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Implementation of Closed Principles in Ad-hoc Arbitration Disputes Settlement by Online Mechanism in Indonesia

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Abstract

Dispute between the parties at dispute resolution through arbitration in the 1999 Arbitration Law can be simplified in the form of sending a letter, fax, telegram, electronic mail or other alternative type of communication that makes things easier. Meanwhile, according to the provisions in the law, The Arbitration Law 1999 declares that all examinations of disputes by arbitrators or arbitration panels are carried out behind closed doors with the intention that examination of disputes through arbitration upholds the principle of confidentiality. The purpose of this writing is to examine the legal regulations governing online ad-hoc arbitration trials, but confidentiality is maintained. This research was carried out using a normative approach. After the research was executed, there were no arrangements for examinations to be carried out by online ad-hoc arbitration, even though The 1999 Arbitration Law states the examination of the trial decision should be conducted behind closed doors due to the principle of confidentiality.

Keyword : Closed principle; Ad-hoc arbitration; Online

INTRODUCTION

Since the emergence of Covid 19 in 2020, not only Indonesia but also the world, it has forced us to change the paradigm in resolving disputes which were previously carried out directly in closed sessions, but with the Covid conditions that we have gone through, we have had to resolve these disputes through online hearings. Along with the growth of technology which is increasingly felt to be able to make one's work easier and changing times have changed to the era of technology industry 4.0, unconsciously the need for achieving communication technology and consumer data security have become two factors that really need attention to support digital economic transaction facilities, as of the advances in science, especially technology, can now support implementation in the business sector.(Hukum Online, 2021) Business disputes and civil disputes include: trade, banking, finance, investment, industry and intellectual property rights.

BANI (National Arbitration Board) in its institutional institutions, in holding closed arbitration hearings, now conduct online arbitration hearings based on BANI Decree Number:

KEP 20.015/SK-BANI/HU on 28 May 2020, concerning Regulations and Procedures of the Electronic Arbitration. Implementation was carried out based on agreement between the parties and is currently continuing to be improved. "The rules" that may be used during this arbitration are in accordance with the agreement with the Arbitration Panel, such as the practice carried out by ICC Arbitration,(Hukum Online, 2021) " This arbitration dispute resolution mechanism refers to the provisions of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as Law No. 30/1999) which includes consultation, negotiation, consolidation, mediation or arbitration. Accordingly, online arbitration dispute resolution refers to electronic mediation held by supporting professionals such as advocates, mediators or government agencies with authority for this purpose(Hukum Online, 2021).

The dynamics of social development and the dynamic pace in the business streams have apparently had quite fundamental implications for legal institutions and institutions. The implications for legal institutions are due to the very inadequate set of norms to support such growing economic and business activities, even though what is needed is legal certainty. Efforts are being made to overcome this condition and to overcome this by carrying out legal reforms in the field of economic activities. Various efforts have been made by the government through updating the substance of legal products that are lagging behind and by creating new regulations regarding areas that support economic and business activities. The legal products needed to overcome this are related to the arbitration settlement process as an institution for resolving disputes outside the court that is needed by society, because arbitration is seen as an institution that has the power to give decisions that state that the decision is final and binding, in which is where the parties must comply with the decision.

If the parties have chosen arbitration as an institution that can resolve their dispute, thus ideally they will no longer take the disputes to the court, either in terms of executing or cancelling the arbitration verdict. Notwithstanding, the arbitration only a *quasi-judicial*, an arbitration institution will be more effective in solving business disputes, as long as voluntarily and in good faith by principle, the parties choose arbitration to avoid court. One of the reason is the closed nature of arbitration can keep their cases confidential.

Even though arbitration is one of solution of solving legal disputes outside of the court, arbitration forums are not something new in the legal dispute resolution system in Indonesia. In the past, arbitration attracted less attention and was less popular though it had long been regulated in the Indonesian legal system. Even in the early period of Indonesian independence, arbitration was commonly practiced among businessmen. Nowadays, arbitration is seen as an important legal institution as one of the way of solving business disputes outside of court. As matter affect, the increasing role of arbitration coincides with the increase in business transactions, both nationally and internationally.

In Indonesia, there are several institutional arbitration institutions that provide arbitration services, namely, the Indonesian National Arbitration Board (BANI), the National Sharia Arbitration Board (BASYARNAS), the Indonesian Capital Market Arbitration Board (BAPMI), the Indonesian Muamalat Arbitration Board (BAMUI), the Indonesian Insurance Mediation and Arbitration (BMAAI), Financing Company Arbitration and Mediation Agency (BAMPPI), Indonesian Arbitration and Alternative Construction Dispute Resolution Agency (BADAPSKI), apart from the non-institutionalized ones afore mentioned above, are able to resolve ADR disputes, namely through *ad-hoc*. Dispute resolution using *ad-hoc* is incidental in nature and is chosen based on the agreement of the parties to appoint an arbitrator either single or using a panel. Institutional arbitration institutions with an international perspective that exist and have been establishing for a long time, namely: "*ICC (The International Chamber of Commerce), UNCITRAL (United Nations Commission on International Trade Law), SIAC (Singapore International Arbitration Convention), and ICSID (The International Centre For Settlement of Investment Disputes)*".(Margono, 2004)

The increasing competition in business transactions, both national and international, creates the potential for disputes. Potential disputes that arise can originate from various business activities or commercial activities, generally be referred to as business disputes or commercial disputes. The broad definition of commercial can cover all aspects of business activities, the business relations between foreign entrepreneurs and national entrepreneurs are ongoing and increasingly open. These phenomenon has had an impact on the role of the court as an institution where cases are resolved. The courts are considered incapable to meet the demands for acceleration that are always demanded by entrepreneurs, including in the matter of resolving the disputes they face, as of the parties in the business consider it ineffective if the case is resolved through the courts. On the other hand, the main issues faced by judicial institutions is the judge's perspective on the law which is very rigid and normative-procedural in carried out legal concretization. Judges applied what is called "legal justice", but fail to applied "social justice". Therefore, we often hear that judges' verdict in their considerations and verdicts have been abandoned the sense of justice in society, so the consequences for the performance of the court are often in the spotlight because the majority of court verdicts still applied a strong formalism rather than an approach to a sense of social justice. It is difficult to avoid if the sense of public society of distrust the judicial institution is growth in daily basis.

As a concrete solution to resolve disputes between parties who are in dispute because of an agreement, the parties can choose an arbitration as the proper choice, whether institutional arbitration or *ad-hoc* arbitration is to be chosen. If the choice is an *ad-hoc* arbitration, this is temporary, means it is formed after a dispute occurs and will end after the decision is issued. The arbitrator can be selected by each party to the dispute. However, if the parties do not appointed their arbitrator, they can request to the court for assisted to appoint an arbitrator to examine and given the verdict the dispute case.(BP Lawyers, 2017) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which is positive law (enacted law) which regulates arbitration including *ad-hoc* arbitrators, namely in Article 6 paragraph (9) reads: "If amicable settlement are made as intended in paragraphs (1) to paragraphs (6) cannot be achieved, then the parties, based on a written agreement, can submit a settlement effort through an arbitration institution or ad-hoc arbitration." From Article 6 paragraph (9) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution above, it can be concluded that:

1. If amicable settlement cannot be achieved, the parties can submit an attempt to resolve the dispute with an arbitration institution.
2. Arbitration settlement can be through institutional arbitration or *ad-hoc* arbitration.
3. To be submitted a dispute resolution through arbitration, the requirements are based on a written agreement (Arbitration Agreement).(Antono, 2017)

Article 4 paragraph 3 of Law 30 of 1999 mentioned if it is agreed that dispute resolution through arbitration occurs, it can be carried out in the form of exchanging letters, sending telexes, telegrams, facsimiles, e-mail or in other forms of communication means, must be comply by a note of receipt by The parties, have not explained of the procedures for resolving disputes online in *ad-hoc* arbitration dispute resolution where the hearing is closed and contains the principle of confidentiality. This is as intended in Article 27 of Law no. 30/1999 that all dispute examinations by arbitrators or arbitration panels are carried out behind closed. Arbitration in the definition given by Alan Redfron and Martin Hunter states that it is a "Private Process". This means that resolving disputes in the context of this arbitration is private, where this private term means that no parties outside of the non-disputing parties having information and it is confidential. Partij autonomy, with the aim of ensuring that access to the parties of company data are guaranteed to be closed to unauthorized parties.(Anienda Tien F., 2009)

METHOD RESEARCH

This research uses normative research methods, which is a technique used to collect and record data in the form of primary and secondary data which is used by researchers for the purpose of compiling and then analysing factors related to the main problem that the truth data will be obtained to strengthen research. This research was carried out by collecting various legal literature, including written works, books, journals and data in accordance with the desired field of study. Through these collection of literature, an in-depth study can be carried out that it can solve the issue in this research. In carried out the analysis, several interpretations are used: a) Grammatical interpretation, namely looking for meaning using text, using grammar; b) Historical interpretation, namely analysing the history of the formation of laws and regulations; c) Systematic interpretation, namely looking for correlations between the enactment of one law and another.

DISCUSSION

1. Implementation of Dispute Resolution Through *Ad-hoc* Arbitration in Indonesia

The use of arbitration institutions in resolving civil disputes outside of court is based on an arbitration agreement made in writing by the parties concerned. If there is a dispute over the agreement made, then the party submitting the application to resolve the arbitration dispute is called the Applicant "Article 1, paragraph 5, Law no. 30 of 1999" is not the case when the court is named as the plaintiff. The procedural law used in arbitration disputes refers to the rules as in Law no. 30/1999 as the procedural law used. For business people, arbitration is an attractive option for resolving business and trade disputes between them with various advantages compared to court proceedings.(Wibowo, 2021) Elucidation in the provisions of "Article 2 of Law no. 30/1999" basically states that the resolution of disputes or differences of opinion between parties in a particular legal relationship who have entered into an arbitration agreement. Disputes or differences of opinion that arise or may arise from that legal relationship will be resolved by means of Arbitration or Alternative Dispute Resolution. As elucidation in article 6 paragraph (9) of Law 30/1999, it is explained that if the parties have made amicable settlement based on a written agreement, they can submit an attempt to resolve the dispute through arbitration or *ad-hoc* arbitration.

In the arbitration agreement there are two procedural law, namely:

In terms of "*pactum de compromittendo*" and "*Acta Compromi"*, the difference between the two only lies in the time the agreement is made before or after the dispute. Pactum de compromittendo is an appointment made from the beginning of the agreement, before a dispute occurs. Meanwhile, Acta Compromis is carried out after a dispute occurs.(Maharani, 2012) The existence of this written agreement negates the rights of the parties to submit dispute resolution or differences of opinion contained in the agreement to the Court.(Tampongagoy, 2015)

If the pactum de compromittendo clause or acta compromis stated that if a dispute occurs it will be resolved by independent arbitration outside of "institutional" arbitration or if the clause states that the arbitration that will resolve the dispute will consist of individual arbitrators, then the agreed arbitration is a type of individual arbitrator arbitration. The main characteristic of agreed individual arbitration is the type of *ad-hoc* arbitration. The main characteristic of this arbitration is the appointment of individual arbitrators.

In ad-hoc arbitration settlements, court intervention in the arbitration process is limited to the following matters:

1) If no later than 14 days after the respondent and applicant fail to determine a sole arbitrator, then one of the parties can submit a request to the Chairman of the District Court to appoint a sole arbitrator.
2) At the request of one of the parties, the Chairman of the District Court will appoint a sole arbitrator based on the list of names submitted by the parties or obtained from the

organization or Arbitration Institution, taking into account both the recommendations and objections submitted by the parties to the prospective arbitrator in question.

3) The Arbitration Panel can be appointed by the parties by first each appointing an arbitrator, and the appointed arbitrators will jointly appoint a third arbitrator. However, no later than 14 days after the last arbitrator is appointed at the request of one of the parties. The Chairman of the Court may appoint a third Arbitrator and such appointment cannot be cancelled by the parties.
4) An arbitrator who has stated that he has accepted the appointment, but then wishes to resign, without obtaining the consent of the parties, the release shall be determined by the Chairman of the District Court.(Sutiarso, 2011)

Currently the appointment of the arbitrator has been explained by article 4 of Supreme Court Regulation no. 3 of 2023 concerning Procedures for the Appointment of Arbitrators by the Court, the Right to Disapprove, Examination of Applications for Implementation and Cancellation of Arbitration Verdict in essence:

1) If the parties do not reach an agreement on the selection of an arbitrator, the parties or one of the parties can submit a request to the chairman of the court to appoint an arbitrator or arbitration panel;
2) Regarding the request, the Chairman of the Court hears the parties along with the reasons for the disagreement and the proposal of the arbitrator or arbitration panel;
3) The Chairman of the Court appoints an arbitrator or arbitration panel no later than 14 (fourteen) days after the application is submitted in the form of a decision;

However, the Supreme Court Regulation still contains weaknesses in that it does not regulate the obligation for courts to provide opportunities for arbitrators to register with every court, just as non-judge mediators can register with every court. If the arbitrators are registered in each court, the chairman of the court will have no difficulty in selecting arbitrators who are registered in that court. Unlike the considerations in the South Jakarta District Court Decision No.431/Pdt.P/2024/PN.Jaksel, dated June 13, 2024, where the judge rejected PT.WKT application to determine the requested arbitrator because it was not registered, even though the applicant's authority to appoint an arbitrator is the applicant's absolute authority to determine his arbitrator, the court only has authority if there is a dispute over the determination of the chief arbitrator and the respondent's arbitrator. Not to mention the court must open ADR case registration using online.

On the other hand, the birth of the Supreme Court Regulation does provide confirmation that the court is given a role to be involved in the appointment of arbitrators after the parties have a disagreement between them. However, if there is an understanding between the parties, then the parties are given the freedom to determine the event and the dispute examination process that they want to be carried out by the arbitrators who have been appointed or appointed, only the wishes of the parties must be stated explicitly and in writing, so that it can be a clear reference for the arbitrators in handling the problems they face. However, what the parties must pay attention to is that the selection of events and processes still refers to the provisions of Law No. 30 of 1999 and may conflict with these provisions.(Wijaya & Yani, 2003) This *ad-hoc* arbitration has been formulated by the 1958 New York Convention, in article 1 paragraph (1) using the term "arbitration appointed for each case" which means: "arbitrator appointed for a particular case for one appointment". In this provision we can clearly see the incidental nature inherent in *ad-hoc* arbitration. If an agreement stated there is an agreement made by the parties that if a dispute or difference of opinion arises due to the agreement made by the parties, then this has proven that the resolution of the dispute will be resolved through ad-hoc or institutional arbitration, and not to court.

Arbitration is an institution chosen by the parties to resolve disputes outside of court where this arbitration institution can make decisions that are final and binding, thus, ideally if

the parties have chosen this institution they will no longer take the matter to court, but can voluntarily accept what is decided in the arbitration verdict so that whether the arbitration verdict is executed or cancelled, it should be submitted to the Court even this arbitration institution is only a *quasi-judicial*. This legal choice of arbitration institution in resolving business disputes will be more effective if it is done voluntarily and in good faith by the parties because if the case has been referred to an arbitration institution it means the parties avoid court. One of the reasons for choosing an arbitration institution where the hearings are held behind closed doors is because it is intended to maintain the confidentiality of their cases, considering that publicizing their disputes for business people will not be good. One of the advantages in arbitration proceedings is that in resolving arbitration disputes before the trial begins, the parties already know their respective positions and attitudes as stated in the arbitration request and responses to the arbitration request. The process of resolving civil disputes in court is very different. In resolving arbitration disputes at the beginning of the trial, a list of evidence and supporting evidence and arguments are submitted. This is intended to give the parties the freedom to express their arguments verbally and can also include additional evidence.

In the event of agreement clause states that if a dispute occurs it will be resolved by arbitration, then this means that the parties are subject to "Law no. 30/1999" where if a dispute occurs, the parties each appoint an arbitrator. After the appointment of the two Arbitrators by each party, each party will appoint another Arbitrator as the third arbitrator where this third arbitrator will be the chairman of the Arbitration panel, so that what happens is what is called an ad-hoc Arbitration process. Dispute resolution through ad-hoc arbitration, this is incidental and only handles a particular case so that it is formed after a dispute arises and is appointed by the parties.

If the arbitration dispute resolution is chosen by the parties, where the parties choose is through arbitration after the dispute occurs, then the parties must make an agreement as outlined in a written agreement signed by the parties. In the event that the parties cannot sign a written agreement, the written agreement must be made in the form of a notarial deed. This is elucidation by "Article 9 of Law no. 30/1999" that the written agreement must contain:

a. disputed issues;
b. full name and place of residence of the parties;
c. full name and place of residence of the arbitrator or arbitration panel;
d. the place where the arbitrator or arbitration panel will make a decision;
e. secretary's full name;
f. dispute resolution time period;
g. statement of willingness from the arbitrator; And
h. statement of willingness of the disputing party to bear all costs necessary for resolving the dispute through arbitration.

This ad-hoc arbitration dispute resolution is based on the wishes of the parties, who must appoint an arbitrator or arbitrators who resolve the dispute without institutional supervision and must determine their own applicable procedural rules. The courts generally serve as a last resort to correct procedural errors in arbitration (for example, disagreements in the selection of arbitrators). Sometimes parties adhere to a pre-existing set of procedural rules designed to govern ad-hoc arbitrations (such as the UNICITRAL Arbitration Rules) and even in ad-hoc arbitration agreements the parties must designate a "nominating authority" with the authority to appoint arbitrators.

In "Article 1 number 7 of Law 30/1999" it is explained that an arbitrator is one or more persons chosen by the parties to the dispute or appointed by the District Court or by an arbitration institution to provide decisions regarding certain disputes which are submitted for resolution through arbitration. Furthermore, in "Article 12 paragraph (1) of Law 30/1999" it is

explained that those who can be appointed or appointed as arbitrators must meet the following requirements:

a. competent to take legal action;
b. minimum age 35 years;
c. not have a blood or marital relationship up to the second degree with one of the parties to the dispute;
d. has no financial or other interest in the arbitration verdict; and
e. have experience and active mastery in the field for at least 15 years.

If we refer to the provisions above, we can see as long as a person fulfils the requirements above, he/she can be appointed or appointed as arbitrator. This provision also does not require that he or she must take special education to become an arbitrator.

If we look at the selection of arbitrators in institutional arbitration, they can be selected by each institution that accepts arbitration strictly and selectively, their appointment as arbitrator at that arbitration institution. The conditions are very strict, at least referring to the provisions of Article 12 of the Arbitration Law and additional regulations made by the Institution itself.(Antono, 2017) If ad-hoc arbitration is chosen in the agreement, then the arbitration procedure is not subject to the management or control of the institution, but still refers to the provisions of the Arbitration Law. In Article 13 of Law no. 30 of 1999 states that in the event there is no agreement regarding the arbitrator who will resolve the dispute, then one of the parties can submit a request to the chairman of the District Court who will appoint the arbitrator in question. This authority is absolute, but which district court has the authority is a relative competency, namely the district court where the respondent domiciled.

Generally, parties choose *ad-hoc* arbitration, because resolving disputes through ad-hoc arbitration will be more comfortable for them and they can choose their own procedures for resolving disputes. Indeed, there are many reasons why they cannot choose institutional arbitration, because when parties have different views from institutional arbitration institutions, ad-hoc arbitration must be chosen, which often turns out to be the final commitment. They do have their own sovereignty to resolve cases so they do not submit to the authority of any institution, thus they prefer ad-hoc arbitration. Institutional arbitration is sometimes perceived by the parties as having partiality or non-neutrality, hence this issues makes some countries prefer to established an independent ad-hoc mechanisms, because they can ensure the maximum level of non-nationality and the least constraints on their sovereignty.

The parties prefer ad-hoc arbitration because it can be cheaper than institutional arbitration, this is cause ad-hoc arbitration does not have an institutional secretariat to be charged for payment. However, in ad-hoc arbitration, the referee himself (or a secretary appointed by them) is necessary to perform basic administrative functions, which may charge to incur costs equal to or greater than those incurred by institutional arbitration. Moreover, when using a judicial institution, there can be intervention from members of the judiciary, plus the costs for legal counsel going to court can be very large and the resolution time can take a long time. There is also a perception that ad-hoc arbitration is slightly more confidential than institutional arbitration, because it does not involve institutional administrative staff. However, the emphasis is that arbitral institutions are closed in nature and therefore subject to confidentiality obligations and the greatest risk of public disclosure usually comes from the parties themselves and from the post-adjudication enforcement process.(Aceris Law LLC, 2019) Thus more extensive arrangements are needed if this is done online so that confidentiality can be properly maintained. In ad-hoc arbitration dispute resolution, it is preceded by the appointment of an arbitrator and if the parties to the case do not agree on the appointment of an arbitrator, then the chairman of the court will appoint the arbitrators. Although arbitration dispute resolution is carried out on an ad-hoc basis, the arbitration dispute resolution process follows the provisions contained in Law 30/1999.

If the parties in making the agreement do not mention that if there is a discrepancies of opinion in interpreting the agreement they have made, a dispute will eventually arise and it is not stated that if a dispute occurs in the future it will be resolved through arbitration, then both parties can negotiate again and agree that their dispute will be resolved. through arbitration whether through ad-hoc arbitration or through institutional arbitration and in the agreement stated in written form.

2. Closed Principles in Ad-hoc Arbitration Dispute Resolution Through Online Hearings

Settlement of arbitration disputes through online hearings in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has not been explicitly regulated, therefore to hold online arbitration as an alternative dispute resolution requires a legal basis. Although Law 30/1999 does not explicitly regulate online arbitration procedures, Article 4 paragraph 3 of Law 30/1999 states:

"In the event that it is agreed that dispute resolution through arbitration will occur in the form of an exchange of letters, then the sending of a telex, telegram, facsimile, e-mail or other form of communication means, must be accompanied by a note of receipt by the parties," thus in the meantime if the parties are If a dispute wants to use online dispute resolution, the legal basis that can be exercise is the provisions of Article 4 paragraph (3).

Therefore, the Law no. 30/1999 provides the possibility of using e-mail in the dispute resolution process even though it is only at the letter delivery stage. Apart from the word email, the words "other forms of communication" in this provision can be exercise as a legal basis for carrying out online arbitration. The only issue is what the operational procedures for online arbitration are because online arbitration is no different from conventional arbitration, the only thing that is different is the procedure for implementing it.(Cakrawala, 2015)

Refer to the provisions in Article 18 paragraph (4) of Law Number 11 of 2008 concerning Electronic Transactions and Information states:

"The parties have the authority to determine a court forum, arbitration, or other alternative dispute resolution institution which has the authority to handle disputes that may arise from international electronic transactions made by them."

Arbitration authority must be based on an arbitration agreement made and signed by the parties before or after the dispute occurs, therefore it must be stated in the arbitration agreement so that it is binding on the parties. The agreement between the parties, which is an agreement that the parties wish to resolve the trade dispute through arbitration, can be stated in a separate arbitration agreement or separate from the main agreement, or made into one unit with the main agreement.

The advantages through arbitration are:

a) The procedure is not complicated and can produce decisions in a short time.
b) The evidences is more flexible and confidentiality is guaranteed.
c) The parties to the dispute can choose which law they wish to apply during the process.
d) The decision is final and binding so there is no need for appeal or cassation.
e) The procedure is easier for both parties to follow.
f) Closing down shopping forum (legal smuggling or selecting laws in bad faith to deceive actual facts).
g) The decision can be immediately executed by the court without any prolonged review.
h) More compromise and acceptable to both parties.

Another advantage in resolving arbitration disputes is by utilizing information technology, the process is simple, costs are low and time is not wasted.(Riza & Abduh, 2019) In the elucidation of Law no. 30/1999 that the advantages of settlement through arbitration are:

a. guaranteed confidentiality of the parties' disputes;

b. can avoid delays caused by procedural and administrative matters;
c. the parties can choose an arbitrator who they believe has sufficient knowledge, experience and background regarding the disputed issue, is honest and fair;
d. the parties can determine legal options to resolve the problem as well as the process and place for holding the arbitration; And
e. An arbitration verdict is a decision that is binding on the parties and can be implemented through simple or direct procedures.

Besides of the advantages of the aforementioned above, online arbitration in its implementation faces juridical obstacles in terms of:

1) Contract to conduct arbitration
2) Selection of Arbitrator
3) Fulfilment of basic procedural principles
4) The nature and implementation of binding verdicts from arbitration.(Barkatullah, 2010)

Business transactions will continue to develop in the future, where further regulations regarding these business transactions are needed, especially now when the business transactions are mostly carried out using electronic systems. This is an elucidation in "Article 65 paragraph (5) of Law Number 7 of 2014 concerning Trade" which states:
"In the event of a dispute related to trade transactions via electronic systems, the person or business entity experiencing the dispute can resolve the dispute through court or through other dispute resolution mechanisms."
Meanwhile, Article 66 of Law Number 7 of 2014 concerning Trade states:
"Further provisions regarding business transactions via electronic systems are regulated by or based on Government Regulations."
Previously, the trade law stated that trade also included trade via electronic systems. This provision is stated in Article 4 paragraph (1) point e of Law Number 7 of 2014 concerning Trade, that the scope of trade regulations includes: Trade via Electronic Systems.(Nureda, 2017)

Settlement of disputes between parties is carried out through arbitration by the parties because they have the freedom to determine for themselves the law that must be used by the arbitrators in resolving the dispute in question. The law of a particular country chosen by the parties is the substantive law and not the rules of private international law. For example, substantive civil law in Indonesia is contained in the Civil Code and Commercial Code.

As time goes by, to resolve civil cases in court, the Supreme Court has introduced e-court as a means of electronic hearings as regulated in Perma No. 1 of 2019 challenges the electronic administration of cases and trials in court. When compared to trials in court, where in civil courts everyone can hear the decisions regarding cases which are opened publicly, even the mass media can cover the proceedings, because the court is public and the public knows from the initial process until the decision is read and then heard. arbitration is not like that. In an arbitration hearing, the dispute process is closed.

The parties who resolve the dispute at the arbitration institution have full control in determining how this arbitration is initiated. Before arbitration begins, the parties have the right to choose the place where the arbitration will be held, the applicable law, the arbitrators and the language used in the arbitration hearing process. The parties of course chose this arbitration to be closed because it is to protect the company's image from the public so that it is not negative. In arbitration, in various quotations or references, there should be no special autonomous obligation for the parties to choose a closed or private and confidential principle, because this principle is in fact a moral principle that comes from within the disputing party.(Anienda Tien F., 2009)

Confidentiality is a principle that must be maintained by the parties starting from the level at which the dispute is examined in the arbitration process until the arbitration decision is pronounced by the arbitrators. If it has been decided then the results of the decision from the arbitration hearing are brought to the District Court for executorial implementation.(Anienda Tien F., 2009) Dispute resolution contains several basic fundamentals. In these basic fundamentals, the parties have full authority and/or control in determining the contents of the agreement, how the arbitration will proceed and the choice of forum. This arbitration takes precedence over the parties' agreement to dispute in the arbitration process. Without an agreement between the parties, arbitration cannot be carried out. This reflects the principle of freedom of contract and every freedom of contract or contractual engagement is carried out in a free state.(Anienda Tien F., 2009)

In the arbitration process, the principle of confidentiality means that the arbitration process is closed starting from the process of examining documents, witnesses, experts from and/by the parties to the dispute. The nature of this arbitration is closed, meaning that only the parties to the dispute, witnesses and arbitrators are allowed to attend the arbitration hearing. In Article 27 of Law no. 30/1999 states that "all dispute examinations examined by an arbitrator or arbitration panel are carried out in a closed manner". Due to the arbitration law states that all dispute examinations are closed to the public, how can ad-hoc dispute resolution be implementing by online? If the arbitration dispute is resolved online, the parties make this method the arbitration method of choice for the disputing parties, while the Arbitration law does not yet regulate online dispute resolution.

When carried out using the online method, here the arbitrator and witnesses are no longer hampered by time and space when outside the physical hearing location. In accordance with the character of efficient, fast and legal arbitration(Anienda Tien F., 2009), then the dispute resolution procedure to ensure confidentiality will not be guaranteed. Dispute resolution through online arbitration, registration of cases, selection of arbitrators, making decisions, submission of documents, deliberation of arbitrators, making decisions, notification of a decision is carried out online in the form of digital data.(Indrani & Hadi, 2017)

According to Paustinus Siburian online arbitration is as follows:

1) Regulations are required regarding requests for arbitration and their implementation, this may include regulations applied by the arbitration body regarding information provided by one of the parties regarding a dispute, in consumer disputes this means providing a complaint formula online, and in dispute disputes business to business availability of an online formula containing a request to conduct arbitration including regulations for providing an arbitration agreement;
2) Provide a way to select an arbitrator, accept a seat or reject it;
3) Providing arbitration procedures such as providing procedural rules such as procedures for filing cases online, submitting responses, submitting evidence and arguments and the possibility of postponement;
4) Providing procedures for using electronic messages, using video conferencing and audio conferencing, including in this case providing evidence in the form of statements from witnesses and expert witnesses;
5) Providing online decision making and the requirements necessary for a decision to be accepted and implemented;
6) Provision of possible procedures for contesting or appealing decisions;
7) Providing facilities to store data, especially in cases involving the right of one of the parties to fight because there is an allegation that the rights of one of the parties have been violated;
8) Providing procedures that can enable the process to run confidentially by providing encryption and electronic signature technology.(Siburian, 2009)

In the international context, the UN has established a body related to arbitration. The two most important UN bodies are the United Nations Commission on International Trade Law (UNCITRAL) rules of procedures and the International Centre for Settlement of Investment Disputes (ICSID) rules of procedures.

In contrast to Indonesia, the legal provisions of Law no. 30/1999 does not regulate that arbitration dispute resolution can be carried out online, whereas online arbitration in America has become common practices and the American Arbitration Association has the supplementary procedure for resolving arbitration disputes by online. American Arbitration is an Alternative Dispute Resolution service operator that handles employment, intellectual property, consumer, technology, health, financial services, construction and International trade disputes.

Therefore, the ADR (Alternative Dispute Resolution) is a mechanism for resolving disputes outside of court which is considered more effective, efficient, fast and low cost and benefits both parties (win-win solution) in the case.(Kurniawati, 2017)

In implementing online arbitration, the American Arbitration Association issued additional rules (supplementary rules) which enacted in 2001. The purpose of establishing supplementary rules is to facilitate the use of electronic means for arbitration if agreed by the parties. In the supplementary rules it is stated that in carrying out online arbitration procedures, according to these additional regulations there is a main concept, namely that for every dispute carried out an online website will be created for that case. On this website, all files regarding cases and documents sent by the parties will be stored. Only the American Arbitration Association, the parties and the arbitrator have access to the information stored on the site.

In Indonesia it is regulated in Law no. 11 of 2008 states that an electronic document is any information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form that can be seen, displayed, and/or heard via a computer or electronic system. , but not limited to writing, sound, images, maps, plans, photographs or the like, letters, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. Meanwhile in Law no. 30/1999 and Perma No. 3 of 2023 which has just been promulgated does not regulated online hearing procedures for those parties who applied for ad-hoc arbitration.

Conclusion

Dispute resolution through ad-hoc arbitration, in addition to being incidental in nature, to handle a particular case, is only formed after a dispute arises. On the other hand, the Court has no regulations that open up opportunities for registered arbitrators in each court such as non-judge mediators. Settlement of ad-hoc arbitration disputes online using this method as an option for the disputing parties, then the arbitrators and witnesses are no longer hampered by space and time when outside the physical courtroom, so that the principle of confidentiality and closedness remains a guideline for resolving the dispute, so that the principle of confidentiality regarding the arbitration process is carried out in a closed manner from the public, here only the disputing parties and/or parties interested in this dispute are allowed to attend the hearing. However, Law No. 30 of 1999 and Perma No. 3 of 2023 have not regulated the procedures for online use by adhering to the principle of confidentiality from the public, so a norm is needed to regulate this matter.

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