



## What is the Dispute Resolution Process in International Business Law?

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### ABSTRACT

*The complex global business landscape often creates conflict between entities, highlighting the need for efficient dispute-resolution mechanisms. Increased competition between countries can result in disputes that require immediate attention and require careful consideration of the structure of international and national communities. The importance of dispute resolution mechanisms is visible in the complexity of international business activities. This research aims to deepen a more essential understanding of alternative dispute resolution mechanisms in international business law. This objective is achieved by stating two research questions: the scope of resolving trade disputes and the alternative resolutions for international trade disputes. This is comparative qualitative research carried out in the literature concerning a normative juridical approach. Data was collected by searching relevant literature and legal materials for normative qualitative analysis. This research found that two types of disputes are commonly encountered in the legal process: disputes that are legal or can be resolved and conflicts that are political or cannot be resolved. Alternative Dispute Resolution (ADR) stands out for its effectiveness and efficiency in dispute resolution law. ADR aligns with the evolving dynamics of global trade, providing a valuable tool for managing disputes between business entities. Alternative. At least three alternative dispute resolution options can be chosen: (i) Resolving international trade disputes through mediation; (ii) Resolving international trade disputes through the World Trade Organization (WTO); Resolving disputes in international business through arbitration. This research suggests that it would be best to consider alternatives for resolving trade disputes according to the case's complexity level.*

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## 1. Introduction

Business activities are an integral part of everyday human life in society, so it is not surprising that a legal framework called a business law institution is needed to regulate all aspects of these activities.<sup>1</sup> Business law combines various instruments designed to enforce its rules in situations where violations occur, or disputes arise during their application. This underlines the broad scope of business law, even covering activities involving dispute resolution, as highlighted by Latumeten.<sup>2</sup> Business legal disputes can be resolved with rules made by a country. However, business disputes will become complicated if the disputants come from two or more countries, called an international business dispute. Of course, each country maintains its laws, and it will be challenging to resolve them if they do not use alternative international business law dispute resolution.

So far, several researchers have carried out research related to international business law dispute resolution. Grasia Kurniati focuses her research on a comparative study between arbitration bodies in Indonesia and Singapore.<sup>3</sup> Furthermore, Putra's research focused more on problems in mediation carried out outside of court as a resolution of business disputes.<sup>4</sup> Judicial dispute resolution is contained in Puspita's research which discusses the law of international dispute resolution in the GATT and WTO dispute resolution mechanisms<sup>5</sup>, as well as Syahrin's research which dissects legal certainty in development in determining the authorized forum for resolving international business disputes.<sup>6</sup> Meanwhile, research that examines the role of the state in resolving international business disputes is carried out by Kaparang,<sup>7</sup> Alternative dispute resolution through arbitration was carried out by Riza and Abduh by offering the use of information technology.<sup>8</sup> Some of these studies correlate because they both discuss efforts to resolve international business legal disputes. Research related to alternative resolution of international business disputes through several methods

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<sup>1</sup> Firda Ainun Fadillah and Saskia Amalia Putri, "Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika)." *Jurnal Ilmu Manajemen Terapan* 2, no. 6 (2021): 744-756.

<sup>2</sup> Junior Willem John Latumeten, "Klausula Arbitrase dan itikad Baik Para Pihak Sebagai Dasar Penyelesaian Sengketa Bisnis Internasional." *JURNAL LITIGASI (e-Journal)* 20, no. 1 (2019). <https://doi.org/10.23969/litigasi.v20i1.1113>

<sup>3</sup> Grasia Kurniati, "Studi Perbandingan Penyelesaian Sengketa Bisnis dan Implementasinya Antara Lembaga Badan Arbitrase Nasional Indonesia dan Singapore International Arbitration Centre." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 201-234. <https://doi.org/10.35706/dejure.v1i2.507>

<sup>4</sup> Muhammad Hafiz Dwidhani Putra, "Problematika Mediasi Di Luar Pengadilan Sebagai Model Resolusi Sengketa Bisnis." (2020).

<sup>5</sup> Lona Puspita, "Mekanisme Penyelesaian Sengketa GATT dan WTO Ditinjau Dari Segi Hukum Penyelesaian Sengketa Internasional." *Normative Jurnal Ilmiah Hukum* 6, no. 1 (2018): 22-28. <https://doi.org/10.31317/normative%20jurnal%20ilmah%20hukum.v6i1%20April.358>

<sup>6</sup> Muhammad Alvi Syahrin, "Penentuan Forum Yang Berwenang Dan Model Penyelesaian Sengketa Transaksi Bisnis Internasional Menggunakan E-Commerce: Studi Kepastian Hukum Dalam Pembangunan Ekonomi Nasional." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 2 (2018): 207-228. <http://dx.doi.org/10.33331/rechtsvinding.v7i2.240>

<sup>7</sup> Geroge Lucky Kaparang, "Peran Negara Dalam Menyelesaikan Sengketa Perdagangan Internasional." *Lex Et Societatis* 7, no. 4 (2019). <https://doi.org/10.35796/les.v7i4.24732>

<sup>8</sup> Faisal Riza, and Rachmad Abduh. "Alternatif Penyelesaian Sengketa Secara Arbitrase Melalui Pemanfaatan Teknologi Informasi." *De Lega Lata: Jurnal Ilmu Hukum* 4, no. 1 (2019): 77-86. <https://doi.org/10.30596/dll.v4i1.3171>

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is rarely carried out, so there is no more essential analysis regarding what legal options are suitable for a dispute. This research is here to fill this void by presenting various ways of resolving international business law disputes that can be used as legal options.

In international business law, there are various legal bodies, one of which designates the state as a subject that has power and an essential role in the progress of international business transactions. Given the growth and evolution of international trade relations that continues every year, state involvement functions as a supervisory entity capable of monitoring potential impacts arising from these international business activities. However, as international business relationships become increasingly complicated, the possibility of disputes in the business world increases. Therefore, a dispute resolution mechanism is essential, especially in offering a more effective and efficient way of resolving disputes.

This research aims to deepen a more essential understanding of alternative dispute resolution mechanisms in international business law. At least three alternative forms of resolution are reviewed, namely, resolving international trade disputes through mediation, resolving international trade disputes through the World Trade Organization (WTO), and resolving disputes in international business through arbitration. These components collectively influence the decisions of business people, including those involved in international business, in resolving the disputes they face today.<sup>9</sup> Given the growth and evolution of international trade relations that continues every year, state involvement functions as a supervisory entity capable of monitoring potential impacts arising from these international business activities.<sup>10</sup> However, as international business relationships become increasingly complicated, the possibility of disputes in the business world increases. Therefore, a dispute resolution mechanism is essential, especially in offering a more effective and efficient way of resolving disputes.

Basically, dispute resolution is generally categorized into two areas, each of which has a different background and procedures, namely diplomatic law and conventional law. Typically, disputes in international business begin with negotiations, but if this approach proves unsuccessful, the parties can use other methods known as ADR, such as litigation or arbitration. Of course, there is a connection between ADR and dispute resolution because ADR itself is part of dispute resolution. Therefore, alternative problem-solving problems can be resolved by strengthening the agreements or contracts made by the parties to the agreement and establishing legal options if a dispute occurs. This method can be applied globally because it is the main thing that must be done before carrying out legal business with partners.

This paper argues that disputes in international business can arise from various sources, considering that this activity usually involves two countries with different legal

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<sup>9</sup> Armelia Syafira, *Penolakan Pelaksanaan Putusan Arbitrase Dagang Internasional oleh Suatu Negara Ditinjau Dari Prinsip-Prinsip Dasar Hukum Perdagangan Internasional*. Diss. Universitas Hasanuddin, 2022.

<sup>10</sup> Ema Rahmawati, and Rai Mantili. "Penyelesaian Sengketa Melalui Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 3, no. 2 (2016): 240-260.

frameworks. Therefore, an essential factor in resolving these disputes in international business law is the agreement reached by the parties involved. The parties have the authority to determine dispute resolution, ensuring legal certainty. Apart from that, the inclusion of a choice of law clause in the contract is essential to determine the legal framework that regulates dispute resolution according to Syahrin<sup>11</sup> also according to Achmad & Fadlurrohimi.<sup>12</sup> Basically, dispute resolution is generally categorized into two areas, each of which has a different background and procedures, namely diplomatic law and conventional law. Typically, disputes in international business begin with negotiations, but if this approach proves unsuccessful, the parties can use other methods known as ADR, such as litigation or arbitration. Of course, there is a connection between ADR and dispute resolution because ADR itself is part of dispute resolution. Therefore, alternative problem-solving problems can be resolved by strengthening the agreements or contracts made by the parties to the agreement and establishing legal options if a dispute occurs. This method can be applied globally because it is the main thing that must be done before carrying out legal business with partners.

## 2. Legal Material and Methods

The method used in this research is comparative qualitative, which analyzes, searches, collects, and reviews relevant materials. The comparative qualitative method was chosen because this research leads to various alternative dispute resolutions, so it needs to be presented comparatively. In terms of data collection, this research is classified as library research through collecting legal materials and reviewing relevant literature. The research approach used is a normative juridical approach, carried out by inventorying, studying, analyzing, and understanding law as a collection of positive norms in the legal system regulating international business problems. The normative juridical approach is an appropriate step in resolving business disputes through law enforcement. Even if dispute resolution is pursued through alternatives, judicial strengthening is needed so that this research can help formulate policies for resolving contemporary international business disputes. Descriptive and analytical research aims to describe the flow of scientific communication and analyze the problems presented comprehensively.<sup>13</sup> Secondary data, including library materials related to research, primary legal materials, secondary legal materials, and tertiary legal materials, is the type of data used. Primary legal materials use Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 5 of 1968 concerning the Settlement of Disputes between States and Foreign Citizens Regarding Investment. The data collection process includes a literature study,

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<sup>11</sup> Muhammad Alvi Syahrin, "Penentuan Forum Yang Berwenang Dan Model Penyelesaian Sengketa Transaksi Bisnis Internasional Menggunakan E-Commerce: Studi Kepastian Hukum Dalam Pembangunan Ekonomi Nasional." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 2 (2018): 207-228. <http://dx.doi.org/10.33331/rechtsvinding.v7i2.240>

<sup>12</sup> Willya Achmad, and Ishak Fadlurrohimi. "The role of BUMDes in Community Empowerment in Salamjaya Village, Pabuaran District, Subang Regency." *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 7, no. 2 (2023). <http://dx.doi.org/10.58258/jisip.v7i1.4640>

<sup>13</sup> Yulianah. *Metodelogi Penelitian Sosial*. (CV Rey Media Grafika, 2022).

reviewing literature relevant to the research problem, followed by qualitative-normative analysis.

### 3. Results and Discussion

#### 3.1 Scope of International Trade Disputes

Humans try to fulfill their needs in various ways, one of which is by carrying out business activities.<sup>14</sup> As explicitly defined by Ariani<sup>15</sup> and Ahmad,<sup>16</sup> business can be understood as an individual endeavor that involves the exchange of goods, services, or money for mutual benefit. Changing conditions in the era of modernization also become increasingly relevant when linked to the increasingly globalized state of business activity. In this context, individuals worldwide can carry out business activities, eroding a country's territorial boundaries and giving rise to a global village pattern. This transformation is a crucial phenomenon and heralds a new era marked by substantial growth in international trade between countries around the world.<sup>17</sup> Viewed from this point of view, it is clear that globalization is closely related to the economic sector, considering the ongoing expansion and openness of the global economy, especially in the field of international trade.<sup>18</sup> Mayangsari et al. argues that international trade, which is based on the principle of free trade, relies on economic indicators oriented towards efficiency, transparency and open competition between cross-border business entities.<sup>19</sup> This also resulted in the modernization of law, including in terms of international trade.<sup>20</sup> The rapid development of technology and the flow of the world economy means that free trade activities cannot be avoided. Open access between countries means that trade is prone to giving rise to disputes and must be resolved through alternative dispute resolution.

In practice, international trade law is a rapidly developing legal domain with a broad scope. This field covers many cross-border trade relationships, ranging from simple

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<sup>14</sup> Andi Ardillah Albar, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional." *Otentik's: Jurnal Hukum Kenotariatan* 1, no. 1 (2019): 18-32. <https://journal.univpancasila.ac.id/index.php/otentik/article/view/419>

<sup>15</sup> Nevey Varida Ariani, "Alternatif penyelesaian sengketa bisnis di luar pengadilan." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 277-294. <http://dx.doi.org/10.33331/rechtsvinding.v1i2.101>

<sup>16</sup> Willya Achmad, "Corporate Social Responsibility and Zakat: A Model of Philanthropy in the Society Era 5.0." *Jurnal Scientia* 11, no. 1 (2022): 565-574. <https://seaninstitute.org/infor/index.php/pendidikan/article/view/579>

<sup>17</sup> Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*. Kencana, 2017.

<sup>18</sup> Dewi Tuti Muryati, and B. Rini Heryanti. "Pengaturan dan Mekanisme Penyelesaian Sengketa Nonlitigasi di Bidang Perdagangan." *Jurnal Dinamika Sosbud* 3, no. 1 (2011): 49-65.

<sup>19</sup> Annisa Mayangsari, Agoes Ary Prasetyo, and Rildo Rafael Bonauli. "Pembangunan Hukum Arbitrase Di Bidang Konstruksi (Politik Hukum) Sebagai Upaya Penyelesaian Sengketa (Tinjauan atas Undang-Undang No. 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa Dan Tinjauan Atas Undang-Undang Nomor 2 Tahun 2017 Tentang Jasa Konstruksi)." *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 18, no. 1 (2020): 86-100. <https://doi.org/10.32528/faj.v18i1.6528>

<sup>20</sup> Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum." *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 1-36. <https://doi.org/10.35673/ajmpi.v6i1.1129>

activities such as bartering and exchanging goods to complex trade transactions. The development of technological services, especially information technology, has accelerated trade transactions and removed obstacles in the trade process.

International disputes arise when one party's efforts to assert dominance through violence are met with resistance or challenges from the opposing party. In essence, a dispute involves a clash between the conflicting desires of two or more parties, which cannot be resolved through force. For example, in the case of illegal fishing<sup>21</sup> or land dispute cases<sup>22</sup> which in essence the dispute involves foreign parties<sup>23</sup> in it can cause conflicts and the resolution is carried out based on international law. International law actually boils down to humanitarian principles so that when disputes occur they can be resolved humanely.<sup>24</sup> In theory, two main types of disputes are commonly encountered in human legal proceedings:<sup>25</sup>

- a. Disputes that are legal or can be resolved, and
- b. Disputes that are political or cannot be resolved.

The difference between legal and political disputes lies in the legal principles governing dispute resolution and the authority to handle these disputes. The handling of international disputes managed by each country can be seen in the established dispute resolution framework, such as a joint agreement regarding disputes in the General Agreement on Tariffs and Trade (GATT) before the formation of the World Trade Organization (WTO).<sup>26</sup> This shows that the resolution of trade disputes, whether legal or political, is determined based on the legal principles that govern them as well as mutually determined agreements.

For example, in the case of the European Union's lawsuit against Indonesia, which ended at the WTO, the concrete reason for which the European Union sued Indonesia regarding the policy of banning nickel exports was a crucial issue of current discrimination in the European Union's view. This case has been ongoing since 2021, and in November 2022, the outcome of the nickel dispute will be determined. As a result, the European Union won the dispute regarding the ban on nickel exports in the WTO domain, and even though

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<sup>21</sup> Sarah Aisha Rizal, "Pengaruh Relaksasi Kebijakan Transshipment Terhadap Kegiatan Penangkapan Ikan Ilegal (IUU Fishing)." *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022): 173-197. <https://doi.org/10.35673/ajmpi.v7i2.2598>

<sup>22</sup> Alwi Jaya, Gustika Sandra, and Tarmizi Tarmizi. "Legal Settlement of Land Disputes at the Bone Regency National Land Office." *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 1, no. 1 (2021): 428-436. <https://doi.org/10.59141/comserva.v3i1.985>

<sup>23</sup> Khairunnisa Khairunnisa, and Mohamad Fajri Mekka Putra. "Akibat Hukum Perjanjian Nominee Hak Atas Tanah Berkaitan Dengan Kepemilikan Warga Negara Asing." *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022): 151-172. <https://doi.org/10.35673/ajmpi.v7i2.2655>

<sup>24</sup> Nur Paikah, "Hukum Internasional untuk Kemanusiaan; Telaah Penyelesaian Persengketaan Dalam Hukum Konvensional Dan Hukum Islam." *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023): 97-108. <https://doi.org/10.30863/ajmpi.v8i1.3779>

<sup>25</sup> Cahya Palasari, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku. "Penyelesaian Sengketa Secara Damai Dalam Perspektif Hukum Internasional." *Jurnal Komunikasi Hukum (JKH)* 8, no. 2 (2022): 688-697. <https://doi.org/10.23887/jkh.v8i2.52016>

<sup>26</sup> Berliana Linda, "Kajian Hukum Internasional Terhadap Negara Yang Melanggar Prinsip-Prinsip Wto (World Trade Organization)." *Lex Privatum* 10, no. 4 (2022). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/42399>

the European Union won the dispute, of course, the Indonesian side could not escape defeat.<sup>27</sup> Another case that has occurred is discrimination against palm oil by the European Union which caused Indonesia to fight back.<sup>28</sup> The example of the case raised falls within the scope of a legal trade dispute, but the resolution involves the WTO organization. The dispute resolution also uses alternative international trade dispute resolution.

## 3.2 Alternative International Trade Dispute Resolution

### 3.2.1 Settlement of International Trade Disputes through Mediation

From a legal perspective, mediation is outlined in Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; both arbitration and *alternative dispute resolution* are defined as "institutions or methods for resolving disputes." resolve disputes or differences of opinion through procedures agreed by the parties." This procedure involves out-of-court settlement through consultation, negotiation, mediation, conciliation, or expert assessment. Choosing one of these dispute resolution mechanisms usually involves considering factors such as applicable law.<sup>29</sup> Apart from that, according to Supreme Court Regulation Number 1 of 2016 concerning Procedures for Mediation in Courts, *mediation* is defined as a method of resolving disputes through a negotiation process which aims to reach an agreement between the parties with the help of a mediator. The mediator's role includes guiding the parties in exploring various potential solutions without making decisions or imposing opinions on the issues discussed throughout the mediation process. However, mediation for dispute resolution is now becoming increasingly popular and widely adopted by individuals who wish to resolve their conflicts.

Mediation involves resolving disputes through a negotiation or consensus process facilitated by a mediator who does not have the authority to create or enforce a settlement. A key aspect of mediation is negotiation, similar to deliberation or consensus. By the nature of negotiations, deliberation, or consensus, there must be no coercion in accepting or rejecting ideas or solutions during mediation, and the parties must approve all decisions. Mediation also serves to resolve disputes involving third parties, such as international organizations, countries, or individuals. The third party in resolving this dispute is called a mediator.

The primary purpose of the existence of this global organization is to find solutions, determine areas of agreement between parties, and propose proposals that can end disputes informally and proactively. This is in line with the negotiation process outlined in Articles 3

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<sup>27</sup> Muhammad Abdul Rozaq, "Kontribusi WTO Menangani Sengketa Perdagangan Internasional: Analisis Kasus Nikel Gugatan Uni Eropa kepada Indonesia (Strategi Sustainable Indonesia Demi Pertumbuhan Ekonomi Dalam Negeri)." *Prosiding Management Business Innovation Conference (MBIC)*. 6, no. 1. 2023. <https://jurnal.untan.ac.id/index.php/MBIC/article/view/67593>

<sup>28</sup> M. Fuadillah Nugraha, "Analisis strategi perlawanan Indonesia dalam diskriminasi kelapa sawit oleh Uni Eropa." *Al-Adalah: Jurnal Hukum dan Politik Islam* 6, no. 1 (2021): 88-105. <https://doi.org/10.35673/ajmpi.v6i1.1458>

<sup>29</sup> Faisal Riza, and Rachmad Abduh. "Alternatif Penyelesaian Sengketa Secara Arbitrase Melalui Pemanfaatan Teknologi Informasi." *De Lega Lata: Jurnal Ilmu Hukum* 4, no. 1 (2019): 77-86. <https://doi.org/10.30596/dll.v4i1.3171>.

and 4 of the Hague Convention on the Settlement of Pacific Disputes (1907), which emphasizes that the mediator's proposal should not be considered a partial measure that benefits any aggrieved party.<sup>30</sup>

Meanwhile, according to Wibowo, individuals choose mediation to resolve their disputes for several reasons: First, The dispute resolution process is relatively fast, usually completed within one or two months, with only two or a maximum of three negotiation sessions. Second, It is cost-effective. The mediation process is generally affordable due to its short duration and the role of the mediator, who primarily provides guidance. Third, Mediation is confidential. The mediator must maintain confidentiality during the trial, ensuring that dispute resolution remains private and cannot be disclosed or made public. Finally, the mediation process is an embodiment of fair dispute resolution through compromise, carried out informally, free from rigid and coercive procedural provisions.<sup>31</sup>

The mediation process is flexible, meaning strict legal provisions do not limit it. It has the potential to deviate from formal law, whose primary focus is determining right and wrong.<sup>32</sup> Furthermore, the mediation process provides complete freedom for the parties to convey the proposals they wish but also requires a willingness to consider the proposals of other parties. This is in line with the provisions of Article 6 (3-5) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which defines *mediation* as an activity after failed negotiations between the parties.

The mediation process outlined in Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is the resolution of disputes or differences of opinion through alternative dispute resolution. This process takes place in face-to-face meetings between the parties for a maximum of fourteen days, and the results are documented in a written agreement. Suppose within the same fourteen-day period, the parties, assisted by an expert advisor or mediator, do not reach an agreement, or the mediator cannot bring the parties together. In that case, the parties can use an arbitration institution or alternative dispute resolution. To appoint a mediator. Once a mediator is appointed, the mediation process must begin within seven days. What is essential is that dispute resolution through mediation must strictly uphold confidentiality and be supported by all parties involved.<sup>33</sup>

Mediation cannot be applied universally to all disputes, and its need depends on specific conditions. The success of mediation depends on predetermined factors, including (1) the parties having comparable bargaining power, concerns regarding the future

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<sup>30</sup> Ukas, Ukas. "Analisis Yuridis Mekanisme Penyelesaian Sengketa Perdagangan Internasional (Dalam Kerangka Gatt-wto)." *JCH (Jurnal Cendekia Hukum)* 4, no. 1 (2018): 129-140. <http://doi.org/10.33760/jch.v4i1.93>

<sup>31</sup> Candra Wibowo, *Pelaksanaan Penyelesaian Kredit Bermasalah pada PT. Bank Tabungan Negara (BTN) Perserocabang Surakarta*. Diss. UNS (Sebelas Maret University), 2021.

<sup>32</sup> Setiawan Wicaksono, "Reformulasi Pengaturan Penilaian Ahli Oleh Notaris Sebagai Alternatif Penyelesaian Sengketa." *Mimbar Keadilan* 14, no. 1 (2016): 117-127.

<sup>33</sup> Tesalonika Clara Roringpandey, "Mediasi sebagai Alternatif Penyelesaian Sengketa Perdagangan Internasional di Tinjau dari Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan." *LEX ET SOCIETATIS* 8, no. 1 (2020). <https://doi.org/10.35796/les.v8i1.28578>

relationship, and issues conducive to exchange; (2) there is urgency or time constraints for completion; (3) the absence of prolonged and deep hostility, where the party has supporters or followers who cannot be controlled; (4) prioritizing solving urgent problems over setting precedents or defending rights; and finally, (5) if the parties are involved in litigation, ensure that other interests are not treated more favorably than mediation.

The mediation process results from a peace agreement whose implementation relies on the good faith of the parties involved. This differs from mediation in the arbitration process carried out at the Indonesian National Arbitration Board (BANI). If mediation proves successful, the parties formalize their agreement through a deed of peace. Furthermore, the peace deed is stated in an arbitration decision, which is final and binding on the parties. It is important to note that dispute resolution through mediation varies depending on whether it is resolved through court or arbitration because the mediator does not have the authority to decide on disputes between the parties. In this context, the parties to the dispute give the role of the mediator to help them resolve their problems.<sup>34</sup>

In practice, the mediator does not function as a judge who has the authority to determine whether the parties are right or wrong; instead, their role is that of an assistant. Therefore, many argue that mediation cannot be applied universally to all disputes. Mediation can only be carried out under certain conditions, including (1) the parties' comparable bargaining power. (2) shared concerns for future relationships. (3) the existence of various problems that allow exchanges to occur. (4) there is urgency or limited time for completion. (5) the absence of long-standing and deep-seated animosity between the parties, with the ability to manage any supporters or followers, if any.

Based on the mediation techniques presented, it shows that the mediation process is the most moderate method that can be used, including dispute resolution.<sup>35</sup> In mediation, all parties can resolve the problem in a win-win solution. This includes international trade disputes where all parties want to avoid experiencing losses. Mediation is very appropriate, especially if you want to resolve business disputes peacefully, because it refers to the results of a mutual agreement.

### **3.2.2 Settlement of International Trade Disputes through the World Trade Organization (WTO)**

The World Trade Organization (WTO), founded on January 1, 1995, is a permanent organization whose essential document is the "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations." This document outlines the organization's principles, objectives, structure, and operational procedures. The WTO comprises member countries, has organs to carry out its functions, and operates with a

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<sup>34</sup> Agung Sujati Winata, "Ketidakpastian Hukum Dalam Penyelesaian Sengketa Bisnis Internasional Melalui Arbitrase Internasional Di Indonesia." *Iblam Law Review* 3, no. 1 (2023): 89-98. <https://doi.org/10.52249/ilr.v3i1.120>

<sup>35</sup> Alwi Jaya, Tarmizi Tarmizi and Gustika Sandra. "Resolution Efforts Land Dispute Through Mediation in Tanah Tenggara Village Subdistrict Palakka Bone Regency." *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 2, no. 2 (2022): 217-221. <https://doi.org/10.59141/comserva.v2i6.976>

secretariat based in Geneva. As an international organization, its status is more than being recognized as a subject of international law with legal personality, which is given the authority to enter into contracts. The WTO is also obliged to carry out its functions effectively by the mandate given by its member countries.

From a legal point of view, international organizations, having acquired a distinct position and personality, inherently have the authority to carry out actions by the provisions spelled out in their principal instruments and decisions approved by their 11 members. Likewise, as an international organization appointed to resolve disputes as intended in Article III: 2 of the Agreement on the Establishment of Multilateral Trade Organizations, the WTO functions as a forum for resolving disputes between its member countries. The authority to resolve disputes within the WTO is complemented by legal personality and capacity widely recognized by international law, referred to as "International Legal Capacity." This recognition includes its ability to achieve legal objectives in relations with other countries, member states, or other entities. The process of resolving international trade disputes at the WTO is an essential element in maintaining the international trade regime, as reflected in the provisions packaged in the WTO.<sup>36</sup>

In the WTO dispute resolution process, member countries must adhere to the legal aspects formulated jointly through mutual agreements during negotiations. This legal aspect, originating from GATT 1947, was consolidated into WTO regulations at its founding. The provisions for dispute resolution, as intended in Article 22 and Article 23, outline straightforward provisions. Article 22 requires disputing parties to conduct bilateral consultations to resolve any issues that impact the GATT agreement or provisions. In particular, the rules governing the settlement of trade disputes at the WTO only relate to disputes involving WTO member countries. In a broader context, international trade organizations act as an overarching legal framework that regulates various agreements covering trade in goods and services, intellectual property rights, and investments related to international trade relations.

The settlement of trade disputes through the WTO is a coherent dispute resolution because the World Trade Organization knows better the technicalities of resolving trade disputes well. The WTO has its policy, and it is based on mutual agreement with member countries so that it can minimize objections from disputing parties. This will be a consistent solution to WTO policy, and member countries must follow it. The General Agreement on Tariffs and Trade (GATT) was a collective agreement between member countries before forming the World Trade Organization (WTO), reflecting each country's approach to dealing with international disputes.

### **3.2.3 Dispute Resolution in International Business Through Arbitration**

Settlement of conflicts between countries, including business entities, can be done through arbitration, as referred to in Article 1 number 1 of Law Number 30 of 1999.

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<sup>36</sup> Musfala Yudha, Nur Qalbi Putri Ramadhani Ahmad, and Muhammad Agung. "Ketaatan Negara Terhadap Hukum Perdagangan Internasional." *Jurnal Litigasi Amsir* (2022): 7-12. <https://journalstih.amsir.ac.id/index.php/julia/article/view/175>

Arbitration is a method of resolving civil disputes outside ordinary courts, relying on a written agreement between the parties involved. Arbitration has been used throughout the history of international law since Greek times, and disputes between kings and rulers were referred to as papal arbitration in Christian times. Historical figures such as Vitoria, Suarez, and Grotius utilized arbitration to resolve disputes, and its historical significance also inspired the creation of permanent international judicial institutions.

These articles explain that international arbitration decisions are only recognized and can be implemented in the jurisdiction of the Republic of Indonesia if they are issued by arbitration. An Indonesian arbitration tribunal that regulates bilateral or multilateral agreements relating to the recognition and enforcement of international arbitration awards. As previously mentioned, these decisions, which are decided outside the jurisdiction of Indonesia, must be registered with the Central Jakarta District Court, which, by Law Number 30 of 1999, is appointed as the authority in international arbitration matters. In cases involving the Republic of Indonesia, the Supreme Court has the authority to issue execution. The implementation of international arbitration awards in Indonesia requires execution from the Central Jakarta District Court's Chairman; once granted, the decision cannot be appealed or castrated. However, suppose the Chairman of the Central Jakarta District Court refuses to recognize and implement an international arbitration award. In that case, an appeal or cassation can be submitted.<sup>37</sup> The country of Indonesia was chosen as a case study because Indonesia is one of the largest trade centers in the Southeast Asia region, a target for the world market, and is busy with the import-export process. However, it does not rule out the possibility that disputes may arise during international trade contracts, and it is necessary to show that this is how trade disputes are resolved in Indonesia. This is because Indonesia also has laws that apply on the basis of Pancasila law.<sup>38</sup>

Perma Number 1 of 1990, which regulates procedures for implementing foreign arbitration awards, is the primary regulation governing the implementation of international arbitration awards. The importance of this regulation lies in the fact that although the government has stipulated Law Number 5 of 1968 concerning the resolution of disputes between countries and foreign entities regarding investment and participating in the convention for resolving investment disputes between countries and citizens of other countries, it still discusses procedures specifically to enforce foreign (international) arbitration awards. The definition of an international arbitration award, as stated in Article 1 paragraph (1) of the 1958 New York Convention, states that the convention applies to the recognition and implementation of an arbitration award made in the territory of a country other than the country where the recognition and award is made. Law enforcement is sought.

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<sup>37</sup> Helmi Kasim, "Arbitrase sebagai mekanisme penyelesaian sengketa penanaman modal." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 1 (2018): 79-96. <http://dx.doi.org/10.33331/rechtsvinding.v7i1.228>

<sup>38</sup> Ahmad Nur Fajri, and Irfan Amir. "Penegakan Hak Konstitusional Melalui Constitutional Question Serta Relevansinya Terhadap Negara Hukum Pancasila." *Constitutional Law Review* 1, no. 1 (2022): 39-56. <https://mail.jurnal.iain-bone.ac.id/index.php/colrev/article/view/3372>

The previous article explained that an international arbitration award refers to a decision handed down in the territory of a country other than the territory where the request for recognition and enforcement of the arbitration award was made. According to this article, an essential criterion for labeling an arbitral award as an international award is its origin outside the country's jurisdiction where its recognition and enforcement are sought. In addition, decisions taken must also relate to disputes involving individuals or legal entities, emphasizing that differences in nationality are not an absolute prerequisite. Furthermore, Article 1, paragraph (2) of the 1958 New York Convention stipulates that international arbitration awards do not only include decisions issued by arbitration bodies. *To this* or case-specific arbitrator, but also includes any decision made by a permanent arbitration body, often referred to as institutional arbitration.

Article 60 of the Arbitration Law regulates that arbitration awards are conclusive, have permanent legal force, and are binding on the parties. In principle, the losing party is not permitted to seek further legal remedies after an arbitration award, and the winning party is only obliged to implement the award. However, implementing an arbitration award is more challenging than it seems. Article 61 of the Arbitration Law states that if the parties do not implement the arbitration award voluntarily, the execution will be carried out at the direction of the chairman of the district court, on the orders of one of the parties to the dispute.

For an arbitration award to provide practical benefits for the parties involved, the award must be enforceable through an authorized court body. Execution of an arbitration award can be carried out in two ways: (1) Voluntary execution, namely, the parties carry out the arbitration award voluntarily without involving the chairman of the district court. (2) Mandatory execution is carried out when the obligated party refuses voluntary compliance with the decision, thereby requiring coercive measures as according to Kusen<sup>39</sup> and Achmad.<sup>40</sup>

Per Article 1 point 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, *arbitration* is defined as a method of resolving civil disputes outside ordinary courts, which relies on a written agreement between the parties. Individuals or institutions can facilitate the arbitration process. Today, arbitration is increasingly used to resolve national and international trade disputes. However, several requirements must be met before using the arbitration clause, including a. The need for a written arbitration agreement; b. Application to existing or new disputes; c. Its relevance to the legal relationship between the parties, whether contractual or not; d. Arbitrability of disputes. Additionally, there are two more conditions: the parties must have the capacity to choose arbitration, and the arbitration clause must be permissible under the laws of their respective countries.

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<sup>39</sup> Stevana Ameliana Kusen, "Hakekat Keberadaan Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan Negeri." *Lex Crimen* 5, no. 6 (2016). <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/13464>

<sup>40</sup> Willya Achmad, and Yulianah Yulianah. "Corporate social responsibility of the hospitality industry in realizing sustainable tourism development." *Enrichment: Journal of Management* 12, no. 2 (2022): 1610-1616. <https://doi.org/10.35335/enrichment.v12i2.447>

Arbitration is a preventive form of dispute resolution because it has permanent legal force and is binding on the parties. The losing party may not seek further action, and the winning party must only carry out according to the decision. This method is the most effective method for resolving trade disputes so that cases that occur will not continue continuously or even repeat the same case.

#### 4. Conclusion

Increased competition between these countries often gives rise to conflicts and disputes that require immediate resolution. In theory, two main types of disputes are usually encountered in the legal process, namely disputes that are legal or can be resolved and disputes that are political or cannot be resolved. In the legal field of dispute resolution, mechanisms that are considered more effective and efficient are usually in line with the concept of Alternative Dispute Resolution (ADR). There are at least three alternatives for resolving international trade disputes that can be an option, namely resolving disputes through mediation, resolving disputes through the World Trade Organization (WTO), and resolving disputes through arbitration. Various factors, including applicable law and its application, are usually considered when choosing a mechanism. Dispute resolution. This research suggests that it would be best to consider alternatives for resolving trade disputes according to the case's complexity level. If the case is minor or the disputing parties have small-scale companies, mediation can resolve the dispute. Meanwhile, suppose the case is moderate, and the disputed company includes an extensive national-scale company. In that case, it is best to resolve it through arbitration to obtain permanent legal force. Meanwhile, if the case is severe and the parties in dispute come from sizeable international-scale companies, it must be resolved through the World Trade Organization. However, this research is still limited to specific case examples, so to better understand the differences between the three alternative dispute resolutions, further research is needed so that different results can be found in a case.

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