

CHAPTER I

INTRODUCTION

A. Background

Dispute concerning an agreement therein is something that is quite likely to happen between parties. A good loss may become material or immaterial to other parties if a dispute arises because of default or unlawful act by one of the parties. As a result of one issue, there are now many more that need to be handled, and each one of them needs to be resolved amicably and in accordance with the law, in person between the parties and a judge or arbitrator, and in good faith.

But in 2019, a pandemic, specifically the outbreak of the Corona virus Disease (Covid-19), has forced the government to take action. Large-Scale Social Restrictions were established in the Republic of Indonesia, as were all home activities, including working from home. The more advanced technology is, keep in mind, it does not preclude the use of technology or social media to carry out the resolution of a conflict, or what is often known as Online Dispute Resolution (ODR).¹ Online arbitration also makes it easier for parties who want to resolve arbitration anywhere and anytime.

¹Schmitz Amy J, "Online Dispute Resolution for Smart Contracts", *Journal of Dispute Resolution*, Vol.19, No. 2 (2019) p. 105-107.

Online dispute resolution (ODR) is regarded as one of the initiatives and an efficient alternative in settling conflicts, particularly an agreement taking place online.² This is due to the fact that ODR, as opposed to Alternative Dispute Resolution (ADR) and court proceedings, might make it simpler to resolve disagreements, as it is no longer constrained by space and time efficiency in resolving problems,³ The phrase "one size fits all" is not recognized in ADR (Alternative Dispute Resolution), thus an acceptable mechanism must be sought for an issue in APS.⁴

If the mechanism to be used is online, ODR can be used online because the parties do not need to meet in person in different locations.⁵ Then, a direct meeting between the parties and the judge, arbiter, or mediator is necessary for operational costs and dispute consultation. different from Online Dispute Resolution (ODR), the costs incurred are relatively minimal. first-instance courts pursue conflict resolution for six months, the supreme court for one year, and Massachusetts has no set settlement deadline.⁶ Along with additional expenses that are covered by the parties to the dispute.⁷ Contrary to criminal matters, which must go through a court body, civil and commercial cases can typically be handled outside of the court or litigation.

² Alessa Hibah, "The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview", *Journal of Information & Communications Technology Law*, Vol. 31, No. 3 (2022) p. 319-342.

³ Kurniati, "Peluang dan Kendala Pengembangan Arbitrase Sebagai Alternatif Penyelesaian Sengketa", *Journal of Doctrinal*, Vol. 4, No. 1 (2019) p. 931-933.

⁴ Petrauskas, Felikas and Egle Kbartiene, "Online Dispute Resolution in Consumer Disputes", *Journal of Jurisprudencia*, Vol. 18, No. 3 (2011) p. 921-941.

⁵ Matthew S Erie, "The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution", *Journal of International Law*, Vol. 59, No.3 (2019) p. 225.

⁶ Shelly Kurniawan, "Perbandingan Penyelesaian Sengketa Merek Berdasarkan Undang-Undang Merek Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Jo. Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan World Intellectual Property Organization arbitration and Mediation Centre", *Journal of Nationally Accredited Journal by Sinta*, Vol. 11, No.1 (2019) p. 097-113.

⁷ Rachmadi Usman, 2013, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, (Bandung: PT. Citra Aditya Bakti) p. 17.

Considering many issues with the legal system, it leads the disputing parties to alternatives outside of court that are anticipated to be more successful and allow for the achievement of a win-win outcome.⁸ The option that can be chosen and is very well-liked by the parties involved in a dispute is arbitration.⁹ The topic of peaceful settlement was avoided because it depended on the consent of the parties.

In Indonesia, disputes are resolved by arbitration through a national and international organization called the Bani Arbitration Center, which was founded by the Indonesian Chamber of Commerce and Industry (KADIN).¹⁰ Since BANI Arbitration Center is an autonomous, libertarian, and independent entity, no outside parties are allowed to interfere with its operations. BANI is required to be truthful, impartial, and unbiased in a situation.¹¹

Because the cost of settling other cases demands a significant price, Online Dispute Resolution (ODR) can become a viable option to a case settlement to seek justice.¹² However that online arbitration is permitted only in emergencies, which in this instance is a Covid-19 emergency and stems from an agreement the parties made in that dispute to have the dispute handled by arbitration.

⁸ Sitompul, Merine Gerarita, "Online Dispute Resolution (ODR): Prospek Penyelesaian Sengketa E-Commerce di Indonesia", *Journal of Renaissance*, Vol.1, No.2 (2016) p. 77.

⁹ Abdulkadir Muhammad, 2019, *Hukum Perdata Indonesia*, Bandung, PT. Citra Aditya Bakti, p. 60.

¹⁰ Susilowati, Kartika Dewi Sri, et al, "Pelatihan Akuntansi Terapan Berbasis Android pada Usaha Mikro, Kecil dan Menengah (UMKM) Anggota Kamar Dagang dan Industri Indonesia (Kadin) Kota Malang", *Journal of Abdi Insani*, Vol.8, No.2 (2021) p. 150-157.

¹¹ Sulistianingsih, Dewi and Muhammad Shidqon Prabowo, "Problematik Dan Karakteristik Penyelesaian Sengketa Kekayaan Intelektual Melalui Badan Arbitrase Nasional Indonesia", *Journal of QISTIE*, Vol.12, No.2 (2019) p. 166-177.

¹² Muskibah, M, "Arbitrase Sebagai Alternatif Penyelesaian Sengketa", *Journal of Komunikasi Hukum*, Vol.4, No.2 (2018) p. 139-149.

The determination and application of choice of law are excluded from the online arbitration mechanism.¹³ However, the majority of arbitration agreements are formed in a standard or well-known provision with the phrase Standard Contract. A website that is integrated with a database application to accommodate the submitted application, the list of arbitrators, and the necessary rules regarding the application to arbitrate are required in online arbitration in order for the online arbitration proceedings to run smoothly. This website must also be complete and have adequate Internet access.¹⁴

Through the use of online arbitration, differences of opinion can be resolved because of the rules. Indonesia simply lacks regulations specifically dealing with foreign jurisdictions' use of the internet, which leads to misunderstanding.¹⁵ There is currently no international agreement that governs comparable matters. Then, there is a lack of adequate regulation of online arbitration agreements, online administration of the arbitrator's location, and the issue of online rulings.¹⁶

Article 4 Paragraph 3 Law No. 30 of 1999 explained that "In the event that is agreed that the settlement of disputes through arbitration occurs in the form exchange of letters, sending telexes, telegrams, facsimiles, e-mails or any other form other communication, must be accompanied by a record of acceptance by the parties". With this provision, online arbitration has a great opportunity to resolve disputes between

¹³ Albar, Andi Ardillah, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional", *Journal of hukum kenotariatan*, Vol.1, No.1 (2019) p. 18-32.

¹⁴ Arum Afriani Dewi, "Arbitrase Online di Era Revolusi Industri 4.0 dan Pandemi Covid-19", *Journal of Legal Reasoning*, Vol.3, No.2 (2021) p. 100-115.

¹⁵ Aziz, M. F., & Hidayah, M. A, "Perlunya Pengaturan Khusus Online Dispute Resolution (Odr) Di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce", *Journal of Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol.9, No.2 (2020) p. 275.

¹⁶ Wibowo, A. M, "Perbandingan Hukum Arbitrase Dan Alternatif Penyelesaian Sengketa Arbitrase Online Indonesia Dan Cina", *Journal of Audito Comparative Law*, Vol.2, No.2 (2021) p. 110-118.

parties.¹⁷ Regarding the application of online arbitration through BANI Arbitration Center, and in response to circumstances of the Covid-19 pandemic, the BANI Arbitration Center Secretariat Board issued a Letter Decree Number 20.015/V/SK-BANI/HU concerning Regulations and Procedure for Organizing Arbitration Electronically, on May 28, 2020, which refers to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Implementation of arbitration has become faster due to the advancement of time and technology which continues to develop rapidly. Additionally, arbitration processes may be conducted online. Based on the above background, the researcher wants to do further research and put it in the form of an article entitled "Application of Online Arbitration in Indonesia".

B. Research Problems

Based on the description of the background of the problems above, it can be drawn the formulation of the problem by the author for the study as follow:

1. How is online arbitration implemented in BANI Arbitration Center?
2. Is online arbitration effective as an alternative dispute resolution?

C. Objectives of Research

Based on the formulation of the problem in the research, as for the objectives of the research intended by the researcher, namely:

1. To understand the application of online arbitration in Indonesia.

¹⁷ Law Number 30 of 1999 concerning of arbitration and alternative dispute resolution.

2. To analyze the effectiveness of the online arbitration as an alternative to dispute resolution in the Indonesian legal system.

D. Benefits of Research

There are some benefits of the research, namely:

1. Theoretical Benefits

The results of the study are expected to provide information to author student and the publics as material for legal studies in knowing the Application of Online Arbitration in Indonesia. In addition, this paper expected to add insight into the collection of scientific works by contributing to the community regarding the online arbitration as an alternative to dispute resolution. The findings of this study are anticipated to be used as guidance by legislators and attorneys who would collaborate to resolve disputes through online arbitration.

2. Practical Benefits

The findings of this study show that alternative dispute resolution methods, such as online arbitration, can be used to resolve disputes in a way that is more effective, efficient, affordable, and satisfying to the parties while also benefiting society as a whole.