



The Urgency of Regulating Online Arbitration in Dispute Settlement of E-Commerce Transactions in Indonesia

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Abstract

The purpose of this study is to analyze the urgency of arrangements regarding Online Arbitration in dispute resolution on e-commerce transactions and to analyze the conceptualization of Online Arbitration in dispute resolution on e-commerce transactions. This research uses the statue approach to analyzing and tracing the regulations related to Online Dispute Resolution (ODR) and trade disputes. The legal material analysis technique was carried out by using the descriptive analysis method. ODR must have a clear legal basis. But in reality, in Indonesia until now the ODR does not have a legal basis even though in several laws and regulations it has opened opportunities for ODR to enter and also in article 72 paragraph (2) of the Government Regulation No. 80 of 2019 concerning Trade Through Electronic System states that settlement of disputes through electronic systems can be resolved via ODR. The ODR concept, especially online arbitration, which will be adopted by Indonesia, can be implemented by first reformulating existing regulations, particularly in Law No. 30 of 1999 concerning Arbitration and Other Alternative Dispute Resolution. By reformulating the rules contained in the Law, it can be used as a rule that also underlies the use of ODR in Indonesia. Incorporating the ODR concept into Indonesia is also carried out by making comparisons with other countries that have used it first so that Indonesia has an overview and inspiration in making the concept of ODR in Indonesia.

Keywords: *Online Arbitration; E-commerce; Online Dispute Resolution; Indonesia*

Introduction

E-commerce has the aim of eliminating the difficulties commonly experienced in conventional business transactions by using litigation dispute resolution which takes more time and costs, which is certainly not expected (Purwanto, 2015). Dispute resolution through litigation is currently less attractive to the business world so it is more used as a final option (ultimatum remedium) after other efforts have failed. Therefore, the modern business world has begun to turn to online dispute resolution to resolve disputes due to the need to resolve disputes at a low cost and in a fast time. Online Dispute Resolution (ODR) is a solution in resolving trade disputes, especially disputes that are separated by geographical location.

Indonesia is a country that has a strategic area for the development of business on an international scale because it has a large population. Businesses that grow big and fast trigger an increase in disputes which also occur as a side effect. However, conventional dispute resolution is considered incapable of compensating for this rapid dispute, and in Indonesia itself there are no rules that specifically regulate online dispute resolution but only implicitly. As stated in the Indonesia Arbitration and Alternative Dispute Resolution Law No. 30 of 1999 (Law No. 30 of 1999), which discusses dispute resolution in the trade sector through arbitration, it is stated in article 5, but the drawback of this regulation to be applied in online dispute resolution is the direct meeting of the parties involved. stated in article 6 paragraph (2) while online dispute resolution is carried out through online media.

Then in the Indonesia Trade Law No. 7 of 2014 (Law No. 7 of 2014), has also opened up opportunities for trading through the electronic system as stated in Article 65 and opened up opportunities for parties to choose a dispute resolution method, namely through courts (litigation) or through other alternative dispute resolutions (Article 65 paragraph (5)). Also in the Indonesia Information and Electronic Transactions Law No. 11 of 2008 (Law No. 11 of 2008) which in Article 18 paragraph (2) provides a choice of law for parties in international electronic transactions, then paragraph (4) also provides a choice of forum for dispute resolution for parties. party.

This provides an opportunity for the disputing parties or aggrieved parties to choose the desired dispute resolution method and also opens up opportunities for online dispute resolution as an alternative to resolving disputes. However, online dispute resolution uses online media in the process. Where this is not by the provisions contained in Law No. 30 of 1999. This makes the urgency for a new concept related to online dispute resolution as an alternative dispute resolution option.

In Government Regulation No. 80 of 2019 concerning trading through an electronic system (PP No. 80 of 2019), some sections state that there are discrepancies and obligations to resolve them as well as about defaults and how to resolve them with settlement agreements or cancellations carried out by statutory regulations. and the existence of dispute resolution with the option of dispute resolution through litigation and non-litigation channels. In PP No. 80 of 2019, dispute resolution can be done electronically or called ODR which can be carried out by the provisions of the legislation.

In the explanation section in PP No 80 of 2019, it is stated that ODR can be carried out if there is an agreement from the parties and can be in the form of electronic mediation or through online arbitration from an accredited institution or through a government agency that has the authority. However, in reality, the settlement of business disputes through online arbitration conducted at the Indonesian National Arbitration Board (BANI) and other arbitration institutions has not been carried out in full because until now (Indrani, S.M., 2017), BANI only uses electronic mail to send letters in arbitration process or trial but there is no specific place to hold arbitration online (Siburian, P., 2004).

In addition, there are still many consumers from e-commerce who have been disappointed with online trade but just let it go without taking further action, such as the example of consumers of women's products in Pekanbaru (Sommaliagustina, D. & Fatma, Y., 2019). There are still many things that are considered by consumers to take further action from the disappointment experienced with the trade process from e-commerce, including the amount of money spent going to court will be more expensive than the loss of goods, also consumers do not want to have a complicated legal process. In addition to taking proceedings outside the court, there are still many consumers who do not understand the flow and where to file a complaint.

Therefore, it is important to create a new concept of laws and regulations that specifically regulate ODR, the concept of proceedings in online arbitration and the proof system, the validity of the decision/determination, and also the power of coercion The purpose of this study is to analyze the

urgency of regulation regarding Online Arbitration in dispute resolution in e-commerce transactions and to analyze the conceptualization of Online Arbitration in dispute resolution in e-commerce transactions.

Research Methods

This type of research is juridical normative (normative legal research). The approach of this research is to use a written legal rule approach (statue approach), namely by analyzing and tracing the regulations related to Online Dispute Resolution and trade disputes. The written legal rule approach is carried out by examining laws and regulations related to legal issues and the philosophical content of regulation and to study the consistency and suitability of the existing provisions of one law with other laws (Marzuki, P.M., 2008). The technique of analyzing legal materials is carried out using descriptive analysis methods, namely by systematically compiling and categorizing legal materials.

Research Result and Discussion

The urgency of Regulating Online Arbitration in Dispute Settlement of E-commerce in Indonesia (Philosophical, Juridical and Sociological Reasons)

Indonesia is a legal state as stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3). This means that all government policies to do something must be based on applicable law, not only based on the power it has. In all cases, the Constitution applies as a constitution, namely the basic law that must be obeyed by all citizens.

Therefore, the inclusion of ODR as an alternative dispute resolution must also be based on applicable regulations so that it will not cause side effects due to the lack of legal basis in its implementation. However, in reality, the implementation of ODR in Indonesia cannot be carried out optimally because there are no rules that specifically regulate ODR. Existing laws and regulations do not specifically regulate ODR, although these regulations have opened up opportunities for ODR to enter and become part of alternative dispute resolution.

According to Article 72 paragraph (2) PP No. 80 of 2019, ODR can be used to resolve trade disputes using electronic systems. However, until now there is still no legislation that regulates further related to ODR. The need for ODR to be included as one of the contents of the Law is because Indonesia is a legal country as stated in the Constitution. In addition, this can also make ODR have a clear legal basis in its implementation so that it does not cause new problems when used to resolve a problem or dispute.

After legal certainty and social benefits are obtained, there will also be justice for disputes that have been properly resolved, so that it also creates confidence for the general public to use ODR as one of their settlement options. Although it is possible to implement it, it is difficult if the cooperation is carried out properly then this can be realized.

Legal certainty is also one of the factors causing the need for ODR to be included in the content of the legislation. Because the existence of legal certainty makes people understand what is allowed and what is not allowed to be done because regulation has been made logically and clearly. So that it creates a sense of security for users in using the facilities of ODR because they have been given certainty, protection, and law enforcement.

The litigation process for resolving disputes from e-commerce is often inappropriate, causing inconvenience, even time-consuming and expensive costs that are not commensurate with existing

transactions, and the physical distance from the parties can be very far (Crawford, V.C., 2001). In addition, the litigation pathway (courts) can lack resources and expertise to compensate for the growth of disputes that occur across national borders and borders to keep pace with the growth of e-commerce (Ponte, L.M., 2001).

Cases about customer complaints in Indonesia are quite a lot, even complaints that are not also responded to by e-commerce parties or from irresponsible shipping companies so that consumers often have to give up their money but do not get the goods they want. Although there are a few consumers who are lucky after their case went viral and get their rights back, this is only experienced by a few of the many cases that have occurred.

ODR is broadly included in Alternative Dispute Resolution, the process of which is largely assisted by the speed and advantages of information and communication technology and the internet, where this can be more integrated with e-commerce needs. ODR opens up opportunities for dispute resolution that has a small nominal value and that is between regions and between countries to be more easily resolved. In addition, ODR in the context of business to consumers can be used to increase consumer confidence and becomes an important point for the sustainability of e-commerce because if it is not provided it can reduce consumer confidence so they prefer to shop at local stores. (Rule, C., 2002).

Conceptualization of Online Arbitration in Dispute Settlement of E-Commerce Transactions in Indonesia

E-commerce which is currently being widely used by people from the upper class to the lowest class by sharing different interests and the number of transactions will certainly cause dissatisfaction and disappointment from many factors. The lack or absence of good faith or the inability to complete transactions is also one of the driving factors for disputes in e-commerce transactions.

It is undeniable, the pandemic caused by the coronavirus has forced almost the whole world to stay at home and carry out their various daily activities only from home. Indonesia is no exception, almost all aspects of life are carried out at home. This has an impact on the trade sector, namely an increase in e-commerce transactions. People who stay at home use their gadgets more for activities and work, as well as going to school.

According to Filianingsih Hendarta, e-commerce transactions rose by 26% during the coronavirus pandemic and daily transactions also rose to 4.8 million (Liputan6.com, 2020). The pandemic that forced people to stay at home more often also increased e-commerce transactions. This increase in transactions must also cause many side effects, one of which is disappointment and dissatisfaction in transactions. However, if complaints or disputes that occur in e-commerce transactions must also be carried out conventionally, it is not by current conditions and not by the times.

Therefore, there is a need for reformulation of laws and regulations for the entry of ODR, especially online arbitration and online resolution of customer complaints as a forum to resolve disputes due to e-commerce transactions. Because ODR overrides conventional methods and can be used even if the parties are only at home even if the parties are in different regions and countries.

The reformulation is aimed at the rules in Law No. 30 of 1999 because ODR is included in one of the alternative dispute resolutions. Researchers have mentioned that the laws and regulations that discuss trade have opened up opportunities for the entry of ODR as an alternative dispute resolution. Even in PP No. 80 of 2019, it has given authority for parties to use ODR as a dispute resolution procedure.

Law No. 30 of 1999 has rules for arbitration in articles 2 to 5, then in article 6 discusses alternative dispute resolution and further discusses procedures for implementation, terms, and conditions, as well as rights and obligations of the parties, as well as other provisions. This law is quite clear in its provisions, however, to facilitate the entry of ODR, it is necessary to reformulate several existing provisions and regulations. The first rule that needs to be reformulated for the entry of ODR is the rule contained in article 6 paragraph (2) states:

"The settlement of disputes or differences of opinion through alternative dispute resolution as referred to in paragraph (1) shall be resolved in a direct meeting by the parties within a maximum period of 14 (fourteen) days and the results shall be stated in a written agreement."

In the paragraph it is written that the resolution of disputes or differences of opinion using alternative dispute resolutions is resolved in a direct meeting by the parties, this is one of the most basic things that distinguishes between arbitration and alternative conventional dispute resolution with ODR.

ODR uses online media or what is commonly referred to as cyberspace, although it may be done by using the telephone along with videos or other media that can show the faces of each party this is not a face-to-face meeting but a virtual meeting because it uses media. to meet. Therefore, there is a need for reformulation to replace or eliminate these words.

In the future, related articles can be adjusted so that they can be used as the basis for rules for the entry of ODR, especially for online arbitration. One of the content materials that need to be reformulated is the terms and procedures used. For example, the requirements for correspondence which are usually in physical form, are also held in digital form as a condition used for online arbitration.

Then to provide rules that provide a space or digital forum as a forum for the implementation of online arbitration to be carried out by accredited and trusted institutions such as Indonesia National Arbitration Board (BANI Arbitration Center) and National Sharia Arbitration Board (BASYARNAS). Also for arbitrators who will work are the same as arbitrators in conventional arbitration forums but with the additional condition that they understand the technology and master online procedures, this is intended so that the arbitrator does not only act as a mediator and arbiter but also understands if the parties do not understand or if there is fraud.

The arbitration award is also made digitally and physically which is used as physical evidence and as an archive for the parties. Then for more specific and detailed procedures, it can be stated in other laws and regulations mandated by the relevant laws. In addition, the competent authorities can also provide new rules for e-commerce owners both domestically and overseas e-commerce owners who expand the scope of their trade within the country or who cooperate with domestic residents to provide a forum for consumers to give complaints and/or dissatisfaction and/or injustice they experience, especially this is usually experienced by consumers with small nominal and only transact for daily needs or types of e-commerce in the form of Business to Consumer (B2C) or Consumer to Consumer (C2C).

As for Business to Business (B2B) type e-commerce or those that have a larger nominal and are not used for personal interests, besides that usually also occurs above the agreement of the parties contained in an agreement can be resolved through online arbitration which was previously agreed upon in their agreement or an agreed agreement after a dispute arises.

Conclusion and Suggestion

Legal certainty for ODR which is also driven by the development of e-commerce which is running very quickly, and also driven by the development of the times which is quite fast. E-commerce is more used because it is considered more practical than conventional transactions, but this is also inseparable from the dissatisfaction that follows, especially consumer dissatisfaction with the performance of e-commerce and transportation service providers who work together.

Nor is there a dispute between the parties caused by e-commerce with the type of business to business. So that the use of ODR, especially in online arbitration and online resolution of customer complaints, which has been accompanied by technology, will make it easier for the disputing parties and the aggrieved parties. Although ODR is also inseparable from its shortcomings, it can also be resolved or reduced.

The concept of ODR, especially online arbitration which will be adopted by Indonesia, can be implemented by first reformulating existing regulations, particularly in Law No. 30 of 1999. By reformulating the rules contained in the Act, it can be used as a rule that also underlies the use of ODR in Indonesia. Incorporating the ODR concept into Indonesia is also done by making comparisons with other countries that have already used it so that Indonesia has an idea and inspiration in making the concept of ODR in Indonesia.

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