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Normative Legal Views in Handling Electronic Dispute Resolution Abroad through International Arbitration Legal Entities

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Abstract

The rapid growth of e-commerce has transformed international trade by enabling cross-border transactions without requiring direct interaction between business actors and consumers. Despite its advantages, e-commerce also increases the risk of cross-border commercial disputes, particularly regarding defective products, contractual breaches, and compensation claims. Conventional litigation is often considered inefficient due to differences in legal systems, jurisdiction, and enforcement mechanisms among countries. Consequently, international arbitration, particularly electronic arbitration, has emerged as an effective alternative dispute resolution mechanism. This study aims to analyze the legal framework governing electronic arbitration in Indonesia and examine the enforceability of international online arbitral awards under Indonesian law. The research employs a normative juridical method using statutory and conceptual approaches. Legal materials were obtained through library research and analyzed qualitatively using a deductive method. The findings indicate that Indonesian law recognizes electronic arbitration through Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 as amended by Law Number 19 of 2016 on Electronic Information and Transactions, and the Indonesian National Arbitration Board (BANI) Electronic Arbitration Rules. Electronic arbitration provides a faster, more efficient, and confidential dispute resolution process while maintaining procedural fairness. However, the enforcement of international arbitral awards in Indonesia remains subject to several legal requirements, including the principle of reciprocity, commercial subject matter, compliance with Indonesian public policy, and the issuance of an exequatur by the Central Jakarta District Court. Therefore, although electronic arbitration offers significant advantages for resolving cross-border e-commerce disputes, further harmonization of legal regulations is necessary to strengthen legal certainty and improve the effectiveness of enforcing international arbitral awards in Indonesia.

I. INTRODUCTION

In the current modern era, where the development of global technology and information in the world is very fast and rapid. Long distances and boundaries within the country can become narrow and accessible in using tools created by technological developments brought by the currents of the times. In addition to technology that is easily accessible, there is one of the influences of the development of science and knowledge and collaboration with technology, namely activities contained in the trade sector. In the existing international structure, the trade system has also experienced significant developments, as evidenced by the number of builders who have begun to utilize technology and the internet which are basically used for the implementation of product promotions and provide reach to traders and buyers who can carry out trade remotely. There is no significant difference for national and international consumers, all discuss the business and platform used for the promotion of all of these products, both on social media and in the form of e-commerce. (Ervita Tri Aryani & Munawar Kholil, 2021) The uniqueness of the e-commerce arrangement lies in the fact that business actors and consumers do not interact directly and do not make deals face-to-face. Buying and selling transactions in this context depend on the mutual trust built between the two parties. This condition can result in various legal consequences, especially if one of the parties commits a default or unlawful act that could lead to a dispute. The important issue here is that when e-commerce transactions are carried out between individuals from two different countries, then challenges arise in the application of the laws of each country. This is one of the biggest obstacles to the development of e-commerce as a global market, especially related to the settlement of international trade disputes between sellers and buyers. After the dispute is resolved, a new legal issue arises regarding how the mechanism of execution of damages is from one party to another. If the two parties to the dispute are in different countries with different legal systems, important questions arise regarding how the enforcement process and the mechanism for redressing damages can be implemented. (Arfian Sentrianto, et al.2018) Basically, the e-commerce system makes it easier for people in the world to buy and sell. However, e-commerce can also provide detrimental cases, especially for consumers. For example, there is a case of goods purchased by consumers experiencing defects or production failures. Meanwhile, the seller is reluctant to pay compensation. Then the consumer can sue the seller to the court. However, in general, business and commercial circles tend to prefer out-of-court dispute resolution such as through mediation, negotiation, and arbitration rather than through court.1 The term that is often used for the settlement of a dispute outside of court is Alternative Dispute Resolution (APS). The definition of APS itself is contained in Article 1 number 10 of Law Number 30 of 1999, namely "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment". Some of the factors that drive APS tend to be chosen in the settlement of trade disputes, namely the fees incurred in APS are relatively cheaper when compared to settlement through court institutions. In addition to being cheaper, the dispute resolution process through APS is also faster than through the court. This APS method also guarantees the confidentiality of the parties to the dispute. The APS method also upholds the principle of fairness or the principle of impartiality, to ensure that there is a third party who will mediate or decide disputes experienced by the parties.2 Article 6 paragraph (1) of Law Number 30 of 1999 regulates the ability to resolve disputes through methods outside the judicial institution. In addition, it is also regulated regarding the ability to choose a dispute resolution mechanism related to transactions with electronic systems 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 through electronic systems, the person or business entity experiencing a dispute can resolve the dispute through the court or through other dispute resolution mechanisms". (Arvin Wichaksono, et al. 2022)

II. RESEARCH METHODS

In this research, the research used is The type of research this research can examine a secondary document such as government laws and regulations, court decisions on a case, relevant legal theories and some of the opinions of previous researchers. This normative research presents data that has been collected from several sources in the form of words that have been assembled. In this study, the approach that is based is a conceptual approach where this approach focuses on the doctrines that develop in law and the state approach (statute approach) where this approach aims to discuss the views of law, both Islamic law and positive law and its regulations in the world of law. The data collection technique used in this study is to collect several sources from the latest books, articles and journals so that the research is relevant. After that, to answer the results of the research, a deductive framework will be used so that the questions that are the basis of the research can be answered. In this study, it aims to provide a normative legal perspective in handling electronic dispute resolution abroad through international arbitration legal entities (Sugiyono, 2010)

III. RESULTS AND DISCUSSION

The electronic dispute examination process through the arbitration institution is regulated in the provisions of Article 36 of the UUAAPS, which emphasizes that dispute examination must be carried out in writing. However, oral examination is also allowed if it is agreed by the parties or deemed necessary by the arbitrator or arbitral tribunal. Although some provisions in the UUAAPS seem to be "coercive," the explanation in the law provides flexibility to the parties and arbitrators to determine the course of the arbitration arbitration process, provided that it is relevant and necessary to support the smooth running of the process within the stipulated time, without reducing the essence of the arbitration institution which must be prompt and maintain confidentiality (Widjaja and Yani, 2000). Furthermore, Article 38 of the UUAAPS states that after the arbitrator or arbitral tribunal is established, the arbitrator is obliged to immediately notify the parties of the obligation to submit a letter of application containing claims to the arbitral tribunal within the period determined by the arbitrator or tribunal. Regarding the arbitration request, in the event of the situation described in Article 1 of the BANI Decree Number: 20.015/V/SK-BANI/HU, one of the parties may file an arbitration request electronically. (Waluyo, et al. 2023) Letters or documents sent through internet media or other communication media, according to the provisions of Article 1 number 4 of the ITE Law, can be considered as electronic documents. If the respondent provides an answer to the application letter, the arbitrator or the Chairman of the Arbitration Panel is required to immediately submit a copy of the answer to the applicant. In addition, the arbitrator or the Chairman of the Arbitration Panel shall issue an order for the parties or their proxies to appear before the arbitration hearing determined within a maximum of 14 (fourteen) days from the day the order is issued. If after the period of 14 (fourteen) days the respondent does not submit his answer, then the arbitrator or the Chairman of the Arbitration Panel is obliged to summon the respondent or his attorney to appear in the arbitration hearing within a period of 14 (fourteen) days counted from the time the order is issued. Regarding the trial mechanism, this follows the event that applies in front of the Arbitration Panel, as stipulated in Articles 27 to 51 of the UUAAPS. However, the electronic trial process is different; If the parties agree, the trial may be conducted using internet-based telecommunication facilities, which include but are not limited to teleconference, video conference, or virtual conference using the platform that has been agreed upon by the parties. (Annisa Fitria, 2020) The stages of conducting arbitration electronically are very important to ensure an efficient and transparent process. The technical preparations made three days before the trial showed a commitment to the smooth running of the event, while checking equipment and arranging the attendance of the parties involved was a crucial step. In addition, equal opportunity for both parties during the arbitration process reflects the principle of fairness expected in any arbitration dispute. The mediation process that can still be carried out in this context is also a positive aspect, as it can open up opportunities for a peaceful settlement before arbitration resumes. The existence of a binding peace deed if an agreement is reached adds to the legitimacy of this process. By allowing the submission of evidence by e-mail or physically, it demonstrates the flexibility that should exist in modern arbitration practice. Therefore, I believe that electronic arbitration can be an effective solution that not only follows the provisions of the UUAAPS, but also improves accessibility and efficiency in dispute resolution. (Dewi Arum Afriani, 2021) Regulations regarding letters or documents sent through internet media, which are recognized as electronic documents based on Article 1 number 4 of the ITE Law, are very relevant in today's digital era. The provisions of Article 44 letter b which affirm that electronic documents can be considered as evidence further strengthen the position of documents sent via e-mail in legal proceedings. According to the author, all forms of documents that meet the terms and conditions of the ITE Law must be accepted as valid evidence. when the original document in a foreign language is filed, the Arbitration Tribunal has the right to request a translation into Indonesian. This demonstrates the importance of clarity and understanding in the arbitration process. However, if the parties agree to use another language, then the submitted document must be accompanied by an official translation, and this shows good flexibility in handling multiple languages. In addition, in the context of the examination of witnesses and expert witnesses, the UUAAPS regulates the implementation of such examinations in accordance with civil law. The opportunity for arbitrators or arbitral tribunals to call witnesses or expert witnesses at the request of the parties or on their own initiative adds a dimension of fairness to the arbitration process. With the provision that witnesses and expert witnesses must take an oath before giving evidence, according to this author, it gives more weight to the validity of the information given. Thus, the entire process of examining witnesses and expert witnesses must be carried out carefully and in accordance with applicable regulations, so as to ensure justice for all parties involved. (John Matheus, 2021) The provisions of Article 51 of the UUAAPS stipulate that all activities in the arbitration and arbitration hearing must be recorded in the minutes of the examination prepared by the arbitrator secretary or the arbitration tribunal. The role and function of this secretary is similar to that of a clerk in court. With respect to the electronic dispute resolution process, UUAAPS cannot stand alone; There are other relevant legal regulations. One of the equivalents to the UUAAPS is the ITE Law. To complete the technical aspects of the implementation of electronic dispute resolution through an arbitration institution, there is a Decree of the Indonesian National Arbitration Board (SK BANI) Number: 20.015/V/SK-BANI/HU regarding Electronic Arbitration Rules and Procedures. These two legal products strongly support and facilitate the process of resolving business disputes electronically through arbitration institutions. Article 34 of the UUAAPS stipulates that: (1) Dispute resolution through arbitration can be carried out using both national and international arbitration institutions based on the agreement of the parties; (2) The settlement of disputes through the arbitration institution as intended in paragraph (1) shall be carried out in accordance with the rules and procedures of the selected institution, unless otherwise determined by the parties. The explanation of Article 34 of the UUAAPS emphasizes that paragraph (2) gives the parties the freedom to choose the rules and procedures to be used in the settlement of disputes between them, without having to use the rules and procedures of the chosen arbitration institution. I am of the opinion that the phrase "using a national or international arbitration institution" contained in Article 34 paragraph (1) is a source of authority for the arbitral institution. In my opinion, the provisions of this article give full authority to arbitration institutions, both national and international, to carry out the arbitration dispute resolution process. This source of authority, if associated with the provisions of Article 34 paragraph (2) of the UUAAPS, has a consistent correlation and continuity, where in addition to the agreement of the parties in determining their own rules and procedures, the arbitration institution (national or international) is also required to prepare rules and procedural procedures that apply within its institution. (Benediktus Akel, et al.2021) Underlining the sentence "carried out in accordance with the rules and procedures of the elected institution" contained in the provisions of Article 34 paragraph (2), I am of the opinion that the arbitral institution (both national and international) is not only entrusted to resolve arbitration disputes, but is also obliged to have procedural rules and procedures. Thus, it can be understood that in addition to being given the power to resolve disputes through arbitration, arbitration institutions (national and international) are also authorized to formulate rules and procedures for the conduct of arbitration that apply within their organizations. Based on the provisions of Article 34 of the UUAAP jo. Article 4 paragraph (3) of the UUAAPA, it is legal for an arbitration institution to formulate or compile rules and procedures for the implementation of arbitration within the scope of its institution. Thus, in certain situations (such as disasters or other special conditions), the arbitration institution (national or international) may draw up rules and procedures for conducting arbitration electronically. This was then realized by the issuance of the Decree of the Indonesian National Arbitration Board (SK BANI) Number: 20.015/V/SK-BANI/HU regarding Regulations and Procedures for the Implementation of Electronic Arbitration. The content of the BANI Decree makes it easier to electronically check disputes at the BANI institution. The provisions contained in the BANI Decree are always guided by the UUAAPS as the main legal basis. Of course, in the process of electronic information exchange and electronic transactions, the ITE Law is one of the legal umbrellas that can guarantee and protect the legal interests of legal subjects who carry out dispute resolution. (Abdul Halim Barkatullah, 2010) Based on the results of the research, the author did not find any inconsistency between the rules and procedures for conducting electronic arbitration held by BANI or other institutions with the UUAAPS. In fact, electronic dispute resolution can be facilitated by the existence of regulations and procedures for the implementation of electronic arbitration as a concise form of regulations for the implementation of electronic arbitration. Of course, this is based on the UUAAPS and the ITE Law as the main legal umbrella that legitimizes all electronic dispute resolution activities through the arbitration institution. Regarding ad-hoc arbitration, Article 31 paragraph (2) of the UUAAPS states: "In the event that the parties do not determine for themselves the provisions regarding the arbitration procedures to be used in the examination, the arbitrator or the Arbitral Tribunal that has been established in accordance with Article 12, Article 13, and Article 14, all disputes whose resolution is submitted to the arbitrator or the Arbitration Tribunal shall be examined and decided in accordance with the provisions of this law." Based on the above provisions, the sentence "all disputes whose resolution is submitted to such arbitrator or Arbitral Tribunal" does not provide any limitation on the powers of arbitrators or ad-hoc Arbitral Tribunals or arbitral bodies. The provisions of Article 31 paragraph (2) also apply to arbitration that is carried out on an ad-hoc basis. If faced with a situation where the parties do not determine the provisions of the arbitration procedure themselves, and an arbitrator or Arbitration Tribunal has been established, then all disputes whose resolution is submitted to the arbitrator or the ad-hoc Arbitration Tribunal to be examined and decided in accordance with the UUAAPS. In this stage, the provisions of Article 31 paragraph (2) authorize the arbitrator or the ad-hoc Arbitration Panel to establish rules and procedures as long as they do not conflict with the procedures of the provisions of the UUAAPS. Although ad-hoc arbitration does not have the rules and procedures for conducting electronic arbitration, it is still possible to carry out electronic dispute resolution by the arbitrator who conducts the ad-hoc arbitration. Of course, this must pay attention to the legal provisions listed in the UUAAPS jo. ITE Law and other provisions agreed upon by the ad-hoc arbitrator. (Yongki Pieter, 2021) The place where the arbitral award is rendered has a very crucial role in the implementation of the arbitration award. Any arbitral award taken outside a country, which is intended to be enforced, is known as international arbitration or foreign arbitration. Prior to the enactment of the UUAAPS, Indonesia had ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) which was announced in the Presidential Decree of the Republic of Indonesia No.

34 of 1981. This Presidential Decree, although it was ratified to be enforced in Indonesia in 1981, was only effective in 1990 with the issuance of Supreme Court Regulation No. 1 of 1990 concerning Procedures for the Implementation of Foreign Arbitral Awards on March 1, 1990. The UUAAPS does not recognize the term foreign arbitral award, but uses the term international arbitration award, which is defined in Article 1 number 9 of the UUAAPS as: A award taken by an arbitral institution or an individual arbitrator outside the territory of the Republic of Indonesia, or a decision of an arbitral institution or an individual arbitrator that according to the provisions of the law of the Republic of Indonesia is considered an international arbitration award. The definition given is basically a repetition of the provisions stipulated in Supreme Court Regulation No. 1 of 1990, which states: What is meant by a Foreign Arbitration Award is an arbitral award taken by an Arbitral Body or an individual Arbitrator outside the jurisdiction of the Republic of Indonesia, or the decision of an Arbitration Body or an individual Arbitrator which according to the provisions of the law of the Republic of Indonesia is considered to be a Foreign Arbitration award, which has permanent legal force in accordance with Presidential Decree No. 34 of 1981. Basically, international online arbitration handles disputes that occur in e-commerce transactions, the issue is how the validity and execution of the decision is in Indonesian law. Apparently, the implementation of online arbitration decisions in international consumer disputes in Indonesian law has not been implemented, due to various legal constraints. The international arbitration decision according to the UUAAPS, in Article 67 paragraph (2) (a), states: (2) The submission of the application file for implementation as intended in paragraph (1) must be accompanied by: Original sheet or authentic copy of the International Arbitration Award, in accordance with the provisions of authentication of foreign documents, as well as the official translation text in Indonesian. The requirements set forth by the UUAAPS are more relaxed than those set forth by the New York Convention. UUAAPS does not require that the original sheet be authenticated first. (Aziz & Hidayah, 2020) The procedure for registration and recording of international arbitration decisions, as one of the requirements for international arbitration decisions to be implemented in Indonesian territory, is regulated in the provisions of Article 67, Article 68, and Article 69 of the UUAAPS which are updates and improvements to similar provisions regulated in Supreme Court Regulation No. 1 of 1990. According to UUAAPS, the application for the implementation of the decision was submitted and registered by the arbitrator or his representative to the Registrar of the Central Jakarta District Court. The submission of the application file must be completed with: First, the original sheet or authentic copy of the International Arbitration Award, in accordance with the provisions regarding the authentication of foreign documents, as well as the official translation text in Indonesian; Second, the original or authentic copy of the contract on which the International Arbitration Ruling is based in accordance with the provisions regarding the authentication of foreign documents, and the official translation of the document in Indonesian; Third, a statement from the diplomatic representative of the Republic of Indonesia in the country where the International Arbitration Ruling was established, stating that the applicant country is bound by an agreement, both bilaterally and multilaterally, with the Republic of Indonesia regarding the recognition and implementation of the International Arbitration Award. Not all international arbitration awards can be enforced in Indonesia, but in order for the award to be enforceable in Indonesia, the following conditions must be met: First, the principle of reciprocity (principle of reciprocity). International arbitration decisions are made by arbitration from countries that are bound by agreements with Indonesia, both bilaterally and multilaterally. This is regulated in Article 66 letter (a) of the UUAAPS, namely: "An international arbitration award is rendered by an arbitrator or arbitral tribunal in a country bound by an agreement, either bilaterally or multilaterally, concerning the recognition and enforcement of International Arbitration Awards." This provision affirms the principle of reciprocity that is generally recognized in international civil law. This principle directly refers to the validity of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards—New York Convention 1958 which was ratified by Presidential Decree No. 34 of 1981. This provision is a reflection of the principle of reciprocity between countries, where not all foreign arbitral awards are recognized and enforceable. A foreign arbitral award that can be recognized and enforced is limited to a decision taken in a foreign country that has bilateral or multilateral ties with Indonesia and is jointly bound by Indonesia in an international convention. In many cases, the majority of online arbitrage users are individuals who conduct trading transactions on the internet with a small value. These transactions are more directed to the B2C sector. Because these transactions often cross national borders, to facilitate the process of claiming or resolving disputes, a fast, cheap, and unbound dispute resolution system was chosen, namely ODR which includes online arbitration. (Santoso, 2020). Disputes that arise between business actors who market their products online and consumers who live anywhere in the world, as long as they are connected to the internet network, have a high

possibility for consumers to buy goods from business actors who come from countries that do not have ties as required by Article 66 letter a UUAAPS. As a result, if the dispute is submitted through an online arbitration institution originating from the country of the business actor, the result of the decision will not be enforceable. In cyberspace, a person or even a country cannot restrict or prohibit its citizens from conducting trade transactions with individuals who are in different parts of the world. The development of online alternative dispute resolution is still relatively new at the global level, considering that this institution is relatively new. However, if you look at the very rapid advancement of information technology, currently the demand for ODR is very large. For example, judgments from US-based ODR providers have been enforceable in European countries such as France, the United Kingdom, and Germany, and vice versa. Second, it covers the scope of trade law. In order for international arbitral awards to be enforced in Indonesia, it is limited to awards related to trade. The explanation of Article 66 letter b of the UUAAPS explains that the scope of trade law includes: commerce, banking, finance, investment, industry, and intellectual property rights. Third, it does not contradict public order. The international arbitration award must not contradict the public order in the legal system in Indonesia. The principle that decisions must not be contrary to the public interest is a general principle that has been universally recognized in international law. Despite its widespread recognition, to date, legal experts around the world have not been able to reach agreement on the proper formulation of such a public order, which could lead to the inability to enforce an international arbitration award. As a general overview, it can be stated that this principle is a reflection of the applicability of *dwingende regels* in a sovereign state. International law (public) recognizes the existence of the full sovereignty of a country in the international arena. This means, in principle, that no country in the world can impose the application of a provision on another country in any way, as long as it is not in accordance with the rules and joints of state life, or in other words, is not desired by the country concerned. Fourth, obtaining an executor from the Chairman of the Central Jakarta District Court. The UUAAPS stipulates that the authority to handle the issue of recognition and implementation of International Arbitration Awards is the Central Jakarta District Court (Article 65). The International Arbitration Award can only be enforced in Indonesia after obtaining an executor from the Chief Justice of the Central Jakarta District Court. However, if the International Arbitration award involves the state of the Republic of Indonesia, then only the Supreme Court can grant an executor. (Limanto, et al. 2021)

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

international arbitration there are a number of important provisions that must be met in order for an arbitral award to be enforced in Indonesia. First, the award must be produced by an arbitration institution from a country that has a reciprocal agreement with Indonesia, in accordance with Article 66 letter (a) of the UUAAPS. Second, only judgments that are within the scope of trade law such as commerce, banking, and intellectual property rights can be executed in Indonesia. Third, an arbitral award must not conflict with public order in the Indonesian legal system, although this concept of public order still requires further clarification. Fourth, the execution of an international arbitration award can only be carried out after obtaining an executor from the Chief Justice of the Central Jakarta District Court, with certain exceptions involving the state of the Republic of Indonesia. In addition, the challenges in implementing online arbitration also need to be considered, especially related to the validity and implementation of decisions in Indonesian law. Despite the high demand for online dispute resolution, regulatory developments and legal practices still require adjustments to meet the growing need for cross-border transactions. With these provisions in place, it is important for businesses and consumers to understand the existing restrictions and procedures in order to make effective use of international arbitration. It also shows the need for collaboration between arbitration institutions and governments to create a legal framework that is more responsive to technological developments and global trade dynamics. Thus, while online arbitration offers a quick solution to dispute resolution, legal and practice challenges persist and require attention to ensure effective and fair implementation.

B. Suggestions

1. The next research should clearly provide the impacts faced in using arbitration as electronic dispute resolution abroad.
2. Provide advantages and disadvantages in handling electronic dispute resolution abroad using an arbitration body.

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