

CRITICAL ANALYSIS OF LAW NO. 30 OF 1999 ON ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION RELATED TO THE POTENTIAL DEVELOPMENT AND IMPLEMENTATION OF ONLINE ARBITRATION

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ABSTRACT

This paper critically examines the relevance of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution in the context of online arbitration. With the rapid growth of e-commerce and the increasing reliance on technology for dispute resolution, the legal framework governing arbitration in Indonesia has become outdated. While various arbitration institutions, such as BANI and the ICC, have adopted online arbitration processes, the existing legislation fails to accommodate these developments. This research highlights the potential legal uncertainties that arise from the lack of provisions for online arbitration in the current law and underscores the need for immediate legislative revisions. By analyzing relevant legal norms and the implementation of electronic arbitration regulations, the study aims to provide insights into how the law can be modernized to better serve the needs of contemporary dispute resolution practices in the digital age.

KEYWORDS Online arbitration, Law No. 30 of 1999, Alternative Dispute Resolution, Legal Uncertainty, BANI, E-Commerce Disputes



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INTRODUCTION

Trade activities, whether in the form of goods or services, can now be conducted even if the seller and buyer are in different countries. This is due to the development of globalization, which affects not only the economic sector but also the political, cultural, and various other aspects. The advancement of information

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technology serves as one of the pillars of globalization (Dewi, 2009). The Covid-19 pandemic has changed the habits of people worldwide in conducting business activities. Social restrictions imposed by governments around the world have transformed traditional business transactions—from purchasing products directly from stores to online transactions using e-commerce. The use of online buying and selling continues to grow in a massive and complex manner, leading to significant disputes (Katsh & Rabinovich-Einy, 2017). This has also encouraged more disputes and new types of conflicts, including those arising from e-commerce activities.

In such trade activities, the possibility of disputes always exists. The disputes that need to be anticipated include how to implement the clauses of agreements, the content of the agreements, or other causes (Soemartono, 2006). The mechanism for resolving disputes can be determined and agreed upon by the parties involved, whether through negotiation, mediation, litigation, or arbitration.

In practice, efforts to resolve trade disputes will first be attempted through negotiation. If the negotiation fails, the dispute will be resolved either through litigation or arbitration, depending on the agreement of the parties. For resolution through arbitration, the parties must first create a written agreement that is also signed. This can be done by drafting a separate agreement or including a dispute resolution clause in the contract or agreement they make (Cooke, 1997).

According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as the “Arbitration and ADR Law”), arbitration is defined as a method for resolving a civil dispute outside of the general courts based on an arbitration agreement made in writing by the parties involved in the dispute. In Indonesia, one of the arbitration institutions for business disputes is called the Indonesian National Arbitration Board (hereinafter referred to as “BANI”).

The development of arbitration as a dispute resolution institution chosen by entrepreneurs and business actors has progressed rapidly, alongside conventional dispute resolution through the courts. This is evidenced by the fact that many commercial contracts made today include arbitration clauses as the chosen forum for dispute resolution (Rajagukguk, 2000). The choice of arbitration as a means of dispute resolution by business practitioners is not without reason. This is because arbitration has several advantages, including (Adolf, 2010):

1. Arbitration proceedings are less formal and more flexible.
2. In arbitration, the disputing parties have the opportunity to select an arbitrator who meets their expectations in terms of expertise and knowledge in a specific field; and
3. The confidentiality of the arbitration process and the decisions issued are primary reasons for the preference for arbitration forums.

Along with the advancement of time, especially in the field of technology, human life has become easier in several ways, one of which is the use of the internet in daily life. The internet enables us to access the information we need and connects people in one location to others, even those far away, in real time.

The internet plays a significant role in the evolution of arbitration, with many arbitration institutions now utilizing online systems for dispute resolution. BANI,

the arbitration institution in Indonesia, has accommodated online arbitration proceedings since the issuance of the Regulation and Procedure for Electronic Arbitration in 2020 (Adolf, 2011). Similarly, the International Chamber of Commerce (ICC), under the ICC Arbitration Rules 2021, specifically Article 26, paragraph 1, states that proceedings can be conducted with physical presence or remotely via video, phone, or other suitable communication methods. However, unlike these institutions that have adapted to online arbitration and kept pace with technological advancements, the Arbitration and ADR Law in Indonesia, which has been in effect since August 12, 1999, has not been updated to reflect current developments, necessitating several amendments to its content.

RESEARCH METHOD

This research employs a doctrinal research method, wherein the author identifies key issues to be thoroughly examined in relation to the legal norms found in the relevant legislation. The types of data utilized in this study include both primary and secondary data (Soekanto, 2007). Secondary data is obtained directly through legal literature searches and library resources, encompassing official documents, books, research reports, diaries, and more. The collected data will then be analyzed qualitatively, meaning it will be systematically organized into descriptions or explanations to illustrate the research findings in an easily understandable manner for dissemination to others. Qualitative data analysis involves the author's systematic understanding and perception of the available data, aiming to uncover answers to the research problems. This qualitative analysis prioritizes the quality aspects of data that cannot be merely defined by mathematical or statistical calculations (Marzuki, 2017).

RESULT AND DISCUSSION

In Indonesia, the provisions for online arbitration processes are accommodated in various regulations, including Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024, specifically in Articles 18, paragraphs 1, 2, 3, and 4, and Article 41, paragraphs 1, 2, and 3. Additionally, Government Regulation Number 80 of 2019 on Trade Through Electronic Systems in Article 72, paragraph 2, has also provided for the implementation of online arbitration processes. However, the Arbitration and ADR Law, which specifically governs the arbitration process in Indonesia and serves as the primary reference, has yet to address this matter.

The arbitration process for dispute resolution bears similarities to the litigation process in courts, where the party filing a claim or demand bears the burden of proving what has been claimed. Generally, the following stages are undertaken by the parties in the arbitration process:

1. The claimant opens the case, and the respondent provides an answer or a counterclaim if applicable.
2. The claimant presents witnesses to support the arguments made, and these witnesses may be cross-examined by the respondent.
3. The respondent opens their case.

4. The respondent presents witnesses, who may also be cross-examined by the claimant.
5. The claimant provides a response.

Referring to the Arbitration and ADR Law as the legal framework governing arbitration in Indonesia, particularly Article 40, paragraph 2, it states that “Simultaneously, the arbitrator or the chair of the arbitration panel shall order the parties or their representatives to appear before the arbitration hearing, which is set no later than 14 (fourteen) days from the date of issuance of that order.” The phrase “...appear before the arbitration hearing...” implies that the summoned parties must attend the arbitration proceedings in person. This certainly poses a potential for legal uncertainty in the implementation of online arbitration. However, in practice, online arbitration in Indonesia has already been conducted and regulated by BANI through Decree Number KEP 20.015/SK-BANI/HU dated May 28, 2020, regarding the Regulation and Procedure for Electronic Arbitration, which serves as a guideline for the parties in resolving disputes online through BANI. Nevertheless, the Arbitration and ADR Law, which serves as the legal basis for arbitration processes in Indonesia, has yet to accommodate this matter. Thus far, the basis for conducting online arbitration has relied on the regulations and procedures issued by each arbitration institution itself.

The provisions in the Arbitration and ADR Law are considered outdated and not in line with current developments. In this internet era, disputing parties can participate in arbitration proceedings online through video conferencing technology. The Arbitration and ADR Law must accommodate the implementation of arbitration both offline (traditional) and online.

CONCLUSION

The advantages and conveniences of conducting arbitration processes online should be supported by the government through prompt revision of the Arbitration and ADR Law. This would greatly assist many parties, especially business practitioners, in resolving disputes through arbitration in an effective manner regarding time, location, and costs. To create legal certainty and keep pace with current developments, it is essential to raise awareness among stakeholders about the urgency of revising the Arbitration and ADR Law, as the existing legal framework has not accommodated online arbitration resolution.

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