

THE URGENCY OF E-ARBITRATION IN DISPUTE RESOLUTION IN THE ERA OF THE INDUSTRIAL REVOLUTION 4.0 IS REVIEWED FROM LAW NUMBER 30 OF 1999 CONCERNING ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

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ABSTRACT

The development of technology and information in Indonesia is currently happening very quickly. People know it as Industrial Revolution 4.0, which is an era of digitalization that combines automation technology with cyber technology. The Industrial Revolution 4.0 has forced us to change the way we judge by maximizing the use of current digital technology. Changes in legal methods not only in terms of legal actions but also in law enforcement including ways of resolving disputes. The existence of technological developments has influenced arbitration as a form of Alternative Dispute Resolution (ADR) so that it has experienced developments that were initially only conventional towards online arbitration where almost all arbitration implementation from registration to awarding is carried out via the internet network (online). E-Arbitration, also known as online arbitration, has now become an attractive option for resolving disputes, therefore the existence of E-Arbitration is a law that is aspired to. The existence of E-arbitration is also regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. With E-Arbitration, it will be easier to connect parties from various countries who want to resolve disputes quickly and at a low cost. The approach method used in this research is the normative juridical approach, namely a method that uses secondary data sources, namely statutory regulations, legal theories, and the opinions of leading legal scholars, which are then analyzed and draw conclusions from the problem. which will be used to test and review secondary data.

Keywords: *Industrial Revolution 4.0, Dispute resolution, E-arbitration*

A. Introduction

The development of technology and information in Indonesia is currently happening very quickly. People know it as Industrial Revolution 4.0, which is an era of digitalization that combines automation technology with cyber technology. It cannot be denied that the Industrial Revolution 4.0, which shifts the power of conventional technology to digital technology, has changed most of the order of life, including economic, legal, political, educational and other civilizations. The existence of the Industrial Revolution 4.0 era has had a significant impact on industry and the behavior of Indonesian society. In line with this, the existence of the Industrial Revolution 4.0 has forced us to change the way we judge by maximizing the use of current digital technology. Changes in legal methods not only in terms of legal actions but also in law enforcement including ways of resolving disputes. We know that dispute resolution can be done in two ways, namely litigation and non-litigation. To be clearer, the litigation route resolves disputes through the courts, while the non-litigation route resolves disputes outside the courts. This non-litigation route is known as Alternative Dispute Resolution.

The non-litigation route or what was known as Alternative Dispute Resolution (ADR) in the Industrial Revolution 4.0 era has now become known as Online Dispute Resolution (ODR) which is a method of resolving disputes carried out via the internet. The settlement process is carried out by parties located in cross-border areas (borderless) without having to meet face to face. Basically, ODR is the same as other conventional dispute resolution, the difference lies in the media which uses the internet (international network). One of the Alternative Dispute Resolution (ADR) dispute resolutions is arbitration. Arbitration is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Nowadays, technological developments have influenced arbitration so that it has experienced developments which were initially only conventional towards online arbitration where almost all arbitration implementation from registration to awarding is carried out via the internet network (online) (Vikarin, 2020).

E-Arbitration, also known as online arbitration, has now become an attractive option for resolving disputes, therefore the existence of E-Arbitration is a law that is aspired to. With E-Arbitration, it will be easier to connect parties from various countries who want to resolve disputes quickly and at a low cost. Based on the description above, it stimulates the author's curiosity to study further about "The Urgency of E-Arbitration in Law Enforcement in the Era of the Industrial Revolution 4.0 in View

of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution" Based on the description of the research background above, then the problem can be formulated, How does E-Arbitration exist as a form of dispute resolution in Indonesia in terms of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. What is the dispute resolution mechanism through E-Arbitration in Indonesia. To find out about the existence of E-Arbitration in terms of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. To find out the mechanism for resolving disputes through E-Arbitration in Indonesia.

B. Literature Review


Currently the world is facing changes in the industrial world called Industrial Revolution 4.0. The word "Revolution" can be interpreted as "a fairly fundamental change in a field". Fundamental changes have a big impact on the way of life. The Industrial Revolution that is currently taking place is called industrial revolution 4.0, because this revolution is the 4th (fourth) revolution that occurred in the history of industrial development. The Industrial Revolution 4.0 provides opportunities for people in everyday life, especially in the industrial world, to implement automation systems. The automation system allows technology and machines to be applied in life thereby reducing the role of humans (Akbar, 2021). Industry 4.0 is the fourth industrial period which in various literature states that the industrial stages are divided as follows (Disemadi, & Kang, 2021).

- a. Stage 1: Industries that have adopted mechanical machines starting with the discovery of the steam engine
- b. Stage 2: Industries that have adopted electricity are characterized by mass production
- c. Stage 3: Industries that have adopted computers and automation;
- d. Stage 4: Industries that have utilized cyberspace

Human life cannot be separated from disputes. According to Nurnaningsih Amriani, a dispute is a dispute that occurs between the parties to an agreement due to a breach of contract committed by one of the parties to the agreement (Amriani, 2012). Meanwhile, according to Takdir Rahmadi, disputes are situations and conditions where people experience factual disputes with each other or disputes based on their perception. Disputes are conditions where a party feels disadvantaged by another party, which then conveys this dissatisfaction to the second party (Rahmadi, 2017). If a condition shows a difference of opinion, what is called a dispute occurs. Disputes can be viewed from several points of view, one of which is the contract law perspective. According to the perception of contract law, a dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. Violations of the contents of the agreement occur in the form of excess fulfillment of obligations or deficiencies in fulfilling obligations. This violation causes losses to one of the parties (Amriani, 2012). Disputes that occur between the parties must be resolved so as not to cause prolonged disputes and to provide justice and legal certainty for the parties. In general, dispute resolution can be done in two ways, namely litigation and non-litigation.

A dispute is a polemic between two parties that requires resolution. In general, dispute resolution can and is usually carried out using litigation institutions (through court) and dispute resolution through non-litigation (outside court). In the statutory regulations there is nothing that provides a definition of litigation, but it can be seen in Article 6 paragraph 1 of Law 30/1999 concerning Arbitration which essentially states that disputes in the civil sector can be resolved by the parties through alternative dispute resolution based on good faith. rule out litigation settlement in the District Court. Article 6 paragraph (1), "Civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by ruling out litigation dispute resolution in the District Court.

The dispute resolution process by the disputing parties can be carried out through litigation or state judicial institutions. This means that the dispute will be examined by a court judge in a series of trials. The administration of justice is carried out by a Supreme Court and subordinate judicial bodies within the General Court, Religious Court, military court, state administrative court, and by a Constitutional Court (Rosita, 2017). Disputes are problems that require a resolution instrument. Rachmadi Usman said that apart from litigation (court), dispute resolution can also be resolved through non-litigation (outside of court). This method is called Alternative Dispute Resolution (ADR) in America, while in Indonesia it is usually called Alternative Dispute Resolution (hereinafter referred to as APS) (Usmani, 2012). The term APS is a term given to the grouping of dispute resolution through negotiation, mediation, conciliation and arbitration processes. Some interpret APS as an Alternative to Litigation where all dispute resolution mechanisms outside of court, including arbitration, are part



of APS. These two opinions mean that non-litigation dispute resolution methods are a collection of dispute resolution methods that do not involve the court. This method can be a reference for parties in a dispute (Lestari, 2017).

The development of the times causes various changes. One form of change is the increasing role of technology in life. An example of an aspect of life that is affected by the role of technology is the aspect of alternative dispute resolution. Currently, technological developments have also penetrated the world of alternative dispute resolution, which is demonstrated by the existence of ODR. ODR is a method of resolving disputes carried out via the internet, in the sense that the settlement process is carried out by parties located in cross-border areas (borderless) without having to meet face to face. ODR is the same method as alternative dispute methods in general but involves the internet in the implementation process (Petrauskas & Kybartienė, 2011). ODR is included in ADR which has 3 (three) types of dispute resolution, namely negotiation, mediation and arbitration. Therefore, there are various forms of online dispute resolution (ODR) (Sibirian, 2004).


Everyone can negotiate (Soemartono, 2006). Online negotiations have several advantages. The first advantage is simplicity. Online negotiation is a simple method because it only requires the parties to the dispute to be in good faith and have an internet connection. Online negotiations eliminate the need to travel to meet with the other party and eliminate the need to specifically determine a place to hold the meeting because online negotiations do not require face-to-face meetings. Online negotiations use only the creation of a request or offer. The simple process also results in significant cost savings. This happens because in online negotiations the parties do not have to be connected to the internet at the same time. Basically, the online negotiation model is divided into two forms, namely assisted negotiation and automated negotiation (Widaningsih, 2017).

There is no difference between offline mediation and online mediation dispute resolution, the only difference is the media used, namely electronic communication facilities in offline mediation. Online mediation is the same as offline mediation in that it is usually organized through two stages or sessions: the problem definition stage (preparation, mediator's remarks, presentation of the parties, identification of understanding, defining and agenda the problem) and the problem resolution stage (negotiation of the parties, caucus, decision of the parties, recording decisions, closing, creating documents). The industrial revolution is formed from two words, namely revolution and industry. Revolution means very rapid changes, while industry is an effort to implement the production process. Based on each definition, a common thread can be drawn that the definition of the industrial revolution is a rapid change in the implementation of the production process where previously the production process work was carried out by humans, replaced by machines, while the goods produced have added value (value added) which is commercial. The Industrial Revolution has changed the way humans work from manual use to automation or digitalization (Manurung & Heliany, 2019).

Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that arbitration is a method of resolving a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute. Based on the definition above, there are three things that based on dispute resolution through arbitration. First, arbitration is a form of non-litigation settlement. Second, the arbitration agreement must be made in writing. Third, an arbitration agreement is an agreement to resolve disputes carried out outside the general court. The implementation of arbitration requires an agreement between the parties including the media of arbitration, namely conventional arbitration or online arbitration (Rahman, 2003). Online arbitration is a practice that is starting to develop in Indonesia. Arbitration regulations in Indonesia actually regulate online arbitration. This can be seen from the provisions of Article 4 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 3 letter m, Article 4 paragraph (1) and paragraph (3). Through this article, there is a legal basis for settlement through online arbitration in Indonesia.

C. Research Methods

The approach method used in this research is the normative juridical approach, namely a method that uses secondary data sources, namely statutory regulations, legal theories, and the opinions of leading legal scholars, which are then analyzed and draw conclusions from the problems being discussed. will be used to test and study secondary data (Hanitijo, 1990). Secondary legal materials are books and scientific legal writings related to the problem to be researched. Such as theses, theses, legal journals, and many more (Zainuddin, 2015). Arbitration is a method that can be used if the parties are unable to resolve their dispute through negotiation and mediation. The parties who decide to use arbitration make a written agreement regarding submitting dispute resolution efforts through an arbitration body (Widaningsih, 2017). Dispute resolution through arbitration is a resolution



of disputes outside the court that is binding and final. Arbitration comes from the word *arbitrare* which means the power to resolve something according to one's discretion. So arbitration is actually a judicial institution run by private/private judges (*particuliere rechtspraak*) (Rahman, 2003). Negotiation is a method for resolving problems through deliberation by seeking direct agreement between the parties in dispute so that the results can be accepted by the parties. In Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution it is stated that civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by excluding litigation settlement in the District Court. Negotiations can be carried out face to face or online, which is called online negotiation.

D. Results and Discussion

The development of technology and information in Indonesia is currently happening very quickly. People know it as Industrial Revolution 4.0, which is an era of digitalization that combines automation technology with cyber technology. It cannot be denied that the Industrial Revolution 4.0, which shifts the power of conventional technology to digital technology, has changed most of the order of life, including economic, legal, political, educational and other civilizations. The existence of the Industrial Revolution 4.0 era has had a significant influence on industry and the behavior of Indonesian society. Fundamental changes have a big impact on the way of life, in line with the way of law, the existence of the Industrial Revolution has forced us to change the way of law by maximizing the use of current digital technology. Changes in legal methods not only in terms of legal actions but also in law enforcement including ways of resolving disputes. According to Nurnaningsih Amriani, a dispute is a dispute that occurs between the parties to an agreement due to a breach of contract committed by one of the parties to the agreement (Amriani, 2012).

Dispute resolution using ODR and/or online arbitration will provide many benefits, one of which is avoiding large costs in resolving disputes, considering that the domicile of the disputing parties is cross-border (Ningtyas, 2014). Online arbitration produces a decision that is different from conventional arbitration. Online arbitration is made via electronic media in digital form, and the decision is sent via e-mail to each party (Siburian, 2004). Meanwhile, conventional arbitration is made in written form as intended in Law No. 30 of 1999 which regulates that "an award must be made in writing and signed by the arbitrator or arbitration panel. Online arbitration can be carried out only if there is prior agreement from parties to conduct arbitration online.

Dispute resolution can be done through litigation and non-litigation. The non-litigation route or what was known as Alternative Dispute Resolution (ADR) in the Industrial Revolution 4.0 era has now become known as Online Dispute Resolution (ODR) which is a method of resolving disputes carried out via the internet. The settlement process is carried out by parties located in cross-border areas (borderless) without having to meet face to face. Basically, ODR is the same as other conventional dispute resolution, the difference lies in the media which uses the internet (international network). With this, technological developments have influenced arbitration as a form of Alternative Dispute Resolution (ADR) so that it has experienced developments which were initially only conventional towards online arbitration where almost all arbitration implementation from registration to awarding is carried out via the internet network (online). So in online arbitration, paper media has been replaced by digital data so that there is no longer a need for paper documents (paperbase). E-Arbitration, also known as online arbitration, has now become an attractive option for resolving disputes, therefore the existence of E-Arbitration is a law that is aspired to. With E-Arbitration, it will be easier to connect parties from various countries who want to resolve disputes quickly and at a low cost.

If you look at the current arrangements regarding arbitration in Indonesia, the actual implementation of online arbitration in dispute resolution in Indonesia has not been specifically regulated in a separate regulation. However, if we refer to Law Number 30 of 1999, we can actually find provisions in the article which can be used as a legal umbrella for the existence of online arbitration. In article 4 paragraph (3) of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. If it is agreed that dispute resolution through arbitration will occur in the form of an exchange of letters, then the sending of a telex, telegram, facsimile, e-mail or other form of communication means, must be accompanied by a note of acceptance by the parties. online. The only problem is how it is implemented which is not sufficiently regulated in the law. Apart from that, based on these provisions, holding online arbitration is possible, as long as there is a prior agreement to hold it. This provision means that dispute resolution occurs in the form of a letter. Unfortunately, the legislators do not determine what form the agreement must be made, whether it can be made electronically, orally, or whether it must be written (Bagulu, 2019).



Looking at the description above, according to the author, actually the existence of E-arbitration or online arbitration is quite effective considering that in the era of the Industrial Revolution 4.0, all life mechanisms have changed using digital tools. Furthermore, the author will review the existence of E-Arbitration in Indonesian positive law, namely Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 point 3 states: "An arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises." Based on the definition explained above, the law does not provide restrictions on what form must be used, namely whether it must be printed or not, it only provides limitations that the agreement is in writing. The law above does not regulate what materials or media are used for writing. Dispute resolution through conventional arbitration bases its activities on the exchange and examination of paper documents. Meanwhile, in online arbitration, paper media has been replaced by digital data so that there is no need for paper documents (Makarim, 2005).

People have a general understanding that original documents are documents written on paper. However, this understanding does not apply to documentation systems using computers. The computer system states that original documents are a form of electronic data (softcopy) stored on the computer hard disk. An agreement in content does not depend on the media for making the agreement but depends on the process of making the agreement. For example, an arbitration agreement written on paper can become invalid if the drafting process does not meet the legal requirements of the agreement (Bagulu, 2019). Then, in terms of the arbitration agreement having to be signed, it is stated in Article 4 point 2 of Law Number 30 of 1999 which states: "The agreement to resolve disputes through arbitration as intended in paragraph (1) is contained in a document signed by the parties." The explanation above means that an arbitration agreement becomes valid if it has been signed by the parties who made it. Signing in everyday life is equivalent to a signature on the internet, meaning it aims to convey the authentic value of data or information. However, these two types of signatures have differences. In general, a signature is a combination or variation of a person's name or abbreviation of their name. Meanwhile, signatures created using the internet are in the form of digital combinations, namely a combination of binary numbers 0 and 1 which are interpreted into unique characters and go through an encoding (encryption) process (Soemartono, 2006).

Article 4 number 2 regulates the existence of documents and the signatures of the parties, but does not explain the media for producing the documents. So documents can be interpreted as electronic information files. The term signed document in Article 4 point 2 does not require making an agreement and signing it on paper. This causes written agreements in national arbitration to be in the form of electronic information. Based on the description above, we can see that the existence of E-arbitration, if viewed from Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution already has legal force, but it is necessary to make separate special arrangements so that there is no overlap in application to dispute resolution. Supported by special regulations related to E-arbitration will provide a clearer understanding of the mechanism and will make it easier and provide confidence for parties who wish to resolve disputes through E-arbitration. The dispute resolution mechanism through E-arbitration is reviewed from Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. As stated above, the legal umbrella for conducting E-arbitration is article 4 paragraph (3) of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Other provisions that support the implementation of online arbitration are the provisions in Article 36 of Law Number 30 of 1999 which states that "(1) Examination of disputes in arbitration must be carried out in writing. (2) Oral examinations can be carried out if agreed by the parties or deemed necessary by the arbitrator or arbitration panel." This article provides the meaning that arbitration according to Law Number 30 of 1999 is arbitration using documents solely and in accordance with Article 4 paragraph (3) can use electronic means (Bagulu, 2019). To carry out online arbitration, it requires stages which include (Tantowi, 2018).

The applicant submits a case claim to the arbitration institution if the uncertainty in the arbitration agreement cannot be resolved. The applicant can send the case via email or online form site if the arbitration institution provides it. This information is conveyed via the applicant's email. The applicant and respondent have the right to accept or reject the online arbitration procedure. If the parties agree and the arbitration institution wishes, then online arbitration can take place. However, if the arbitration institution determines that the parties are incapable of carrying out online arbitration, then conventional arbitration procedures are carried out. In the aspect of written statements and documents, the parties are required to submit written statements and documents to the arbitrator and opposing party to guarantee the principle of contradiction. Regarding e-commerce disputes, parties are permitted to provide electronic evidence in the form of electronic documents available on their own website by searching or providing files and physical evidence to support their

arguments. All electronic documents in the form of document files and program files will be checked for hashes on the files using a certain hash function algorithm.

The written arbitration process is stated in article 36 of Law Number 30 of 1999. In practice, the written arbitration process also carries out oral examinations if necessary. Oral examinations can occur electronically, but are very expensive. Technological developments are able to support the conduct of trials between the applicant and the respondent before the arbitrator because the proceedings are carried out using cell phones with 3G signal quality or video conferencing. Online deliberations are the final stage of the arbitration process. Deliberations are carried out by arbitrators if there is more than one panel. Email media becomes an intermediary in deliberations if the arbitrators are located far apart. This has an impact on providing time for deliberation. Law Number 30 of 1999 itself does not regulate the deliberation issues of arbitrators, so it will need to be revised in the future to be regulated in more detail. Sending the decision After the decision is issued, the parties are notified online of the decision and the decision is sent using electronic means. Law Number 30 of 1999 does not yet regulate this matter. Article 55 of Law Number 30 of 1999 states: "When the examination of the dispute has been completed, the examination shall immediately be closed and a hearing date shall be set to pronounce the arbitration decision." Article 57 further stipulates "The decision shall be pronounced no later than 30 (thirty) days after the examination is closed." Such a decision is pronounced in a trial. The arbitral tribunal may send the award by e-mail or place it on the website used for the case in question.

E. Conclusion

The development of technology and information in Indonesia is currently happening very quickly. People know it as Industrial Revolution 4.0, which is an era of digitalization that combines automation technology with cyber technology. It cannot be denied that the Industrial Revolution 4.0, which shifts the power of conventional technology to digital technology, has changed most of the order of life, including economic, legal, political, educational and other civilizations. In line with this, the existence of the Industrial Revolution 4.0 has forced us to change the way we judge by maximizing the use of current digital technology. Changes in legal methods not only in terms of legal actions but also in law enforcement including ways of resolving disputes. The existence of technological developments has influenced arbitration as a form of Alternative Dispute Resolution (ADR) so that it has experienced developments which were initially only conventional towards online arbitration or E-arbitration where almost the entire implementation of arbitration from registration to awarding is carried out via the internet network (on line).

E-Arbitration, also known as online arbitration, has now become an attractive option for resolving disputes, therefore the existence of E-Arbitration is a law that is aspired to. With E-Arbitration, it will be easier to connect parties from various countries who want to resolve disputes quickly and at a low cost. E-arbitration is reviewed from Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution already has a legal umbrella, namely in article 4 paragraph (3), but it is necessary to make separate special arrangements so that there is no overlap in application to dispute resolution. Supported by special arrangements related to E-arbitration will provide a clearer understanding of the mechanism and will make it easier and provide confidence for parties who wish to resolve disputes through E-arbitration.

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