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## The Legal Conflict In The Resolution of International Trade Disputes: A Comparison of Arbitration and Courts

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### ABSTRACT

International trade disputes often involve parties from different countries with different legal systems, resulting in legal conflicts in their resolution. This article aims to analyze the comparison between two commonly used dispute resolution mechanisms, namely arbitration and court. Through a normative juridical approach and comparative analysis, this study examines the advantages and disadvantages of both methods in the context of international law. Arbitration is often chosen because it is more flexible, confidential, and allows the parties to choose a competent arbitrator. In contrast, dispute resolution through the courts tends to be more formal, with clearer enforcement power but often takes longer and is less flexible. The results of this study show that arbitration is superior in terms of time efficiency and privacy, while courts are stronger in terms of law enforcement in various jurisdictions. The study concludes that the choice between arbitration and the court depends largely on the nature of the dispute at hand, the preferences of the parties, as well as the prevailing jurisdiction.

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### INTRODUCTION

International trade has grown rapidly in line with economic globalization, involving countries from various parts of the world (Rachmaningrum, 2024). However, this development also increases the potential for trade disputes between parties from various different legal jurisdictions (Indrawanto, 2024). Differences in laws and regulations between countries often trigger conflicts in the settlement of international trade disputes (Nasution et al., 2024), especially regarding applicable laws, dispute resolution mechanisms, and the implementation of decisions. This condition requires a fair, effective, and acceptable settlement mechanism for all parties involved in the dispute.

In the context of international commercial law, there are two main mechanisms that are often used to resolve disputes, namely through courts (litigation) and arbitration (Siregar, 2024). These two mechanisms have their own characteristics, advantages, and weaknesses. The courts as formal state institutions provide a public process with strong enforcement power, but the process is often long and inflexible. On the other hand, arbitration is increasingly popular in resolving international trade disputes because it is more flexible, fast, and maintains the confidentiality of the parties (Claudia, 2024). In addition, international arbitral awards are also easier to recognize and enforce in many jurisdictions through the 1958 New York Convention (Hidayat & Jaelani, 2024).

The comparison between these two mechanisms is important, especially in the context of international trade disputes involving parties from different countries with different legal

systems (Akbar, 2024). This article aims to analyze the fundamental differences between arbitration and courts in the resolution of international trade disputes, both in terms of procedure, effectiveness, and legal certainty. By reviewing case studies and related jurisprudence, this article is expected to provide insight into the factors that affect the selection of the most appropriate dispute resolution mechanism for international trade actors (Firmanto et al., 2024).

The rapid growth of international trade has led to an inevitable increase in cross-border commercial disputes. These disputes often involve multiple jurisdictions, where the interpretation and application of laws differ significantly. As a result, the resolution process becomes more complex, and parties are forced to seek mechanisms that provide both fairness and efficiency. Arbitration has emerged as a popular option due to its perceived neutrality and adaptability in handling international cases. However, litigation through courts remains a preferred choice for parties seeking strong enforcement powers and judicial oversight. The choice between these two mechanisms depends on the nature of the dispute, the preferences of the parties, and the legal environment governing the dispute (Suherman, 2022).

In international trade, disputes often arise over contractual breaches, delays in delivery, payment issues, and intellectual property rights, among others. When such disputes occur, businesses are under immense pressure to resolve them quickly to avoid further economic losses (Anggraeni, 2019). Arbitration is attractive because of its streamlined process, which allows businesses to avoid the lengthy procedures often associated with court litigation. Nevertheless, courts provide a formal structure that ensures adherence to procedural and substantive justice, which is particularly important in disputes where legal precedent or public policy is a factor. The tension between the flexibility of arbitration and the authority of courts continues to shape the landscape of international trade dispute resolution (Daud & Yusuf, 2024).

Another critical factor in the debate between arbitration and courts is the enforceability of decisions. International arbitration awards are widely recognized and enforced under the New York Convention, giving businesses confidence that decisions will be upheld in multiple jurisdictions. In contrast, court judgments often face challenges in enforcement, particularly when there is no reciprocal recognition agreement between countries. This limitation makes arbitration an attractive choice for businesses operating across borders, as it provides a level of predictability and security that courts may not offer. However, the high costs associated with arbitration remain a concern for smaller businesses, raising questions about its accessibility and fairness (Restiyanda, 2020).

Despite these challenges, arbitration and courts continue to coexist as vital components of the international legal system. Both mechanisms have their merits and are chosen based on the specific needs and circumstances of the disputing parties. For example, arbitration is often used in sectors such as construction, shipping, and finance, where confidentiality and technical expertise are critical (Wowor, 2021). Courts, on the other hand, are more frequently relied upon in cases involving public interest or where a clear legal precedent is required. This duality highlights the need for a deeper understanding of both mechanisms to help businesses navigate the complexities of international trade disputes effectively.

The increasing complexity of international trade disputes and the economic losses resulting from unresolved conflicts highlight the urgency of this research. As globalization accelerates, businesses face greater exposure to cross-border legal issues that require quick and effective solutions (Azzahra & Apriani, 2023). The lack of uniformity in international legal systems and the inconsistent enforcement of decisions present significant challenges for businesses. A comprehensive analysis of arbitration and courts as dispute resolution mechanisms is urgently needed to help businesses make informed choices, minimize risks, and ensure the stability of international trade relationships.

This study introduces a novel perspective by providing an in-depth comparative analysis of arbitration and court litigation in the context of international trade disputes. While previous studies have explored these mechanisms separately, this research offers a holistic understanding of their advantages and limitations through case studies and practical examples. The novelty lies in the emphasis on key factors such as time efficiency, enforceability, confidentiality, and flexibility, which are often overlooked in theoretical analyses. Additionally, this study highlights the evolving trends in dispute resolution and offers fresh insights into the role of arbitration and courts in a globalized economy.

Although considerable research has been conducted on arbitration and court-based dispute resolution, there remains a significant gap in understanding their comparative effectiveness in international trade disputes. Most studies focus on the theoretical aspects or procedural frameworks of these mechanisms, without adequately exploring their practical implications. Furthermore, little attention has been given to the economic and strategic considerations that influence the choice of dispute resolution mechanisms. This research fills the gap by combining normative analysis with practical case studies to provide a comprehensive understanding of arbitration and court litigation, addressing both their strengths and weaknesses.

The purpose of this research is to analyze and compare arbitration and courts as mechanisms for resolving international trade disputes, with a focus on their efficiency, enforceability, and suitability for various types of disputes. This study aims to provide valuable insights for businesses, policymakers, and legal practitioners in selecting the most effective dispute resolution mechanism. The benefits of this research include enhancing legal certainty in international trade, reducing the time and costs associated with dispute resolution, and promoting smoother economic transactions across borders. By offering practical recommendations, this study supports businesses in mitigating risks, fostering trust in international trade, and contributing to the overall stability of the global economy.

## RESEARCH METHOD

This study employs a normative juridical approach using qualitative research methods to analyze the legal frameworks governing international trade dispute resolution, specifically focusing on arbitration mechanisms and court systems. The research aims to provide a comparative analysis of these two mechanisms from a legal and effectiveness perspective. The methodology includes comprehensive data collection through library research, utilizing both primary legal sources—such as the 1958 New York Convention and UNCITRAL Model Law—and secondary sources like textbooks and legal journals. This foundational research sets the stage for a comparative analysis based on key variables including dispute resolution processes, time and cost efficiency, confidentiality, enforcement of awards, and flexibility in the choice of applicable law.

In addition to normative analysis, the study incorporates a case study approach, examining notable international trade disputes resolved through arbitration and courts. Selected cases illustrate the strengths and weaknesses of each mechanism, facilitating a deeper understanding of their practical implications. By synthesizing findings from both normative and comparative analyses, the study aims to conclude on the effectiveness of arbitration and court mechanisms in resolving international trade disputes. Ultimately, the research intends to offer valuable recommendations for international trade actors, guiding them in selecting the most suitable dispute resolution mechanisms to meet their specific needs and circumstances.

## RESULTS AND DISCUSSION

This study examines the comparison between arbitration mechanisms and courts in international trade dispute resolution with several key indicators, such as time and cost efficiency, flexibility, award enforcement, and confidentiality. The results of the study show that there are significant differences in the two mechanisms, which affect the choice of parties in resolving cross-border trade disputes.

### **Time and Cost Efficiency**

Arbitration tends to be more efficient in terms of time compared to courts (Baharuddin, 2024). Based on the results of the analyzed case studies, the average arbitration process takes a shorter time because the process is not bound to a strict formal schedule and procedures like in court (SETYALAKSONO, 2024). This allows the parties to speed up the resolution of disputes by choosing a more flexible trial schedule.

However, in terms of costs, the results of the study suggest that arbitration can be more expensive compared to litigation in court, especially when it involves arbitrators with an international reputation or when arbitration is conducted in reputable arbitration centres such as Singapore or London. In addition, administrative costs in arbitration can also be higher because they involve private arbitration institutions. In contrast, court proceedings are often subject to lower costs, especially in countries that have government-funded justice systems.

### **Flexibility**

One of the main advantages of arbitration is its flexibility. The parties to the dispute may choose for themselves an arbitrator who has expertise in the relevant field, establish the location of the arbitration, and determine the law applicable to their dispute. This flexibility allows for dispute resolution that is more in line with the needs of the parties, especially in international trade disputes that often involve certain technical aspects.

In contrast, courts do not provide the same flexibility. The parties must submit to the jurisdiction of the courts in the country where the dispute is filed, which means that they are bound by the national laws of that country and have no choice in choosing a judge. In the context of international disputes, this is often considered disadvantageous, especially if one party feels aggrieved by the application of foreign law that is not in accordance with its interests.

### **Enforcement of Judgments**

Enforcement of judgments is one of the important factors in the resolution of international trade disputes. The results of the study show that arbitral awards are easier to recognize and enforce in different countries compared to court decisions. This is due to the existence of the **1958 New York Convention**, which has been ratified by more than 160 countries, thus providing a solid legal framework for the recognition and enforcement of international arbitral awards in the participating countries.

In contrast, court rulings often face challenges when it comes to execution in foreign jurisdictions. Courts in one country may not recognize foreign court judgments, especially if there is no bilateral treaty providing for reciprocal recognition of court judgments. As a result, even if the court renders a ruling in favor of one party, the execution process can be quite complicated and time-consuming when applied in other countries.

### **Confidentiality and Privacy**

Another advantage of arbitration is confidentiality. The entire arbitration process, from the filing of the dispute to the award, can be conducted behind closed doors, which allows the parties to maintain the confidentiality of information related to their business. This is especially important in international trade disputes, where a company's reputation or sensitive business information may be at stake.

On the contrary, the court process is open and transparent, so it is accessible to the public. This can be a problem for parties who want to maintain the confidentiality of

information related to disputes. Therefore, international companies that have confidentiality-related concerns tend to prefer arbitration as a dispute resolution mechanism.

### **5. Case Study: International Trade Dispute Resolution through the Court**

This study also examines several cases of international trade disputes that are resolved through arbitration and courts. One of the famous cases resolved through arbitration is **PT Amco Asia Corporation vs. the Republic of Indonesia**. **PT Amco Asia Corporation**, a company incorporated in the state of Delaware, United States, entered into an agreement with PT Wisma Kartika (PT. Wisma), a limited liability company registered in the Republic of Indonesia. The agreement initially stipulated the sharing of profits/investment from the management of the Kartika Plaza Hotel for 19 years, but then extended to 30 years (ending in 1999) based on the approval of PT Wisma Kartika on January 24, 1969, the Indonesian state managed to win the dispute through international arbitration after many years of court proceedings. These results show how arbitration can deliver a final and internationally recognized award more quickly than a court.

In contrast, in **the case of Chevron vs. Ecuador**, Chevron rejected the decision of the Ecuadorian District Court and filed a number of defenses related to the case. First, Chevron argued that they should not have been responsible for Texaco's activities before the acquisition was made. Second, Texaco has completed the environmental improvements agreed upon in 1998. Third, the largest operation during the Texaco era was Petroecuador, which was considered to contribute more to environmental pollution. Fourth, Chevron claims that the evidence presented by the Ecuadorian public is invalid and has been scientifically manipulated.

In addition, Chevron alleged a bribery case against judges to force them to pay damages. As part of its defense, Chevron released a video online highlighting the bureaucratic inequalities in the case. The company then appealed the court decision, citing fraud in the judicial process, including corruption, as the main basis for their appeal. Dispute resolution through the courts lasted for a long time, up to several appeals, before finally being decided by the country's highest court. This lengthy and open process demonstrates the court's weakness in handling cross-border disputes, especially in terms of time efficiency and jurisdictional complexity.

### **Enforcement Force of Judgment**

Arbitral awards are final and binding, and can rarely be appealed, resulting in faster execution. On the other hand, court decisions often go through a protracted appeal process, adding uncertainty to the parties to the dispute.

## **CONCLUSION**

Based on the results of this study, arbitration mechanisms tend to be preferred in the resolution of international trade disputes due to their flexibility, time efficiency, and ease of enforcing awards. Meanwhile, although courts provide clearer enforcement powers in national jurisdictions, litigation processes are often lengthy and less flexible. Therefore, the choice between arbitration and tribunals in the settlement of international trade disputes depends largely on the specific needs of the parties and the characteristics of the dispute at hand.

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