

Online Arbitration as a New Way of Business Dispute Settlement in Indonesia

Pujiyono¹, Sufmi Dasco Ahmad²

¹ Universitas Sebelas Maret, Surakarta - Indonesia

² Member of Indonesian Parliament, Jakarta - Indonesia

pujifhuns@staff.uns.ac.id

Abstract- The business world develops faster than law. Business always requires speed including speed in handling disputes between parties. Online arbitration is a breakthrough that must be taken to bridge the speed of business and the availability of legal institutions in resolving disputes. Regulations in Indonesia tend to respond slowly to this change. Therefore this research is important to know the importance of online arbitration and what legal breakthroughs can be taken so that regulations can be accommodated in Indonesia. The legality of online arbitration can be found from the online arbitration agreement that should meet 4 preconditions of a legitimate agreement based on Civil Code considering the provision of Article 4 clause (3) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, it can be said that the organization of online arbitration is possible when there is an agreement first between the parties to organize online arbitration. Indeed, Indonesia already has a regulation that recognizes electronic evidence as appropriate as physical evidence, except that the acknowledgment of online arbitration itself has not yet met with understanding.

Keywords- *Online Arbitration, Alternative Dispute Settlement, Business, Indonesia*

I. INTRODUCTION

The resolution of business activities for certain considerations, is resolved through non-judicial institution (non-litigation) [1]. Business dispute through non-litigation is held by arbitration institution [2]. When business persons are faced with a dispute, they will, of course choose the simpler procedure with limited resolution time, to avoid the dispute settlement mechanism in the court taking longer time than that out of the court, and to save cost, and most importantly to resolve the dispute peacefully. The dispute settlement out of the court is guaranteed for its confidentiality [3], so that it is unnecessary to worry that what occurs during the resolution process will be known by others or public [4].

The choice of arbitration [5] as the means of resolving dispute by business persons is based on the fact that the Arbitration's verdict is final in nature and has a permanent legal power binding the parties. In implementing the arbitration verdict, there is a difference between national and international arbitration verdict implementations. The development of e commerce business in Indonesia is quite rapid, even SMEs in Indonesia have used e commerce as a business tool [6]. The survey conducted by Indonesian Internet Network Organizing Association (APJII) reveals

that more than a half of Indonesian people have been connected to internet today. The survey conducted in 2016 found that 132.7 millions Indonesian people have been connected to Internet. Meanwhile, total Indonesian populations are 256.2 millions people [7]. From the data above, it can be seen that technology development has an implication to the increased number of internet users, due to the known easiness and advantage the people get from internet use. It also has an implication to the form of arbitration resolution online.

II. RESEARCH METHOD

This study was a normative law research using statute approach. The source and type of law material used consisted of primary law material including legislations, particularly related to Online Arbitration, such as Law Number 30 of 1999 on Arbitration (Law Arbitration) and Law Number 19 of 2016 on The Changing of Law Number 11 of 2008 on Information and Electronic Transaction (Law IET). It also consisted of secondary law material related to primary law material source such as books and journals relevant to Arbitration and Alternative Dispute settlement.

III. FINDING AND DISCUSSION

Alternative Dispute settlement (ADR) brought with it a new mindset, and so will Online Dispute settlement. ADR involved not only new tools and techniques but different assumptions, principles and values, and so will Online Dispute settlement. That is inevitably going to change as access barriers are reduced, effectiveness is increased, machines become more intelligent, software becomes more powerful and some components and beliefs of the ADR field are challenged [8].

1. *Legality of Online Arbitration as Alternative Dispute settlement out of the Court in Indonesia*

Online arbitration can be a solution amid the slow development of legal resolution in dealing with the dynamics occurring within society [9], particularly amid the more rapidly developing technology. Online arbitration itself is similar to the conventional arbitration [10]; the difference lies on the process of registering the case, arbitrator selection, judgment, document submission, arbiter discussion, and notification about the verdict all of which are conducted online in online

arbitration. In many developed countries, online arbitration has been known since a long time ago and has usually settled dispute. The institutions offering ADR online are, among others: *e-Resolutions.com*, *Online Mediators*, *Virtual Magistrate*, *American Arbitration association* and etc. Online arbitration in Indonesia is something new and has not been governed specifically in certain regulation. The opportunity of realizing online arbitration is included into Article 4 clause (3) of Law Number 30 of 1999 reading: "In the case of there is an agreement to settle dispute through arbitration, it occurs in the form of mail exchange; therefore telex, telegram facsimile, e-mail deliveries, or other communication media should be obligatorily accompanied with a receipt by the parties".

Considering the provision of Article 4 clause (3) of Law Number 30 of 1999, it can be said that the organization of online arbitration is possible when there is an agreement first between parties to organize arbitration online. In non-litigation dispute settlement using online arbitration, the provisions about agreement prevails as governed in Book III of Civil Code about Binding. Corresponding to the provision of Article 1313 of Book III of Civil Code, "An agreement is an action by which one or more people bind themselves to one or more people". As included in Article 1338 clause (1) of Book III of Civil Code reading "All agreement developed legally applies as the law for those developing it". Similarly, arbitration agreement made online, when it has been agreed by the disputing parties, it will automatically be the law for the parties developing and binding themselves to the agreement.

Regarding an arbitration agreement's legality, the implementation of agreement should refer to Article 1320 of Civil Code, stating that for an agreement to be legitimate, four conditions should be met: Agreement among those binding themselves; Competency of developing an agreement; A certain thing; A rightful cause. Considering the provision of Article 1320 of Civil Code, an arbitration agreement should meet the precondition of agreement legality. It also is also true for online arbitration agreement in which the parties should met the four condition of agreement legality.

In online arbitration, it can be found that the dispute settlement process will surely use electronic media in its procedure of having case. Regarding this, Article 4 clause (3) of Law Number 30 of 1999 has accommodated the procedure of having case online as long as the disputing parties have agreed it, and it has been equipped with the parties' receipt. Considering the provision of Article 6 of Law Number 11 of 2008 about Information and Electronic Transaction reading: "In the case of there is a provision other than that governed in Article 5 clause (4) requiring that some information should be written or authentic, Electronic Information and/or Electronic Document is considered as legitimate as long as the information included into it is accessible, displayed,

guaranteed for its intactness (completeness), and can be accountable for, thereby explaining a condition". Therefore, online arbitration agreement can be considered as legitimate as long as the information included into it is accessible, displayed, guaranteed for its completeness, and can be accountable for.

It is in line with the provision of Article 34 of Law Number 30 of 1999 stating that: (1) Dispute settlement through arbitration can be done using both national and international arbitration based on the agreement among the parties. (2) "Dispute settlement through arbitration institution as intended in clause (1) is conducted according to regulation and procedure of the institution selected, unless it is specified differently by the parties. Based on the provision of Article above, it can be said that dispute settlement with arbitration channel through arbitration institution will be determined by the corresponding arbitration institution, unless it is specified differently by the parties. Therefore, it can be said that it enables the arbitration institution to apply arbitration online by determining the online arbitrating procedure on the parties' agreement.

Based on the provision of Article 1 clause (3) of Republic of Indonesia's Law Number 30 of 1999 about Arbitration and Alternative Dispute Settlement, arbitration agreement [11] is the one constituting arbitration clause included into a written agreement into which the parties enter before the dispute occurs, or a distinctive arbitration agreement into which the parties enter after the dispute occurs. Considering the provision of Article aforementioned, arbitration agreement is made in written form.

Corresponding to the provision of Article 9 clause (1) of Law Number 30 of 1999 about Arbitration and Alternative Dispute Settlement reading, "In the case of the parties choose dispute settlement through arbitration after the dispute occurs, the agreement concerning this should be made in written form and signed by the parties". It means that although arbitration is conducted online, the agreement should be made in written form and signed by the parties. It is intended to prevent the misuse from occurring because all systems are electronic based.

The verdict in online arbitration should be made in written form, signed and authentic. It refers to Chapter VI of Law Number 30 f 1999 about the implementation of arbitration verdict, in which the chapter mentions that within as lately as 30 (thirty days) since the date when the verdict is pronounced, the original sheet or authentic copy of arbitration verdict should be submitted and registered by arbiter or those authorized to the Registrar of District Court (Article 59 clause (1)).

2. *The Regulation of Online Arbitration as an Alternative Dispute Settlement in Indonesian Legal System*

Considering the provision of Article 4 clause (3) of law Number 30 of 1999, it can be said that the organization of online arbitration is possible when there is an agreement first between the parties to organize online arbitration. To the agreement between the parties, clause of online dispute settlement is added.

The regulation related to online arbitration in Indonesia has actually been accommodated by Law Number 30 of 1999 about Arbitration and Alternative Dispute Settlement. It can be seen from the regulation in Article 31 clause (1) of Law Number 30 of 1999, explaining that the parties in a firm written agreement can determine independently the arbitration procedure to be used in the dispute investigation as long as it is not in contradiction with the provision of this law. This provision explains that the parties determine the arbitration procedure independently; therefore online arbitration has an opportunity of being applied to the dispute settlement.

In online arbitration, it can be found that the parties in dispute settlement will meet face to face. The Law Number 30 of 1999 has accommodated it in Article 4 clause (3), explaining that in the case of there is an agreement to settle dispute through arbitration, it occurs in the form of mail exchange; therefore telex, telegram facsimile, e-mail deliveries, or other communication media should be obligatorily accompanied with a receipt by the parties. From such the provision, it can be seen that online arbitration has been accommodated in the Law Number 30 of 1999.

The problem is that there has been no executing regulation becoming the guidelines to the parties in using online arbitration as the dispute settlement method. The executing regulation is important to accommodate the effectiveness and efficiency of online arbitration process in Indonesia. In addition, it is also important to be the standard accommodating the element of justice in dispute settlement.

Corresponding to the provision of Article 6 of Republic of Indonesia's Law Number 11 of 2008 about Information and Electronic Transaction, online arbitration can be considered as legitimate as long as the information included into it is accessible, displayed, guaranteed for its completeness, and can be accountable for. Considering the Provision of Article 18 clause (4) of Law Number 19 of 2016 stating that: "The parties are authorized to determine the forum of trial, arbitration, or other alternative dispute settlement institution authorized to deal with the dispute likely resulting from International Electronic Transaction they have made". Based on the provision of article, the parties are given freedom to choose the dispute settlement institution to cope with the dispute resulting from international electronic transaction.

Thus, online arbitration is possible to do as an alternative dispute settlement pertaining to online activity.

IV. CONCLUSION

The legality of online arbitration in Indonesia can be seen from the online arbitration agreement that should meet four (4) conditions of an agreement's legality based on Civil Code. Considering the provision of Article 4 clause (3) of Law Number 30 of 1999, it can be said that the organization of online arbitration is possible when there is an agreement first between the parties to organize online arbitration. To the agreement between the parties, clause of online dispute settlement is added. The organization of online arbitration using information technology in resolving dispute is governed specifically concerning the legitimacy of an agreement in the Law Number 19 of 2016 about Information and Electronic Transaction. The regulation related to online arbitration in Indonesia has actually been accommodated by Law Number 30 of 1999 about Arbitration and Alternative Dispute Settlement. The problem is that there has been no executing regulation becoming the guidelines to the parties in using online arbitration as the dispute settlement method. The executing regulation is important to accommodate the effectiveness and efficiency of online arbitration process in Indonesia. In addition, it is also important to be the standard accommodating the element of justice in dispute settlement.

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