

CHAPTER ONE

INTRODUCTION

A. Background

In 2016, according to preliminary statistics, a total of 966 new cases administered to the International Chamber of Commerce (abbreviated: ICC) – involving 3,099 parties from 137 countries.¹ From the data, it can be concluded that ICC reflects continuing growth of the world’s leading arbitral institution. It is assumed that people over the world still prefer Arbitration to be their choice of dispute settlement because international commercial disputes are particularly suitable for resolution by Arbitration.² Long before that, Arbitration arises because the active activities of commerce that become a benchmark of country’s economic level.³

The data above proves that a commerce gives the significant contribution as the factor of globalization. At the moment, globalization in the economic sector have developed rapidly. For example, the businesses are greatly facilitated by the interconnected networking (abbreviated: Internet) as the speedy communication media that able to connect them anywhere.⁴ That

¹ ICC, 2017, “ICC reveals record number of new Arbitration cases filed in 2016”, taken from <https://iccwbo.org/media-wall/news-speeches/icc-reveals-record-number-new-Arbitration-cases-filed-2016/> accessed on Friday, November 3rd 2017, 10:15 p.m.

² Jason Chuah, 2013, *Law of International Trade: Cross-Border Commercial Transactions*, London, Thomson Reuters, p. 764.

³ Andi Julia Cakrawala, 2015, *Penerapan Konsep Hukum Arbitrase Online di Indonesia*, Bandung, Rangkang Education & Republik Institute, p. 1.

⁴ *Ibid*, p. 3.

is even make commercial considered as an engine of growth.⁵ As the time progress, the commercial transaction by facilitating Internet has changed the business world from traditional method to more modern, it is known as electronic commerce (abbreviated: e-commerce).⁶ In its development, e-commerce was appear from the society's request who require faster, simpler, easier, and better quality service because e-commerce is a recent and rapidly evolving phenomenon.⁷

Concerning to the business activity nowadays that can reach up to the millions transactions, conducting conventionally nor by online, bring through a possibilities there will be a dispute among the parties. It is evident that due to the different interest, conflict of laws problems may arise.⁸ Even though in a business activity wish to have a harmonize relation, but somehow in a practice, it is arduous to avoid a dispute.⁹ It could be understand because every party has their own interest that is quite impossible to be united because this is a human nature. Scholars Witherington defines it is merely because a humans are actually very difficult to understand its substance.¹⁰

⁵ T Gilarso, 2004, *Pengantar Ilmu Ekonomi Makro*, Yogyakarta, Kanisius, p.58. The commercial activity is a kind of service business that connecting producer and consumer, which has time and place utility function in economic theory. The advantage of commercial transactions are transferring a goods from somewhere to other places but also transporting goods to the other places which has higher value.

⁶ Onno W Purbo, 2005, *Mengenai Electronic Commerce*, Jakarta, Elex Media Komputindo, p.2. Generally, e-commerce can be defined as all trade in a form of goods and service by using electronic media. In conclusion, e-commerce is a part of e-business.

⁷ Barbara M Fraumeni, 2001, "E-Commerce: Measurement and Measurement Issues", Vol. 91 No 2, *The American Economic Review*, ISSN: 00028282, Nashville, The United States of America, p. 318.

⁸ Sudargo Gautama, 2002, *Indonesian Business Law*, Jakarta, Citra Aditya Bakti, p. 31.

⁹ Andi Julia Cakrawala, *Op. cit*, p. 4.

¹⁰ Bisri Mustofa, 2015, *Psikologi Pendidikan*, Yogyakarta, Parama Ilmu, p.11. The interest of human is hard to understand because it is abstract.

Martin Hanter defines the resolving contract disputes in the field of business or commercial can be settled through 4 methods:

1. Direct negotiation
2. Third party assisted negotiation (ADR)
3. Arbitration
4. National court¹¹

Parties may resolve their differences by negotiating with each other and reaching a compromise, by having lawyers or other representatives settle their disagreements, or by hiring a mediator to help them reach a settlement. But the further ways that businessmen are able to do when they can not resolve their dispute using one of these approaches then they will submit their affair to an arbitrator, judge, or jury who will decide who wins and who loses.¹² Discussing the advantages and disadvantages in resolving business case, businesses, companies, organizations, employers, individuals, employees, and governments with a business dispute may agree to choose the possible way to resolve the case.

The only institution that people used to know to resolve the dispute is only the Court, but accomplishing the dispute through litigation got assumed not professional to deal with business case (especially for international case), not independent, even the judges are losing the moral integrity while performing their duties, and considered as a place that is

¹¹ Martin Hunter, 1993, *The Fersfield Guide to Arbitration and ADR*, Deventer, Kluwer, p. 1.

¹² Herbert M Kritzer, 2000, *Legal Systems of the World*, New Delhi, Pentagon Press, p. 61.

ineffective and not efficient to resolve business disputes.¹³ Therefore, the parties tend to switch from litigation to non-litigation which used to called as Alternative Dispute Resolution (abbreviated: ADR)¹⁴, for example through Arbitration. The Arbitration is one of the dispute settlements that provides many advantages, i.e: cheaper and faster, kept confidential, final and binding decision. Arbitration is usually must faster, far less expensive, and just as fair as litigation, which is why many parties prefer to use Arbitration as the best way.¹⁵ That is why the Arbitration become the most frequently alternative dispute resolution.¹⁶

In addition, the general elucidation of Indonesian Law Number 30 of 1999 on Arbitration and Alternative Dispute Settlement defines that although Arbitration is not entirely able to meet the wishes of the parties, but Arbitration is still more desirable than litigation, especially to the resolution of international business disputes.¹⁷ On the other hand, Arbitration is not merely cheaper or less complicated than judicial settlement. But also the parties may be better able to control the process including the choice of arbitrators, language(s) and confidentiality.¹⁸

¹³ Eman Suparman, 2004, *Pilihan Forum Arbitrase dalam Sengketa Komersial untuk Penegakan Keadilan*, Jakarta, PT Tatanusa, p. 2-3.

¹⁴ Joni Emirzon, 2001, *Alternatif Penyelesaian Sengketa di Luar Pengadilan*, Jakarta, PT Gramedia Pustaka Utama, p. 2.

¹⁵ Herbert M Kritzer, *Op.cit*, p. 61.

¹⁶ Peter Mahmud Marzuki, 2011, *An Introduction to Indonesian Law*, Surabaya, Setara Press, p. 268.

¹⁷ See the General Elucidation of Indonesian Law Number 30 of 1999 on Arbitration and Alternative Dispute Settlement

¹⁸ Anthony Aust, 2010, *Handbook of International Law*, Cambridge, Cambridge University Press, p.408.

But practically, Arbitration often takes a long time and the cost of Arbitration is not as cheap as previous presumption.¹⁹ It is not doubtful that sometimes the party failed in submitting the Arbitration because the cost is not affordable to reach.²⁰ Arbitration as the method of dispute settlement has develop from time to time, by answering party's needs, the issue of online Arbitration arises and comes to rectify the disadvantage of conventional Arbitration. At present, the world has changed so very much, developed technology has penetrated business transactions.²¹

Electronic commerce and the use of Internet has influence the dispute settlement and propose unprecedented opportunities for involving party to expand their business.²² It is also happen to Arbitration that using an Internet which used to be called as online Arbitration. But in fact, the Online Arbitration has no spesifically regulated under Indonesian Law on Arbitration and Alternative Dispute Settlement, on the contrary, it is already applied in ICC which has regulated under 2017 ICC Rules of Arbitration & Mediation. Based on the background above, the author considers to know deeply about the mechanism of International Chamber of Commerce (ICC) as the largest institution that has Permanent Court of Arbitration in dealing with the implementation of online Arbitration mechanism.

¹⁹ Hornle Julia, 2001, "Disputes Solved in Cyberspace and the Rule of Law", Vol. 19 No 2, *International Journal of Law and Information Technology*, ISSN: 0967-0769, London, p. 2.

²⁰ Sudargo Gautama, 1986, *Arbitrase Dagang Internasional*, 2nd Edition, Bandung, Alumni, p. 5.

²¹ Agustina Fitrianingrum, *et al.*, 2016, "Legal Approaches To Online Arbitration: Opportunities And Challenges In Indonesia", Vol. 28 No 2, *Mimbar Hukum*, ISSN: 2443-0994, Yogyakarta, Indonesia, p. 315.

²² Marc Wilikens, 2000, *Out-Of-Court Dispute Settlement Systems For E-Commerce Technological Challenges Digest*, Luxembourg, Ispra Joint Research Centre, p.2.

B. Research Question

Considering the research background above, the author formulated two questions to be answered, namely:

1. What are the rules that applied through Online Arbitration in International Chamber of Commerce?
2. How does the procedure of case examination through Online Arbitration in International Chamber of Commerce?

C. Research Objective

This research divided into objective and subjective, the objectives are:

1. To know the rules that applied through Online Arbitration in International Chamber of Commerce.
2. To know the procedure of case examination through Online Arbitration in International Chamber of Commerce.

Whereas the subjective of this research as the graduation requirement to obtain Law Degree in Faculty of Law, Universitas Muhammadiyah Yogyakarta.

D. The Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

This research gives benefits to know deeply about the implementation of Online Arbitration and also for the development of legal science that focusing on the Arbitration.

2. Practical Aspect

This research provides better understanding about the Online Arbitration Law for those who are engaged with Arbitration such as businesses, government, arbitrators, lecturers, students, and the party involved in Arbitration, *etc.*