
The Role of Arbitrators in Settlement of Land Acquisition Cases according to Law Number 30 of 1999*

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[10.15408/jlr.v3i4.24981](https://doi.org/10.15408/jlr.v3i4.24981)

Abstract

Resolution of conflicts through civil channels is particularly stated in Law Number 30 of 1999 concerning Arbitration, which governs the arbitration process. According to the findings of the investigation, the matter was decided by the Amuntai District Court on July 14, 2014, by the issuance of decision letter No. 08/PDT.G/2011. The research method that was employed was a normative research method that took a legislative approach to the problem. Document studies and interviews are utilized to gather information, which is then processed. While qualitative analysis is the method of data analysis employed here. According to the findings of the study, it can be inferred that the conflict has not been resolved, but is still in the midst of being resolved.

Keywords: Arbitration; Arbitrator's Role; Dispute.

* Received: 20 May 2021, Revision: 06 June 2021, Publish: 15 July 2021.

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A. INTRODUCTION

Due to disputes over ownership or overlapping of land, PT. Adaro Indonesia and its partners' acquisitions of land often cause injury to the landowner or vice versa. As a result of landowners disrupting operations, the company suffers losses like as equipment failures, layoffs, and a reduction in the number of workers employed. There is no point in bothering with this because the company will report it and be subject to Article 162 of the Mining Law, which is about obstructing and obstructing the activities of a valid mining business permit holder if the community interferes with the company's operations.

Assuming the land acquisition has been completed, there is a person who claims to be the owner, and he or she has proof of the legitimacy of the file, such as a seal or certificate, to back up his or her claim. It is not uncommon for one side to become unsatisfied with an outcome reached by a jury and turn to an alternate method of reaching a verdict. When both parties agree to an arbitrator, their final decision cannot be challenged. This is known as arbitration.³

Under the preceding background in mind and observations made at PT. Adaro Indonesia, the author will discuss research with the title "The Role of Arbitrators in Completing Land Acquisition Studies with Zainie Apin pursuant to Law No. 30 of 1999."

Allah said in the Qur'an: "And if two groups of believers are at odds, then reconcile them. If one of them commits an injustice against the other (group), they must combat (the group) that committed the wrongdoing in order to bring it back to Allah's commandment. If the group has returned (as per Allah's instruction), then reconcile the two parties with justice and carry out justice. Indeed, Allah adores people who do the right thing." (Verse 9 of Surah Al-Hujurat 49). "Truly, believers are brothers; therefore, reconcile your two brothers (who are at odds) and fear Allah in order to receive mercy." (Surat al-Hujurat 49:10;

From the problems above, the researcher wants to focus the discussion on the dispute between PT Adaro with two questions, namely; How is the arbitration process in resolving land acquisition disputes for PT. Adaro Indonesia with Zaini Apin? What is the role of arbitrators in resolving land acquisition disputes for PT. Adaro Indonesia and Zaini Apin according to Law No. 30/1999?

³ Juwana, Hikmahanto. (2002). Pembatalan Putusan Arbitrase Internasional oleh Pengadilan Nasional, Jurnal Hukum Bisnis, Vol. 21, Jakarta.

B. METHODS

Dogmatic or theoretical law are other terms for the same type of inquiry that is employed in this case. That's because it doesn't look at how the law is being implemented. The ruling of the Amuntai District Court Number 50/PDT/2010 was examined in this study. "N.O." and PT ADARO's exception were refused on February 2, 2011, and the Banjarmasin High Court's ruling number 50/PDT/2011/PT-BJM was issued. Defendant's exceptions are addressed in a number of library resources and pieces of recent legislation. According to the rulings of the Amuntai District Court and the Banjarmasin High Court, this is the case. A descriptive type of investigation was used in this study; i.e. research that describes the legal conditions that are in place and time, as well as existing juridical phenomena or certain events that take place within the community, in order to get an accurate picture of the community's legal landscape. The findings of this investigation are expected to provide light on the reasoning behind the decisions made by the District Court and the High Court in the area of criminal justice.

C. RESULTS AND DISCUSSION

1. Data Exposure

Exposition of data On the basis of a law enacted in 1999, An arbitration agreement, signed by both parties, is a means by which a civil dispute can be settled outside of court. Frank Elkouri and Edna Elkouri, in their book *How Arbitration Works* Washington D.C., 1974, cited Sidik Suraputra's essay entitled *Several problems of obstacles to international arbitration* published by the Center for Law and Economics Studies at the Faculty of Law UI, 1977, citing the limitations (definitions) given in their book. Arbitration can be summed up as follows. When two parties agree to arbitrate a dispute, they agree that the arbitrator's judgment, based solely on the merits of the case and agreed to accept as final and binding, will be final and binding.⁴

Comparison of Arbitration Awards in the United States with those in other countries Arbitral awards in Indonesia are implemented in accordance with the type of award, namely whether it is a national or international arbitration award. The line between domestic and international arbitral awards is hazy under Law No. 30/1999. When it comes to international arbitration,

⁴ Sidik Suraputra, 1977. *Several problems of obstacles to international arbitration* published by the Center for Law and Economics Studies at the Faculty of Law UI

there is a variance in the meaning of international arbitration as defined in article 1 number (9) of Law 30 of 1999 below. Law No. 30 of 1999 (Article 1 point (9)). There are two ways to classify an international arbitration award: a decision made by an arbitrator outside Indonesia's jurisdiction and one made by an arbitrator who is regarded as an arbitrator outside Indonesia's jurisdiction, according to Indonesia's laws.

Article I paragraph (1), of the New York Convention of 1958 defines international arbitration in the following manner: Disputes between individuals, whether physical or legal, can give rise to arbitral awards that must be recognized and enforced in jurisdictions other than the one in which registration and execution of the award are sought. If an arbitral award isn't recognized or enforced in the state where it was issued, the same rules apply.

2. Research Findings

Resulting results Arbitration can only be used to settle commercial disputes, which are those that fall under the exclusive jurisdiction of the disputing parties under applicable laws and regulations. According to statutory restrictions, reconciliation is not possible in conflicts that cannot be settled by arbitration. As stated in Article 4 of Law no. 30/1999, disputes between parties bound by an arbitration agreement cannot be settled by the District Court, and the award rendered in arbitration proceedings is final and binding, meaning that the decision cannot be challenged or reversed and remains in effect indefinitely.

Principles that must be considered in conducting Arbitration are:⁵

1. Dispute resolution is carried out outside the court.
2. The desire to resolve disputes outside the court must be based on a written agreement made by the disputing parties.
3. Disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights which according to laws and regulations are fully controlled by the parties concerned..
4. The parties appoint arbitrators/referees other than judicial officials such as judges, prosecutors, clerks who cannot be appointed as arbitrators.

⁵ Margono, Suyud. Arbitrase Proses Pelembagaan dan Aspek Hukum, Ghalia Indonesia

5. Dispute examination is carried out in private. Disputing parties have the same right to express their respective opinions.
6. Settlement of disputes through arbitration can be carried out using national or international arbitration institutions.
7. The arbitrator/arbitral tribunal makes decisions based on legal provisions or based on justice and propriety.
8. The award is pronounced within 30 days after the examination is closed. The arbitration award is final and binding, meaning it is final and has permanent and binding legal force..
9. The arbitration award is submitted and registered by the arbitrator to the clerk of the District Court, and in the event that the parties do not implement the arbitration award voluntarily, the award is executed based on an order from the Head of the District Court, at the request of one of the disputing parties. The competent authority to handle the issue of recognition and implementation of the International Arbitration Award in the Central Jakarta District Court.

According to the findings of the study on Afie Zhahir alias Masri's customary land conflicts in South Kalimantan, the following recommendations are made: Whereas in relation to the ownership dispute, mediation by the local police is necessary to ascertain who pays for the land acquisition, while APIE DHAHIR as the party responsible for the land covering an area of 445 40 Ha has never received compensation for land acquisition; It is necessary to test PT ADARO INDONESIA's ownership in the Administrative Court as well as civil lawsuits involving major to incraht cases;

3. Discussion of Ad Hoc Arbitration (Volunteer Arbitration)

Arbitration was established with the express purpose of resolving or deciding specific disputes. While institutional arbitration is a permanent institution or arbitration body, such as the BANI (Indonesian National Arbitration Board), international arbitration institutions such as the International Center for the Settlement of Investment Disputes are not permanent (ICSID).⁶

BANI is an independent institution that provides various services related to arbitration, mediation, and other forms of out-of-court dispute resolution.

⁶ Margono, Suyud. Arbitrase Proses Pelembagaan dan Aspek Hukum, Ghalia Indonesia

BANI was founded in 1977 on the initiative of three prominent legal experts, namely the late Soebekti and Haryono Tjitrosoebono and Priyatna Abdurrasyid, and is managed and supervised by a Board of Directors and an Advisory Board consisting of community and business sector figures. BANI is domiciled in Jakarta with representatives in several major cities in Indonesia including Surabaya, Bandung, Pontianak, Denpasar, Palembang, Medan and Batam.

In providing the necessary institutional support to act autonomously and independently in law enforcement and justice, BANI has developed its own rules and procedures, including the time limit within which the Arbitral Tribunal must render a decision. This rule is used in domestic and international arbitrations conducted in Indonesia. Currently, BANI has more than 100 arbitrators with various professional backgrounds, 30% of whom are foreigners.⁷

Since the adoption of Law No. 30 of 1999 on Arbitration and Alternative General Dispute Resolution in 1999, interest in resolving conflicts through arbitration has surged in Indonesia (UU Arbitration). This development is consistent with globalization's trend toward non-judicial dispute resolution, which has become the preferred method of resolving corporate disagreements. Along with being quick, effective, and comprehensive, arbitration adheres to the principle of a win-win solution and is not lengthy due to the absence of an appeals and cassation institution. Arbitration costs are also more scalable due to the speed of the procedure. Another advantage of arbitration is that decisions are made instantly (final) and conclusively (binding), in addition to being confidential, as the trial and arbitration proceedings are not published. Foreign arbitration judgments involving foreign firms may be implemented in Indonesia based on the principle of reciprocity. Similarly, Indonesian arbitral awards involving overseas corporations will be enforceable in other jurisdictions.

The objectives of establishing BANI are as follows:

First; in Indonesian law enforcement, arbitration and other forms of alternative dispute resolution can be used to organize disputes or disagreements that arise in a wide range of industries and trades such as: corporations; insurance; financial institutions; manufacturing; intellectual

⁷ Yunus, N.R.; Anggraeni, RR Dewi.; Rezki, Annissa. "The Application of Legal Policy Theory and its relationship with Rechtsidee Theory to realize Welfare State," 'Adalah, Volume 3, No. 1 (2019)

property rights; licensing; franchising; construction; shipping and maritime; the environment; remote monitoring;

Second; Provide services in accordance with the BANI Procedure Rules or other procedural rules agreed upon by the interested parties for the implementation of dispute resolution through arbitration or other alternative forms of dispute resolution, such as negotiation, mediation, conciliation, and the provision of binding opinions.

Third; Act autonomously and independently in law enforcement and justice.

Forth; Organizing studies and research as well as training/educational programs regarding arbitration and alternative dispute resolution.

As stated in Article 70 of the Arbitration Law, the parties can apply for annulment if the arbitration award is suspected to contain elements such as: (Article 70 of Law No. 30 of 1999)

- Letters or documents submitted during the examination after the decision is rendered are admitted to be fake and/or declared to be false;
- Decisions are made based on evidence that was withheld by one of the parties throughout the investigation of the dispute, as well as the repercussions of that deceit.
- It is required to submit a written request for cancellation within 30 days, based on the terms of the foreign (international) arbitration award, which, if granted by the court, will result in the head of district court making a decision on whether to cancel in whole or in part of the arbitral award within 30 days.

It is stated in Article 72 paragraph (4) of the Arbitration Law that an appeal against an annulment decision can be made with the district court and will be heard by the Supreme Court, which will determine in the first and final instance, in order to provide legal clarity to the opposing party.⁸ Due to the fact that the Arbitration Law does not contain a provision regarding the time limit for filing an appeal and a memorandum of appeal, this must be determined in accordance with the provisions of the applicable procedural law, which states that an appellant must submit a memorandum of appeal within 14 days of the

⁸ Suyud Margono, *Arbitrase Proses Pelembagaan dan Aspek Hukum*, Ghalia Indonesia, hlm. 137.

appeal being recorded in the Court of Appeal. a book for keeping track of things.

It must be decided since the application for an appeal is received at the latest thirty days after the decision is made. Only Indonesian courts have the authority to annul international arbitral awards, as stated in Article 70, Article 71, and Article 72 of the Arbitration Law, which only applies to arbitral awards made in Indonesia.

This can be construed as meaning that the Indonesian courts will not nullify an international arbitral judgement on the basis of the annulment clauses in the arbitration agreement. For example, the use of the term international arbitral award in articles 65 to 69 of the Arbitration Law distinguishes it from the term arbitration award, which is used in Article 70 of the Arbitration Law and is defined as follows: The District Court cannot, therefore, annul an international arbitral award, whereas the District Court can only nullify a domestic arbitration judgment if the award meets the limitations set forth in Article 70 of the Arbitration Law.

The panel of judges at the Central Jakarta District Court is of the opinion that in principle only Article VI jo. V(1)(e)The 1958 New York Convention only refers to one competent authority. There is only one court that has the authority to overturn international arbitral awards, namely the court where the arbitral award was made.⁹

Historically, Indonesian Land Law (Agrarian) has seen significant political development since the enactment of UUPA No. 5 of 1960 on September 24, 1960. Land Law Politics (Agrarian) is a government policy in the land sector that has the ability to influence the direction of the development of legally binding land law in a given area. With the establishment of the UUPA as the primary provider, the content contained in the UUPA still requires further development in the regulations governing its execution, but it must not be in contradiction with the UUPA's primary provisions as a legal framework.

According to the provisions of the UUPA Number 5 of 1960, which ensures legal uniformity for every citizen with regard to land rights, the formulation of the articles in the formation of the UUPA prioritizes the interests of the people with regard to their welfare and development. The legislation and regulatory frameworks, on the other hand, are political creations that have

⁹ Hikmahanto Juwana, Pembatalan Putusan Arbitrase Internasional oleh Pengadilan Nasional, Jurnal Hukum Bisnis, Vol. 21, Jakarta, 2002, hlm. 71.

violated the rights of the people and are incompatible with the founding principles of the country.

The UUPA's rationale and national agrarian political foundation is based on Article 33 of the 1945 Constitution, which states that the state does not need to act as the owner of national wealth and natural resources, but rather as the authority to lead and regulate national wealth and natural resources. As a result, it is possible to conclude that state authorities should be granted the authority to control ownership and determine its use, in order for all land within the state's territory to be used for the greatest possible benefit of the people in the state.

Law is a political product, but the evolution of land law is a political product as well. Politics has a long history throughout every period and decade of administration, beginning with the colonial era and continuing until the age of the Republic of Indonesia's independence in 1945. As a result, both the Old Order and the New Order, as well as the Reformation Order, have left behind a long history of land law politics in the records, dating back at least to the 16th century when explorers first arrived in a land where land was the most important factor supporting people's lives and welfare, but not in the traditional sense of land's function. Not only from an economic standpoint, but from a much broader perspective, including social, political, cultural, and magical-religious values, amongst other considerations. When examining the existence of land, even when there is a land dispute, it is important to take a more complete approach in order to establish a settlement pattern that is more equitable for all parties. The presence of expansionists in Indonesia has had an indirect impact on the structure and order of land ownership in the country's social structure.

A characteristic of this period is the transformation of land from its original social function to one that is more economic in nature. This transformation is solely due to the fact that expansionists have made forced or violent attempts to control customary community lands through the kings and sultans of Java. In order to facilitate the process of control over land, one method is through a process of cooperation with local rulers (kings and sultans) by means of suppression and coercion with Dutch politics "Devide et impera," which continues even though there is already a Dutch regulation on land management and use, namely Agrarische Wet and payments "Blasding," but by the rulers of the old order regime has succeeded in carrying out and fighting for independence of the former Dutch colonies.

Different issues that arise in the agrarian sector provide severe challenges to the nation's development process. The following are some examples. The agriculture sector is experiencing difficulties as a result of the direction of political policies that are not in the best interests of the greater community. The accomplishment of social justice and community welfare, which has been the goal of improvement efforts throughout the course of national development, serves as an estuary.

Legislation and government regulations related to land issues were passed, such as the LoGA, PP, and KBPN Decrees, but since conflicts over land issues have escalated since the Old Order regime until the reform order regime in which UUPA No. 5 of 1960 concerning Basic Regulations on Agrarian Principles was never revised, it is still being seen that there are still many indigent people in Indonesia. Likewise, the writing of this study discusses the problem of conflict over customary land on behalf of M. ZAINI APIN and PT ADARO INDONESIA in the area of South Kalimantan with an area of 455,443 Ha.

Data

According to the data, there is a photocopy of a customary letter issued by Buntu Karau called SARDAN on August 12, 1982, confirming APIE BIN ZHAHIR's ownership of customary land inherited from his parents and utilized for cattle raising. Thus, on April 20, 2011, the head of Buntu Karau village (M SHALEH FADLI) issued a letter 17/BK/IV/2011 confirming that the location of 400 to 500 hectares belonged to APHIE DJAHER/H.M.ZAINI.

Data regarding the special statement that the land owned by H. APHIE DJAHER covering an area of 500 hectares according to the customary letter of existence was cultivated by PT ADARO INDONESIA:

- The land certificate issued on May 23, 2016 by the head of Buntu Karau Village (HILMAN) claimed that ZAINI APIN possessed the 330 40 Ha of property (son of H. APHIE DJAHER). On May 23, 2016, H. M. ZAINI APIN was awarded a Statement Letter of Physical Control over Sporadic Land Areas Totaling 445.40 Ha.
- There is a GPS area map which is a plot of the area of customary land belonging to H. APHIE DJAHER. From 2003 to 2008 the land covering an area of 445 40 Ha was controlled by PT ADARO INDONESIA and managed as a coal mine where the PT has released compensation for residents (non-owners).

- A civil lawsuit was filed under the number 08/PDT/2010/PN on February 28, 2011, with the verdict Exception PT ADARO INDONESIA rejected the plaintiff's lawsuit for not having been received (NO), which was confirmed by the Banjarmasin High Court judgment.
- Has made a land grab report to Komnas Ham on November 5, 2012. There is a power of attorney for land management from H. ZAINI APIN to MUKHLISIN.

E. CONCLUSION

Procedurally, the conflict resolution process involves filing a dispute resolution application, which is then reviewed by management to ensure that it complies with civil requirements. The opposing party is notified of the request, and the parties then select an arbitrator. Patents, Trademarks, Geographical Indications, Copyrights, Industrial Designs, Integrated Circuit Layout Designs, Trade Secrets, and Plant Varieties are just a few of the sectors that BAM HKI can handle. The arbitral award is final and has perpetual legal force and binding effect on the parties; by final, we mean that the arbitral ruling cannot be appealed, appealed, or reviewed.

In the case of award implementation, it must occur within a grace period of 30 days from the date of the decision, during which the arbitrator or his proxy submits and registers the original sheet or an authentic copy of the arbitration award with the clerk of the district court, and the clerk is given a note that serves as a registration deed. As specified in Article 59(1) and (2) of Law No. 30 of 1999.

The arbitration award meets the following requirements: the parties have agreed that the dispute between them will be addressed by arbitration; the parties have agreed that the dispute between them will be resolved by arbitration. Arbitration is approved only for disputes in the trade sector and regarding rights which, according to laws and regulations, can be resolved through arbitration. Other types of disputes that can be resolved through arbitration are those that do not conflict with decency and public order. Arbitration is approved only for disputes in the trade sector and regarding rights which, according to laws and regulations, can be resolved through arbitration are those that do not conflict with decency and public order. Implementation of the award must be completed within 30 days of the date of the award, in which case the original sheet or a certified copy of the authenticity of the arbitration award must be submitted and registered by the arbitrator or his proxy with the clerk of the district court, and the clerk must be given a note

that serves as a registration deed by the arbitrator or his proxy Article 59, paragraphs (1) and (2), of Law No. 30 of 1999 (the Constitution). Once the decision has been reached, the arbitrator or his proxies must send it, along with the original sheet of appointment as an arbitrator or an authentic copy of it, to the district court's clerk for filing. In the event that the arbitrator or his proxies fail to submit the two documents required by Law No. 30 of 1999, the arbitration agreement will be unable to be enforced.

Suggestion

As a result of the increasing number of prolonged land disputes and the widespread use of justice institutions, there is an increasing need for legal mechanisms that are effective, efficient, and non-menacing. As a result of this, there is an increasing need for legal mechanisms that are effective, efficient, and non-menacing.

1. Arbitration, in this case, needs to be given more authority in terms of resolving civil disputes.
2. Arbitration must be able to carry out procedures properly in accordance with Law No. 30 of 1999 concerning arbitration and alternative dispute resolution so that the settlement will not take long.
3. If you want to finish the case, it must be submitted to the Supreme Court through a Judicial Review (PK).
4. There must be an official of an authorized institution who dares to decide this case objectively.
5. There are donors who are willing to pay for closing the mine's operations and increasing the status of the land from seal to certificate. Officials of the authorized institutions and related agencies or the authorities must be neutral so that they do not appear to be defending one of the parties.
6. For the sake of solving this case both parties must sit down together to resolve this case peacefully.

Understanding foreign shareholders so that they understand how to solve problems in Indonesia where every problem resolution is not only through the courts but can be resolved through family mediation.

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