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DOI: 10.46924/jihk.v6i2.233



Comparing Litigation and Arbitration Approaches to Resolving Export-Import Business Disputes in Indonesia

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How to cite

Arnold, Arnold. 2025. "Comparing Litigation and Arbitration Approaches to Resolving Export-Import Business Disputes in Indonesia". *Jurnal Ilmu Hukum Kyadiren* 6 (2), 116-126. <https://doi.org/10.46924/jihk.v6i2.233>

Original Article

Abstract

Export-import business disputes pose significant challenges in the global trade landscape. This research examines the critical factors influencing dispute resolution methods, specifically comparing litigation and arbitration in international trade contexts. Through a normative legal research methodology with a comparative approach, the study analyzes the advantages and limitations of each method. Key considerations include dispute complexity, monetary value, confidentiality requirements, party dynamics, and potential impacts on business relationships. The findings reveal that arbitration often provides more flexible, efficient, and relationship-preserving resolution compared to traditional litigation, though the optimal approach depends on specific case circumstances. The research provides strategic insights for businesses navigating international trade conflicts, emphasizing the importance of nuanced dispute resolution strategies.

Keywords: *Trade, Dispute Resolution, Arbitration, Litigation*

Abstrak

Sengketa bisnis ekspor-impor menghadirkan tantangan signifikan dalam dinamika perdagangan global. Penelitian ini mengeksplorasi faktor-faktor krusial yang memengaruhi metode penyelesaian sengketa, khususnya dengan membandingkan litigasi dan arbitrase dalam konteks perdagangan internasional. Melalui metodologi penelitian hukum normatif dengan pendekatan komparatif, studi ini menganalisis keunggulan dan keterbatasan masing-masing metode. Pertimbangan utama mencakup kompleksitas sengketa, nilai moneter, kebutuhan kerahasiaan, dinamika pihak yang terlibat, serta potensi dampaknya terhadap hubungan bisnis. Temuan mengungkapkan bahwa arbitrase sering kali menawarkan penyelesaian yang lebih fleksibel, efisien, dan menjaga hubungan dibandingkan dengan litigasi tradisional, meskipun pendekatan optimal bergantung pada karakteristik kasus tertentu. Penelitian ini memberikan penjelasan strategis bagi bisnis yang menghadapi konflik perdagangan internasional, dengan menekankan pentingnya strategi penyelesaian sengketa secara terukur.

Kata kunci: *Perdagangan, Penyelesaian Sengketa, Arbitrase, Litigasi*

1. INTRODUCTION

In today's era of globalization, international trade, particularly exports and imports, has expanded rapidly, becoming a cornerstone of the global economy. This activity involves numerous stakeholders with diverse interests, including producers, exporters, importers, distributors, and consumers. However, the complexity of global supply chains, along with cultural and regulatory differences among countries, often leads to export-import business disputes.¹ The increasing volume of international trade and the intricacies of global supply chains present both opportunities and challenges. On the one hand, globalization creates broader business opportunities and stimulates economic growth. On the other hand, the complexity of global supply chains and varying regulations and cultural norms across countries can give rise to disputes in the export-import sector.

Export-import business disputes can stem from various issues, such as breaches of contract, substandard product quality, delayed deliveries, and violations of intellectual property rights.² These disputes can have wide-ranging consequences, affecting not only the parties directly involved but also the global economy. Prolonged disputes can disrupt normal business operations, tarnish corporate reputations, and result in significant financial losses.³

In Indonesia, export-import business disputes frequently arise. These conflicts may include disagreements, conflicts of interest, or fears of financial harm, all of which can disrupt business activities and lead to economic losses. Resolving such disputes in Indonesia can be approached in two primary ways: litigation and arbitration. The litigation approach involves resolving disputes through the court system. In this method, disputing parties file a lawsuit in the district court, and the case is ultimately decided by a judge. However, litigation has notable drawbacks, including lengthy proceedings, high costs, and potential subjectivity in judicial decisions.

Conversely, arbitration is a non-litigation method of dispute resolution. In this approach, the parties agree to settle their differences through arbitration, appointing a qualified arbitrator to make a binding decision.⁴ Arbitration offers several advantages, including faster resolution, lower costs, confidentiality, and greater influence over the arbitrator's decision.

¹ Heri Mudjiyono and Hudi Yusuf, "Analisis Terhadap Perspektif Hukum Dagang Dalam Menghadapi Tantangan Globalisasi Ekonomi," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024): 1014–21, <https://jicnusantara.com/index.php/jicn/article/view/127>.

² Trias Palupi Kurnianingrum et al., *Pelindungan Kepentingan Nasional Dalam Perdagangan Internasional* (Jakarta Selatan: Publica Indonesia Utama, 2021).

³ Muhammad Reza Syariffudin Zaki, *Pengantar Ilmu Hukum Dan Aspek Hukum Dalam Ekonomi* (Jakarta: Prenada Media Group, 2022), <https://prenadamedia.com/product/pengantar-ilmu-hukum-dan-aspek-hukum-dalam-ekonomi/>.

⁴ Re hulina Sitepu, "Pengaturan Arbitrase Sebagai Penyelesaian Sengketa Alternative Secara Online," *Jurnal Privat Law* 11, no. 1 (2023): 117–29, <https://doi.org/10.20961/privat.v11i1.72888>.

In Indonesia's export-import business context, arbitration can serve as an effective alternative for resolving disputes. Achieving efficient and effective resolution of export-import business disputes is essential. The choice between litigation and arbitration depends on factors such as the complexity and value of the dispute, the geographical location of the parties, and their preferences. Each approach has its unique advantages and limitations, and selecting the most appropriate method requires careful consideration of these factors.

Based on the background of the problem, this study aims to analyze the factors that should be considered when selecting the most appropriate approach for resolving export-import business disputes and to evaluate the implications of using litigation and arbitration methods on the growth of international trade.

2. RESEARCH METHODOLOGY

This study employs a normative legal research methodology with a comparative approach to examine the dispute resolution process through litigation and arbitration. The legal research framework integrates qualitative methods, a normative legal approach, and comparative analysis to analyze the resolution of export-import disputes through these two approaches. This combination is particularly relevant for evaluating the effectiveness of litigation and arbitration in addressing international trade disputes. Qualitative methods are utilized to gain in-depth insights into the legal frameworks and practices associated with export-import disputes. This involves analyzing case studies, legal precedents, and expert opinions on litigation and arbitration. The qualitative approach provides a comprehensive understanding of the legal issues, strategies employed by parties, and outcomes achieved through these methods.

The normative legal approach focuses on evaluating the legal principles and rules governing export-import disputes. This includes examining the legal frameworks in various jurisdictions, such as laws and regulations pertaining to international trade, contracts, and dispute resolution. This approach helps identify the legal standards and principles essential for resolving these disputes. A comparative analysis is conducted to identify the differences and similarities between litigation and arbitration in resolving export-import disputes. This involves comparing the legal procedures, outcomes, and costs associated with each method. By highlighting the strengths and weaknesses of both approaches, the comparative analysis helps determine which method is more effective for resolving specific disputes.

3. RESEARCH RESULT AND DISCUSSION

3.1. Factors Influencing the Selection of the Litigation or Arbitration Approach

The selection of litigation or arbitration as a method for resolving export-import disputes involves various factors, making this topic essential for discussion.

Complexity of the Dispute

The complexity of a dispute is an important consideration when selecting a resolution method. Disputes that involve intricate issues, multiple stakeholders, or cross-border elements often require a process that can accommodate their unique demands.⁵ Arbitration is particularly well-suited for resolving complex disputes. Its flexibility allows the process to be tailored to the specific needs of the parties, providing a more customized approach compared to the rigid structure of litigation. This adaptability can be crucial in addressing the multifaceted nature of such disputes effectively. Additionally, arbitration's ability to involve experts with specialized knowledge ensures that the complexities of the case are handled with precision. By offering a more focused and personalized resolution process, arbitration provides an efficient and effective option for managing disputes that involve significant complexity.

Monetary Value of the Dispute

The financial scale of a dispute is a critical factor in determining the appropriate resolution method. Disputes involving significant monetary value require careful consideration, as the stakes are often high, and the outcome can have far-reaching implications for the parties involved.⁶ In cases where the dispute involves a large financial sum, litigation is often seen as the preferred approach. Courts have the authority to award substantial compensation, which can provide a more definitive resolution for high-value disputes. This capability makes litigation particularly suitable when a party seeks a robust enforcement mechanism or a clear judicial ruling.

On the other hand, arbitration may not always be the best choice for disputes involving significant financial stakes. Arbitration relies heavily on negotiation and mutual agreement, which, in high-value cases, can be prolonged and contentious. This extended process can disadvantage one party, especially if the power dynamics or financial resources of the parties are imbalanced. Another potential drawback of arbitration in high-value disputes is its limited scope for appeal. Once an arbitrator renders a decision, it is often binding and final, leaving little room for recourse if one party feels the outcome is unjust. This lack of flexibility can pose a risk, particularly in disputes involving substantial sums.

⁵ Indriati Safitri, Alfian Hidayat, and Sirwan Yazid Bustami, "Strategi Council of Palm Oil Producing Countries Dalam Melindungi Ekspor Komoditas Kelapa Sawit Negara Anggota Dari Ancaman Kebijakan Proteksionis Uni Eropa," *Indonesian Journal of Global Discourse* 3, no. 2 (2021): 64–82, <https://doi.org/10.29303/ijgd.v3i2.36>.

⁶ Sai-On Cheung, "Critical Factors Affecting the Use of Alternative Dispute Resolution Processes in Construction," *International Journal of Project Management* 17, no. 3 (1999): 189–94, [https://doi.org/10.1016/S0263-7863\(98\)00027-1](https://doi.org/10.1016/S0263-7863(98)00027-1).

Sensitivity and Confidentiality

For disputes involving sensitive or confidential information, arbitration is frequently the preferred method of resolution.⁷ Its private nature allows parties to address their issues without exposing sensitive details to public scrutiny. This confidentiality is particularly valuable in protecting proprietary information, trade secrets, or business strategies.⁸ Arbitration is firmly grounded in the principles of civil law, as outlined in Article 1320 of the Civil Code. This legal foundation ensures that the arbitration process adheres to established rules while maintaining the flexibility to meet the unique needs of the disputing parties. This adaptability makes arbitration an efficient mechanism for resolving disputes where privacy is paramount.

Unlike arbitration, litigation operates under public scrutiny. Court proceedings and outcomes are typically a matter of public record, which can compromise the confidentiality of the information involved. For disputes where sensitive or proprietary details are at stake, this lack of privacy can pose significant risks to the parties involved. Additionally, litigation often involves the application of criminal law procedures, which may not be ideal for resolving disputes centered on confidentiality. Criminal law typically emphasizes punishment and public accountability, which can conflict with the goals of preserving privacy and achieving a mutually agreeable resolution. Arbitration's ability to provide a private, efficient, and flexible resolution process makes it a superior choice for disputes involving sensitive or confidential information. Its confidentiality safeguards protect the interests of the parties, ensuring that the resolution process does not jeopardize their competitive position or reveal critical business details.

Characteristics of the Parties and Power Dynamics

The nature of the disputing parties and their relative strengths play a crucial role in determining the choice of dispute resolution method. The dynamics between the parties, including their resources, influence, and strategic positioning, can significantly affect the approach they decide to pursue.⁹ Before initiating a claim, it is essential for a party to evaluate the strength of their opponent. This assessment helps in formulating a strategy that maximizes the likelihood of a favorable outcome. Understanding the opponent's resources, legal expertise, and overall bargaining power is critical in deciding whether to opt for litigation or arbitration.

⁷ Toatubun Najaruddin, Lobubun Muslim, and Anwar Iryana, *Penegakan Hukum Terhadap Penyalahgunaan Wewenang Dalam Pengadaan Barang Dan Jasa Pemerintah*, ed. Jurdi Fajlurrahman, 1st ed. (Yogyakarta: Litera, 2020).

⁸ Adrian Sutedi, *Aspek Hukum Pengadaan Barang Dan Jasa*, 2nd ed. (Semarang: Sinar Grafika, 2022).

⁹ Lisa Marwah, "Peran Dan Profesionalitas Lembaga Pengadilan Agama Dalam Menjawab Problematika Sengketa Waris: Studi Kasus Penanganan Waris Islam Di PA Wates" (Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/45225>.

In cases where one party is significantly more powerful than the other, litigation often becomes the preferred choice for the stronger party. The structured nature of litigation and its reliance on formal judicial authority can provide an advantage to parties with greater resources and influence. These parties may feel more confident leveraging their strength in a court of law to secure a favorable judgment. Criminal law can also come into play in such scenarios, particularly when it is treated as a last resort or *ultimum remedium*. If the investigating party has a substantial advantage over its opponent, criminal law proceedings can serve as a powerful tool to compel accountability or enforce legal obligations. This approach, however, is typically reserved for situations where other avenues of resolution have failed.

Business Relationship Considerations

The impact on existing business relationships is a key consideration when choosing between arbitration and litigation. For companies engaged in ongoing partnerships, the resolution process must prioritize maintaining trust and cooperation. Dispute resolution methods that minimize conflict and promote harmony are generally preferred in such cases. Parties with active business ties often lean toward arbitration as it offers a more amicable way to resolve disputes.¹⁰ The arbitration process is designed to foster peaceful resolutions, avoiding the adversarial nature of courtroom battles. By emphasizing negotiation and mutual agreement, arbitration helps ensure that business partnerships remain intact even after the resolution.

One of the significant advantages of arbitration is its ability to resolve conflicts without imposing criminal penalties or harsh sanctions. Unlike litigation, which may involve punitive measures, arbitration focuses on achieving a settlement that satisfies both parties. This approach not only addresses the dispute but also preserves the business relationship, allowing the parties to continue collaborating. In contrast, litigation can have a more disruptive impact on business relationships. The public nature of court proceedings, combined with the possibility of severe consequences such as heavy sanctions or public testimony, can create tension between the disputing parties. Such outcomes can erode trust and make it difficult for businesses to rebuild their relationship after the dispute is resolved.

Speed of Resolution

The speed of the dispute resolution process is another significant factor influencing the choice between arbitration and litigation. For many businesses, time is of the essence, and delays in resolving disputes can lead to financial losses and operational disruptions.

¹⁰ Maurid Rizki and Devi Siti Hamzah Marpaung, "Efektivitas Alternatif Penyelesaian Sengketa Dalam Sengketa Rahasia Dagang," *University of Bengkulu Law Journal* 6, no. 2 (2021): 163–77, <https://doi.org/10.33369/ubelaj.6.2.163-177>.

As such, the efficiency of the resolution process often becomes a critical consideration. Arbitration is typically faster than litigation. Its streamlined procedures eliminate many of the formalities and delays associated with court proceedings, allowing disputes to be resolved in a shorter timeframe. This efficiency makes arbitration an attractive option for businesses seeking a quick and effective resolution.¹¹

The private nature of arbitration also contributes to its speed. Unlike litigation, which is often subject to public schedules and procedural requirements, arbitration allows parties to set their own timeline. This flexibility enables them to address their dispute without the lengthy delays that are common in court cases. A unique advantage of arbitration is the ability of the parties to choose their arbitrator. They can select an expert with specialized knowledge in the relevant field, ensuring that the dispute is handled by someone who understands the complexities of their case. In contrast, judges in litigation are appointed by the government and may not always have expertise in the specific issues being contested.

3.2. Implications of Using Litigation and Arbitration Approaches to International Trade

The use of litigation and arbitration in resolving export-import business disputes has a substantial impact on the development of international trade. These methods are essential in the global marketplace, where conflicts between parties often arise due to the complexity and scale of international transactions. As businesses increasingly engage in cross-border trade, effective dispute resolution becomes crucial to maintaining operational efficiency and minimizing disruptions. Understanding the implications of litigation and arbitration is vital for businesses to address disputes effectively. Each approach offers distinct advantages and challenges, and choosing the appropriate method can significantly influence a company's ability to resolve conflicts, preserve business relationships, and continue operations smoothly in a competitive global market.¹²

Litigation, the process of taking legal action through courts, is often seen as a last resort in international trade disputes. While it can provide a formal and binding resolution, the process is typically time-consuming and expensive. Litigation involves several stages, including discovery, motions, and trials, which can significantly prolong the resolution of a dispute.¹³ For businesses, the high costs and extended duration of

¹¹ H. Karli Kalianda, "Problematika Pengaturan Persaingan Usaha Dalam Sistem Hukum Indonesia," *Wasaka Hukum: Jendela Informasi Dan Gagasan Hukum* 8, no. 1 (2021): 1–82, <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/49>.

¹² Serlika Aprita and Rio Adhitya, *Hukum Perdagangan Internasional* (Tangerang: PT. Raja Grafindo Persada, 2020).

¹³ I Gede Edy Korneawan, A.A Sagung Laksmi Dewi, and Luh Putu Suryani, "Penyelesaian Sengketa Tanah Kehutanan Di Kantor Pertanahan Kabupaten Badung," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 291–95, <https://doi.org/10.22225/jkh.1.2.2568.291-295>.

litigation may not be practical, especially when they need timely solutions to maintain smooth operations. In many cases, businesses may find that litigation is not the most efficient option for resolving disputes, particularly if they are looking to minimize disruption and financial strain.¹⁴

In contrast, arbitration offers a more private and consensual method of dispute resolution. The parties involved agree to have their case decided by a neutral third party, typically an arbitrator or a panel of arbitrators. This process is generally faster and more flexible than litigation, which can make it a preferred choice for many businesses involved in international trade disputes.¹⁵ Arbitration has several key benefits, including confidentiality. Unlike litigation, where the process is often public, arbitration allows for more privacy, protecting sensitive business information. This feature is particularly valuable for companies dealing with trade secrets or proprietary information. Additionally, arbitration offers the ability to select arbitrators with specialized expertise in international trade. This ensures that trade-related issues are handled by professionals who possess the necessary knowledge and experience to resolve complex disputes efficiently, making arbitration a practical and effective alternative to litigation.

One of the main implications of choosing either litigation or arbitration is the potential for significant financial burdens. Litigation is often expensive, with mounting legal fees and associated costs that can quickly accumulate. This can become overwhelming, particularly for smaller businesses that may not have the resources to sustain lengthy legal battles. Although arbitration is generally considered more cost-effective, it still comes with its own financial challenges. There are fees for arbitrators and other services involved in the process, which can add up over time. While arbitration may be less expensive than litigation, the costs can still place a financial strain on businesses, especially if the dispute is complex or lengthy. Both litigation and arbitration can strain a business's financial resources. This strain can affect the company's ability to operate effectively in the global market, as funds spent on dispute resolution may limit the ability to invest in other critical areas of the business. Therefore, businesses must carefully weigh the financial implications of both approaches before making a decision.

Another important consideration is the potential for delays in resolving disputes. Litigation, with its extensive procedures such as discovery, motions, and trials, can take months or even years to reach a final decision. This prolonged timeline can disrupt business operations and harm a company's standing in the fast-paced global market. Although arbitration is generally faster than litigation, it is not without delays.

¹⁴ Nadya Putri Oktapriyani, "Perlindungan Hukum Terhadap Konsumen Jasa Titip Beli Di Media Sosial Instagram: Studi Kasus Pada Infobarkas Semarang" (Universitas Islam Sultan Agung, 2022), <https://repository.unissula.ac.id/25964/>.

¹⁵ Susandi Decapriu Putra Pamungkas et al., "The Urgency of Preserving Regional Languages through Local Educational Curriculum," *Foremost Journal* 4, no. 2 (2024): 186–196, <https://doi.org/10.33592/foremost.v4i2.3731>.

Depending on the complexity of the dispute and the availability of arbitrators, the process can still take several months to complete. While this is an improvement over litigation, it may not meet the urgency required by businesses facing time-sensitive issues. These delays, whether through litigation or arbitration, can negatively impact businesses that rely on swift dispute resolution to maintain operational continuity. Prolonged disputes may erode a company's reputation in a competitive environment, where trust and efficiency are critical for sustaining customer and partner relationships.

The choice between litigation and arbitration in international trade disputes ultimately hinges on the nature and specific circumstances of the case. Litigation may be necessary for disputes involving substantial financial stakes or significant reputational damage, as courts can provide formal, binding resolutions that may include substantial compensation or remedies. This approach, while often time-consuming and costly, offers the authority and structure needed to address high-stakes conflicts.

On the other hand, arbitration may be better suited for disputes such as contract breaches or disagreements requiring specialized expertise. Arbitration's flexibility, confidentiality, and faster resolution process make it an attractive option for businesses aiming to resolve issues efficiently without public exposure. Its focus on mutual agreement and private adjudication allows parties to protect sensitive information and preserve business relationships.

Understanding the potential consequences of each approach enables businesses to make informed decisions that align with their goals and priorities. By carefully weighing factors such as financial strain, time constraints, and the importance of maintaining healthy partnerships, businesses can choose the most effective method for protecting their interests and sustaining operations in the competitive global marketplace.

CONCLUSION

The research on export-import business dispute resolution methods reveals the critical importance of selecting an appropriate approach to managing conflicts in international trade. The study examined two primary methods—litigation and arbitration—and analyzed their implications for businesses engaged in global commerce. Key findings demonstrate that the choice between litigation and arbitration is not straightforward but depends on multiple interconnected factors. These factors include the complexity of the dispute, its monetary value, the need for confidentiality, the characteristics of the involved parties, potential impacts on business relationships, and the desired speed of resolution.

Arbitration emerges as a particularly advantageous method in many scenarios, offering several distinctive benefits: greater flexibility in addressing complex disputes, enhanced confidentiality, faster resolution processes, potential for preserving business

relationships, and ability to select specialized arbitrators with domain expertise. Litigation, while providing formal judicial authority and the potential for substantial compensation, presents significant challenges such as prolonged legal proceedings, higher costs, public scrutiny, potential damage to business relationships, less adaptable procedural frameworks.

The research underscores that there is no universal best method for resolving export-import disputes. Instead, businesses must carefully evaluate their specific circumstances, weighing the advantages and limitations of each approach. The selection should align with their strategic objectives, financial capabilities, and long-term relationship management goals. Effective dispute resolution in international trade requires a nuanced understanding of these methods, strategic decision-making, and a commitment to finding solutions that balance legal, financial, and relational considerations. As global trade continues to evolve, businesses that develop sophisticated approaches to managing conflicts will be better positioned to navigate the complexities of the international marketplace.

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