
Application of Online Arbitration to Dispute Resolution E-Commerce Business in Indonesia (in Academic Discourse and Practice)

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ABSTRACT:

Online trade dispute resolution has actually been regulated in the Law on Trading Through Electronic Systems, namely "PMSE dispute resolution as referred to in paragraph (1) can be held electronically (online dispute resolution) in accordance with the provisions of laws and regulations". However, online dispute resolution currently does not have a clear mechanism to be resolved through online arbitration. The purpose of this study is to see an overview of the Application of Online Arbitration to E-Commerce Business Dispute Resolution in Indonesia (in academic discourse and practice). This method of approach is a normative juridical approach with secondary data. This research is descriptive analytical. The results of the study found that the settlement of trade disputes electronically (e-commerce) through online arbitration in accordance with the APS Law which states that in the event that it is agreed that dispute resolution through arbitration occurs in the form of exchange of letters, then the sending of telex, telegram, facsimile, e-mail, or in the form of other means of communication, accompanied by a note of acceptance by the parties. Online arbitration in the process of its implementation in Indonesia is in accordance with and does not conflict with existing laws and regulations, although there are no implementing rules governing the arbitration process online.

Keywords: Online Arbitration, E-Commerce Business, Law, Settlement, Disputes.

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INTRODUCTION

The principle of simple, speedy and low-cost justice is a fundamental legal principle in the civil procedural law system in Indonesia, because the principle is a demand that grows from the community that has been formulated normatively in statutory provisions. As a principle of civil procedural law, of course, this principle must be the foundation of all legal provisions governing the process of settling civil cases, and this principle must be reflected in all provisions of the law and in court decisions (Hariddin et al., 2020).

Years of proceedings, which the justice-seeking heirs must sometimes continue, must be avoided to the greatest extent. The judiciary must be cheap. The courts are for the people, therefore the judiciary must be conducted at a low cost so that the people seeking justice can pay for it". While the Explanation of Article 4 paragraph (2) of Law No. 14 of 1970 states "With this principle, it is intended that the judiciary must be able to meet the expectations of justice seekers who always want their cases to be examined and decided quickly, precisely, fairly and at low cost. There is no need for convoluted examinations and events that can lead to proceedings for years, sometimes even to be continued by justice-seeking heirs (Simanjuntak & Santoso, 2022).

Dispute resolution outside the court has a very important role in reducing the backlog of cases in the Supreme Court. The development of the dispute resolution system through existing judicial bodies, the formation of new regulations in the law enforcement process in Indonesia gave birth to a new court known as a private court, one of which is currently known as

the Indonesian National Arbitration Board (BANI) which was established based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law). BANI was formed as a forum for out-of-court settlement of court seats in line with the needs of global developments that are closely related to dispute resolution, especially business or trade disputes, which require quick handling and also save time and costs for the parties to the dispute. The establishment of BANI as an alternative form of dispute resolution is an effort to maximize an effective and efficient law enforcement process (Yuniar & Yuwono, 2022).

Trade dispute resolution through arbitration is one of the options pursued as a dispute resolution mechanism based on the agreement of the parties who agree and pour an arbitration clause to resolve their disputes final and binding to arbitration. In addition, the implementation of arbitration can also be agreed upon by the parties to the dispute over the execution of a business contract, in this case the arbitration agreement is made in the form of a separate arbitration agreement (submission agreement) (Sovern et al., 2015). The arbitration clause and the arbitration agreement are separately, by law, both are arbitration agreements that bind the parties as a choice of law if at any time problems arise between the parties in fulfilling the contents of the agreement.

Resolution of business disputes through arbitration brings benefits to business people, namely ensuring the confidentiality of the parties' disputes, avoiding delays that are procedural and administrative, the parties can choose

arbitrators who according to their beliefs have sufficient knowledge, experience and background on the disputed matter, are honest and fair, the parties can determine legal options to resolve the problem as well as the process and place of implementation arbitrage; and the arbitrator's award is a binding award on the parties and through simple procedures or directly enforceable (Rahmah & Handayani, 2019).

In general, business actors prefer to resolve business disputes through arbitration rather than other dispute resolutions, including national courts, because they consider the litigation system is not designed to solve problems but prioritizes settlements based on enforcement and legal certainty (Nyarko, 2019).

Settlement of trade disputes through arbitration is closely related to the development of a business through electronic media or e-commerce which is currently rapidly using the internet (Kesuma & Triputra, 2020). The rapid development of telecommunication and internet channels in Indonesia no longer requires business people to be present as conventional businesses and does not require complete documents to conduct business transactions, has changed the global order in business transactions. Before the development of the internet, almost all business transactions were carried out in conventional ways, as well as in resolving business disputes carried out in a slow and convoluted way, so that it has caused the business world to be less conducive and slow development. Resolving business disputes that are considered long will result in high costs and can drain the company's potential resources. So with the presence of e-commerce business transactions in today's digital era, it is expected that there

will be informal settlements, fast procedures and low costs.

The development of information technology must contribute to the development of arbitration to be carried out online via the internet to help the parties to the dispute. Online arbitration allows parties to a dispute to find a win-win solution. In addition, parties residing abroad do not require a passport or visa to appear at the online arbitration. The online arbitration model has begun to be known and applied in developed countries such as America, the United Kingdom, Canada and several European Countries (Siemiatycki, 2013).

The implementation of online arbitration is needed in Indonesia considering Indonesia's geographical location which is quite wide and large and can be ascertained to take time and costs that are quite high if done conventionally, so that the existence of online arbitration is expected to be able to facilitate the parties to the dispute without being hindered at a time and place and relatively cheap costs. In general, conventional arbitration and online arbitration have similarities, but the difference between online arbitration lies in the process of registering cases, selecting arbitrators, making awards, submitting documents, consulting arbitrators, and notification of awards made online. In addition, discussions in online arbitration are focused on regulating the validity of arbitration agreements made online, online arbitration procedures and online arbitration awards (Mania, 2015).

Dispute resolution through online arbitration requires very adequate internet access so that the online arbitration proceedings can be carried out properly and supported by other facilities and infrastructure such as websites, database

applications to place incoming requests, lists of arbitrators and rules needed for proceedings. Based on the explanation above, online arbitration is actually very possible to be applied in Indonesia and also applied globally, but so far there has been no international convention that applies online arbitration internationally (Haftel & Thompson, 2018).

Online trade dispute resolution has actually been regulated in Article 72 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems, namely "PMSE dispute resolution as referred to in paragraph (1) can be held electronically (online dispute resolution) in accordance with the provisions of laws and regulations". However, online dispute resolution currently does not have a clear mechanism to be resolved through online arbitration.

The development of information technology that is not balanced with the renewal of laws and regulations has brought the necessity to immediately establish an online arbitration administration system and reform of the arbitration legal system in the legal order.

Based on the background description above, this research needs to be conducted to further examine comprehensively entitled "Application of Online Arbitration to E-Commerce Business Dispute Resolution in Indonesia (in Academic Discourse and Practice)".

RESEARCH METHODS

The approach method used in this study is a normative juridical approach. This

research was conducted on secondary data such as laws and regulations, scientific journals, law books. Data obtained from the results of literature research, then the data editing process will be carried out. This is done so that the accuracy of the data can be checked and errors can be corrected by exploring back to the data source. After the next editing is data processing. After data processing is complete, descriptive-analytical-qualitative data analysis will be carried out, and specifically for the data in the documents, a content analysis will be carried out. After the data and legal materials are collected, the next stage is to carry out data processing, which is to manage the data in such a way that the data and legal materials are arranged in a coherent, systematic manner, so that it will make it easier for researchers to conduct analysis. In a legal study, there will be several approaches. This research is descriptive analytical, namely research that reveals laws and regulations related to legal theories that are the object of research. Regarding the nature of the data analysis, the author will use an approach in conducting data analysis. The various approaches used in legal research are: Statute approach, conceptual approach.

RESULTS AND DISCUSSION

Alternative Dispute Resolution

At the beginning of the development of ADR there emerged a mindset of the need to integrate ADR components into the law regarding arbitration. This thinking is intended to make ADR an alternative form

of dispute resolution outside the court that can develop rapidly and in accordance with its objectives, including the following:

1. There is community participation to resolve their own disputes (access to justice)
2. Fostering a healthy competitive climate for the judiciary so that a selection process will occur that describes the level of public trust.
3. How to increase competitiveness in inviting investors to Indonesia through legal certainty, including the availability of an efficient dispute resolution system.
4. ADR institutions are expected to encourage dispute resolution institutions in the community to improve public image and trust.

The establishment of ADR as an alternative dispute resolution is not enough with the support of a culture of deliberation / consensus from the community, but needs development and institutionalization which includes legislation to provide a legal basis and the formation of professional associations or professional services (Tjukup et al., 2018).

The article discusses Law Number 30 of 1999 in Indonesia, which recognizes alternative dispute resolution (ADR) as an institution for resolving disputes outside of court. ADR methods include consultation, negotiation, mediation, conciliation, or expert assessment, and provide legal certainty for informal and efficient procedures. In business practice, ADR can be seen in every agreement made, especially in the field of trade/business, giving the business community the option

to use ADR institutions for resolving disputes. The definition of arbitration is distinguished from ADR based on the method of resolution. Arbitration has its own terms, means, and conditions for the application of its formalities. However, both ADR and arbitration can resolve civil disputes or differences of opinion in the field of trade through "peaceful" efforts. The ADR model follows a confidential procedure, which is regulated in Law Number 30 of 1999, providing guarantees for the parties to the dispute in an equal capacity and giving each other control.

Settlement Procedures

1. Agreement of the Parties

The form of agreement of the parties regarding the way of resolving disputes or differences of opinion in a particular legal relationship (e.g. trade agreements) is made in a statement from the parties explaining that all disputes or differences of opinion arising or that may arise from the legal relationship will be resolved by arbitration or through alternative dispute resolution.⁴

Article 6 of Law Number 30 of 1999 states that the parties can use negotiation, mediation, conciliation, or expert assessment which is completed in a direct meeting by the parties within 14 (fourteen) days and the results are poured into a written agreement.

This provision provides flexibility for the parties to set the rules of the game for conflict resolution, even though it is only given a maximum of 14 days.

2. ADR Agency Assistance

If the parties to the dispute resolution or disagreement have reached an impasse and have not put it in the agreement, upon written agreement, the dispute may be resolved through the assistance of one or more expert advisors or mediators.

Law Number 30 of 1999 does not provide limitations or regulations for service provider institutions (expert advisors, mediators), but only provides limitations on alternative dispute resolution institutions that appoint a mediator or expert advisor. So where will the parties look for professional service providers (negotiators, mediators, expert assessors)?

This question becomes important for society, especially in practical reality. Therefore, at least in Law Number 30 of 1999, there needs to be further regulation regarding the ADR institution. The law states that ADR institutions appoint mediators or expert advisors. Where is the mediator or expert advisor obtained? In ADR-kah institutions or mediators or professional expert advisors who stand independently. Let alone the service provider institution, while the appointment requirements for mediators, negotiators, expert advisors alone are not regulated in Law Number 10 of 1999.

In our opinion, in such conditions at least implementing regulations are needed, such as government regulations or other regulations regarding the establishment of alternative dispute resolution institutions and alternative dispute resolution institutions and service providers

(mediators, negotiators, professionals, as well as their terms and appointments).

3. Binding Strength

If the parties within a maximum of 14 (fourteen) days with the assistance of one or more mediators fail to reach an agreement or bring together both parties, the parties may contact an arbitral institution or alternative dispute resolution institution to appoint a mediator. After the appointment of a mediator by the arbitral institution or alternative dispute resolution institution, mediation efforts must be commenced within a maximum of 7 (seven) days. In an effort to resolve disputes or differences of opinion through alternative dispute resolution, the role of mediation as a form of dispute resolution in Law Number 30 of 1999 is preferred (Okudan & Çevikbaş, 2022).

The agreement to resolve the dispute or difference in writing is final and binding on the parties to be properly implemented and must be registered in the state court. Thus, it can be seen that the role of the court as a judicial institution cannot be denied its binding power with the force of law. However, Law Number 30 of 1999 does not regulate how if the agreement or difference of opinion that has been registered is not implemented by the parties until the specified time limit.

Arbitration

1. Sources of Arbitration Law

Before discussing arbitration issues, you must first know the legal resources governing the existence of arbitration itself in the Indonesian legal system. Thus, we will

know exactly the point of departure of thinking in discussing arbitration. This is based on an assumption that among ordinary people, there are still many who do not know the reference to provisions concerning arbitration in the Indonesian legal system.

Article 377 HIR, the Indonesian legal system has rules regarding arbitration. The legal basis stems from article 377 HIR or article 705 RBG, which states that if Indonesians and foreigners want their disputes to be decided by a separate interpreter, they must comply with the rules of the court of cases applicable to Europeans. Article 377 HIR above is the starting point for the existence of arbitration in the life and practice of law. This article confirms the following:

- a. The parties concerned are allowed to resolve disputes through separation or arbitration.
- b. Arbitration is given the function and authority to resolve it in the form of a decision.
- c. Therefore, both the parties and the arbitrator "shall" comply with the procedural law rules applicable to European nations or groups.

The settlement and decision can be left entirely to the separator commonly known as "arbitration". In the law, arbitration is delegated the function and authority to decide disputes.

2. Articles 615 – 651 Rv

As already explained, the basis for the existence of arbitration rules rests on the provisions of article 377 HIR. However,

neither HIR nor RBG contain any further rules on arbitration. To fill the void in the rules on arbitration, article 377 HIR or article 705 RBG directly designates the rules of arbitration contained in the Reglement of Civil Procedure Law (Reglement op de Burgerlijke Rechtsvordering, abbreviated Rv, S1847 – 52 jo 1849 – 63). This clearly reads in the sentence "must comply with the rules of the court of cases applicable to Europeans".

Starting from the political history of law outlined in article 75 RR and further regulated in article 131 IS, the era of Baelanda's reign was known for the division of three groups of the population with a legal system and judicial environment with a "pluralistic" style. For Bumiputra people, material law applied in the field of civil law is basically applied in customary law. The court is subject to the Landraad court as the court of first instance, while the procedural law used is HIR for the island area of Jawa – Madura and RBG for the opposite land.

For residents of the Foreign East and Europe, the material civil law applied is the Civil Code (BW) and the Trade Code (WvK), while the civil procedural law is the Civil Procedure Regulation (Rv). In the third book of the Civil Procedure Regulation on Miscellaneous Procedures, Chapter I stipulates provisions regarding arbitrator awards consisting of Articles 615 to 651. These articles must be followed and applied as a basis for general law arbitration from the past until now, both for Bumiputra, Foreign Eastern, and European populations. Thus, the existence of procedural law

regarding arbitration in the RV is "mandatory" if the parties to the parties wish to resolve their dispute through arbitration. In other words, the application of the arbitration provisions provided for in the Civil Procedure Regulation (Rv) must be complied with by anyone if they wish to resolve disputes arising through the arbitral body.

As a general guideline, the arbitration rules set out in the Civil Procedure Regulation include the following five main parts:

- a. Part one (615 – 623) : Agreement to arbitrate and appointment of arbitrators.
- b. Part Two (624 – 630) : Examination before the arbitral body.
- c. Part Three (631 – 6400): Arbitration Award.
- d. Part Four (641 – 647): Remedies against arbitral awards.
- e. Part Five (647 – 651): Termination of arbitration proceedings.

3. Law Number 30 of 1999

In the explanation of Article 3 Paragraph (1) of Law Number 14 of 1970, among others, it is stated that settlement of cases outside the court on the basis of peace or through arbitration is still allowed. However, an arbitral award only has executory force after obtaining permission or an order to be executed (executoir) from the court.

The use of Articles 615 to 651 of the Civil Procedure Regulations (Reglement op de Rechtsvordering, Staatsblad 1847:52), Article 377 of the Revised Indonesian

Regulations (Het Herzeine Indonesisch Reglement Staatsblad 1941:44), and Article 705 of the Procedural Regulations for Regions Outside Java and Madura (Rechtsreglement Buistengewesten, Staatsblad 1927:227) as arbitration guidelines is no longer adequate with the conditions of international trade provisions. The renewal of the arrangements regarding arbitration is already *conditio sine qua non* and needs substantive and philosophical changes to the existing arbitration arrangements.

On August 12, 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was passed. This Act is an amendment to the arbitration arrangements that are no longer adequate to the demands of international trade. The arbitration provisions referred to in Articles 615 to 651 of the Civil Procedure Regulations (Reglement op de Rechtsvordering, Staatsblad 1847:52), Article 377 of the updated Indonesian Regulations (Het Herzeine Indonesisch Reglement Staatsblad 1941:44), and Article 705 of the Procedural Regulations for Regions Outside Java and Madura (Rechtsreglement Buistengewesten, Staatsblad 1927:227), are no longer valid (Marbun et al., 2021).

Agreement and Application of Arbitration Clauses

Arbitration as referred to in Law Number 30 of 1999 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. In this Law, state courts are not authorized to

adjudicate disputes of parties who have been bound by arbitration agreements. This is necessary so that the position of the arbitral institution is stronger so that if there are differences of opinion or disputes that may arise in a particular legal relationship will be resolved through the arbitral institution.

1. Written Agreement

Arbitration agreements are not "conditional" or "voorwaardelijke verbentenis" agreements. Therefore, the implementation of the arbitration agreement does not depend on a particular event in the future. The arbitration agreement does not question the issue of execution of the agreement, but only questions the issue of the way and institution authorized to resolve disputes that occur between the parties who promise.

According to Article 3 Paragraph (2) of Law Number 14, it is stated that only the State judicial body is authorized to determine and enforce the law of justice in Indonesia. Thus, the only one who has the authority to adjudicate disputes arising among citizens is the judicial body of the State. This means that the resolution of any dispute that occurs must be submitted to the court.

The article means that in addition to the State courts, other courts are no longer allowed to resolve disputes. However, it turns out that the settlement of the article itself opens up the possibility of the ability to resolve disputes outside the State judiciary. In the next sentence, the

explanation of Article 3 states that settlement of cases outside the court on the basis of peace or through referees (arbitration) is still allowed.

This explanation is the legal basis of the arbitration agreement. Thus, Law No. 14 of 1970 as the main law of judicial power opens the possibility of resolving cases through arbitration. Because the Law itself provides for the possibility of resolving cases through arbitration bodies, it is legally open to freedom for the parties to the agreement to include arbitration clauses, provided that the clauses are born by mutual agreement. So, the essence of the ability to enter into an arbitration agreement is that the agreement must be based on the "agreement" of the parties and include or regulate the arbitration agreement (consensual principal) in one of the clauses of a particular agreement (Sadrak, 2017).

Arbitration agreements include or agree on a way of resolving disputes that arise in the future. Furthermore, the conditions contained in the "conditional" agreement are an inseparable entity in the agreement. The terms in the agreement are "conditional" and add to the agreement, but include the subject matter or material of the agreement (John et al., 2022).

Article 17 of Law Number 30 of 1999 states that parties can agree on a dispute that has occurred or will occur between them to be resolved through arbitration with a written agreement agreed upon by the parties. The existence of a written agreement negates the right of the parties

to submit dispute resolution or differences of opinion contained in the agreement to the state court (Wijaya & Shesa, 2021).

Regarding the choice of law, the parties are free to determine the choice of law that will apply to the settlement of disputes that may arise or have arisen between the parties (Marshall, 2018). An arbitration agreement is not void due to circumstances, among others (Marwan, 2016): the death of one of the parties; bankruptcy of one of the parties; novation; insolvency of one of the parties; inheritance; the enactment of the conditions for the cancellation of the main engagement; when the implementation of the agreement is transferred to a third party with the approval of the party making the arbitration agreement; or expiration or cancellation of the principal agreement.

2. Arbitration Clause

In practice and writing, arbitration consent is always called an arbitration clause. The use of the term arbitration clause carries the connotation that the agreement of the subject matter concerned is followed or supplemented by agreement regarding the conduct of arbitration. In other words, the principal agreement in question contains an arbitration clause.

As already explained, the type of arbitration agreement consists of a pactum de compromittendo and a compromise deed. The difference between the two lies only in the time of making the agreement. A pactum de compromittendo is made before a dispute occurs, while a compromise deed is made after a dispute arises. In terms of

the contents of the agreement, there is no difference between the two. However, in the context of discussing the contents of the arbitration clause, this description simultaneously includes a pactum de compromittendo and a compromise deed (Situmorang, 2020).

Article 5 of Law No. 30 of 1999 states that disputes that can be resolved through arbitration are only disputes in the field of trade and regarding rights that according to law and legislation are fully controlled by the disputing party. Disputes that cannot be resolved by an arbitral institution are disputes that according to laws and regulations cannot be held peace efforts (Manik, 2020).

3. Accessory Arbitration

The article discusses the concept of arbitration agreements, which are accessory agreements in addition to the main agreement and contain specific terms on how disputes arising from the principal agreement will be resolved. The existence of an arbitration clause does not affect the fulfillment of the main agreement, and the clause cannot bind parties if the principal agreement does not exist. However, arbitration agreements have become a necessity in business and trade transactions, and almost all transnational joint venture and trade agreements have arbitration clauses. The confidentiality of arbitration proceedings is essential, especially in cases where information about the condition of the company or other business fields of the parties involved could be disseminated through print media. If the

parties have agreed to resolve their disputes through arbitration and have authorized an arbitration institution, the arbitrator has the authority to determine the rights and obligations of the parties.

4. Standard Contracts

The text discusses the use of standard contracts in business agreements, particularly in insurance policies. Standard contracts contain predetermined terms and conditions that have been formulated in advance by the party making it, without any preliminary negotiations with the other party. The weaker party, usually the consumer, is only asked for their consent, and if they agree, they sign the agreement. This can lead to situations where the weaker party is coerced into signing the agreement under duress, without fully understanding the terms and conditions.

The text also mentions the use of arbitration clauses in standard contracts. Arbitration clauses require any disputes arising from the agreement to be resolved through arbitration, rather than going to court. This can sometimes create issues with the fairness and transparency of the arbitration process.

Despite the theoretical approach that standard contracts may contain defects and can be cancelled, in practice they have become a necessity in people's lives due to the development of globalization and technology transfer. Therefore, it is important to be aware of the potential issues with standard contracts and to ensure that all terms and conditions are fully understood before signing.

Types of Arbitration

The things that will be discussed in this section are discussing the issue of arbitration institutions. The review of the types of arbitration institutions is carried out through the approach of statutory provisions and rules contained in Rv and Law Number 30 of 1999.

The arbitration in question is a variety of arbitrage that is recognized for its existence and authority to examine and decide disputes that occur between the parties to the agreement.

1. Ad Hoc Arbitration

This type of ad hoc arbitration is also referred to as voluntary arbitration. The provisions in the Reglement Rechtvordering recognize the existence of ad hoc arbitral institutions. Ad hoc arbitration is arbitration formed specifically to resolve or decide a particular dispute, or in other words ad hoc arbitration is incidental.

In principle, ad hoc arbitration is not subject to any of the arbitral bodies. Its arbitrators shall be determined by agreement of the parties. Since ad hoc arbitration is not related to any one of the arbitral bodies, it can be said that this type of arbitration does not have its own rules or ways regarding dispute resolution procedures. In Law Number 30 of 1999 there are conditions to be appointed or appointed as arbitrators, including: capable of carrying out legal actions; be at least 35 years old; does not have a blood or blood family relationship of the second degree with one of the parties to the dispute; has

no financial or other interest or arbitral award; and have experience and actively master the field of work for at least 15 years.

2. Institutional arbitration

Institutional arbitration is an institution or arbitration body that is permanent so it is called a "permanent arbitral body". Institutional arbitration is deliberately established to deal with disputes that may arise for those who wish an out-of-court settlement. This arbitration is a forum deliberately established to accommodate disputes arising from agreements.

Parties wishing for the resolution of their dispute to be made by arbitration may agree that the decision will be decided by the institutional arbitration concerned. Institutional arbitration remains standing even after the dispute has been decided. Instead, ad hoc arbitration will dissolve and end its existence after the dispute being handled has been decided. In addition to the matters stated above, in the establishment of institutional arbitration as a permanent body, at the same time its organization and provisions on the manner of binding arbitrators and procedures for hearing disputes.

The scope of existence and institutional jurisdiction of a national nature only covers the territory of the State concerned, for example the Indonesian National Arbitration Board abbreviated as BANI. The scope of existence and jurisdiction of BANI only covers the territory of Indonesia. However, even though BANI is

national, it does not mean that it only functions to resolve national disputes but also to resolve disputes of international weight, provided that it is requested and agreed upon by the parties.

3. System of Arbitrators

After we know the type of arbitration, then discuss the arbitrator system that will sit and function to carry out arbitration services and services. If arbitration is a container, arbitrator is the person appointed and charged with exercising the function and authority of the arbitration. Thus, the discussion of the arbitration system concerns issues that are concerned with the number of arbitrators, the manner of appointment or appointment of arbitrators, and the interference of the court in the appointment of arbitrators.

Arbitration Authority

This section briefly discusses the arbitral authority as a dispute separator. That is, does the agreement containing the arbitration agreement, whether in the form of a pactum de compromittende or a deed of compromise, override the competence of the court?

Against this problem developed two streams as follows:

1. Arbitration clause: not a public order

This school argues that arbitration is not absolute. The clause must be retained by the parties so that it will remain binding. If a dispute arising out of an agreement containing an arbitration clause is submitted by a party to the court, the court has the authority to adjudicate. The

authority is only void if the defendant raises an exception to the existence of an arbitration clause.

2. Arbitration clause: pacta sunt servanda

This school stems from the legal doctrine that teaches that all valid agreements will be binding and become law for the parties. Therefore, any agreement can only be void (withdrawn) by mutual agreement of the parties.

Examination and Proof of Arbitration

1. Nature and Period of Examination

All hearings of disputes by arbitrators or arbitral tribunals are conducted behind closed doors and the language used in all arbitral proceedings is Indonesian, except that upon the consent of the arbitrator the parties to the dispute may choose another language to be used.

In an agreement, the parties are expressly and in writing free to determine the arbitration procedure used in the examination of the dispute, as long as it does not conflict with the provisions in Law No. 30 of 1999. In addition, there must be agreement on the time and place of arbitration. If the time period and place of arbitration are not specified, the arbitrator or arbitral tribunal shall decide.

2. Proof

Determination of valid evidence in the process of examining disputes or cases is very important. The limited determination of valid evidence is the basis of legal certainty in the process of proof and decision making.

The determination of valid evidence in a dispute examination before a court

forum or arbitral tribunal depends on the provisions in a particular legislation. The determination of this reference lies in the arbitration clause. If the parties appoint BANI as the dispute resolution institution, the parties submit themselves to the process of determining evidence based on its provisions. However, specifically regarding evidence, we agree to abide by the law of the way it applies in Indonesia.

Thus, evidentiary evidence and judgment in the practice of the arbitration world can be applied accordingly, depending on the law appointed and agreed by the parties in the arbitration clause. They can also point and subject themselves to evidentiary provisions stipulated in private international law.

In connection with the rapid development of information technology and communication technology today, in existing views, globalization is usually considered as a one-way process, namely the relationship between developed countries and developing countries. This viewpoint makes globalization considered closely related to domination and neo-imperialism by developed countries. This view is very reductionist in understanding the meaning of globalization and the staticness of this view will actually obscure our understanding of the essence of the process that is currently symptomatic. As a result, this blurring of obscures the logical consequences that accompany the process of globalization itself. Globalization is a necessity, understanding also whether we like it or not, people in all corners of the

world now live in a global habitat, transparent, borderless, linkag, and interdependence and global village which seems limitless.

Economic development that processes in today's global economic system can be interpreted as a process of business expansion through the jurisdictional boundaries of the national territory. From a liberal point of view, business expansion is primarily identified with the entry of Multi National Corporations (MNCs) and Trans National Corporations (TNCs) in the context of resource utilization by large companies. Whether we realize it or not, this kind of phenomenon indicates a process of penetration and expansion of the capitalist system throughout the world and making the world the scope of business operations. One of the prominent characteristics of the capitalist system is trade liberalization, at least this has two representative examples, namely first, the entry into force of the free market and second, requiring the absence or involvement of the government in the economy. This is in line with the concept of "laissez faire" introduced by Adam Smith⁵ which states that individuals take the initiative and are responsible for their own good and bad luck without government interference, especially in economic matter.

One of the efforts that can be taken in resolving these problems is to use alternative dispute resolution mechanisms that are effective, efficient, and low cost. The development that allows electronic commerce (e-commerce) has inspired

electronic dispute resolution as well. One of these alternative dispute resolution mechanisms is through arbitration. The arbitration conducted in this case may be either direct arbitration or online arbitration. However, dispute resolution in trade transactions via the internet (ecommerce) will be more effective if carried out through internet media as well (on-line arbitration).

Currently the process of arbitration dispute resolution can be carried out through intermediaries of the Indonesian National Arbitration Board (BANI) or other arbitration institutions both in Indonesia and abroad with established procedures and regulations. Meanwhile, the settlement of electronic trade disputes (e-commerce) through on-line arbitration in Indonesia with the mediation of the Indonesian National Arbitration Board (BANI) has not been fully implemented, because until now, BANI has only used e-mail for sending letters in the arbitration process. or conducting trials through the use of the e-mail, but there is no use of a specific website to hold arbitration (online arbitration).

The reasons behind dispute resolution through alternative dispute resolution mechanisms (MAPS) including electronic arbitration (online arbitration), are due to the many weaknesses in dispute resolution through the litigation system (judicial bodies), including:

- a. Litigation forces the parties to be in an extreme position and requires a defense.

- b. Litigation raises all issues in a case, thus encouraging the parties to investigate the weaknesses of the parties.
- c. The litigation process takes a long time and is expensive. Looking at the various weaknesses above, it appears that settlement through justice or litigation is very contrary to the nature of business transactions, especially electronic trade transactions as a virtual trading system that requires an effective and efficient system.

The article discusses the importance of alternative dispute resolution methods for resolving trade disputes in Indonesia, especially in the context of electronic commerce. Litigation through the court system is often considered costly and time-consuming, which can hinder business activities. Therefore, many parties choose non-litigation channels such as negotiation, mediation, conciliation or arbitration to resolve their disputes.

Arbitration, in particular, is a popular alternative dispute resolution method, which is regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law allows for the resolution of civil disputes, including trade disputes, through arbitration, which can be pursued through the intermediary of arbitration institutions such as the Indonesian National Arbitration Board (BANI) or any other arbitral institution.

With the increasing use of electronic commerce, the article suggests that civil disputes that occur in cyberspace, including electronic trade disputes, can also be

resolved through arbitration. This is in line with the Indonesian ITE Law, which regulates electronic transactions and defines electronic documents as any electronic information that can be seen, displayed and/or heard through a computer or electronic system.

Overall, the article highlights the importance of alternative dispute resolution methods in resolving trade disputes in Indonesia, especially in the context of electronic commerce. Arbitration, as a non-litigation channel, can provide an effective, efficient, and cheap way to settle trade disputes, which can help to promote and facilitate business activities.

The article discusses the use of online arbitration in resolving trade disputes, particularly in e-commerce. Electronic transactions are based on the principle of freedom of contract, and the parties often prefer resolution through negotiation, mediation, or arbitration. In Indonesia, national arbitration is a common dispute resolution method, as the trial procedure in Indonesia takes a long time, and not all judges can understand the problem of the case. Online arbitration offers a paperless and non-face-to-face alternative to traditional arbitration, with registration of cases, selection of arbitrators, making awards, submission of documents, deliberation of arbitrators, making awards, and notification of awards carried out online. The article also states that the construction of the validity of an arbitration agreement is regulated in Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution (APS Law), and there are no restrictions on the form that must be used for writing. Finally, the article highlights that arbitration agreements, including online arbitration, must be signed according to the provisions of Article 4 paragraph (2) of the APS Law, and the concept of signature is evolving with the development of society and technology.

Ideal Online Arbitration Application Model at the Academic and Practical Level to Resolve E-Commerce Business Disputes in Indonesia

Business Law refers to the legal regulations that govern the rights and obligations arising from agreements and engagements that occur in business practice. It serves as a source of information for business practitioners, so they can understand their rights and obligations and know good settlement procedures in case of disputes.

Arbitration is an alternative dispute resolution institution outside of the court system that has been recognized and strengthened by the enactment of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In arbitration, the parties agree to resolve their business disputes outside the court system. It differs from court settlements in that the authority of the court is based on the law established by the state, while arbitration is based on an agreement made by the parties. In resolving a business dispute, there are three ways: through amicable solution, through the court, or

through arbitration. Therefore, parties need to include a dispute settlement clause in their business agreement, specifying how disputes will be resolved, whether through court or arbitration.

If the parties include an arbitration clause in their agreement, they have agreed to choose arbitration specified in the agreement to resolve their dispute. Thus, the case is under the authority of the arbitration, not an ordinary court institution. Dispute resolution through arbitration, which can also be conducted online, is one form of law enforcement efforts. To ensure legal certainty while still paying attention to the values of justice in society, it is necessary to update the law so that dispute resolution through online arbitration has legal certainty.

The text discusses the factors that must be considered for the institutionalization of statutory regulations in society. The conditions that regulations must meet include being made by an authorized official in a legal manner, being systematic and not conflicting, and being implemented by the parties whose interests are regulated. Law enforcers, facilities that support law enforcement, and legal awareness and compliance are also important factors. The text also highlights the importance of supervision and repression as preventive measures to achieve compliance with laws and regulations. Furthermore, the text emphasizes the importance of involving community members in the formation of laws and the role of the government in promoting general welfare and protecting citizens against the attitude of state administration actions.

This text is about bureaucracy, administrative law, and the distribution of power in the Indonesian government

system. The author explains that bureaucracy is a difficult social structure to destroy and is a means of carrying community action over into rationally ordered societal action. Bureaucracy has been and is a power instrument for those who control it. The author also discusses administrative law, which is seen as an important means of controlling bureaucratic excess. The text explains that the Indonesian government system is based on the rule of law and the division of power, which is interrelated and complementary. The author describes the different types of power, such as executive, legislative, and judicial, and how they are distributed among state institutions in Indonesia. Finally, the author explains how the distribution of power has changed after the amendment of the '45 Constitution, where the function of the People's Consultative Assembly was reduced.

Based on the description above, it is clear that one of the principles of legislation is as a means to achieve as much as possible external and mental well-being. Here it seems clear that the role of judges in law enforcement is very important in realizing the welfare of the people. Therefore, what has been decided in arbitration may no longer be heard by a judge in the District Court. To achieve the aforesaid objectives, it can be done through changes in law (in this case online arbitration law).

CONCLUSION

Based on the results of the study can be concluded as follows: 1) Electronic settlement of trade disputes (e-commerce) through online arbitration is possible based on the provisions of Article 4 paragraph (3) of the APS Law which states that in the

event that it is agreed that dispute resolution through arbitration occurs in the form of exchange of letters, then the sending of telex, telegram, facsimile, e-mail, or in other forms of communication, accompanied by a note of acceptance by the parties. Online arbitration in the process of its implementation uses media that as a whole in the form of paperless/scriptless electronic information transactions even the parties involved in this online contract may never meet face-to-face. An online arbitration clause or agreement is valid if it meets the subjective and objective requirements contained in article 1320 BW. Based on the APS Law, New York Convention, Uncitral Model Law, Unc it ra l Mode l Law on International Commercial Arbitration, online arbitration, is enforceable and legally valid, meaning that the conduct of online arbitration in Indonesia is in accordance with and does not conflict with existing laws and regulations, even though there are no implementing rules governing the online arbitration process. 2) Online arbitration proceedings in resolving trade disputes electronically (e-commerce), may be conducted as follows: (a) The initial stage, namely the submission of the parties to resolve disputes that occur to arbitration, institutions or ad hoc arbitration. (b) At this stage the parties must submit statements and written documents submitted to the arbitrator and the opposing party, including electronic documents and information as electronic evidence contained on its website or on other related sites. (c) The

trial stage, in accordance with the provisions of the APS Law, that the arbitration process shall be conducted in writing, unless necessary, an oral examination may also be conducted, such as the examination of witnesses. (d) Online deliberative stage, which can be conducted using e-mail or IRC facilities, if the arbitration is conducted by a panel that is more than one arbitrator, so deliberation among the arbitrators is required. (e) The stage of sending the award, is carried out because in the arbitration process on line there is no reading of the award, so that after the award is taken by the arbitrators, then the award is notified to the parties online and the award is sent electronically as well.

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