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Foreign Arbitration As The Only Recourse In Resolving Trademark Disputes In A Civil Manner, Criticism of Act Number 20 Year 2016 About Brands and Geographical Indications

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Abstract

Introduction: *Act Number 20 year 2016 on trademark and geographic indication opens up opportunities to resolve trademark disputes not only through the Commercial Court, but also to resolve disputes through the District Court.*
Purposes of the Research: *The purpose of the study was to find a form of fair trademark dispute resolution. Conventionally, dispute resolution is usually done by litigation or dispute resolution before the court.*
Methods of the Research: *Normative research is used to answer the formulation of problems regarding foreign arbitration as the only way to resolve trademark rights disputes in a civil manner. The method of approach is the approach of legislation that is to examine and analyze the regulation.*
Results of the Research: *Indonesia also has repeatedly updated the regulation on trademark, but on the other hand, the level of trademark infringement is increasing, even the Commercial Court which should be a place for people to seek justice often gives decisions that do not reflect justice. Is it not better to start looking for other alternatives to resolve trademark disputes that can provide a sense of justice to the community. The court, which is only a mouthpiece of the acts, without regard to the conventions in the field of trademark that have actually been ratified by Indonesia, making the enforcement of trademark regulations in Indonesia, has not been able to provide a sense of justice to holders of rights to trademarks, especially holders of rights to well-known trademars. So that the settlement of famous brand disputes through foreign arbitration is expected to provide a sense of justice for the rights holders of the wellknown trademark.*

Keywords: Foreign Arbitration; Dispute Resolution; Brand.

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INTRODUCTION

One of the main branches of Intellectual Property Rights is trademark. The origin of the trademark stems around the Middle Ages in Europe, at a time when trade with the outside world began to develop. The function of the original trademark to show the origin of the product in question. It was only after mass production methods became known and with a wider and increasingly complex distribution network and market, that the trademark's functions evolved into what they are known today.[1] Along with the rapid development of trade in goods and services between countries, it is necessary to have international arrangements that provide guarantees of protection and legal certainty in the field of brands. In 1883, the Paris Convention for the Protection of Industrial Property (Paris Convention) was signed. This convention was followed by the Madrid Agreement and The

[1] Rahmadi Usman, *Dasar-Dasar Hukum Hak Kekayaan Intelektual*, (Prenada Media Group, Jakarta Barat, 2020), p. 57

Hague Convention and the Lisbon Treaty. Of all these conventions, the Paris Convention for the protection of trademarks is the most important.

In Indonesia there was a trademark act number 21 year 1961 which replaces Reglement Industriele Eigendom Kolonien Staatsblaad 1912 number 545 juncto Staatstblaad 1913 number 214.[2] The next development in 1992 was the birth of a new trademarkact which was revised in 1997, and also in 2001 by adjusting to Trade Related Aspects of Intellectual Property Rights.[3] Trademarks are very important in the world of advertising and marketing because the public often Associates an image, quality or reputation of goods and services with a particular trademark. A trademark can be a very valuable wealth commercially. Passing off protects the owner's reputation from those who would piggyback on their success, so that the piggyback can no longer use the trademark, packaging, or other indications that could encourage consumers to believe that the products sold by them, re-made by others without permission.[4] Infringement of the trademark that is often done is to put the trademark, logo, and materials exactly with the original, now the use of a trademark similar to other trademarks that have been registered as well as the use of the same brand and or similar to other brands that cause misperceptions in the minds of the public. Indonesia is the fourth largest country in the high number of intellectual property piracy.

Based on the report of the Supervisory Agency of the United States, USTR (United States Trade Representative), Indonesia is included in the top four countries in the high number of piracy in the world. The majority of violations stem from violations of the right to trademark on the circulation of fake trademarks in Indonesia.[5] Some examples of trademark cases, Inter-Continental Hotel headquartered in Atlanta, Georgia, United States sued PT Lippo Karawaci Tbk as the owner of the Inter-Continental apartment located in Karawaci, Tangerang. In the Central Jakarta District Court (PN Jakpus), this lawsuit was rejected, and won PT Lippo Karawaci Tbk. However, at the Cassation level PT Lippo Karawaci Tbk lost, because the Supreme Court in November 2011 granted the appeal of the Inter-Continental Hotel Company headquartered in Atlanta, Georgia, United States. The hotel company also had a dispute with the name 'HOLIDAY'. The word is disputed between Holiday Inn and Holiday Inn Resort owned by Six Continents Hotel with the Holiday Resort Lombok trademark owned by PT Lombok Seaside. In the Central Jakarta Commercial Court, Six Continents Hotel won the lawsuit. But on appeal, the Supreme Court ruled the word "HOLIDAY" could not be invoked rights to the trademark because it is public, not private property, so Six Continents Hotel was declared defeated.

Not only that, but also the case of Pierre Cardin from France filed a lawsuit to the Central Jakarta Commercial Court. Pierre Cardin of France sued an Indonesian citizen for using the same trademark. The plaintiff postulates that he is a World designer who started his business since 1950. Then, in 1954 made women's clothing and women's ready to wear for the Printemps department Store in 1959. Later, Pierre Cardin expanded the market by touring Japan and designing clothing for Pakistan International Airlines. Pierre Cardin also received the Superstar Award from Fashion Group International for six decades. Pierre

[2] Dian Latifani, Pentingnya Hak Kekayaan Intelektual Sebagai Hak Benda Bagi Hak Cipta Atau Merek Perusahaan, *Supermasi Hukum:Jurnal Penelitian Hukum*, Vol 32 No 1, 2022. p. 66-74

[3] Maya Jannah, Perlindungan Hukum Hak Kekayaan Intelektual (HAKI) di Indonesia, *Jurnal Ilmiah Advokasi*, Vol 06 No 02, 2018, p 10-17

[4] Endang Purwaningsing, *Hak Kekayaan Intelektual dan Investasi: Kajian HKI Dalam Dunia Investasi Termasuk Pada UKMK*, (Setara Press, Malang, 2019), p. 66

[5] Agil Febriansyah Santoso, Implementasi Hukum Kekayaan Intelektual Dalam Meningkatkan Kesejahteraan Masyarakat Dalam Perspektif Negara Hukum, *Jurnal Notarius*, Vol 15 Nomor 2 (2022), p 818-831

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Cardin France registered the trademark in Indonesia through the Ministry of Law and human rights with the trademark number IDM000192198 in 2009, then extended in 2014. In addition to Indonesia, Pierre Cardin registered its trademark in countries such as Australia, Brazil, Hongkong, Japan, Denmark, Korea, Italy, Malaysia, the United States, France, and Singapore. The Assembly rejected the lawsuit filed by the French Pierre Cardin. This is because the local Pierre Cardin has a distinction by always including the words 'Product by PT Gudang Rejeki'. Thus strengthening the rationale that the trademark does not ride the fame of other tradeamrks," said the Assembly. In addition, in its consideration, the judge also stated that the lawsuit filed by Pierre Cardin of France was overdue, where the deadline for filing a lawsuit regarding the trademark was 5 years. The local Pierre Cardin registered the trademark in 2010, while the French Pierre Cardin in 2015. Pierre Cardin from France is a well-known trademark in many countries. Without having to prove the existence of good faith, ethics, morals, the registration of the Pierre Cardin brand belonging to the defendant cannot be justified.

To further improve services and provide legal certainty for the world of industry, trade, and investment in the face of local, national, regional, and international economic development as well as the development of information and communication technology, it needs to be supported by a more adequate legislation in the field of trademark and Geographical Indications, this is what makes the government re-ratify Act Number 20 year 2016 on tradeamrk and geographical indications on November 26, 2016, as the legal basis for brand protection in Indonesia. Act Number 20 year 2016 opens up opportunities to resolve trademark disputes not only through the Commercial Court, but also to resolve disputes through the District Court. However, when trademark protection in Indonesia has been going on since pre-independence, even Indonesia has ratified the Paris Convention. Indonesia also has repeatedly updated the act on trademark as described above, but on the other hand, the level of trademark infringement is increasing, even the Commercial Court, which should be a place for people to seek justice, often gives decisions that do not reflect justice. Is it not better to start looking for other alternatives to resolve brand disputes that can provide a sense of justice to the community?

The problem which studied in this study is Can foreign arbitration be the only way to resolve trademark disputes in a civil way? The aim of the research is seek a legal basis for foreign arbitration as the only way to resolve trademark disputes in a civil way. So far, writing about arbitration only as an alternative to resolve disputes, but in this paper intends to show that arbitration is not as an alternative but as the only way to resolve trademark disputes in a civil manner, in order to get justice.

METHODS OF THE RESEARCH

Normative research is used to answer the formulation of problems regarding foreign arbitration as the only way to resolve trademark rights disputes in a civil manner. The method of approach is the approach of legislation that is to examine and analyze the legislation in the form of (a) Civil Code; (b) Act Number 20 year 2016 on trademarks and geographical indications, (c) Act Number 30 year 1999 on Arbitration and Alternative Dispute Resolution. The source of data in this study is secondary data. Secondary Data in this study consists of primary legal materials (primary materials), and secondary legal materials (secondary materials). Primary legal materials consist of Act Number 20 year 2016 on trademarks and Geographical Indications, and Act Number 30 year 1999 on arbitration and Alternative Dispute Resolution, as well as other laws and regulations. The techniques used in the collection of legal materials in the form of documentation, namely the

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collection of legal materials from agencies related to research problems, and the documentation is as a study material relevant to research. The entire legal material collected is processed and analyzed qualitatively, then presented by outlining and explaining in accordance with the problems that are closely related to this study.

RESULTS AND DISCUSSION

Based on Act Number 20 year 2016 on trademarks and Geographical Indications, the definition of a trademark is 'a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by a person or legal entity in the activities of trade in goods or services'. Based on the trademark regulation itself, in general, it can be concluded that what is meant by the word trademark is a sign (sign) to distinguish similar goods or services, as well as a guarantee of their quality and use in trading activities of goods or services.

Act Number 20 year 2016 concerning trademarks and Geographical Indications regulates the types of trademarks, namely as stated in Article 1 points 2 and 3 are trademarks and service marks. Based on Act Number 20 year 2016 on trademark and Geographical Indications, brands can be distinguished into several types, including: a) Trademark is a brand used on goods traded by a person/several persons/legal entities to distinguish similar goods; b) A service mark is a mark used on services traded by a person/several persons/legal entities to distinguish them from similar services; c) Collective marks are marks used on goods/services with the same characteristics regarding the nature, general characteristics, and quality of goods and/or services and supervision that will be traded by several persons or legal entities together to distinguish them from other similar goods and/or services.

The function of the trademark can be seen from the point of view of producers, traders, and consumers. In terms of manufacturers, the trademark is used to guarantee the value of their products, especially regarding quality, then use. From the merchant side, the trademark is used to promote its merchandise in order to find and expand the market. While from the consumer side, the trademark is used to make choices for goods and services that will be purchased. The existence of an interest in trademark registration is a legal interest for the owner and holder of trademark rights to provide a guarantee of legal certainty and legal protection of the trademark. This is to anticipate possible infringement of the trademark on the brand that occur in Indonesia, even though in principle the protection is given from the date of receipt and the trademark has no distinguishing power, has similarities in essence or in whole with what has been there before. Thus the protection of the trademark is concretely realized if it has been registered with the competent authority to take care of the field of intellectual property rights. Therefore, protection is easier to do when a trademark is registered, meaning that every registered trademark needs to be registered in order to facilitate the provision of protection for the trademark.

Indeed, the act and regulations in Indonesia have provided many ways to resolve disputes over trademark rights, based on Act Number 20 year 2016, settlement of trademark rights disputes can be done by filing a lawsuit to the Commercial Court, through arbitration, through alternative dispute resolution, and through the District Court. Conventionally, dispute resolution is usually done by litigation or dispute resolution before the court. In

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such circumstances, the position of the parties to the dispute is very antagonistic (mutually opposed to each other) Dispute Resolution business model should not be recommended. Even if it is finally taken, the settlement is only as a last resort (ultimatum remedium) after other alternatives are considered fruitless. Philosophically, Pancasila as the source of all sources of law or sources of legal order for the Republic of Indonesia has taught the Indonesian people to consult first when finding conflicts with others. This is actually contrary to the spirit of dispute resolution through the court, because the nature of the court is open and open to the public, so of course, every dispute that occurs between the parties has been known by many people. In addition, according to Von Savigny every nation has its own soul called Volkgeist, meaning the soul of the people or the soul of the nation. Pancasila as the soul of the Indonesian nation, was born simultaneously with the existence of the Indonesian nation, namely in the era of Srivijaya and Majapahit. This is confirmed by A.G. Pringgodigdo who stated that June 1, 1945 is the birthday of the term Pancasila. While Pancasila itself has existed since the existence of the Indonesian nation.[6]

In the Indonesian legal system, Pancasila is the source of all sources of law, in addition to placing Pancasila as the basis of the Republic of Indonesia. That the source of Indonesian Legal order is the view of life, consciousness, and ideals of law and moral ideals that include the psychological atmosphere and character of the Indonesian nation. Pancasila as the basis of the state is a fundamental element in the fundamental state rules, is a basic legal norms, so that all existing legislation, both written and unwritten, should not be contrary to Pancasila which contains the values of the Supreme God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for all Indonesian people.This means that Pancasila is used as a guide to everyday life, so philosophically, choosing to resolve disputes through arbitration procedures that are closed to the public, in the opinion of the author, is precisely in line with the soul of Pancasila itself that wants harmony and tranquility in resolving disputes that arise between the parties.

In terms of the legal system of the third book of the Civil Code which is open, it means that someone is allowed to make an agreement even though the agreement has not been (or is not) regulated in the law. In other words, the provisions in the third book of the Civil Code on the engagement may be distorted by the parties. Interested parties may make their own provisions that deviate from the third book of the Civil Code. Thus the third book of the Civil Code is as a complementary law or aanvullen recht. Act Number 20 year 2016 is actually in the area of the third book of the Civil Code on engagement. Thus, if the parties to the agreement as stipulated in Act Number 20 year 2016 intend to resolve the dispute through foreign arbitration and ignore the settlement of the dispute through the Commercial Court, then based on the nature of the third book described above, the parties do not infringe the law. In addition, it is known that it turns out from the examples that have been given in the introductory part of this paper, that the Commercial Court was not able to provide a sense of justice as expected by the parties.

Rights To The Mark Under The Convention

Indonesia is also a member of the Paris Convention for the Protection of Industrial Property (Paris Convention) which was later ratified through Presidential Decree No. 15 of

[6] Vero Arifani Caniago, Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan, *Jurnal Ilmiah Wahana Pendidikan*, No 8 Vol 3 doi: https://doi.org/10.5281/zenodo.7242951, p. 304-313

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1997. In addition to joining the organization, Indonesia also signed several agreements, one of the latest is the TRIPs Agreement (Trade Related Aspects of Intellectual Property Rights) which is the most comprehensive agreement in the field of intellectual property rights, where all member countries of the World Trade Organization are bound by the TRIPs Agreement.

Article 1 of the Paris Convention states that: 1) The contracting states are members of the Union for the protection of industrial property rights; 2) The protection of industrial property rights is part of the patent object which includes, among others, utility models, industrial designs, trademarks, service marks, trade names, indications of sources or designations/titles of origin as well as the restraint of unfair competition. Article 2 of the Paris Convention states that: In the case of the protection of the right to industrial property, to the citizens of a member state of the Union shall be entitled to all other member states of the Union to the benefits or gains which they currently guarantee or hereafter guarantee with all citizens, without prejudice to the special rights which have been established. Accordingly, the citizen has the same right to the protection just mentioned, and the same legal treatment for violations that occur against his rights, as long as the conditions and fomalities established against the citizen are met. Article 6 of the Paris Convention states that: A mark reasonably registered in a member state of the Union shall be regarded as a registered mark independent of the other states of the Union, including in the country of origin of the mark.

Arbitration As A Trademark Dispute Resolution Institution

The use of arbitration institutions as a choice of place for business dispute resolution is generally based on economic considerations rather than juridical considerations, this is because the dispute resolution process through arbitration according to business actors is more profitable than the dispute resolution process through litigation institutions in court. The conventional dispute resolution process by way of litigation in court is felt by business people to be less effective and efficient, this is because it is considered that the judiciary has not carried out its duties properly, the dispute process takes a long time because of the process of examining appeals, Cassation and judicial review, is formalistic and very technical, can cause hostility, so that business people look for other ways that they feel can respond to their interests in resolving business disputes they face through alternative dispute resolution outside the litigation process in court. Arbitration aims to:[7] 1) Resolving legal disputes out of court for the benefit of the disputing parties; 2) Reduces the cost of conventional litigation and the usual downtime; 3) Prevent the occurrence of legal disputes that are usually filed in court.

The desire of the disputing parties to sincerely resolve their dispute in good faith.[8] With the seriousness of the intention should also be followed that they have closed the opportunity to resolve the dispute through the courts.[9] It is difficult to be realized by each party will be aware to negate differences of opinion.[10] Perhaps at first both of the above were

[7] Indriati Amarini. "Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Optimalisasi Mediasi Di Pengadilan". *Jurnal Kosmik Hukum* Vol 16 No 2 Juni (2016): 88-98. https://doi.org/16.88198/kosmik.v16n2.1017.

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[9] Karlina Perdana & Pujiyanto. Kelemahan Undang-undang Merek Dalam Hal Pendaftaran Merek (Studi Atas Putusan Sengketa Merek Pierre Cardin). *Privat Law* Vol V No 2 Juli-Desember 2017. p. 45-67. https://doi.org/15.25101/privatlaw.v05no02.6678.

[10] Lahmuddin Zuhri & Endra Syaifuddin. Nilai Lokal Sebagai Model Mediasi Perdata Di Indonesia. *E-Journal Graduate Unpar Part B: Legal Science*. Vol 3 No 1 Tahun 2017. 77-90. https://doi.org/15.25101/ejournal.v03no01.6678.

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in themselves. But in general, obstacles are often found, because the nature of people tend to feel themselves most self-righteous.[11] Then people are less or unwilling to hear what the opponent has to say and are more likely to easily blame others. When disputing parties can meet to resolve a dispute, it often happens that each party lacks self-control in dialogue.[12]

Each social institution is always inseparable from its advantages and disadvantages, this is also owned by the arbitration institution. The advantages of arbitration institutions, among others:[13] a) Disputes can be resolved more quickly, if the parties have seriousness and good faith in resolving disputes; b) The arbitrator who resolves the dispute is a person who is really an expert in his field, so hopefully the resulting decision can be better than if the dispute is resolved through the court; c) The parties mutually guarantee the confidentiality of the dispute; d) Each party is satisfied with the results achieved; e) The costs incurred are cheaper, when compared to resolving disputes through the courts.

The weakness of Arbitration is that arbitration, for example, does not recognize the concept of jurisprudence so that it allows for different decisions in cases that are almost similar in subject matter.[14] However, as has been stated in the introduction of this paper, that at the Cassation level there was a difference of decision in a case that is almost the same subject matter, as experienced by the case of Inter Continental, and Holiday Inn. Basically, dispute resolution through arbitration can be carried out using national or international arbitration institutions based on the agreement of the parties. Settlement of disputes through this arbitration institution is carried out according to the rules and events of the selected institution, unless otherwise established by the parties.

Act Number 30 year 1999 on arbitration and Alternative Dispute Resolution adheres to the territorial principle in determining whether an arbitration award is included in a national or international arbitration award. In Article 1 Number 9 of Act Number 30 year 1999 concerning arbitration and Alternative Dispute Resolution, it has been determined as follows: 'an international arbitration award is a decision handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or the decision of an arbitration institution or individual arbitrator which according to the provisions of the law of the Republic of Indonesia is considered an international arbitration award'. Thus, according to the phrase "outside the jurisdiction of the Republic of Indonesia", all arbitral awards imposed outside the territory of the Republic of Indonesia are international arbitral awards. So in its implementation, refer to the provisions in Article 65 to Article 69 of Act Number 30 year 1999 concerning arbitration and Alternative Dispute Resolution. While based on the phrase "which according to the provisions of the law of the Republic of Indonesia is considered as an international arbitration award", until now there is no provision of the law of the Republic of Indonesia that regulates this matter. So that the determination of an arbitration award can be categorized as a national or international arbitration award, based on the country in which the award was handed down.

The agreement or rules that need to be agreed in the arbitration are regarding the choice

[11] Rahmi Yuniarti. Efisiensi Pemilihan Alternatif Penyelesaian Sengketa Dalam Penyelesaian Sengketa Waralaba. *Jurnal Fiat Justitia* Vol 10 Issue 3 Juli-September 2016. p. 35-50. https://doi.org/15.25101/fiatjustitia.v10no31.6808.

[12] Harijanto. Analisa Terhadap Alternatif Penyelesaian Sengketa (APS) Ditinjau Dari Sosiologi Hukum. *Jurnal Rechtens* Vol 3 No2 Desember 2014 p. 8-20. https://doi.org/18.15101/rechtens.v03no02.6808.

[13] Devirianti Effendi. Pelaksanaan Pemberian Bantuan Hukum Terhadap Masyarakat Tidak Mampu Di Luar Pengadilan (Non Litigasi). *Jurnal Unes* Vol I Issue I 2017. p. 55-66. https://doi.org/15.25101/unnes.v01no01.6578.

[14] Anik Entriani. Arbitrase Dalam Sistem Hukum Di Indonesia. *Jurnal An-Nisbah* Vol 03 No 02 April 2017. p. 8-20. https://doi.org/15.25101/annisbah.v03no02.6808.

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of law (choice of law), the choice of forum (choice of jurisdiction) and the choice of domicile (choice of domicile). In contracts of international dimension, the determination of choice of law is very important to avoid conflict of law, considering the parties involved, the place of transaction and the related legal system, the place of transaction and the related legal system vary and may even conflict or conflict between one legal jurisdiction and another legal jurisdiction. Even if the choice of law has been established in a contract or agreement, international civil law still leaves fundamental issues in the proceedings of a case. This is rooted in the qualification differences between the various civil international law systems in the world.

The Urgency Of Resolving Trademark Rights Disputes Through Foreign Arbitration

The recognition of the judicial system in Indonesia for arbitration has been going on since colonial times. The existence of arbitration as an alternative in civil dispute resolution has received formal juridical recognition in the Indonesian legal system. Traces of these rules, among others, can be seen in Article 377 HIR, Article 3 of Act Number 5 year 1968 on the settlement of disputes between states and foreign nationals regarding investment, Supreme Court Regulation (PERMA) Number 1 year 1999 and also in Act Number 30 year 1999 on arbitration and Alternative Dispute Resolution. Based on Act Number 30 year 1999 on arbitration and Alternative Dispute Resolution, what is meant by arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute. The arbitration agreement is defined as an agreement in the form of arbitration clauses contained in a written agreement made by the parties before the dispute arises, or a separate arbitration agreement made by the parties after the dispute arises.

The New York Convention year 1985, namely the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been accepted by Indonesia through Presidential Decree No. 34 year 1981 is the official recognition of international arbitration in the national legal system in Indonesia. The main points of the material provided for in the convention include: a) Meaning of foreign arbitral awards, namely arbitral awards made in the territory of another state of the country where the recognition and execution of the arbitration award in question is requested; b) The principle of reciprocity, meaning the application of recognition and execution of foreign arbitral awards within a country at the request of another country, can only be applied if between the countries concerned have previously had bilateral or multiteral ties; c) During trade disputes, States Parties limit self-subjugation only to the recognition and enforcement of foreign arbitral awards, insofar as they relate to business and trade disputes; d) Written form, namely the agreement or clause must be stipulated in writing; e) Arbitration has absolute competence, meaning that once the parties make an agreement to resolve disputes through arbitration, since then arbitration has absolute competence to resolve disputes arising from the agreement in question; f) Arbitration award, final and binding, means as a binding and final decision and must carry out execution according to the rules of procedural law applicable in the territory of the country where the arbitration award in question is requested for execution; g) Execution is subject to the principle of ius sanguinis, or the principle of personality, that is, the procedure by which the execution is carried out is subject to the court to which the application for execution is submitted; h) The documents attached to the application for recognition of execution, include all documents as the basis for the issuance of the arbitration award; i). Refusal of execution, it is possible if: 1) a matter which is disputed according to the laws of

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the state in the place where the petition is filed, shall not be resolved according to the arbitral forum; 2) the recognition and execution of the relevant foreign arbitral award will give rise to a conflict with the public interest.

The meaning of Arbitration at the choice of the parties to the contract is: a) arbitration is a dispute resolution mechanism chosen by the parties; b) arbitration is a private institution (private tools) or extra-judicial or settlement mechanism outside the court; c) the existence of arbitration is on the principle of its independence; d) The Source or basis of law the jurisdiction and scope of the arbitration are determined and limited by the parties ' own will, in the sense that the disputing parties can determine for themselves the rules of law to be applied, by what procedure or procedural law, or can agree otherwise on how the arbitration will be conducted.

Indonesia also has an arbitration institution, namely the Indonesian National Arbitration Board, but for the field of intellectual property rights, even since 2012 an arbitration institution has been established that deals specifically with intellectual property rights issues, namely the arbitration and Mediation Board for intellectual property rights, but five years since the establishment of the arbitration and Mediation Board for Intellectual Property Rights has not decided cases in the field of intellectual property rights itself. Meanwhile, on the other hand, with the establishment of the arbitration and Mediation Board for Intellectual Property Rights, Intellectual property disputes are no longer the jurisdiction of the Indonesian National Arbitration Board. Based on normative rules if the parties agree to go through arbitration, there is actually no longer the authority of the District Court to examine the substance of the dispute.

CONCLUSION

Law arises as a solution to resolve conflicts that arise in society, and all citizens have an equal position before the law, therefore, an ideal law is needed to resolve conflicts that arise in that society. Although the ideal law is very difficult to achieve, but the existence of a fair law can help resolve conflicts of interest involving individuals or groups. Related to fair law, it is appropriate if foreign arbitration can be used as the only way to resolve trademark disputes in a civil manner, because the Commercial Court, which should be a place for people to seek justice, often even gives decisions that do not reflect justice. In addition, with the establishment of the Intellectual Property Rights arbitration and Mediation Board, intellectual property disputes are no longer the jurisdiction of the Indonesian National Arbitration Board, but on the other hand the Intellectual Property Rights arbitration and Mediation Board has never decided cases in the field of intellectual property rights itself.

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