards. Such efforts should include specialized training for arbitrators and mediators, as well as educational programs for business professionals concerning the advantages and procedures of arbitration and mediation. It is also important to update and effectively enforce legal frameworks to ensure efficient non-litigation dispute resolution and international recognition of resulting decisions, thereby creating a secure and attractive business environment for foreign investors. By studying and incorporating arbitration and mediation mechanisms into business contracts, parties can better manage international disputes, minimize risks, and benefit from the speed, reliability, and confidentiality offered by these methods. Business professionals are encouraged to proactively include clear arbitration clauses and mediation procedures in their contracts in order to enhance legal certainty, improve efficiency, maintain positive relationships with international partners, and avoid the time and expense associated with court litigation. Through the implementation of these mechanisms, the business community can effectively mitigate uncertainties and risks arising from global commercial disputes.

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