



# Harmonization of Uncitral Model Law on International Commercial Arbitration as a Legal Protection Towards Tourism Industry

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**Abstract.** Despite being one of the biggest industries in the world, the tourist industry uses arbitration and other kinds of ADR less frequently than other industries (ADR). In disputes involving parties from other jurisdictions, the travel and tourist sector is frequently engaged. Travel agents, airline, hotels, rental vehicles company, and travel insurers can come from different countries. The use of litigation is needless, not only because it is costly and destroy productive relationships, but also the court decision in one jurisdiction cannot be enforced in another jurisdiction. While tourism or travel arbitration has been recognized in China, Thailand, Singapore and many other countries, this type of arbitration is not well known in Indonesia. Tourism industry in Indonesia has become one of the main sources of currency earnings which contribute around 5% of Indonesia's total GDP. At the same time, tourism provides around 13 million jobs, representing around 11% of total employment. This due to the increasing number of foreign tourist arrivals. It is therefore important to provide legal protection toward tourism industry by providing arbitration law that meeting the standard set up by the UNCITRAL Model Law. The goal of this study is to examine how harmonizing Indonesian arbitration legislation with the UNCITRAL Model Law may encourage the peaceful settlement of conflicts in the travel and tourist sector. This topic is important to address since it is part of the effort that the Indonesian government must do as part of tourism development efforts. The Indonesian government shall bring its arbitration law up to the international standard to be able to compete with countries in Asia in the tourism sector.

**Keywords:** Tourism Arbitration · Harmonization of Arbitration Law · UNCITRAL Model Law on Commercial Arbitration

## 1 Introduction

The tourist industry is one of those that is well-known internationally. Travel, housing, and allowed tourist locations are all subject to the regulations that each state has enacted regarding tourist attractions. Participants in the industries include airlines, travel agencies, tour operators, hotels and resorts, and companies that rent cars. There are cruise lines and travel insurance companies everywhere. The successful communication

between those individuals and businesses is essential to the tourist industry's success. Conflicts that damage the relationships between the players have the potential to weaken the network's ability to function effectively.

The tourism industry in Indonesia contributes about 5% to Indonesia's total GDP. In addition, 10% of total employment in Indonesia is related to the tourism industry, making a total of around 319 million jobs. The growth of the Indonesian tourism industry between 2014 and 2019 helped the number of foreign visitors to the nation rise. However, Indonesia continues to lag behind its neighbors in South-East Asia. The growth of the tourist sector is crucial for the welfare of the Indonesian people. Unfortunately, such a development is not large enough to be able to achieve the target of increasing its contribution to the national economy. In this regard, the many variations and options provided to tourists encourage the tourism industry to continue to grow. This development includes aspects that can increase the value of tourism.

Considering the fact that Indonesian tourism sector has not yet flourish to its maximum potential, there are several policies that can be taken. Among them are continuing policy that prioritizes tourism in the national development; improving the competitiveness of Indonesian tourism and improving human resources capacity and capability through better education and trainings to support the tourism industry. In respect to improve the competitiveness not only can be done by providing services in travel-related activities, but also by providing effective and efficient dispute settlement mechanism available for tourism industry players. There are various ways to resolve disputes related to the tourism industry. However, tourism industry actors are not only in domestic affairs, but also allow actors in other jurisdictions. The difficulty of implementing court decisions involving parties in other jurisdictions makes courts no longer an option in dispute resolution. Thus, the use of Alternative Dispute Resolution (ADR) is preferable. Unfortunately, tourism industry's use of ADR lags behind many other industries.

Among ADR mechanism, arbitration is the most feasible method to choose as parties in a tourism dispute often come from different countries. The arbitrator(s) conducts the arbitration hearing and renders a ruling in light of the legal arguments and evidence put forth by the disputing parties. More than 150 countries around the world have ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, making the decision enforceable in all of these countries.

Indonesian arbitration law must adhere to widely accepted international standards in order for it to be competitive in the country. UNCITRAL Model Law on International Commercial Arbitration (1985), with 2006 revisions, was produced by the United Nations. The Model Law is intended to assist nations in updating and changing existing legislation governing arbitral proceedings. Unfortunately, Indonesia has not harmonized the model law that can facilitate international commercial arbitration. Indonesian arbitration law does not refer to UNCITRAL Model Law.

Based on the discussion above, it is crucial to conduct research into the necessity for Indonesia to update its arbitration law in order to draw in tourism stakeholders and international arbitration institutions as a way to promote sustainable tourism and to offer legal protection to those involved in the sector. This essay argues for Indonesia's acceptance of the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration, which was first published in 1985.

## 2 Method

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Law No. 30 of 1999 Concerning Arbitration and Dispute Resolution, Law No. 10 of 2009 Concerning Tourism, and the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, serve as the primary legal sources used in this research. Among the secondary legal sources are dictionaries, books, journals, and books.

## 3 Research and Discussion

### 3.1 Dispute Resolution in Tourism Industry: The Importance of Arbitration

The use of international commercial arbitration in tourism-related issues In 1991, the United Nations World Tourism Organization defined tourism as the pursuits of people who, for business, pleasure, or other reasons, travel to and stay in places other than their usual surroundings for a period of no longer than one year consecutively. Domestic and international tourism could now be distinguished. The former refers to travel that is limited to staying within one's own country's borders. Travel within one's own country's borders is meant by the latter.

The tourism industry's main objective is to provide good service for travelers. Its success lays in the good relations between all sectors involved such as: transportation, accommodation, ancillary services and sales and distribution. In hospitality business, including tourism, it is important to have smooth relationship between all stakeholders. This industry relies heavily in cooperation and trust. Therefore, good relationship and reputation are the most crucial thing that must be maintained.

There is a need of sustainable tourism development which depends among other things, the application of dispute settlement mechanism which needs to be private yet legally binding. Arbitration fulfills that requirement by having the following natures: confidentiality, neutrality, flexibility, party autonomy and also its enforcement worldwide.

Arbitration is preferable to tourism industry because its privacy as well as final and binding decision. In addition, parties in the disputes may select arbitrators who have expertise in the field of tourism. This is for example if the dispute involve airlines and travel agent, the arbitrator can be picked from practitioners who have the experience in either aviation or hospitality services. By having the dispute handled by decision makers who understand the substantive issues, the resolution is hoped to be fair, proper and end the dispute without ending the business relationship.

However, the use of arbitration to settle tourism disputes is still uncommon. This is especially for disputes involving individual tourism consumers. The reasons are because the individual tourists are not familiar with arbitration and also there is no arbitration clause in the contract with service providers. Another concern is related to time and costs, in which some regard arbitration as unworthy because only involve a minor monetary claims.

### **3.2 Current Challenges of Arbitration in Indonesia**

Several international arbitration decisions cannot be easily implemented in Indonesia, earning it the moniker "unfriendly country to arbitrate." Due to the fact that Indonesian arbitration legislation does not incorporate the UNCITRAL Model Law on Arbitration, it is also thought to be outdated. The Indonesian statute No. 30 of 1999, which refers to arbitration, substantially resembles the Dutch Code of Civil Procedure. No indication of the administration's or parliament's intention to adopt the UNCITRAL Model Law on Arbitration has yet been made. It is believed that there are substantial differences between the Indonesian Arbitration Law and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As a result, Indonesia has had trouble attracting participants in international arbitration.

Lack of trust on the part of foreigners and international arbitral organizations is the main factor hindering Indonesia's ability to draw arbitration users. They are unconvinced by Indonesian arbitration law, the judicial system, and their capacity to support arbitration as well as to acknowledge and uphold arbitral awards. Indonesia will take proactive steps to expand its global visibility and capabilities in order to draw tourist stakeholders that use arbitration to settle their issues. One option is to align its arbitration statute with the UNCITRAL Model Law on Arbitration.

In the meantime Indonesia have several arbitration institution specialized for various sectors such as: construction, capital market, banking, insurance. Unfortunately, tourism arbitration is not yet available. This paper suggest, to increase trust among tourism stakeholders, it is important for Indonesia to establish arbitration institution specialized in tourism. This institution is to provide lower cost and efficient international arbitration for low and medium value tourism disputes.

### **3.3 The Importance of Harmonization of Uncitral Model Law on Commercial Arbitration to Protect Tourism Industry Players**

The UNCITRAL Model Law on International Commercial Arbitration will contribute in the modernization and reform of national arbitration laws. Establishing a few rules and clauses to standardize international business arbitration is the main goal. The scope of judicial involvement through the acceptance and execution of the verdict, the arbitration agreement, and the composition and authority of the arbitral tribunal are all covered. It also encompasses all phases of the arbitration process and processes. The Model Law, which has been adopted by all areas and the various legal systems worldwide, demonstrates global consensus on fundamental aspects of the practice of international arbitration.

The Model Law further restricts the court's ability to interfere, allowing only for judicial action in the nomination of arbitrators, in the contesting or dismissal of an arbitrator's appointment, in the jurisdiction of an arbitral award, and in the setting aside of an award. It lays forth the procedures that must be followed for the declaration of the award, its enforcement, and the reasons for contesting the award.

Thus, by establishing uniformity in the procedural and substantive procedures of arbitration, the UNCITRAL Model Law offers crucial aspects to minimize challenges in the process of international arbitration. A nation can be viewed as not possessing the

highest international standards if it does not accept the UNCITRAL Model Law. Given the circumstances, it is exceedingly improbable that a credible international arbitration institution will think upon Indonesia as a potential arbitration venue. Although Indonesia is not being considered as a venue for arbitration, Indonesian parties with issues involving foreigners will need to travel outside of their country to conduct arbitration. This damages Indonesia's reputation abroad for its businesses dealing with foreigners as well as the legal profession in Indonesia.

There will be several effects if Indonesia aligns its arbitration legislation with the UNCITRAL Model Law. First of all, it will transform Indonesia's reputation from an unfavorable to a favorable country for arbitral procedures, making it a good location for the conduct of both international commercial and judicial actions. Second, users of arbitration will select Indonesia as the venue. As a result, more tourists and business travelers will enter the nation. It will make money from the hospitality sector.

By updating its arbitration law through the adoption of the UNCITRAL Model Law, Indonesia will also be chosen by recognized arbitration institutions as a seat of arbitration or a location for arbitration. The International Chamber of Commerce (ICC), a well-known arbitral institution, typically held its arbitration hearings in countries they believed to have advantageous arbitration legislation. Indonesia will not be regarded as an appropriate location for arbitration without unifying its legal system.

To attract international arbitral institutions, foreign lawyers, and parties interested in using international arbitration, Indonesia must have a favorable arbitration statute. Adopting the widely accepted UNCITRAL Model Law is the best method to start persuading disputing parties because the legal environment is the most essential factor when choosing a seat and location for arbitration.

## 4 Conclusion

Numerous industries have shown great success using arbitration. In addition to improving relations between all participants in the industry, the harmonization of Indonesian arbitration law with the UNCITRAL Model Law presents prospects for success in fairly and effectively resolving tourism disputes. By adopting UNCITRAL Model Law, not only will Indonesia have a modern law but also it will contribute to develop tourism industry in the country.

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