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Resolution of Business Disputes in the Aviation Industry: The Role of Law and Arbitration

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Abstract: The purpose of this study is to explore the legal framework governing dispute resolution, examine the practice of using arbitration, identify the challenges faced, and provide recommendations to improve the effectiveness of business dispute resolution in the aviation industry. Conduct a review of the relevant literature to understand the legal framework governing business dispute resolution in the aviation industry, as well as practices and trends in the use of arbitration. Analyze data obtained from literature studies, case analysis, and, trends, and findings relevant in the context of business dispute resolution in the aviation industry. The role of arbitration law and implementation in the resolution of business disputes in the aviation industry is of significant importance. Law governs operational aspects and handles conflicts, while arbitration offers efficient and transparent solutions. The focus on investment risk prevention, regulatory updates, and negotiation methods demonstrate efforts to improve a conducive business environment. Consumer protection and law enforcement are necessary to ensure fairness for all parties. Thus, efforts to increase the role of arbitration law and implementation can bring great benefits in the aviation industry.

Keyword: Business, Legal Policy, Abitration

INTRODUCTION

In the dynamic world of the aviation industry, where transactions soar as far as the aircraft itself, business dispute resolution becomes one of the critical foundations for ensuring operational efficiency, fostering trust among stakeholders, and maintaining the industry's reputation for reliability. As the industry continues to evolve and globalize, the complexity of business relationships and transactions increases, inevitably leading to an increase in disputes (Lee, 2022). Such disputes can arise from a variety of sources, including breach of contract, regulatory compliance issues, competition issues, and disputes over liability. The aviation industry faces various challenges in resolving business disputes. The international nature of air travel often means that disputes involve parties from different jurisdictions, each with its own set of laws, regulations, and legal procedures (Zhang, 2022). This complexity can significantly hinder the settlement process, causing delays, increased costs, and uncertainty for all parties involved.

In addition, the high-risk nature of business disputes in the aviation industry adds to its complexity. Airlines, manufacturers, care providers, and other industry players operate in environments where safety, security, and reputation are paramount (Özel and Hacıoglu, 2021). As a result, disputes must be dealt with quickly and efficiently to reduce the potential negative impact on operations and public perception (Mizrak, 2023). Another pressing issue is the evolutionary landscape of the aviation industry itself. Technological advances, changes in regulatory frameworks, and constantly changing market dynamics are reshaping industries, introducing new types of disputes and challenges (Sabour, Mohammadi and Khosravian, 2015). For example, disputes over intellectual property rights, data privacy, and environmental concerns have become increasingly common in recent years, reflecting the industry's ongoing transformation. There has been an increasing trend in utilizing legal mechanisms such as arbitration to resolve business disputes within the aviation industry (Cauia and Bria, 2023). Arbitration offers several advantages over traditional litigation, including confidentiality, flexibility, and the ability to select arbitrators with expertise in aviation matters (Vinod, 2010). In addition, arbitration can provide a faster resolution process compared to court proceedings, which is invaluable in the fast-moving aviation industry.

Arbitration provides parties with the opportunity to choose a neutral forum and applicable law, thereby avoiding the potential bias or uncertainty associated with litigants in various jurisdictions. This aspect is particularly advantageous in international disputes, where parties may prefer a neutral and predictable legal framework. The purpose of this study is to explore the legal framework governing dispute resolution, examine the practice of using arbitration, identify the challenges faced, and provide recommendations to improve the effectiveness of business dispute resolution in the aviation industry.

Business

Business refers to entities involved in producing, distributing, or selling goods and services. It can take the form of a sole proprietorship, partnership, corporation, or cooperative, with the primary goal of earning income and achieving profitability. Businesses span sectors such as manufacturing, retail, finance, healthcare, and technology. Typically, they have a mission statement, vision, and set of values that direct their activities and choices (Kang *et al.*, 2019). Business in the aviation industry refers to the economic activities involved in the production, distribution, and sale of aviation-related goods and services. This includes various entities such as airlines, aircraft manufacturers, aircraft maintenance service providers, airports, tour operators, and other related companies. The main goal of business in the aviation industry is to generate revenue and achieve profitability through the provision of aviation services to customers (Haag, 2020).

The aviation sector is an important part of the global economy and has a crucial role in business and leisure activities. It is the second largest contributor to pollution among transportation methods, and there is a need to switch to more sustainable solutions within the aviation sector (KOŠČÁKOVÁ, 2023).

Legal Policy

Legal policy refers to a set of laws, regulations, and guidelines that govern the functioning of a legal system. It encompasses the principles, rules, and procedures that guide the interpretation, application, and enforcement. Legal policies can be influenced by a variety of factors, including constitutional and legal policies, environmental policies, and international legal order (Ternavska, 2021). Legal policy refers to the set of principles, rules, and guidelines that govern the legal system within a country or jurisdiction. It includes all decisions made by governments, legislatures, and other bodies that influence due process,

including the establishment, interpretation, and enforcement of laws (Friedman and Hayden, 2017).

Arbitration

Arbitration is a form of alternative dispute resolution (ADR) that involves resolving disputes outside the court system. It is a process in which a neutral third party, called an arbitrator, is appointed to hear evidence and make binding decisions on disputes. Arbitration proceedings are often less formal and faster than litigation, and can be more cost-effective due to the reduced need for court attendance and other formalities (Mohanty, 2022). Arbitration is an out-of-court dispute resolution process involving disputing parties using one or more independent and neutral persons, i.e. arbitrators, to make binding decisions on the dispute. Arbitration decisions are usually final and enforceable in court. Arbitration procedures are generally faster, more flexible, and more confidential compared to traditional court proceedings (Born, 2014).

Arbitration in the aviation sector refers to a dispute resolution process outside the judicial system, usually involving a neutral third party, called an arbitrator, who makes a binding decision on the dispute. This process is often less formal and faster compared to litigation, and can be more cost-effective due to the reduced need for court attendance and other formalities. Within the aviation sector, arbitration can be used to resolve different types of disputes, such as those relating to airline contracts, aviation accidents, and disputes between airlines and airports. These proceedings may involve ad-hoc arbitration, domestic arbitration, international arbitration, or international commercial arbitration, depending on the specific circumstances of the dispute (Whelan, 2023).

METHOD

Conduct a review of the relevant literature to understand the legal framework governing business dispute resolution in the aviation industry, as well as practices and trends in the use of arbitration. Analyze data obtained from literature studies, case analysis, and trends, and findings relevant in the context of business dispute resolution in the aviation industry.

RESULTS AND DISCUSSION

Implementation of the Role of Law in Business Disputes in the Aviation Industry

Legal involvement in business conflicts in the aviation sector has significant importance and complexity. Legal issues can arise in a variety of aviation industry domains, including airline agreements, aviation incidents, and conflicts between airlines and airports. In the aviation industry, there are strict rules governing various aspects of its operations. This includes regulations related to safety, security, and environmental issues. Legal experts play a role in interpreting and enforcing these rules, ensuring that companies in the aviation sector comply with applicable regulations (Zhang, 2022). In the event of an accident or incident, legal experts may be involved in determining responsibility and payment of compensation. This can include client representation in court, settlement negotiations, and providing advice on risk management and insurance strategies.

Other result studies also state one of the most significant parameters in aircraft construction design is light weight along with good stability to imposed stresses and forces resulting in lower fuel consumption and increased payload, and determines the position of these products in the aerospace industry. Absorption capacity is defined as the ability to identify, acquire, and apply knowledge in the environment, and technology acquisition often refers to processes, strategies, and use opportunities that provide the possibility of achieving desired goals in a short period of time (Sabour, Mohammadi and Khosravian, 2015). In the aviation sector, even before the enactment of the Serious Accident Criminal Act, the roles

and responsibilities of CEOs have long been emphasized through the implementation of SMS or HFACS proposed by ICAO. However, it is unclear what should be done legally if those roles and responsibilities are not met. During COVID-19, many pointed out that Korean low-cost airline managers lacked interest and investment in aviation safety, and that they paid little attention to recognition and immunity to encourage employees to report company safety issues (Koo and Lee, 2023).

Another results study states the theory of the evolutionary dynamics of the document from micro-level drafting behavior to macro-level effects on the entire contract area. In particular, this theory shows how drafting heuristics work on individual documents and on document paths – lineage from ancestral documents to descendant documents, providing feedback to new documents and undermining overall standardization in the market through the process of text drift (Anderson, 2020).

Arbitration Implementation in Business Disputes in the World of Aviation

Studies from (Sankovych, 2016) which state that proposes improvements to the current framework by utilizing the tools offered by the Convention, thus avoiding the time-consuming and expensive process of amending the Convention or negotiating on new instruments. By modifying dispute resolution mechanisms, ICAO will improve access to dispute resolution and introduce more transparency into decision-making processes. Another study stated that substantially the scope of the General Agreement on Trade in Services (GATS) is relatively limited and there are challenges in applying WTO principles to air services. However, eleven cases have been submitted to the WTO forum relating to aircraft or airports. The fourth part will review cases under the category of aircraft and airports that have been brought to the WTO in history (Zhang, 2018).

Other research results supporting this article state risk prevention for aviation investment and trade, renewal of aviation arbitration rules in China, and importance of the establishment of ASR ITDRC in enhancing the construction of a 'One-Stop' platform for aviation dispute resolution in Shanghai (Dang, 2024). Another study also states the use of the Negotiation method to resolve disputes in aircraft contracts. By applying such methods, aircraft contractors will be able to resolve disputes without damaging the relationship between parties while saving time and costs (compared to other methods) (Faivre, 2017). Another study states In the implementation of air transportation, there is always a potential risk that can harm passengers. Currently, not all risks are attributable to airlines. However, this does not rule out the possibility for passengers to file a lawsuit against the airline as a business person. Passengers who suffer losses due to air transportation can file allegations or claims stipulated in Law Number 8 of 1999 concerning Consumer Protection which can be resolved through two dispute resolution channels, namely through the court and out-of-court channels, both of which are recognized by Law Number 8 of 1999 concerning Consumer Protection (Sudiro and Noviyanti, 2020).

Discussion

Implementation of the Role of Law in Business Disputes in the Aviation Industry

The implementation of the role of law in the resolution of business disputes in the aviation industry is a very important aspect considering the complexity and significance of this industry in the global economy. The range of legal issues that arise, from airline agreements, to aviation incidents, to conflicts between airlines and airports, shows the complexities that legal experts in the industry have to deal with. Strict regulations governing operational aspects of the aviation industry, especially safety, security, and environmental issues, place legal experts in an important role in interpreting and enforcing these rules. They

are responsible for ensuring that companies in the aviation sector comply with applicable regulations, so as to create a safe and sustainable environment for all parties involved.

In addition, handling accident or incident cases also requires the involvement of legal experts in determining responsibility and payment of compensation. This suggests that the role of law is not only limited to the fulfillment of regulations, but also in resolving the consequences of undesirable events in the industry. From an aircraft design perspective, light weight and good stability are key parameters that affect aircraft performance. This shows that in addition to technical aspects, legal factors also play a role in determining product characteristics in the aerospace industry. Technology absorption capacity and acquisition are also in focus, demonstrating the importance of adopting new technologies and knowledge in the face of the evolving challenges of the aviation industry.

However, another challenge arises in the form of vagueness regarding the responsibilities and role of the CEO, especially in the context of aviation safety. The COVID-19 pandemic has also revealed a lack of interest and investment in aviation safety from some airline managers, highlighting the importance of oversight and enforcement in maintaining high safety standards in the industry. Lastly, the theory of document evolutionary dynamics suggests that law has an important role in regulating contractual relationships and ensuring standardization in industry. However, text drift that occurs in the process of drafting documents also suggests that changes in legal practice can affect standards and regulations in the market. The implementation of the role of law in the aviation industry faces a variety of complex challenges and requires cooperation between legal experts, companies, and regulators to create a safe, sustainable, and highly competitive environment.

Arbitration Implementation in Business Disputes in the World of Aviation

Research proposing improvements to dispute resolution frameworks in the aviation industry through the implementation of arbitration highlights efforts to improve efficiency and accessibility in resolving conflicts. By utilizing the tools of the Convention and avoiding the complicated process of amending or negotiating new instruments, this step is expected to bring benefits to all parties involved. The importance of transparency in the decision-making process in dispute resolution not only provides clarity for the parties involved, but also strengthens the legitimacy of the arbitration outcome. This reduces doubts and uncertainties that may arise during the dispute resolution process.

In addition, the focus on the prevention of investment and trade risks in the aviation industry, as well as the renewal of arbitration rules in China, demonstrate comprehensive efforts in improving the conducive environment for investment and trade in the sector. The establishment of ASR ITDRC also provides the possibility to accelerate dispute resolution by providing a unified platform. The application of negotiation methods in resolving aircraft contract disputes shows a proactive approach in resolving conflicts. By prioritizing dialogue and collaboration, this method can help maintain relationships between parties and save time and costs involved in the dispute resolution process.

However, challenges still exist in terms of addressing possible risks in air transport. The importance of consumer protection and law enforcement in handling claims and demands from passengers shows that strong legal arrangements are needed to ensure fairness and security for all parties involved in the aviation industry. From this analysis, that the implementation of arbitration in business dispute resolution in the aviation industry has the potential to increase efficiency, transparency, and fairness in handling conflicts. However, these efforts must be supported by a strong legal framework and an environment conducive to collaboration and peaceful settlement.

CONCLUSION

The role of arbitration law and implementation in the resolution of business disputes in the aviation industry is of significant importance. Law governs operational aspects and handles conflicts, while arbitration offers efficient and transparent solutions. The focus on investment risk prevention, regulatory updates, and negotiation methods demonstrate efforts to improve a conducive business environment. Consumer protection and law enforcement are necessary to ensure fairness for all parties. Thus, efforts to increase the role of arbitration law and implementation can bring great benefits in the aviation industry.

REFERECE

- Anderson, R.T. (2020) 'Path Dependence, Information, and Contracting in Business Law and Economics', in. Available at: <https://api.semanticscholar.org/CorpusID:225870324>.
- Born, G.B. (2014) 'The law governing international arbitration agreements: An international perspective', *Singapore Academy of Law Journal*, 26, pp. 815–848.
- Cauiá, A. and Bria, F. (2023) 'Legal mechanisms to prevent the negative effects generated by the COVID-19 pandemic on civil aviation security', *International Relations Plus* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:262196939>.
- Dang, S. (2024) 'Summary Report on the Inaugural Meeting of the Air Silk Road Investment and Trade Dispute Resolution Centre with the Announcement of the New SHIAC Aviation Arbitration Rules (2024), Held in Shanghai, China, on 26 November 2023', *Air and Space Law*, 49(2).
- Faivre, L. (2017) 'Dispute methods resolution comparison toward the Aircraft contracts'.
- Friedman, L.M. and Hayden, G.M. (2017) *American law: An introduction*. Oxford University Press.
- Haag, K. (2020) 'International action and the role of ICAO', in *Aviation and Climate Change*. Routledge, pp. 104–116.
- Kang, J. et al. (2019) 'Study on the Definition of Reference Building Based on Analysis of Design of Retail Buildings', *IOP Conference Series: Earth and Environmental Science*, 238. Available at: <https://api.semanticscholar.org/CorpusID:189653546>.
- Koo, S.-N. and Lee, J.R. (2023) 'Anticipated Effect of Serious Accident Punishment Act on Air Transportation Industry's Flight Safety Promotion', *Crisis and Emergency Management: Theory and Praxis* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:265391769>.
- Lee, J.W. (2022) 'The Resolution of Inter-State Disputes in Civil Aviation by Luping ZHANG. Oxford: Oxford University Press, 2022. xx + 256 pp. Hardcover: £80.00; eBook available. doi: 10.1093/oso/9780192849274.001.0001', *Asian Journal of International Law*, 12, p. 424. Available at: <https://api.semanticscholar.org/CorpusID:251075782>.
- 'Life Cycle Assessment and its Application to the Aviation Sector' (2023) *Acta Montanistica Slovaca* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:257126031>.
- Mizrak, F. (2023) 'Analyzing Criteria Affecting Decision-Making Processes of Human Resource Management in the Aviation Sector - A Fuzzy Logic Approach', *Journal of Aviation* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:261320475>.
- Mohanty, A. (2022) 'A STUDY OF DEVELOPMENTS IN ARBITRATION LAW WITH REFERENCE TO AMAZON V. FUTURE RETAIL CASE', *THE JOURNAL OF UNIQUE LAWS AND STUDENTS* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:257966396>.
- Özel, E. and Hacıoğlu, U. (2021) 'A critical approach to fatigue risk factors in cockpit and cabin crew for the flight safety in aviation industry', *Bussecon Review of Social Sciences* (2687-2285) [Preprint]. Available at:

- <https://api.semanticscholar.org/CorpusID:240404149>.
- Sabour, M.H., Mohammadi, M.S. and Khosravian, E. (2015) ‘Challenges on Technology Acquisition based on Absorptive Capacity of Composite Materials in Iran’s Aviation Industry’, *Indian journal of science and technology*, 8, pp. 1–14. Available at: <https://api.semanticscholar.org/CorpusID:137890563>.
- Sankovych, R. (2016) ‘ICAO Dispute Resolution Mechanism: Deepening the Current Framework in Lieu of a New One’, *Issues Aviation L. & Pol’y*, 16, p. 319.
- Sudiro, A. and Noviyanti, L. (2020) ‘Flight Dispute Resolution (Based on Law Number 8 of 1999 Concerning Consumer Protection): Lion Air JT 610 Accident Case’, in *Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2019)*. Atlantis Press, pp. 636–642.
- Ternavska, V. (2021) ‘Interpretation of law as a form of implementation of the constitutional and legal policy of the state’, *THE INTERPRETATION OF LAW: FROM THE THEORY TO THE PRACTICE* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:238911554>.
- Vinod, V. (2010) ‘Aviation Dispute Settlement Mechanisms’, in. Available at: <https://api.semanticscholar.org/CorpusID:111817156>.
- Whelan, P. (2023) *Parental Liability in EU Competition Law: A Legitimacy-Focused Approach*. Oxford University Press.
- Zhang, L. (2018) ‘The Role of Dispute Settlement Body (DSB) in the World Trade Organization (WTO) in the Aviation Industry—In the Time of Bombardier Case’, *Air and Space Law*, (2), pp. 179–190.
- Zhang, L. (2022) ‘Means of Dispute Resolution in International Civil Aviation’, *The Resolution of Inter-State Disputes in Civil Aviation* [Preprint]. Available at: <https://api.semanticscholar.org/CorpusID:246915721>.