

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### A. Analysis on the Implementation of Online Arbitration Law as a Modern Dispute Settlement in International Chamber of Commerce (ICC)

##### 1. The Applied Rules for Online Arbitration in International Chamber of Commerce (ICC)

The rapid development of Information Technology (abbreviated: IT) has influenced the pattern of community life, it can not be denied that technology has indulge a people.<sup>1</sup> It is also influenced to the people on how they settle the dispute at the moment which known as Online Dispute Resolutions (abbreviated: ODR). Online Arbitration is a part of ODR which make use of IT as the tool to settle the commercial dispute.<sup>2</sup> The definition of IT itself can be found in Article 1(3) of Indonesian Law Number 19 of 2016 concerning Electronic Information and Transactions, stated that:

*“Information Technology is a technique for collecting, preparing, storing, processing, announcing, analyzing, and / or disseminating information.”*

Broadly speaking, every arbitration institutional body has its own rules as the basis of their procedural law in order to fulfill the material aspect or known as substantive law. Professor Hikmahanto Juwana argues that in a process of Arbitration, there are at least three (3) kinds of Law that must be

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<sup>1</sup> Machsun Rifauddin, 2016, “Fenomena Cyberbullying Pada Remaja”, Vol. 04 No 1, *Jurnal Khizanah Al-Hikmah*, ISSN: 2354-9629, Yogyakarta, Indonesia, p. 35.

<sup>2</sup> Susanti Adi Nugroho, 2015, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta, Prenadamedia Group, p. 469.

fulfilled, which are substantive law, procedural law and *lex arbitri*.<sup>3</sup> At present, an applied arbitration procedural laws of ICC rely on its Rules which known as 2017 International Chamber of Commerce Rules of Arbitration & Mediation (abbreviated: ICC Rules). ICC has issued a Rules that used by the parties who desire to settle different argument or dispute among them with third party assistance.<sup>4</sup>

ICC Rules itself has defined into Foreword, Arbitration Rules which consist of 6 Appendix, and Arbitration Clause. In addition, the parties who are agreed to bind themselves in ICC Rules have to pay attention with Notes to the Parties and Arbitral Tribunals on the Conduct of the Arbitration. This Note is intended to provide parties and arbitral tribunals with practical guidance concerning the conduct of Arbitrations under the ICC Rules of Arbitration (“Rules”) as well as the practices of the International Court of Arbitration of the International Chamber of Commerce (“Court”).<sup>5</sup> Besides that, ICC has ease the parties in terms of cost calculation by providing Cost

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<sup>3</sup> Hikmahanto Juwana, 2002, “Pembatalan Putusan Arbitrase Internasional oleh Pengadilan Nasional”, Vol. 21, *Jurnal Hukum Bisnis*, ISSN: 0852-4912, Depok, p. 67. Redfern and Hunter also argue that Arbitration process must meet 5 kinds of law, namely:

1. The law governing the parties capacity to enter the arbitration agreement;
2. The law governing the arbitration agreement and the performance of that arbitration agreement;
3. The law governing the existence and the proceedings of the arbitral tribunal-the curial law of the arbitration or, in a better phrase, *Lex Arbitri*;
4. The law, or the relevant legal rules, governing the substantive issues in dispute-generally described as “applicable law”, the proper law of the contract or the “substantive law”; and
5. The law governing the recognition and enforcement of the award which may, in practice, prove to be not one law, but two or more, if recognition and enforcement is sought in more than one country in which the losing party has, or is thought to have assets.

<sup>4</sup> Eric Schwartz, 1994, “The Domain of Arbitration and Issues of Arbitrability: The View from the ICC”, Vol. 09 No 1, *Foreign Investment Law Journal*, ISSN: 0258-3690, Oxford University Press, p. 18.

<sup>5</sup> Christian Hausmaninger, 1992, “The ICC Rules for a Pre-Arbitral Referee Procedure: A Step Towards Solving the Problem of Provisional Relief in International Commercial Arbitration?”, Vol. 07 No 1, *Foreign Investment Law Journal*, ISSN: 0258-3690, Oxford University Press, p. 83.

Calculator in ICC official website, it is mainly to enable parties to produce an estimate of the likely costs of an ICC Arbitration according to the scales in Appendix III to the Rules. The Cost Calculator will generate the amounts for the ICC administrative expenses and for the arbitrators' fees.

The Cost Calculator issues the result that provides an estimation of the advance on costs that may be fixed by the Court. It can be resulted after the party input the currency, amount of dispute, procedure and number of arbitrator(s). Due to the rounding of figures, the estimate may vary slightly from the amount resulting from the application of the scales published in Appendix III to the ICC Rules of Arbitration.<sup>6</sup>

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<sup>6</sup> ICC has issued Arbitration Rules which consist of 6 Appendix. Each Appendix has its own Rules, namely:

Appendix I: Statutes of the International Court of Arbitration

Appendix II: Internal Rules of the International Court of Arbitration

Appendix III: Arbitration Costs and Fees

Appendix IV: Case Management Techniques

Appendix V: Emergency Arbitrator Rules

Appendix VI: Expedited Procedure Rules

Figures 4.1

## Illustrated ICC Cost Calculator

Currency	<input checked="" type="radio"/> USS	<input type="radio"/> BRL
Amount in dispute	15000000	
Procedure	<input checked="" type="radio"/> Ordinary	<input type="radio"/> Expedited
Number of arbitrators	<input type="radio"/> 1	<input checked="" type="radio"/> 3
<b>Calculate</b>		
<b>Requested estimation</b>		
Amount in dispute	15000000	
Number of arbitrators	3	
Year (scale)	2017	
<b>Fees per arbitrator</b>		
Min	\$42367	
Avg	\$120909	
Max	\$199450	
<b>Advance on costs (without arbitrator expenses)</b>		
Average fees multiplied by number of arbitrators	\$362727	
Administrative expenses	\$62515	
<b>Total</b>	<b>\$425242</b>	

Source: <https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/>

This Cost Calculator is applied whether the parties intended to choose conventional Arbitration or Online Arbitration. In terms of Online Arbitration, ICC has issued ICC Commission Report on Information Technology in International Arbitration. This Report become the legal document to distinguish the substantive/material law of procedural process between traditional Arbitration and Online Arbitration as a modern kind of

Arbitration. After all, the IT needs the law to regulate.<sup>7</sup>

In terms of legal status of Online Arbitration under ICC Rules, it is stated in Paragraph (f) of ICC Arbitration Rules Appendix IV about Case Management Techniques:

*“The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute: Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.”*

In addition, the existence of ICC Commission Report on Information Technology in International Arbitration answers the question of governing law of Online Arbitration in ICC. In the introduction page of the report, ICC stated that the use of IT can include, for example:

1. Email and other electronic communications between and among the parties, the arbitrator or arbitrators (the “tribunal”), and the administering body;
2. Storage of information for access by the parties and the tribunal using portable or fixed storage media (e.g. flash drives, DVDs, hard drives, and cloud-based storage);
3. Software and media used to present the parties’ respective cases in an electronic format, rather than a paper format; and

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<sup>7</sup> Sheela Jayabalan, 2012, “E-Commerce and Consumer Protection: The Importance of Legislative Measures”, Vol. 16 No 1, *Malaysian Journal of Law and Society*, ISSN: 1394-7729, Universiti Kebangsaan Malaysia, p. 93.

4. Hearing room technologies (e.g. videoconferencing, multimedia presentations, translations, and “real time” electronic transcripts).

ICC argued that when used – and especially when used effectively – IT can help the parties in International Arbitration to save time and costs and to ensure that the Arbitration is managed and conducted efficiently. Indeed it is in line with the needs of the parties who wish to settle the dispute in the most effective and efficient ways.<sup>8</sup> On the other hand, it is to give a chance to obtain dispute settlement that arise an acceptable and satisfying award for the parties.<sup>9</sup>

The use of IT as a characteristic of Online Arbitration shall agreed by the parties. If the parties choose to provide for the use of IT in their arbitration agreement, the agreement should not be too specific. It goes without saying that IT will continue to change over time. Thus, IT that is “state of the art” today may become obsolete or unavailable between the date of the parties’ agreement and the date of the arbitration. Also, specific IT requirements may not become clear until after the dispute arises. Some aspects of the parties’ agreement might be impractical or even impossible to implement in the context of a particular dispute, due to the nature of the dispute, the tribunal’s comfort and familiarity with the technology, or the costs involved.

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<sup>8</sup> Leo Kanowitz, 1985, *Alternative Dispute Resolution*, Minnesota, West Publishing & Co. p. 6.

<sup>9</sup> William Ury, *et.al.*, 1988, *Getting Disputes Resolved*, Cambridge, PON Books Harvard Law School, p. 10.

Here is the sample wording for pre-dispute agreement on IT use that offered by ICC:

*“The Parties, by an express provision in the agreement, adopt the following procedures regarding the use of information technology (“IT”). The interpretation of such provision is subject to the law of the arbitration agreement: The Parties recognise that, in principle, the use of IT in a possible arbitration between them may result in a more cost-effective and less timeconsuming proceeding. Therefore, they shall favourably consider the use of IT for this purpose and shall endeavour to discuss in good faith how to frame it in such a way as may be deemed most suitable at the time of arbitration, taking into consideration, as may be appropriate, relevant developments that have occurred in IT, as well as any observations and suggestions that the Arbitral Tribunal may express, without prejudice to the right of the Arbitral Tribunal to issue directions for case management.”*

## **2. The Case Examination of Online Arbitration in International Chamber of Commerce (ICC)**

According to Huala Adolf, another concept of Arbitration Procedural Law that can be taken as a role model is a Arbitration Procedure in ICC. ICC Rules have been applied widely. The use of this Rules also in line with many cases that have been settled by the ICC Arbitral Body.<sup>10</sup> The case examination procedure as a part of *curial* law of ICC procedural law itself has developed time by time starting from 1927, 1931, 1933, 1939, 1947, 1955, 1975, 1988, 1998, 2012, and the last on 2017. Basically, the ICC Procedural Law is a quite similar with any others Arbitration Procedural Laws in general.<sup>11</sup> The procedures can be divided into 3 parts into registration stage, examination stage, and post-award stage.

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<sup>10</sup> Huala Adolf, 2014, *Dasar-Dasar, Prinsip dan Filosofi Arbitrase*, Bandung, Keni Media, p. 179.

<sup>11</sup> Andi Julia Cakrawala, *Op. cit.*, p. 348.

a) **Registration Stage**

If the party has decided to choose Arbitration as their dispute settlement in ICC, the claimant can directly contact the official site of ICC for further information or fill the lawsuit at ICC Headquarters, ICC Hearing Centre or ICC National Committees that spread out in more than 130 countries in almost all continents. As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference (abbreviated: ToR). ToR become one of the characteristics of ICC Procedural Law as stipulated in Article 23 of ICC Rules.<sup>12</sup> As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its ToR.

The ToR is prepared by arbitral tribunal, ToR shall include the following particulars:

1. The names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;
2. The addresses to which notifications and communications arising in the course of the arbitration may be made;

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<sup>12</sup> *Ibid*, p. 349.



3. A summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
4. Unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;
5. The names in full, address and other contact details of each of the arbitrators;
6. The place of the arbitration; and
7. Particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono.

After receipt of the Request, the Secretary General may request the claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration until the ToR have been drawn up; or when the Expedited Procedure Provisions apply until the case management conference. Any provisional advance paid will be considered as a partial payment by the claimant of any advance on costs fixed by the Court. The Arbitrator(s) in settling the dispute by Online Arbitration is absolutely passive and waiting the case from claimant/plaintiff, it is mainly because the party is the one who register or fill the lawsuit through the facility that have been offered by ICC. Arbitrator(s) only decide based on their scope that filed to them. It is in accordance with

the principle of civil procedural law in general.

The ToR shall be signed by the parties and the arbitral tribunal. Within 30 days of the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court. The Court may extend this time limit of pursuant to a request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so. In terms of Online Arbitration which needs IT, the ICC propose the sample wording in the ToR as mentioned in ICC Commission Report on Information Technology:<sup>13</sup>

*“The Parties recognise that the use of information technology (“IT”) may result in a more cost effective and less time-consuming proceeding. Thus, they favourably consider this use, and undertake to negotiate in good faith between them regarding how such technologies may best be utilised in the present arbitration and to take into account any observations and suggestions that the Tribunal may express, without prejudice to the right of the Tribunal to issue directions for case management.”*

Notwithstanding, when to party choose the Online Arbitration, written submissions (briefs or memorials, along with any witness statements and expert reports) and their fact exhibits and any legal authorities shall be sent to each member of the Arbitral Tribunal and to opposing counsel in hard copy by registered mail, courier service, overnight mail, or any other delivery service that provides a delivery

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<sup>13</sup> In terms of General Use of IT, The Tribunal may issue directions regarding the use of appropriate IT at any presentation to or conference with all parties or at any hearing before the Tribunal unless a party reasonably objects. The Party using IT shall deploy commercially reasonable efforts to ensure that the IT functions properly at all relevant times and does not impair the progress of the arbitration. If a Party does not comply with the preceding requirements, the Tribunal retains full discretion to take appropriate action and issue appropriate directions, including adverse cost findings. In this regard, the Tribunal shall place particular weight on whether that Party acted in good faith.

record, along with a CD/DVD-ROM or memory stick containing a copy of the same submission (brief or memorial, witness statements, expert reports, fact exhibits and legal authorities). In order to meet time limits, written submissions (including witness statements and expert reports, but without fact exhibits or legal authorities) shall also be sent by email to each member of the Arbitral Tribunal, [the ICC Secretariat], and opposing counsel. Written submissions shall be timely if the email to which they are attached is sent by ([time - specify time zone]) of the day on which the relevant time limit expires. Hard copies of the written submissions, together with any witness statements, expert reports and exhibits, shall be handed to the courier, postal or other delivery service not later than [the following business day] [within two business days].

Electronic versions of written submissions (briefs, memorials, witness statements and expert reports; for fact exhibits and legal authorities shall be submitted in a fully text searchable format – preferably PDF – and, if possible, in an ebrief version, containing hyperlinks to the witness statements, exhibits, and legal authorities cited. Electronic versions of witness statements and exhibits shall be submitted in text-searchable (scanned or non-scanned) PDF format, together with a list describing each of the exhibits by exhibit number, date, name of the document, author and recipient (as applicable).

**b) Examination Stage**

The ICC Procedural Law in the examination stage can be consists of petition and its answer, answer-to-answer session, verification, award making process, the cost until recognition and implementation of the award. But after all, it is depend on the parties to choose what Law that they deal with. Regarding to the issues relevant to the hearings, it should be addressed that whenever a party intends to use IT during oral hearings, it should allow enough time to prepare and test the IT so that any technical problems can be identified and corrected before the hearing begins. The tribunal and the other party or parties should be informed of the planned use of IT before the hearing.

A party may use visual presentation software to project still or video images at the hearing. Unless the parties wish to make a joint presentation on certain issues, each of them should be responsible for any arrangements required to show videos, PowerPoint slides, illustrative charts, computer graphics, and other material. Typically, the tribunal will provide directions regarding the extent to which exhibits used solely for demonstrative or illustrative purposes only must be disclosed in advance of the hearing.

In terms of when video or telephone conferencing may be used and what issues should be considered, the parties may agree or the tribunal may order that certain (or even all) witnesses may be heard by video or telephone, instead of requiring the witness to attend the hearing in

person to save time and costs. The emergence of commercial videoconferencing services and free, ubiquitous software such as Skype, Zoom and FaceTime, and the increasing availability of the required equipment in law firms and companies mean that videoconferencing has become much more accepted, accessible and substantially less expensive than at the time of the Task Force's previous report in 2004. Although voice-conferencing is still used, videoconferencing has a greater potential to affect international arbitration practice. As yet, however, state-of-the-art videoconferencing is still more complex to organise than a telephone call, and services like Skype or FaceTime may not offer the required quality and/or functionalities. The parties should therefore seek the tribunal's guidance.

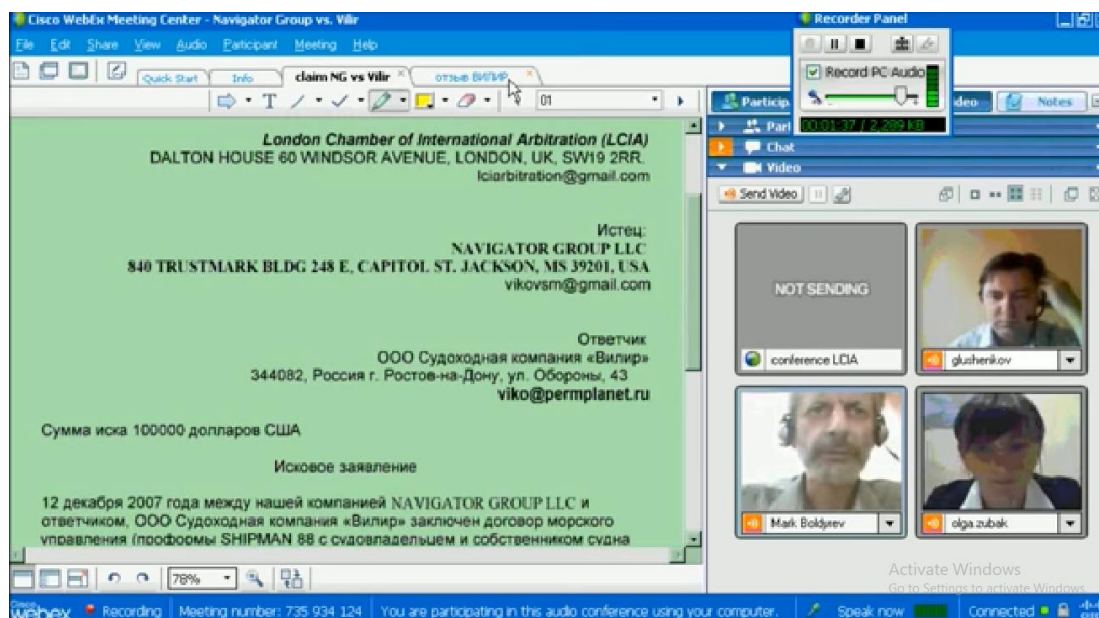
In the past, organising a videoconference required technical arrangements that needed to be delegated to professional service providers. Today, this is no longer necessary with services such as Skype and FaceTime, which have made videoconferencing much easier. Regardless of whether the videoconference will take place using Skype, FaceTime or another service, it makes sense to confirm in advance that the technology and connections to be used are adequate for the videoconference to proceed. If documents are to be used during the conference, they should be made available to all participants and identified in an unequivocal manner whenever they are referred to.

The tribunal and the parties will normally want to be able to verify the identity of the participants, especially witnesses, and to prevent illicit outside interference (e.g. witness coaching). Finally, consider whether the applicable arbitration law limits or prohibits the use of telephone or videoconferencing for a hearing. It can be concluded that ICC allows the Online Procedural Hearings as long the parties followed the sample rules and wording that ICC has been offered as stated in Article 24 of ICC Rules about Case Management Conference and Procedural Timetable:

*“Case management conferences may be conducted through a meeting in person, by videoconference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.”*

Figures 4.2

Illustrated Online Procedural Hearing Under London Chamber of International Arbitration (LCIA)



As it is illustrated, electronic documents may be displayed from one PC running the retrieval software, and either displayed to each participant via a local network of individual screens or projected onto a large screen for collective viewing. As with printed exhibits, to increase efficiency and save time and costs, the tribunal may order the parties to eliminate duplicative exhibits and use only one version of identical exhibits at the hearing. Except where specified otherwise below, the Parties agree, and the Tribunal directs, that all submissions and other communications shall be submitted via email directly to the Arbitral Tribunal, provided that each Party's counsel and the ICC Secretariat are also copied. All notifications and communications shall be considered validly made provided that they are made simultaneously to each of the following: (a) to the Tribunal member[s] at their respective email addresses; (b) to the Parties, by communication to their respective legal representatives at their respective email addresses; and [in an ICC case] (c) to the ICC Secretariat at its email address. Electronic communications are deemed to be made as of the date and time sent.<sup>14</sup>

Electronic and hard copies of documentary evidence will be considered authentic, unless a Party shows cause to consider otherwise.

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<sup>14</sup> See the Sample Wording for First Procedural Orders about Communications between the Parties and the Tribunal which consist of:

Example 1 - Communications

Example 2 - Electronic Submissions

Example 3 - Videoconferencing/teleconferencing and examination of experts and witnesses

Example 4 - Security and Confidentiality

Example 5 - Pre-hearing submissions

Example 6 - Electronic file repository

Example 7 - Electronic Communications

### c) **Post-award Stage**

The enforcement of Online Arbitration (international) is quiet alike with the enforcement of traditional Arbitration which refers to the provisions under New York Convention 1958.<sup>15</sup> It is also applied in ICC. It should be paid attention that the award must be made in a written form as it is agreement in the beginning<sup>16</sup> even though the party agreed to use IT as a tool of their dispute settlement. In terms of how a country implement the Arbitration award, it depends on the choice of Law that chosen by the parties. As an example, if there is one party coming from Indonesia and desire to implement Arbitration award then he/she shall registers the award to the domestic Court.<sup>17</sup>

As soon as possible after the last hearing concerning matters to be decided in an award or the fling of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:

- a) declare the proceedings closed with respect to the matters to be decided in the award; and
- b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34.

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<sup>15</sup> Manevy Isabelle, 2001, *Online Dispute Resolution: What Future?*, Paris, D.E.A. de droit anglais et nord-américain des affaires Université de Paris , p. 44.

<sup>16</sup> Sinta Agtrianari, 2012, *Klausula Arbitrase Dalam Perjanjian Carter Kapal (Charter Party) Yang Diinkorporasikan Ke Dalam Konosemen (Bill Of Lading) Dikaitkan Dengan New York Convention 1958 dan UNCITRAL model law on Arbitration Amandment 2006*, Bandung, Fakultas Hukum Universitas Padjajaran. Quoted by Andi Julia Cakrawala, p. 95.

<sup>17</sup> Susanti Adi Nugroho, *Op. cit*, p. 379. In terms of International Arbitration award recognition, Indonesia regulates it in Article 65 of The Law Number 30 of 1999, it is stated that Central Jakarta Court has its jurisdiction towards International Arbitration Recognition.



After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal. The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3)<sup>18</sup>, the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2)<sup>19</sup>. The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

If the parties reach a settlement after the file has been transmitted to the arbitral tribunal, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the arbitral tribunal agrees to do so. In terms of scrutiny of the Award by the Court, before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down

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<sup>18</sup> See Article 23(3) of ICC Rules stated that “If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference have been signed in accordance with Article 23(2) or approved by the Court, the arbitration shall proceed.” While Article 23(2) emphasizes that The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days of the date on which the file has been transmitted to it.

<sup>19</sup> See Article 24(2) of ICC Rules stated that “During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.”

modifications as to the form of the award and without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.

Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal, provided always that the costs of the arbitration have been fully paid to the ICC by the parties or by one of them. Additional copies certified by the Secretary General shall be made available on request and at any time to the parties, but to no one else. An original of each award made in accordance with the Rules shall be deposited with the Secretariat. Every award shall be binding on the parties.<sup>20</sup> By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days of the date of such award. At the moment, digital copies of awards are sent to the parties in certain instances. It remains somewhat unclear whether and under what conditions an award in electronic format would be enforceable under

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<sup>20</sup> Ningrum Natasia Sirait, 2002, *Bentuk ADR dan Prinsip-prinsip Mediasi*, Medan, Fakultas Hukum Universitas Sumatera Utara, p. 10.

the New York Convention in member states. The reason is that the New York Convention does not define or provide guidance on what constitutes an “original” electronic award or what would be an acceptable electronic “copy” of such an award. Nor does it define exactly what an original electronic signature is. The signature question is especially problematic, given that all visual reproductions of a physical signature in a file are by their nature copies. Thus, a qualified electronic signature meeting the applicable legal conditions established in the member state in which recognition or enforcement is sought may be required.

Moreover, in the event of proceedings for cross-border recognition or enforcement of the award, practical problems could arise if the original signed award is in file format, and the judicial authorities in the country where recognition or enforcement is sought are not adequately equipped to process the application on the basis of such a file. For all of these reasons, for the time being, original awards probably should continue to be made and signed on paper and physically served on the parties. This does not mean that electronic copies of an award or originals signed with qualified electronic signatures in accordance with the laws of the relevant country or countries could not also be communicated and used for other purposes.<sup>21</sup> In this context, sometimes the development of technology not always in tandem with the

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<sup>21</sup> Susanti Adi Nugroho, *Op. cit.*, p. 501.

development of society and the development of the legal instruments that govern it.<sup>22</sup>

In addition to the correction and the annulment of the award, it is clearly stipulated under article 36 of ICC Rules about Correction and Interpretation of the Award; Remission of Awards. On its own initiative, the ICC arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days of the date of such award. Any application of a party for the correction of an error, or for the interpretation of an award, must be made to the Secretariat within 30 days of the receipt of the award by such party. After transmittal of the application to the arbitral tribunal, the latter shall grant the other party a short time limit, normally not exceeding 30 days, from the receipt of the application by that party, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the Court may decide.

A decision to correct or to interpret the award shall take the form

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<sup>22</sup> Mochtar Kusumaatmadja, 1986, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional*, Bandung, Binacipta, p. 14. The similar citation also be in a place under his book "*Konsep-Konsep Hukum Dalam Pembangunan*, Bandung, Alumni, 2002.

of an addendum<sup>23</sup> and shall constitute part of the award. The provisions of Articles 32, 34 and 35 shall apply *mutatis mutandis*.<sup>24</sup> The Court may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional ICC administrative expenses. Once it has been registered to the Secretariat, then the Award can be enforceable with no legal efforts under ICC by the parties because in advance they had given 30 days to interpret and it shall be understood that the nature of Arbitration Award is final and binding. Even though it is not absolutely true because somehow the International Arbitration Award might be refused or annulled by the domestic court if it is not in line with the local provisions.

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<sup>23</sup> In legal document, most importantly in legal contracts, Addendum is an additional document not included in the main part of the contract, usually compiled and executed after the main document, which contains additional terms, obligations or information. But legally attached with the main agreements. (John M Echols & Hassan Shadily, 1988, *Kamus Inggris Indonesia*, Jakarta, Gramedia Pustaka Utama, p. 11.)

<sup>24</sup> According to Black Law Dictionary, *Mutatis mutandis* is a Medieval Latin phrase meaning "the necessary changes having been made" or "once the necessary changes have been made". In this context, the Addendum will take into effect to Article 32 about Making of the Award, Article 34 about Scrunity of the Award by the Court and Article 35 about Notification, Deposit and Enforceability of the Award.