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The Role of the Badan Arbitrase Nasional Indonesia in E-Commerce Dispute Resolution through Online Arbitration

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Abstract. The purpose of this study was to determine the role of the Indonesian National Arbitration Board (BANI) in the process of e-commerce dispute resolution through online arbitration. The research method was carried out using a normative juridical approach and was descriptive analytical, then the data obtained were analyzed in a qualitative juridical manner. The results obtained that the Indonesian National Arbitration Board (BANI) has a very important role in resolving e-commerce disputes through online arbitration, although there are no explicit rules governing this matter, the existence of the BANI institution is one of the alternative choices for parties. - the disputing parties in e-commerce to resolve the dispute. The Indonesian National Arbitration Board (BANI) is one of the alternative dispute resolution institutions outside the court (non-litigation) that has the authority to resolve civil disputes including online/e-commerce business disputes through arbitration methods, both conventional arbitration and online arbitration. The conclusion of this study is that the development of electronic commerce (e-commerce) has inspired electronic dispute resolution as well, which is more effective, namely through on-line arbitration, through the Indonesian National Arbitration Agency (BANI). The impact of this research, among others, provides a profitable choice for the parties to the dispute in e-commerce to resolve their dispute more effectively through arbitration through the Indonesian National Arbitration Board (BANI).

Keywords: Badan Arbitrase Nasional Indonesia (BANI), E-Commerce Dispute, Online Arbitration.

I. INTRODUCTION

Globalization in the world of economy, especially trade, is made easier by the internet (Interconnected Networking) as a fast communication medium. Trading transactions can be carried out directly or indirectly, in the sense of using the internet (cyberspace)¹. Trade transactions using the internet have changed the business world from traditional trading patterns to a more modern trading system, namely a virtual trading system known as Electronic Commerce.

¹ K. M. Akaant, Composition of an Arbitral Tribunal: Reconciling the Judicial Turmoil, *Asian International Arbitration Journal*, Vol. 7 Issue 2, 2021, P. 135.

In its development, *Electronic Commerce (E-Commerce)* was born not only because of the development of information technology, but also because of the community's demands for services that are fast, easy, practical, and require better quality.

The results of previous research conducted by Arsyad Sanusi, that although the use of the internet in trade transactions promises various conveniences, it does not mean that *Electronic Commerce* is a system that is free from problems. In practice, there are many cases that harm consumers due to the use of internet media in this buying and selling transaction.² Currently in Indonesia, there is Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law). In the ITE Law, there are regulations regarding electronic transactions, including trading via the internet. Paustinus siburian in his previous research said that developments that allow for electronic commerce (e-commerce) have inspired electronic dispute resolution as well³. Dispute resolution in trade transactions via the internet (e-commerce) will be more effective if it is carried out through the internet as well (on-line arbitration)⁴.

Furthermore, Pautinus Siburian also said that on-line dispute resolution began in 1995 with the establishment of a Virtual Magistrate at the Villanova Center for Law & Technology, which aims to become a provider of special dispute resolution services for on-line disputes, and the first case handled occurred in 1996, in this case someone has filed a lawsuit for receiving unsolicited advertisements via e-mail sent using an address from America on-line (AOL)⁵.

Currently, the process of resolving arbitration disputes in Indonesia can be carried out through the intermediary of the Indonesian National Arbitration Board (BANI) or other arbitration institutions both in Indonesia and abroad with established procedures and regulations. Meanwhile, the settlement of trade disputes electronically (e-commerce) through on-line arbitration in Indonesia through the intermediary of the Indonesian National Arbitration Board (BANI) has not been fully implemented, because until now, BANI has only used e-mail for sending letters in the arbitration process or conduct the trial through the use of the e-mail, but there is no use of a special website for holding arbitrations (on-line arbitration)⁶.

Based on Article 1 point 1 of the APS Law, it is emphasized that arbitration is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Meanwhile, in Ahmad Riyandi Nasution's research it is said that the arbitration agreement in question is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises or a separate arbitration agreement made by the parties after a dispute arises⁷.

According to Article 4 paragraph (3) of the APS Law, the arbitration agreement that has been agreed upon by the parties to the dispute can be carried out directly between the parties (face to face) or it can also be carried out through the exchange of letters by sending telex, telegram, facsimile, e-mail, -mail or in the form of other means of communication, which must be accompanied by a note of acceptance by the parties, which means there is an agreement between the parties to the dispute. The letter sent via the internet or other communication media, based on Article 1 number (4) of the ITE Law can be considered as an electronic document. Based on this, the settlement of trade disputes electronically (e-commerce) can also be carried out through

² M. Arsyad Sanusi, *Transaksi Bisnis dalam Electronic Commerce*, *Jurnal Hukum*, Nomor 16 Vol 8, 2021, P. 45.

³ Paustinus Siburian, *Arbitrase On Line*, Djambatan, Jakarta, 2014, P.9

⁴ Anastasia Goryacheva, Natalia Kisliakova, Non-recognition of Dissenting Opinions in CAS as a Controversial and Unresolved Matter, *Journal of International Arbitration*, Vol. 39, Issue 2, 2022, P. 233.

⁵ Ibid, P. 9

⁶ Ibid, P.10

⁷ Ahmad Rivandi Nasution, "Keberadaan Badan Arbitrase Nasional Indonesia Sebagai Pilihan Penyelesaian Sengketa Hutang Piutang", Tesis, 2015, P.22.

electronic arbitration (online arbitration). The Indonesian National Arbitration Board (BANI) has the authority to resolve e-commerce disputes, but this does not rule out the possibility of obstacles in the process⁸. Furthermore, Ananda Puspita Aminudin in his research explained that the practice of resolving e-commerce business disputes through online arbitration at the Indonesian National Arbitration Agency (BANI), must be carried out through arbitration procedures from beginning to end as stipulated in the BANI procedure regulations.⁹

The results of previous studies showed that the method of resolving disputes in e-commerce disputes could be done through online arbitration, but there is no certainty which arbitration institution is authorized to do so. In previous research, information has been obtained that arbitration can be conducted online in resolving e-commerce disputes. Meanwhile, the purpose of this research was conducted to obtain clear information about the role of the Indonesian National Arbitration Board (BANI) in resolving e-commerce disputes through online arbitration. The research method used is descriptive analytical, with a normative juridical approach and the data obtained are analyzed in a qualitative juridical manner.

II. METHOD

The research method used is descriptive analytical, namely providing data and facts systematically. The approach method used is a normative juridical approach, in this case testing and reviewing data through library studies, namely secondary data on primary legal materials regarding the Role of the Indonesian National Arbitration Board (Bani) in E-Commerce Dispute Resolution Through Online Arbitration, in the form of laws and regulations. Relevant data include Law Number 30 of 1999 concerning Arbitration and APS, as well as secondary data on secondary legal materials in the form of expert opinions or related doctrines, as well as secondary data on tertiary legal materials taken from legal dictionaries. In addition to secondary data, in this study, primary data was also collected through field studies by means of structured interviews that were relevant to the research objectives. All the data obtained are analyzed by qualitative juridical, in this case the analysis is done by considering the hierarchy of legislation so that the one legislation does not contradict other laws and legal certainty.

III. RESULT AND DISCUSSION

E-commerce is a new concept that can be described as the process of buying and selling goods or services on the World Wide Web internet or the process of buying and selling or exchanging products, services and information through information networks including the internet¹⁰. E-commerce is an undefined concept, that is, e-commerce means different things to different people, depending on the point of view they use. Another opinion from Choi, defines e-commerce as more than just an alternative channel to market or sell products and services online (electronically). Based on the principle of freedom of contract, if in the e-commerce process mentioned above there is a legal dispute, then the dispute resolution can be carried out based on what has been determined in the agreement between the parties, either by litigation (through judicial institutions) or non-litigation (out of court). Settlement of trade disputes by means of arbitration can be carried out by

⁸ Iskandar Syah, Mudakir, *Penyelesaian Sengketa Di luar Pengadilan Via Arbitrase*. Yogyakarta: Calpulis, 2016, P.54.

⁹ Ananda Puspita Aminudin, *Peranan Badan Arbitrase Nasional Indonesia Dalam Menyelesaikan Sengketa Penanaman Modal*, *Lex Administratum*, Vol. V/No. 1/Jan-Feb/2017, P.91

¹⁰ M. Suyanto, *Strategi Periklanan pada e-Commerce Perusahaan Top Dunia*, Andi, Yogyakarta, 2013, P. 15.

means of arbitration through the intermediary of arbitration institutions such as BANI or other arbitration institutions, at the request of one of the disputing parties and or the agreement of the disputing parties.

Badan Arbitrase Nasional Indonesia (BANI Arbitration Center) is an independent institution that provides a variety of services related to arbitration, mediation and other forms of out-of-court dispute resolution. BANI was founded in 1977 by the Indonesian Chamber of Commerce and Industry (KADIN) through Decree No. SKEP/152/DPH/1977 dated November 30, 1977 and is managed and supervised by a Governing Council and an Advisory Board consisting of community and business sector leaders¹¹. BANI is domiciled in Jakarta and has representatives in several major cities in Indonesia, namely Surabaya, Bandung, Medan, Denpasar, Palembang, Pontianak and Jambi. In providing the necessary institutional support to act autonomously and independently in law enforcement and justice, BANI has developed its own rules and procedures, including the time limit within which the Arbitral Tribunal must render a decision. This rule is used in domestic and international arbitrations conducted in Indonesia. Currently, BANI has more than 100 arbitrators with various professional backgrounds, both Indonesian and foreign.

In Indonesia, interest in resolving disputes through arbitration has increased since the enactment of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law). This development is in line with the direction of globalization, where dispute resolution outside the court has become the choice of business people to resolve their business disputes. In addition to the characteristics of being fast, efficient and complete, arbitration adheres to the principle of a win-win solution, and is not long-winded because there is no appeal and cassation institution. Arbitration costs are also more scalable, as the process is faster. Another advantage of arbitration is that the award is final and binding, in addition to its confidential nature, where the trial process and arbitration award are not published. This condition implies that the parties must comply with the APS Law, and the parties will not process the dispute in question to the District Court and carry out the decisions taken by the Arbitration Tribunal consisting of one or three or more arbitrators, which arbitrators This is determined by the disputing parties either based on the list of arbitrators that have been provided by the arbitration institution such as an arbitrator appointed by BANI or the parties determine their own arbitrator from outside BANI as long as they meet the requirements set by BANI¹².

The implementation of online arbitration in Indonesia is in accordance with and does not conflict with existing laws and regulations, especially Law Number 30 of 1999 (the APS Law). However, there are no implementing rules governing the online arbitration process. If the arrangements for the implementation of on-line arbitration are left to the parties to arrange them themselves, it is feared that there will be no standard on the effective and efficient implementation of online arbitration. In addition to the absence of implementing regulations regarding online arbitration, the biggest obstacle to the implementation of online arbitration in Indonesia concerns the facilities and infrastructure for the said online arbitration. Barriers to the implementation of online arbitration in Indonesia include the following¹³:

1. There is no arbitrator or arbitration institution in Indonesia that has explicitly provided dispute resolution services through online arbitration. This is due to the tendency to think that disputes that can be resolved through online arbitration are disputes in electronic commerce or e-

¹¹ www.baniarbitration.org, About BANI.

¹² Law Number 30/1999 About Arbitration and Alternatif Dispute Resolution

¹³ Muskibah, Arbitrase Sebagai Alternatif Penyelesaian Sengketa, *e-journal.undiksha.ac.id*, Vol.4 No. 2, 2018, P. 24.

commerce only and in Indonesia this type of trade is not yet popular, so cases are rarely encountered.

2. Uneven Internet access. Based on the data, the spread of Internet users only occurs in big cities in Indonesia, so that access for dispute resolution through online arbitration is limited to residents who live in big cities.
3. Dependence on foreign software vendors, this can be seen from the data which states that 89% of Indonesian computer users use commercially licensed foreign software.
4. Indonesian people are not used to resolving disputes outside the court, especially through online mechanisms. This is influenced by the thought that implementing decisions in the litigation process is easier to do, because they can use coercive measures. In fact, this thinking is not entirely correct. An arbitration award can be executed by force, as long as the arbitrator's decision has complied with the requirements stipulated in Articles 59 to 64 of Law Number 30 of 1999.

There are several arbitration institutions that can be used to resolve trade disputes electronically (e-commerce) either through conventional arbitration or online arbitration, including the International Chamber of Commerce (ICC), Committee Maritime International (CMI), International Center for The Settlement of Investment Dispute (ICSID) and Singapore International Arbitration Center (SIAC), American Arbitration Association and Ad Hoc Arbitration¹⁴. In Indonesia, there is an alternative dispute resolution institution, namely the Indonesian National Arbitration Board (BANI), in this case BANI has conducted arbitration by using e-mail, and the trial process has often been carried out using this e-mail. However, the use of the website for organizing arbitration has not been carried out.

Based on the provisions of Article 1 of the BANI Procedure Rules, if the parties to an agreement or trade transaction in writing agree to bring the dispute that arises between them in connection with the agreement or business transaction concerned to arbitration before the Indonesian National Arbitration Board (BANI) or use the procedural rules BANI, then the dispute is resolved under the administration of BANI, with due observance of the special provisions agreed in writing by the parties, as long as they do not conflict with the provisions of the law which are coercive and at the discretion of BANI. Dispute resolution through BANI must be based on good faith by the parties. Thus, the district court is no longer authorized to adjudicate disputes that have been bound by the arbitration agreement. BANI has the authority related to the settlement of business disputes (business contracts), both in terms of giving a decision on the dispute or simply providing binding advice if requested by the parties in a trade transaction. Electronic disputes that can be resolved by BANI are no exception to electronic trade disputes (e-commerce) or in other words using internet media where the parties are in different places and not face to face. This condition does not prevent dispute resolution through BANI, as long as all the requirements specified in the APS Law in conjunction with the BANI Procedure Rules are met, including clauses in the contract or agreement of the parties after a dispute occurs which states that the dispute will be resolved through BANI based on applicable procedures. , then the dispute can still be resolved through BANI.

The written agreement referred to in accordance with the provisions of Article 3 letter m of the BANI Procedure Rules, is all writing made in upper and lower case letters, in this case not only documents written or printed on paper but also documents or agreements that are written or printed

¹⁴ Ben Waters, Alternative Dispute Resolution and Civil Justice: A Relationship Resolved, *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, Volume 88, Issue 1, 2022, P. 33



on paper, created and submitted electronically, so that business disputes electronically can be resolved through alternative dispute resolution such as through arbitration, even though the parties to an electronic transaction do not face each other directly and may be located far from each other.

When a request for a business dispute resolution through BANI arises from its parties, BANI will form a tribunal known as the BANI Arbitration Council consisting of one or three or even more than three arbitrators, in which the arbitrator is appointed either from within BANI itself, or from outside BANI in accordance with the wishes of the parties and also in accordance with the BANI Procedure Rules. Based on the provisions of Article 13 of the BANI Procedure Rules, the BANI Arbitration Tribunal that is formed will examine and decide on disputes between the parties on behalf of BANI, thus the BANI Arbitration Council can exercise all the authority that BANI has in relation to examination and making decisions on the said dispute. In practice, in accordance with Article 18 of the BANI Procedure Rules, the BANI Arbitration Tribunal has the right to object to the statement that the tribunal has no authority (absolute competence), including its authority regarding the validity of the arbitration agreement in resolving the dispute.

IV. CONCLUSION

Trade transactions using the internet have changed the business world from traditional trading patterns to a more modern trading system, namely a virtual trading system known as Electronic Commerce. The development of electronic commerce (e-commerce) has inspired electronic dispute resolution as well. Dispute resolution in trade transactions via the internet (e-commerce) will be more effective if it is carried out through internet media as well (on-line arbitration). Currently, the process of resolving arbitration disputes in Indonesia can be carried out through the intermediary of the Indonesian National Arbitration Board (BANI) or other arbitration institutions both in Indonesia and abroad with established procedures and regulations. Meanwhile, the settlement of trade disputes electronically (e-commerce) through on-line arbitration in Indonesia through the intermediary of the Indonesian National Arbitration Board (BANI), although it has not been fully implemented.

V. ACKNOWLEDGMENTS

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