

E-Commerce Dispute Settlement Through Online Arbitration in Indonesia

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ABSTRACT

Many entrepreneurs have begun to look at dispute resolution through arbitration, because they think that arbitration is much faster and does not cost a lot of money. Moreover, the image owned by the company will not be damaged if the settlement is carried out using arbitration because of the public perception that arbitration is a peaceful way to resolve a problem. This research was conducted to find out whether there was a legal umbrella provided by the Government of Indonesia as a guarantee of rights to its citizens regarding the implementation of this online arbitration, and it was found that the legal umbrella that is owned is not strong and only uses the legal basis of arbitration in general, so the authors suggest for the creation of a legal umbrella regarding online arbitration considering that currently there are many cases of e-commerce disputes that occur in Indonesia

Keywords: Arbitration, Dispute, E-Commerce

1. INTRODUCTION

Trade activity is the economic lifeblood of a country, whether it is national or international trade, both of which have an effect on the economy of a country. Along with the development of today's technology, of course, all sectors of state life must also adapt to this, including the trade sector. Trade which used to be a meeting between the seller and the buyer in a certain time and place, now with the use of technology does not require them to meet face to face along with the development of e-commerce.

By the end of 2015, the value of the country's e-commerce business is predicted to be around USD 18 billion. In September 2020 the value of e-commerce transactions increased by 13.3% from Rp. 19.46 Trillion in September 2020 to Rp. 22.05 Trillion. This figure shows that the e-commerce industry in Indonesia has experienced a continuous increase from year to year. Several e-commerce applications known in Indonesia are Shopee, Tokopedia, Bukalapak, and Lazada, all of which have their own market. The existence of this e-commerce certainly brings many benefits to its users, but still in a sale and purchase agreement which is a legal event there is still a risk of conflict or dispute that follows. The dispute arises as a result of a conflict between the interests of one party with the interests of the other party in which each party continues to strive for the realization of these interests. Indeed, in essence, conflict is not something that can be avoided, but must be resolved immediately if one day there is a conflict.

2. METHOD

In general, there are two methods of dispute resolution, namely litigation and non-litigation methods. Each party certainly wants a fast dispute resolution, especially in the trade sector, because a long-term settlement can be detrimental to both parties, so business people prefer to settle disputes using non-litigation methods due to the complexity of settlement using the litigation method. In addition to time effectiveness reasons, another reason where business people prefer to resolve disputes using non-litigation methods is the minimal costs incurred and the settlement is only internal between the disputing parties, so that it will not damage the image of business actors in the future.

One alternative non-litigation conflict resolution is through arbitration. Actually, arbitration and courts have many similarities, both of which have special judges and courts, but what makes the difference is that if the court uses the mechanism permanent trial and arbitration using tribunal forums whose main objective is to reach a peace agreement without bringing the dispute to court. Arbitration that is known at this time still has to bring together the two disputing parties in a certain place to negotiate conflict resolution.

However, along with technological developments, online arbitration has begun to be developed, this is of course done to provide more effectiveness in dispute resolution which in the form of ordinary arbitration has to wait for the parties to have free time together to resolve disputes, not to mention if the scale of The conflict is on an international scale. So has Indonesia's legal umbrella been able to keep up with technological developments by specifically regulating chapters regarding the implementation of online arbitration? Based on the background that has been stated above, the authors are interested in discussing the regulations for the implementation of online arbitration in Indonesia, if there is already one, how are the stages of implementation the same as offline arbitration or not, as well as further reviewing the positive and negative sides of the online arbitration

3. RESULTS AND DISCUSSION

3.1 Regulations and Mechanisms for the Implementation of Online Arbitration

There is no significant difference between the stages of the online and offline arbitration mechanism, the only difference being that the submission of files is done via email without face to face. The enforcement of online arbitration in Indonesia does not seem to have a legal umbrella, because Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has not yet regulated the provisions of Online Arbitration. This is because Indonesia does not yet have or has not ratified international regulations related to the

implementation of internet-based dispute resolution. This reason is exacerbated by the fact that Indonesia is not a participant in the Convention for the International Sale of Goods (CISG).

Whereas this convention applies to regulate standard matters related to substantive law applicable in contracts for the sale of goods between countries. If a country is a member of a CISG participant, that country can apply international civil law. Even though the CISG has not yet regulated all online transactions, especially those based on the internet and there are also doubts whether this convention can later be applied in electronic agreements whose transactions are made online, because until now there are still many companies who say that CISG does not apply to online transactions, it is the American Arbitration Association that applies.

From this explanation, it can be concluded that in fact, on an international scale, there is no concrete regulation that regulates online arbitration³. The only legal umbrella that has little contact with the internet is Law no. 11 of 2008 concerning and Electronic Transactions, and even then only discusses the development of information technology and electronic transactions so that the use of information technology and electronic transactions is carried out safely to prevent misuse by taking into account the religious and socio-cultural values of the Indonesian people and is not regulated regarding online arbitration.

Actually, Indonesia already has a legal umbrella regarding Arbitration, namely Law no. 30 of 1999, but again there is no specific article that regulates online arbitration. The only article that slightly mentions internet-based transactions is only Article 4 paragraph (3) which reads: "In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, the sending of telex, telegram, facsimile, e-mail, or in other forms of communication means, must be accompanied by a note of receipt by the parties."

However, the application of Online Arbitration as an Online Dispute Resolution can already be applied in international e-commerce dispute resolution, especially in disputes of small value so that it can provide consumers with appropriate, inexpensive, and effective solutions and reduce the prosecution of cases in foreign countries⁴. Back again to the general problem in arbitration, both national and international, namely that there are doubts about the executive power of the arbitral award itself. It is true that the arbitral award is final and binding, but the arbitration institution does not yet have its own court, so it must be registered with the local District Court, which if one of the parties makes an attempt to annul it and is

approved by the District Court, an appeal cannot be filed against the annulled decision. any law so that this is actually detrimental to one party.

In the international realm, a solution to this doubt has been found, namely by signing the New York Convention, in which the signing country is obliged to respect foreign arbitral awards, inculcate general principles regarding arbitration and how the arbitration award is implemented. Meanwhile in Indonesia itself, the solution provided by the Government to make Online Arbitration possible is to use Article 4 paragraph (3) of Law no. 30 of 1999 as the basis, where the stages are as follows:

a. Beginning

The applicant can submit a case application to the Indonesian National Arbitration Board (BANI) by sending it via email or via the official website of the local BANI if provided. Consent from both parties is required to resolve disputes online.

b. Written Statements and Documents

The parties can submit a statement that they agree to resolve the dispute through online arbitration and together with the statement, evidence of electronic documents related to the proposed e-commerce dispute can be attached.

c. Trial

As regulated in Law no. 30 of 1999, arbitration can be carried out in two processes, namely in writing and orally. If it is done verbally, you can use a mobile phone via 3G or via video conferencing, but the cost of conducting an electronic oral process is quite expensive. The trial process here is divided into several stages, namely demands, notification of the contents of the demands, answers to demands, answers to counterclaims.

d. Online Consultation

Deliberations are carried out by arbitrators if there are more than one arbitrator judge and because the settlement is done online, the deliberations are carried out by reciprocating e-mails.

e. Delivery of Judgment

Notification that the decision has been issued is notified to the parties by using electronic means such as e-mail But again Law no. 30 of 1999 has not yet regulated the means of sending decision files online Based on Article 55 of Law no. 30 of 1999 "when the examination of the dispute has been completed, the examination is immediately closed and a trial day is set to pronounce the arbitration award. The verdict is pronounced within thirty

(30) days after the examination is closed.” Furthermore, the decision can also be placed on the website used for the case in question

Advantages and Disadvantages of Online Arbitration

a. Advantages

- 1) The time used to resolve cases is relatively faster and shorter because they only interact via the internet;
- 2) Savings in court costs;
- 3) Each party will have more confidence because they are not dealing directly;
- 4) Confidentiality of the parties can be guaranteed because it is not published;
- 5) With the settlement through non-litigation channels, it will become a habit for business people in terms of resolving disputes, not only using litigation;
- 6) Decisions can still be executed in other countries because enforcement can be carried out so that it will provide legal certainty for the parties;
- 7) By avoiding litigation, the harmonious relationship between business people can be maintained;
- 8) Upholding the principle of justice because dispute resolution by arbitration in obtaining a settlement does not take sides with any party.

b. Disadvantages

- 1) Whether or not a trial runs smoothly depends on the smoothness of an internet signal owned by each party;
- 2) It is easy for outsiders to break into the transcription of the internet network;
- 3) Indonesia does not yet have laws and regulations that concretely regulate the implementation of online arbitration;
- 4) The online signing of the file makes it difficult for the parties to identify the authenticity of the signature

4. CONCLUSION

There are no laws and regulations that regulate how online arbitration is carried out but basically online arbitration is not prohibited in terms of resolving disputes between the parties because online arbitration does not conflict with Law no. 30 of 1999. In online arbitration,

case registration, arbitrator selection, decision making, document submission, arbitrator deliberation, decision making, and notification of a decision are made online in the form of digital data. The advantages in the online arbitration process include time efficiency, cost, guaranteed confidentiality, can provide teaching on good business ethics, can provide legal certainty to disputing parties, can maintain good relations between business people, and uphold the principle of justice. While the drawbacks of online arbitration proceedings are that they rely heavily on internet access, there is no clear legal umbrella, difficulty in verifying signatures online and in terms of execution in the field Bibliography.

REFERENCES

- [1] Hariyana, Trinas Dewi, 'Peranan Hukum Dalam Penyelesaian Sengketa E- Commerce', Jurnal Diversi, 2.1 (2016), 308
- [2] Indrani, Sarah Meilita, and Hermawan Hadi, 'Keberadaan Arbitrase Online Sebagai Cara Penyelesaian Sengketa Bisnis Di Indonesia (Studi Di Badan Arbitrase Nasional Indonesia Jakarta', Jurnal Privat Law, 2.5 (2017)
- [3] Matheus, Juan, 'E-Arbitration: Digization of Business Dispute Resolution Pada Sektor E-Commerce Dalam Menyongsong Era Industri 4.0 Di Tengah Pandemi Covid-19', Jurnal Lex Renaissance, 4.6 (2021), 692–704
- [4] Suherman, Dian Rubiana, 'Arbitrase Online Dalam Penyelesaian Sengketa Business Sebagai Wujud Perlindungan Hak Konsumen', Jurnal Aktualita, 2.2 (2019), 584–97
- [5] Suparman, Eman, Pilihan Forum Arbitrase Dalam Sengketa Komersial Untuk Penegakan Keadilan (Jakarta: PT Tata Nusa, 2004)