

The Influence Of Globalization In Developing Arbitration As A E-Commerce Dispute Resolution In Indonesia

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ABSTRACT: *The development of the business world is increasingly rapidly. It can happen because the rise in the era of globalization in the field of technology without limits, then it could have arisen from problems due to the tort committed by the parties. Thus, the necessary alternative dispute resolution when problems arise. Arbitration is one of the alternative dispute resolution in the field of business, as the development of the age and the globalization of arbitrase also experienced changes and developments. The purpose of the author in this study is to find out how the arbitration process in resolving disputes in E-Commerce and to the influence of globalization on the development of arbitration in Indonesia. The results of this research is that arbitration could be made the way as an E-Commerce dispute resolution but the setting is not set explicitly in the legislation, and the fact that globalization indeed influenced the development of arbitration such as arbitration is no longer just in one country but may even cross country.*

KEYWORDS: *influence of globalization, arbitration, e-commerce*

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I. BACKGROUND

The development of economy in the era of globalization systems also give rise to the development of the business transactions.¹ Trading activity is one of the areas that support the economic activities in the community and also has a large role in affecting the condition of the national economy. In addition, the trade has a very important meaning in improving economic growth continuously,² improve the implementation of national development in order to embody equitable development including its results result and maintain national stability. Trade disputes can arise at anytime and anywhere in between the parties involved in the activities of a business or trade, fast and precise. The parties involved in the trade dispute may freely choose the way of settlement and the law that will be used in accordance with the agreement that has been agreed upon in the contract.³ Dispute resolution in the trade activities not only can be made through the courts (litigation) but can also be done through alternative dispute resolution out of Court (non litigation).⁴

One of the alternative dispute resolution in the field of trade is arbitration. According to Act No. 30 of 1999 regarding arbitration and alternative dispute resolution, arbitration is a civil dispute settlement ways outside the public justice based on the arbitration agreement made in writing by the parties in dispute. Arbitration is a way of settlement of a civil dispute outside the public justice based on the arbitration agreement made in writing by the parties in dispute.⁵ Dispute resolution through arbitration can only be done when there is an arbitration agreement which have been exchanged by the parties, either in the form of the arbitration clause set forth in a written agreement made by the parties prior to the arising of the dispute (Pactum de Compromittendo) as well as a separate arbitration agreement made by the parties after the dispute arises (Acta Compromise).⁶ When trading in the contract agreed upon by the Parties contained the arbitration clause designating a particular arbitration institution as a forum of dispute resolution, then the Act No. 30 of 1999 automatically negate the rights of the parties to submit a dispute or difference of opinion contained in its Charter to the courts of the country where the defendant is domiciled. The district court lost the authority to investigate and prosecute such trade disputes as set forth in article 3 of law No. 30 of 1999, as well as having an obligation to refuse a trade dispute arbitration.⁷ Along with the growing age of the developed models of business transactions in Indonesia, like the kneeling and selling Online is being conducted by the city's businessmen in Indonesia. Trade transactions through the internet in contrast to shopping or do trading transactions in the real world.

In the world of law, selling online is called with the term E-Commerce. Electronic Commerce has yet to have a term of formal. There are several terms which are known generally as E-Commerce, WEB Contract, and contracts of trade electronics. However, in this paper, the term used is e-commerce.⁸ E-commerce is part of the Electronic Business (business conducted through electronic media). Business circles gave a definition of e-commerce as any form of commerce/trade goods or services using electronic media. Electronic media here is not

limited to the internet, but because internet use is very popular then focus the discussion this thesis is an e-commerce on the internet. Onno W. Purbo and Aang Wahyudi⁹ which cites the opinion of David Baum mentions that "e-commerce is a dynamic sets of technologies, application, and business process that links enterprises, consumers and communities through electronic transaction and the electronic exchange of goods, services and information". that e-commerce is a dynamic set of technologies, applications, and business activity that links companies, consumers, and communities through electronic transactions and trade in goods, services and information.

In E-Commerce transactions sometimes dispute between sellers and buyers that might not meet each other, as in E-Commerce is very possible transaction of buying and selling without any merging of the seller and the buyer and supported by technological advances in this era of globalization. Data from the ICD Research Institute predicts that e-commerce market in Indonesia will grow 42% from the year 2012-2015. This figure is higher if compared to other countries such as Malaysia (14%), Thailand (22%), and Filipino (28%) Of course , value of this is very tempting for some investors, both in and outside the country. ¹⁰ Some VC (Venture Capital) as large as the Internet Rocket, CyberAgent, East Ventures, and Ide Source even infuse capital into the e-commerce company based in Indonesia. Call it a few among them are Zalora, Berrybenka and Lazada, Tokopedia, Bilna, Saqina, VIP Plaza, Ralali and many more. Those are some examples of e-commerce companies that succeed in harnessing the opportunities e-commerce market in Indonesia who are currently rising.¹¹

Online arbitration dispute resolution efforts have started to be known and enforce developed countries like the United States, United Kingdom, Canada and several countries in Europe. How dispute resolution was very interesting because done online making it easier for the parties to resolve disputes wherever they're obstructed without time and place. In Indonesia the online arbitration is new and has not been regulated in a special regulation. The rules on arbitration in Indonesia is contained in the law of Number 30 of 1999. However, in the law there is no setting on the arbitration conducted online. Arbitration is applied in Indonesia after the promulgation of law No. 30 of 1999 regarding arbitration, so it can be inferred that the arbitration was created before the existence of E-Commerce was born. The author has the initiative to make a writing in the form of a journal will discuss about how to resolve the dispute arbitration in E-Commerce and how the influence of globalization in the development of arbitration as an alternative dispute resolution in the field of E-Commerce in a title scientific papers titled "the influence of Globalization on the development of Arbitration as a Dispute Resolution of E-Commerce in Indonesia".

II. RESEARCH METHOD

This research is normative, according to Peter Mahmud Marzuki, all research related to the law (legal research) is always the normative. If the type of research should be stated in writing, simply expressed that research is the legal research.¹² This research was done with by the author about how arbitration in resolving conflict E-Commerce and how the influence of globalization in the development of arbitration as an alternative dispute resolution in the field of E-Commerce will obtained the conformity between something to were investigated with the value or appropriateness/rules or principles, which provided a reference. In this study, the references into reference is Act No. 30 of 1999 regarding arbitration and alternative dispute resolution and law number 11 year 2009 of the information and electronic transactions.

III. DISCUSSION

1. The process of E-Commerce dispute resolution through arbitration

The arbitration word derived from the Latin arbitration which means the power to get things done, according to the "wisdom". He attributed the term arbitration with wisdom as well – though hints that the Arbitration Panel does not need to look at the law in resolving disputes of parties, but simply basing on wisdom. This view is incorrect because the arbitrator also apply the law as what is done by the judge in court.¹³

Understanding of the institution of arbitration can be seen in article 1 paragraph (8)– Law number 30 of 1999 stated that: "the institution of arbitration was the Agency chosen by the parties to the dispute to give a verdict on the dispute; the institution may also provide a binding opinion regarding a specific legal relations in matters of dispute arising yet ". So it can be drawn the conclusion that the arbitration is a way of dispute resolution chosen by the parties to help resolve the dispute and provide opinion a specific legal relationship, to get a win-win solution that is final and binding for the parties so that the parties can meet its obligations and rights.

Arbitration is made by written agreement¹⁴ in accordance with the agreement between the two sides before the occurrence of a dispute or an agreement made by the parties that were created after the occurrence of the dispute. The agreement to arbitrate arises because of an agreement that was going on between the two sides. An example of a clause or the arbitration agreement is as follows: "all disputes arising from this agreement, will be completed and terminated by the Indonesia National Board of arbitration (BANI) according to the rules of the

arbitration procedural rules of BANI –, which his decision binding both parties to the dispute, as the decision in the first and last levels".¹⁵

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In terms of e-commerce transactions conducted between individuals is not the shape of a business entity, to know the State Court authorized the judge dispute going on, then it can be seen in the choice of jurisdiction. When in the contract e-commerce between countries, the parties have determined the choice of jurisdiction either expressly or tacitly, then the Court as specified in the contract that are put in place. Similarly, in terms of specific legal qualification prescribed in the contract e-commerce transactions, then the authorities prosecute the dispute happening are the courtsspecified in the qualification in accordance with the law enforcement.¹⁷ Furthermore if the business person in e-commerce transactions in the form of a business entity such as a limited liability company and an individual, then the dispute, then it is based on the principle of the Siege, a Court Registrar Statute air adjudicate the matter is the Court of the place of establishment of the company.¹⁸

Dispute resolution through arbitration online is an option in resolving problems that occur due to the use of electronic communication and distribution of information and goods. As for the procedure for resolution of disputes through arbitration, namely online :¹⁹

- a. Agreement to resolve disputes through arbitration online
 - 1) the parties must consider the specific provider on procedures that will be used in the completion of conflict as part of the arbitration agreement, for example through AAA (American Arbitration Association) Therefore, in the beginning of the examination will be conducted on the basis of the procedure that has been chosen by the parties.
 - 2) selected Provider could not perform the task as expected if the parties do not have the capacity to resolve disputes through arbitration and/or disputes that occur are not related to the field of trade or other areas that have been determined.
 - 3) by agreeing to the procedures of a particular provider, then the parties also agreed to the changes when done the checks start.
 - 4) when the parties agree to resolve through arbitration of conflict online, then the chosen provider has the authority to resolve the dispute.
- b. Notification to the parties and the calculation of the period of dispute resolution.
 - 1) If the other is not determined, based on the agreement of the parties and the consent of the arbitrator so any document that was created based on the procedure of provider chosen should have been sent to the case site at the time and day specified. The time and the day of the receipt of the document by e-mail will be set as the time he made the document by the parties
 - 2) the settlement period will be calculated from receipt of these documents in case site.
- c. The claims filed in the arbitration.
 - 1) the applicant must make the document containing the demands to the administrative site. Demands in arbitration must include: the arbitration agreement, the agreement between the parties related to the number, identity, qualifications, and way of appointment of arbitrators, the statement about the dispute which occurred, legal reasons which aspects influenced the demands, the desired amount of damages (if any)
 - 2) the demands put forward by the applicant must also contain the following information:
 - 1) The e-mail address of the applicant;
 - 2) e-mail address of the respondent;
 - 3) Name, address, telephone number and facsimile of the parties.
 - 3) the applicant must pay a fee the day before asked the demands to
 - 4) the administrative site. These costs can be paid electronically or other methods specified by the provider.
- d. Notice the content demands

- 1) Once payment is made, then the provider will examine the demands put forward by the applicant is already in accordance with point 3 above. If it is in compliance, then in a period of 5 working days, the provider shall notify the parties of internet addresses from case site it has made use by the parties. The date and time addresses case site to the parties by e-mail is set as the time and date that the case made by the site.
- 2) If the respondent could not be notified through e-mail, then the provider shall establish that the procedures that have been selected can not be used.
- 3) If the provider establishes that the demands are not eligible formally, then the provider will not create case site and the applicant must equip it in advance.
- e. The answer to the demands for a period of 30 days as of since he made the case that the respondent, the site should answer the demands, which include:
 - 1) the answer to the demands put forward by the applicant party, which includes facts, documents and legal reasons.
 - 2) objection to arbitrator, with regard to the number, identity, qualifications, and/or the way the appointment of arbitrators.
 - 3) e-mail address of the respondent.
 - 4) If the respondent would file a counterclaim, then the document is presented is adapted to the requirements stated in points 3.
- f. The answer to the counterclaim if the respondent filed a counterclaim, the applicant must answer the counterclaim within 30 days of receipt of the counterclaim in the case site. The answer from the applicant must include the information specified points 5.
- g. Extension of period of dispute resolution Providers or arbiters, with a logical reason, may extend the time period, such as the time period of the respondent to answer the demands of the applicant or of the applicant to answer the demands of the reply from the respondent.
- h. Language use
The language used in the resolution of a dispute is the language used in the arbitration agreement, unless the parties or other prescribed on the basis of the authority of the arbitrator.
- i. The process of hearing
 - 1) If the parties with the consent of the arbitrator agreed to carry out the process of hearing, then the arbitrator shall make an award based on compliance by the parties. When the hearing process is not done, then the arbitrator will make a ruling within a period of 30 days as of since the process is closed.
 - 2) in the process of hearing, testimony can be admitted, cross-examination of the witnesses can be conducted, and additional documents may be accepted as evidence of an arbitrator.
- j. Place of Venue verdict of the verdict may be determined by the parties, if the parties do not specify, then the place of the verdict was determined by the arbitrator.
- k. Inform the content of the ruling of the Arbitrator must provide the verdict in case site. The time and date of the verdict was sent to the parties of the case, the site was designated as a time and date for the verdict has been made. Case site will remain available for 30 days as of since he made the ruling.
 1. the method of communication used
 - 1) the arbitrator may determine the method of communication will be used outside of a method of communication used in case site.
 - 2) Provider must provide the e-mail address for the parties and the arbitrators, which the parties and the arbitrator or provider with the provider can keep in touch.

Provisions contained in article 27-64 Act No. 30 of 1999 regarding arbitration and alternative dispute resolution, the lack of any article that States that the parties must be confronted or physically face to face. In the process of arbitration regulated Act No. 30 of 1999, the parties are not required to be present during the process of arbitration so it can't be directly face to face in the process of online arbitration instead of being a problem. In addition, the existence of article 4 paragraph (3) law of Number 30 of 1999, keep open the possibility of the parties to resolve the conflict online.²⁰

Implementation of online arbitration in Indonesia have been fit and does not conflict with existing legislation, in particular Act No. 30 of 1999. Although, the basic law ist he implementation of online arbitration has been there, but the problem is the absence of rules of practice governing how the online arbitration it is executed. When setting the implementation of online arbitration submitted to the parties to set it up yourself, it was feared there were no standard raw about the implementation of arbitration effective and efficient online.²¹

2. The influence of globalization in the development of arbitration as a dispute resolution of E-Commerce in Indonesia

Everywhere, people say that we are now living in the times with a social life that is largely determined by the global process. Even now it has become the fashion to consider that the warring Nations had already passed, and that the national levels of Government is not effective anymore to confront economic and social processes that are globalizing.²² Globalization is a process of culture which is characterized by the

presence of the tendency of the regions in the world, both geographically as well as physical, being uniform in format of social, cultural, economic, and political. In the global process of social life has created the egalitarianism, in the field of culture trigger the emergence of "internationalization of culture", in the field of Economics create interdependence in the process of production and marketing, and in the politics of creating "liberalization".²³

Arbitration is regulated in Act No. 30 of 1999 is a way of settlement of a dispute outside the public justice based upon the written agreement of the parties to the dispute. However not all disputes can be resolved through arbitration but only disputes concerning rights under the law ruled all or completely by the parties to the dispute on the basis of the word agree.²⁴ From the given sense it looks to us that the other is not an arbitration body of the judiciary award has final and binding on the parties who want their dispute settlement is done through institution of arbitration. In this case the Parties shall be entitled and authorized to determine and appoint the arbitrators alone will resolve the dispute, which also means the existence of authority of the parties to determine their own way of dispute resolution that is wanted.

Arbitration is in fact also has a long history, since the arbitration was already known in the legislation since the enactment of the law in the civil code, namely since the Netherlands began introduction of the Rv that is regulated in section 615 to 651. Further historical development of arbitration is characterized by the formation of the National Board of arbitration.

The arbitration was held with based on law No. 14 of 1970 on the provisions subject matter of Justice, as amended at this point with the Act No. 4 of 2004. This legislation is the parent and the general framework laid the Foundation and basis of the judiciary, as well as guidelines for judicial environment, each set in its own legislation. Then it is also arranged in regulation number 30 of 1999 . Where basically dispute resolution outside the Court on the basis of peace or by the referee (arbitration) remains permitted. But the award has only the power of eksekutorial after gaining permission or orders to carry out the execution of the judgment.

With the publication of Act No. 30 of 1999, then the main source of law in the matter of the arbitration and alternative dispute resolution is only based on the LAW, and any regulations during the Foundation of the guidelines in the handling of Arbitration stated does not apply anymore. As good as any award, while the parties do not want to execute it voluntarily, then it will empty the verdict. Then to implement the arbitration ruling is not implemented on a voluntary basis mainly by parties which declared defeated in the matter, the Act gives a form of coercion to parties who do not want to voluntarily implement the Arbitration ruling, namely in the form of execution. Execution of arbitration is an attempt of the State (in this case carried out by the District Court).

To implement the ruling of the arbitration body (represents private law) are not implemented on a voluntary basis by the parties, especially the party declared the losing. The implementation of the verdict (execution) arbitration, is a product of the law from an institution (Institution) was implemented by other institutions (institutions). In this regard the decision of a Board of arbitration administered by judicial bodies, namely the Court of the country.²⁵ In practice this execution may cause some juridical or legal issues, since in general the Act No. 30 of 1999 regarding arbitration and alternative dispute resolution provides the right and authority to the head of State Court to control or correct the verdict or International National Board of arbitration before the Arbitration ruling stated whether enforceable or not.

Apart from that, according to Act No. 30 of 1999 the parties are still allowed to apply for annulment of the decision of a Board of arbitration over to the Chairman of the District Court. As specified in Law Number 30 of 1999, the decision of a Board of arbitration are final and binding. There is no legal efforts over the arbitration ruling, binding on the parties, the efficiency and effectiveness is a characteristic of the arbitration process. control or testing efforts as well as the petition for cancellation upon the arbitration ruling by the Chairman of the District Court may result in the nature of a final and binding ruling loses its meaning. Similarly in the petition for annulment of the award, while the petition is granted, then the Arbitration ruling also ran aground.

As an example of the changes and development of arbitration due to the globalization will be explained below, this arbitration clause has also noted, besides the agreement anyway. So far before a dispute arises as a result of the cooperation agreement, the parties have previously pointed to the Agency as the Agency resolve the dispute. Arbitration when the program is no longer used among relatives only. Now this business relationship has been cross border,²⁶ so too did the parties involved in it from various background economic, cultural and social groups, meaning that arbitration this involves the parties mutually different background. The parties to the dispute is not as freely as in the past in selecting an arbitrator²⁷ will deal with disputes that are submitted to him. At least they are bound by the institution (institution) set up the arbitration. In contrast to the arbitration of the middle ages, nowadays the role of the arbitration shall not only provide services or offer a settlement on the dispute to the entrepreneurs of the industry or trade.

Also resolve the dispute arbitration law, issues that are beyond the jurisdiction of the Court or where the Court is not ready to resolve the dispute. This arbitration is not only being asked to interpret a contract or decide whether a contract has been executed or what the consequences of a breach.

IV. CONCLUSION

The influence of globalization greatly influences the development of arbitration. Arbitration when the program is no longer used among relatives only. Implementation of online arbitration in Indonesia is appropriate and does not conflict with the existing laws and regulations, especially Law No. 30 of 1999. Although, the legal basis for the implementation of online arbitration has been established, but the problem is the absence of implementation rules governing how arbitration online is run. If the implementation of online arbitration is left to the parties to regulate it themselves, it is feared that there is no standard standard on the implementation of effective and efficient online arbitration. Indonesian government must make many changes on Arbitration Act, that addition of online arbitration so that the perpetrators of the attempt did not hesitate to make electronic commerce activities for the sake of legal certainty. Indonesia National Board of arbitration did not hesitate to dispute resolution online. The Government shall provide telecommunications infrastructure and establish a new agency to handle online arbitration case as more advanced technology does not cover the possibility of the large number of online disputes arising.

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