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The Comparison of Arbitration Dispute Resolution Process between Indonesian National Arbitration Board (BANI) and London Court of International Arbitration (LCIA)

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Abstract

Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Each country has a different settlement process. In Indonesia arbitration is based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The Indonesian National Arbitration Board (BANI) is an agency established by the Indonesian government for law enforcement in Indonesia in resolving disputes or differences of opinion that occur in various trade, industrial and financial sectors. Likewise in Indonesia, in England there is also an Arbitration Board called LCIA which is one of the oldest arbitration institutions in the world and has resolved 303 cases annually. This agency acts autonomously and independently in upholding law and justice. The purpose of this research is to determine the differences in the dispute resolution process through arbitration in Indonesia and the UK. The research method used in this article is normative legal research and through a literature study approach with secondary assessment of legal materials and juridical data analysis. The results prove that the process and procedures for dispute resolution at the LCIA institution are different from

the BANI institution in the process and procedures. as well as the legal basis used in resolving the parties' business disputes.

KEYWORDS Arbitration, Dispute Resolution, England, Indonesia

Introduction

One of the legal functions is to settle disputes.[1] In resolving disputes in Indonesia, can be done through two processes: the litigation litigation and non-litigation.[2] Litigation means resolving disputes in court, as a forum for juices or justice seekers to obtain legal certainty, justice, and benefits as the goal of law. [3] Litigation dispute resolution is carried out by the judge, who is an element of the judicial power whose job is to receive, examine, and make decisions on cases that go to court. Judges in deciding cases are required to uphold the law as fairly as possible for the community. Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that civil disagreements or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by overriding litigation in the District Court. [4]

However, many people still complain about the complexity of litigating cases in court. In general, the complexity of litigating cases illustrates the complexity of the bureaucracy in Indonesia. Although the Government has made improvements here and there, complaints about the complexity of litigating cases still exist. One of the existing solutions is to litigate through arbitration. Arbitration is regulated in Law Number 30 Year 1999 (Arbitration Law). The proposed settlement is regulated in Law No. 30

[1] R.F. Saragih, Lembaga Alternatif Penyelesaian Sengketa, *Jurnal Hukum Dan Pembangunan*, No.4, Tahun XXIX, Oktober - Desember 1999

[2] Faisal Riza, Alternatif Penyelesaian Sengketa Secara Arbitrase Melalui Pemanfaatan Teknologi Informasi, *De Lega Lata Jurnal Ilmu Hukum*, Volume 4 Nomor 1, Januari-Juni 2019, 77-86

[3] Witanto, 2012, *Hukum Acara Mediasi*, Alfabeta, Bandung, h. 5

[4] Mustofa Wildan Suyuti, 2013, *Kode Etik Hakim*, Kencana, Jakarta, h. 55

of 1999 article 1 paragraph 10. The Law on Arbitration and Alternative Dispute Resolution indicates that disputes can be resolved through judicial channels or alternative judicial channels (litigation or non-litigation). Many of these alternatives are given, especially in disputes that fall into civil cases. As is known, the litigation process means bringing the dispute issue to legal channels, while the non-litigation process is resolved based on the good faith of the disputing parties. Settlement of disputes outside the court line according to mutual agreement and written in an agreement is also known as arbitration.

Non-litigation dispute resolution is also called out-of-court dispute resolution or Alternative Dispute Resolution. [5] Article 6 of Law no. 30 of 1999 regulates options in dispute resolution through deliberation of the disputing parties, under the title Alternative Dispute Resolution, [6] among others through consultation, facilitation, negotiation, mediation, conciliation, arbitration, adjudication and expert judgment. All of them have different characteristics and are usually tailored to the parties' dispute resolution needs. ADR offers several forms of dispute resolution processes tailored to the needs of the disputing parties. [7]

Arbitration comes from the Latin arbitration which means the power to settle something according to policy. [8] Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Arbitration is the voluntary submission of a dispute to a neutral third party that issues a final and binding decision.[9] There are several juridical characteristics of arbitration,

5 Henny Mono, 2014, *Alternatif Penyelesaian Sengketa Dan Mediasi*, Bayumedia: Publishing, Malang, hal. 2

6 Dewi Tuti Masigaryati, Pengaturan Dan Mekanisme Penyelesaian Non Litigasi Di Bidang Perdagangan, *Jurnal Dinamika Sosbud,* Vol. 13 Nomor 1, Juni 2011:49-65, ISSN 14109859

7 Prinsip Dan Bentuk-Bentuk Alternatif Penyelesaian Sengketa Di Luar Pengadilan, *Hukum Dan Dinamika Masyarakat* Vol.5 No.2 April 2008, Issn : No. 0854-2031

8 Grace Henni Tampongangoy, Arbitrase Merupakan Upaya Hukum Dalam Penyelesaian Sengketa Dagang Internasioanal, *Lex Et Societatis*, Vol. III,No. 1,Jan-Mar,2015

9 Huala Adolf, Hukum Penyelesaian Sengketa Internasional, (Jakarta: Sinar Grafika, 2004), p.23

including controversy between the parties, the controversy is submitted to the arbitrator, the arbitrator is nominated by the parties or appointed by a certain body. Arbitration as an extra judicial institution has legal authority born from legal instruments based on national legislation in the field of arbitration and the agreement of the parties in an agreement containing an arbitration clause.[10] The arbitrator is a party outside the general judicial body. The basis for submitting a dispute to arbitration is an agreement, the arbitrator conducts a case examination, after examining the case, the arbitrator will issue the arbitration award and bind the parties. Given the high probability of a dispute in the performance of an international business contract, the parties usually make a clause or arbitration contract in the agreement or business contract that is carried out.[11]

There are several arbitrations in dispute / dispute resolution. Among others, the parties have several freedoms in: choice of forum; choice of law; choice of place; choice of arbitrator; Select language; and in contracts that can be entered into to select the currency used (choice of currency) as a means of payment. [12] Frans Winarta outlined the meaning of each of the above dispute resolution institutions as follows: [13] Consultation, Negotiation, Mediation, Conciliation and Expert Assessment.

Method

The method used in writing this journal is to use normative juridical legal research. Normative legal research or library research is research by examining document studies, namely using various secondary data or data

[10] *Jessicha Tengar Pamolango, Tinjauan Yuridis Terhadap Kewenangan Arbitrase Dalam Penyelesaian Sengketa, Lex Administratum, Vol 3, No 1 (2015)*

[11] Grasia Kurniati, Studi Perbandingan Penyelesaian Sengketa Bisnis Dan Implementasinya Antara, Lembaga Badan Arbitrase Nasional Indonesia Dan Singapore International Arbitration Centre, *Jurnal Ilmiah Hukum De'jure: Kajian Ilmiah Hukum*, Vol.1 , No.2, September 2016

[12] Rusniati Rusniati, Arbitrase Sebagai Alternatif Ideal Dalam Penyelesaian Sengketa Kontrak Bisnis, *Jurnal Disiplin* Vol 26, No 17, Maret 2020

[13] Frans Hendra Winarta. 2012. *Hukum Penyelesaian Sengketa*. Jakarta: Sinar Grafika.

obtained from the results of literature studies such as statute uproach, court decisions, legal theory, and can be in the form of opinions of scholars with various sources such as books, legal journals, legal dictionaries and the internet are related to comparison of arbitration dispute resolution process between indonesian national arbitration board (BANI) and london court of international arbitration (LCIA). By using uproach statute, the writer will analyze the legal material obtained, then explain the research object obtained based on the qualitative material, so that a clear picture of the substance of the material to be discussed in this study is more accurate. The research conducted in this journal uses qualitative analysis, namely by explaining existing data in words or statements not with numbers in order to explain and understand.

Result and Discussions

A. The Differences Between Indonesian National Arbitration Board (BANI) and London Court of International Arbitration (LCIA)

1. Indonesian National Arbitration Board (BANI)

One of the options for dispute resolution mechanisms is arbitration.[14] Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties (based on article 1 paragraph (1) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution). As for the time when Law no. 30 of 1999, the provisions regarding arbitration as regulated in articles 615 to 651 Rv, Article 377 HIR, and Article 705 Rbg are no longer valid. The existence of Law no. 30 of 1999 has attempted to accommodate all aspects regarding arbitration both from a legal perspective and its substance with both national and international scope.

[14] Tektona, Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan, *Pandecta: Jurnal Penelitian Ilmu Hukum,* Vol 6, No 1 (2011)

Meanwhile, an arbitration agreement is an agreement in the form of an arbitration clause that is stated in a written agreement made by the parties before the dispute arises, or a separate arbitration agreement made by the parties after the dispute arises. The Arbitration Session is held by the Arbitrator. Arbitrator is a person or more who are selected by the disputing parties or who are appointed by the District Court or by the arbitration institution, to give a decision regarding a particular dispute which is submitted for resolution by arbitration. Arbitrators are members of the Arbitration Institute. Examples of Arbitration Institutions in Indonesia are the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS).

In Indonesia, the competent institution to handle arbitration is BANI (Indonesian National Arbitration Board). [15] This institution acts independently in upholding law and justice. BANI always acts based on applicable provisions in the form of laws and internal provisions of BANI itself, including the time limit that requires the arbitral tribunal to give a decision. The rules used in arbitration are national and international in nature.[16]

In Indonesia itself, interest in resolving disputes through arbitration has increased since the promulgation of Law no. 30 of 1999. There are several things that are the advantages of Arbitration compared to resolving disputes through litigation: Closed session to the public; The process is fast (maximum of six months); The decision is final and cannot be compared or cassation; The arbitrator is selected by the parties, is an expert in a disputed field, and has high integrity or morals; Although the formal fees are higher than court fees, there are no 'other costs'; to Particularly in Indonesia, the parties can present their case before the Arbitral Tribunal and the Arbitral Tribunal can directly ask for clarification by the parties.

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[15] Ananda Puspita Aminuddin, Peranan Badan Arbitrase Nasional Indonesia Dalam Menyelesaikan Sengketa Penanaman Modal, *Lex Administratum*, Vol. V/No. 1/Jan-Feb/2017

[16] Mudakir Iskandar Syah, Penyelesaian Sengketa Di Luar Pengadilan Via Arbitrase, Calpulis, Yogyakarta, 2016, p.Vii.

Along with its development, dispute resolution through arbitration has encountered several problems. The main problem is related to the implementation or execution of an arbitral award. In the international scope, international arbitration awards can be recognized and implemented in Indonesia if they do not conflict with public order, have obtained execution from the Chairperson of the Central Jakarta District Court, and if one of the parties to the dispute is the Republic of Indonesia, it can only be implemented after there is an executor from Supreme Court - RI. The problem is that courts in Indonesia are often "labeled" as reluctant to enforce international arbitral awards on the grounds that they conflict with public order. Another problem, in the national scope the implementation of arbitral awards is also often hampered due to the lack of ability and knowledge of Indonesian arbitrators which results in postponement of arbitral awards.

The Arbitration decision is final and binding, meaning that the decision cannot be sought for legal remedies such as appeal and cassation and the decision is binding for the parties to comply voluntarily in good faith because before the award was made, they also agreed to resolve it through arbitration with all the consequences.[17] The arbitration process and procedure are not easy. Therefore, only people in certain social stratification can take advantage. Arbitration is not commonly used by business actors who are less educated or low-class. In Indonesia, arbitration can only be settled on disputes of a commercial nature. [18]

2. London Court of International Arbitration (LCIA)

Alternative Dispute Resulution (ADR) provides an excellent solution in resolving conventional trade disputes that are separated by geographic

[17] *Mosgan Situmorang, Pelaksanaan Putusan Arbitrase Nasional Di Indonesia, Jurnal Penelitian Hukum: Dejure,Vol 17, No 4 (2017), P-Issn1410-5632 E-Issn2579-8561*

[18] Rochani Urip Salami, Aletrnatif Penyelesaian Sengketa Dalam Sengketa Transaksi Elektronik (E-Commerce), *Jurnal Dinamika Hukum*, Vol. 13 No. 1 Januari 2013

location and between countries. [19] Arbitration is one of the out-of-court dispute resolution models which is quite attractive, especially by business actors in resolving trade disputes that occur between them. The use of arbitration as a dispute resolution model is getting bigger, especially for the settlement of international trade disputes where parties are subject to different jurisdictions or the implementation of contracts involves foreign jurisdictions.[20]

The London Court of International Arbitration (LCIA) The London Court of International Arbitration (LCIA) is one of the oldest arbitral institutions in the world. This institution was officially established in 1891, but its roots have been in existence since April 5, 1883. After changing its name several times, this institution then officially adopted the name "The London Court of International Arbitration" in 1981. The name is to reflect that the cases - cases that come are dominated by international cases. Founded in London, the London Court of International Arbitration ("LCIA") is one of the most prominent arbitral institutions, providing services for arbitration, mediation and other ADR proceedings, with a current average of 303 cases per year.

The LCIA provides efficient, flexible, impartial resolution of disputes regardless of the location of the parties and based on any legal system whatever the parties desire. As mentioned above, the LCIA handles many international disputes. The proof, as quoted from the official website, is that 80 percent of the cases currently being handled are not citizens of the United Kingdom. Furthermore, the LCIA has sufficient access to reliable arbitrators and arbitration experts and experience from various jurisdictions. Any person or company can become a party to LCIA without having to register as a member first.

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[19] Adel Chandra, Penyelesaian Sengketa Transaksi Elektronik Melalui Online Dispute Resolution (ODR) Kaitan Dengan Uu Informasi Dan Transaksi Elektronik No.11 Tahun 2008, *Jurnal Ilmu Komputer* Volume 10 Nomor 2, September 2014

[20] Yuanita Permatasari, Kewenangan Pengadilan Dalam Pembatalan Putusan Arbitrase Internasional Di Indonesia, *Privat Law*, Vol. V No 2 Juli-Desember 2017

The impartiality and independence of the arbitrator against the parties is also expressly regulated in the LClA Rules. Arbitrators may not act as an advocate for either party, therefore, before being appointed, they must convey information about their current profession (Article 3 paragraph 3.1.). The impartiality and independence of the arbitrator is guaranteed not only in the process of his appointment, but also for the duration of the arbitrator's process. Therefore, according to the LClA Rules, at any time before the arbitration ends, the arbitrator must submit to the Court of LClA and to the parties anything that could raise doubts about the position of the arbitrator (Article 3 paragraph 3.1.) [21]

LCIA consists of three separate structures, namely the Secretariat, Courts and Companies.

a. The Secretariat is the only permanent organ. It is responsible for carrying out day-to-day management in arbitration proceedings. The Registrar is the highest authority of the Secretariat, assisted by the Deputy Registrar.
b. The Court oversees the activities of the Secretariat. Thirty-five members, serving a five-year mandate, constitute the LCIA Courts. Its main responsibilities are: to act as appointing authority, determining challenges to arbitrators, and controlling costs. Courts also have the final say on interpreting the provisions of the LCIA Rules, when they are called into question.
c. The company is the only organ that does not provide administrative services. Responsible for overseeing LCIA activities and development, in accordance with applicable laws.

B. The Comparison of The Arbitration Dispute Resolution Process of Indonesian National Arbitration Board (BANI) and London Court of International Arbitration (LCIA)

[21] Abdul Wahid, Pengangkatan Arbiter Dalam Arbitrase Internasional (Suatu Studi Perbandingan Berdasarkan UNCITRAL, ICC, AAA dan LCIA Rules), *Jurnal Hukum dan Pembangunan*, Juli- September 1999

1. Arbitration Dispute Resolution Process in BANI

In the BANI Arbitration Procedure Rules (BANI Rules and Procedures), the general requirements to become an arbitrator are determined, namely to be registered as a BANI arbitrator or to have an ADR / Arbitration certificate recognized by BANI. The arbitrators provided by BANI consist of various professions, both legal experts and non-legal experts, such as engineers, architects, and other qualified persons. [22]

To be able to submit an arbitration issue through BANI, there must be an agreement between the two parties or a clause stated in the agreement which states that the parties agree that all disputes between them will be resolved through BANI, the clauses suggested by BANI are as follows. Meanwhile, arbitration settlement procedures in Indonesia include:

1) Registration Procedure

   The arbitration procedure began with a notification to the Respondent that in connection with a dispute between the Petitioner and the Respondent, the Petitioner would resolve the dispute through the Arbitration Institute (BANI). So, the Petitioner must be ready in terms of evidence, reasons, legal standing, and so on. Don't get confused later when going to trial. The notification to the Respondent must contain: names and addresses of the parties; appointment to the applicable arbitration clause or agreement; agreement or issue in dispute; the basis of the charges and the amount demanded, if any; the desired settlement method; and the agreement entered into by the parties regarding the number of arbitrators or, if no such agreement has been made, the applicant may submit an odd number of proposals on the desired number of arbitrators. After that, the Applicant registers and submits the Request for Arbitration to BANI. The Petitioner explains both from

[22] Muskibah, Arbitrase Sebagai Alternatif Penyelesaian Sengketa, *Jurnal Komunikasi Hukum (Jkh)*, Volume 4 Nomor 2 Agustus 2018, ISSN : 2407-4276 (Online); ISSN : 2356-4164 (Print)

the formal point of view of the arbitration callusula, the position of the applicant in relation to the arbitration agreement, the arbitration authority to examine cases, and the procedures that have been taken before being able to enter into settlement through an arbitration forum.

2) The Arbitrator Appointment Stage

The parties can actually agree on whether to appoint a single arbitrator, a panel of arbitrators, or submit the decision to BANI. If the parties use a single arbitrator, the parties are obliged to reach an agreement on the appointment of the applicant's sole arbitrator in writing must propose to the respondent the name of the person who can be appointed as the sole arbitrator. If within 14 days since the respondent accepts the petitioner's proposal the parties fail to determine a single arbitrator, then based on the request of one of the parties, the Chairman of the Court may appoint a single arbitrator. If the parties choose to use the arbiter council system, the parties will appoint one arbitrator each. In the forum chaired by a panel of arbitrators who have been appointed by the Parties, the parties will appoint one third arbitrator (who will then become chairman of the arbitral tribunal). In the Arbitration Law it is stipulated that if within 14 days after the appointment of the last arbitrator there is no agreement yet then at the request of one of the parties, the Chairperson of the District Court can appoint a third arbitrator, against this petition an attempt to annul it can be submitted (Article 15 Paragraph (4) of the Arbitration Law). In addition, Article 15 Paragraph (2) of the Arbitration Law states, if after 30 days after notification has been received by the respondent and one of the parties has not appointed someone who will be a member of the arbitration panel, the arbitrator appointed by the other party will act as the sole arbitrator and the verdict is binding on both parties.

3) Respondent's Response

If BANI decides that BANI has the right to examine, then after the registration of the Application, one or more Secretaries of the Council shall be appointed to assist with the administrative work of the arbitration case. The Secretary must submit a copy of the Request for Arbitration and its attached documents to the Respondent, and ask the Respondent to submit a written response within 30 days. If the Respondent submits an answer, the Respondent may also appoint an arbitrator by means of an application letter which is accompanied by the Respondent's response letter. Meanwhile, if the Respondent does not submit an answer, the Respondent is deemed to have handed over the arbitrator's appointment to BANI.

4) Claims

The Respondent can file a counterclaim (reconvention) on sending a response letter or not later than when the first trial begins. The Petitioner and the Respondent will be charged an additional fee if a counterclaim is filed. If the administration fee for the counterclaim or settlement effort has been paid by the parties, the counterclaim will be examined, considered and decided together with the main claim. If the Petitioner does not want to pay the administrative fee for the reconvention, the Respondent is obliged to pay it. If not, the panel will not examine the case. The arbitration applicant has the right within a period of 30 days or any other period determined by the arbitral tribunal to submit an answer to the counterclaim or counterclaim filed by the arbitration Respondent.

5) Examination Session Process

In a dispute examination hearing by an arbitrator or an arbitral tribunal, it shall be carried out behind closed doors. The language used is Indonesian, except with the approval of the arbitrator or arbitration panel, the parties can choose another language to be used. The disputing parties can be represented by their proxies with a special power of attorney. Third parties outside the arbitration agreement can

participate and join in the dispute resolution process through arbitration, if there is an element of interest involved and participation is agreed upon by the parties to the dispute and approved by the arbitrator or arbitral tribunal examining the dispute in question. At the request of one of the parties, the arbitrator or the arbitral tribunal may adopt a provisional decision or other interim decision to regulate the orderliness of the dispute examination, including the determination of guarantee seizure. Examination of disputes in arbitration must be carried out in writing. An oral examination can be carried out if agreed by the parties or deemed necessary by the arbitrator or arbitration panel. The arbitrator or arbitration panel can hear witness testimony or hold a meeting as deemed necessary at a certain place outside the place where the arbitration is being held. Examination of witnesses and expert witnesses before the arbitrator or arbitral tribunal, shall be conducted according to the provisions of the civil procedural law.

The legal consequence and execution of BANI's decision is that the party defeated in the dispute examination must implement the decision voluntarily within 30 (thirty) days after the request for execution is registered with the Clerk of the District Court, and the decision can be carried out by the clerk with a bailiff on the order of the Head of the District Court. and two witnesses can also be assisted by the police. The legal consequence of the BANI decision is that if the defeated party does not want to implement the decision, the Head of the District Court orders to confiscate the movable property of the defeated party. And the defeated party cannot be held hostage against him, and the death of one of the parties does not stop the consequences of a refereeing clause. [23]

2. Arbitration Court Services at LCIA

[23] Luh Putu Sudini, Eksistensi Badan Arbitrase Nasional Indonesia (Bani) Dalam Penyelesaian Sengketa Perusahaan, *Jurnal Notariil,* P-Issn: 2540-797x, Vol. 2, No. 2 November 2017, p. 42

LCIA provides services for arbitration, mediation, adjudication and ADR. It is important to note that the institution itself does not resolve disputes. Rather, it provides the necessary support for the parties and for the arbitral tribunal throughout the process. The parties can also use the LCIA for processing. In this case, the institution will act as the appointing authority, and it will assist the parties in the appointment of arbitrators, mediators and experts. The costs of arbitration at the London Court of International Arbitration are generally divided as follows:

1) Court fees, which include:
    a. hourly rates charged by arbitrators (currently capped at GBP 450);
    b. charge fees for the arbitral tribunal secretarial services (if any); and
    c. other fees (such as cancellation fees or correction notes).
2) Administration fee, which includes:
    a. registration fees for submitting requests for arbitration (currently set at GBP 1,750);
    b. Secretariat rates per hour; and
    c. A surcharge of 5% of the total arbitration court fee[24]

Court and Secretariat services are charged on an hourly basis. This means that fees will be based on the actual time spent working in connection with a given arbitration process. This is intended to ensure that simple disputes involving a large number of disputes will not cost more than similar disputes with smaller amounts, unlike the rules of other institutions, where fees are calculated based on the amount disputed. While the average LCIA arbitration lasts 16 months and costs USD 97,000, cases in which the disputed amount is more than USD 100 million are expected to cost hundreds of thousands of USD.

Regarding arbitration decisions, the LCIA Rules does not include any provisions regarding the period for pronouncing the verdict. Where the

[24] International Arbitration Information by Aceris Law LLC, Pengadilan London untuk Arbitrase Internasional – LCIA, *https://www.international-arbitration-attorney.com/id/london-court-international-arbitration-lcia/,* accessed on June 26th, 2021

arbitration panel consists of 3 (three) people, the decision is made based on the majority decision of the arbitrators. If there is a difference of opinion, the decision of the Chair of the Arbitration Council will apply.11 These provisions are in line with the ICC Arbitration Rules, LCIA Arbitration 9 Art. 30 (1) ICC Arbitration Rules: "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 "10 Art 5.2 (d) 2013 SIAC Rules:" The award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time "11 Susanti Adi Nugroho, Arbitration Dispute Resolution and Legal Settlement, page 211 Rules and SIAC Rules 2013. 12 An arbitration award can be declarative (explain or confirm), constructive (negating or giving rise to a new legal condition), or condemnatoir (punishment).[25] Arbitration settlement procedures in LCIA include:[26]

1) Registration Procedure

   For the registration procedure, now dispute resolution at LCIA is done more easier by online filling system. Any party, or its authorised representative, can use the online filing system. But online filling is an additional service provided by the LCIA, which may use if applicants wish to do so. If applicants prefer, they may continue to file documents in hard copy or by email as previously. If applicants choose online, before using the system, every applicant will need to register as a user and agree to the terms and conditions of use. The online system allows every applicant to:

   a. File Requests for Arbitration, Responses, applications for expedited formation of the tribunal, applications for expedited

[25] Garuda Wiko, Ketika Termohon Menolak Terlibat Dalam Persidangan Arbitrase, *Tanjungpura Law Journal*, Vol. 3, Issue 2, July 2019: 126 - 143 ISSN Print: 2541-0482 | ISSN Online: 2541-0490

[26] LCIA Arbitration and ADR Worldwide, LCIA Notes For Parties 2020, *https://www.lcia.org//adr-services/* accessed on June 26th, 2021

appointment of a replacement arbitrator, and applications for the appointment of an Emergency Arbitrator;

b. Submit any supporting documentation electronically;
Once applicants have submitted a Request, Response or application, they will not be able to revise that document (or any attachment) through the online system. If applicants realise, after submission, that any information was inaccurate, they can email casework@lcia.org, providing the Online Filing ID or LCIA Arbitration number.

c. Pay any filing fees online
Online filing system allows every applicants to pay for any filing fees using a credit card, via the Worldpay payment gateway or PayPal. After completing the form, applicants will be directed to the payment pages where applicant should enter the necessary credit card information. The filing will only be submitted to the LCIA once payment has successfully been processed.

d. Generate a pdf document,
At the conclusion of the process (and following payment of any fee), which applicant can print/save to their computer and also serve for service on the other parties to the arbitration. If applicat have chosen to use the standard electronic form, the LCIA online filing system will generate a PDF of the document you have filed, which applicant can print and/or save in order to then send it (together with any relevant attachments) to the other parties to the arbitration. If you applicants already uploaded the submission, applicant should serve that uploaded document, (together with any relevant attachments) to the other parties to the arbitration.

Access all applicants' filings made online, including payment history. For both standard electronic form and online filling system,

after applicant fill the form, a member of the LCIA secretariat will respond to you within one business day after submission of your online filing.

2) Responding to a Request for Arbitration

If a party receives a Request for Arbitration, the next step is for it to prepare a Response. According to article 2 of the 2014 Rules provides that a Respondent shall file any Response to a Request within 28 days of the date that the arbitration commenced (namely, within 28 days of the date on which the LCIA received the Request and registration fee). This is a change from the 1998 Rules, which provide that a Response should be sent within 30 days of receipt by the Respondent of the Request, rather than being dependent on the date that the Request was filed with the LCIA.

3) Appointment Of Arbitrators

Unless the parties have agreed express timing, the LCIA Court will take steps to appoint the Arbitral Tribunal promptly after receipt of the Response or, if no Response is received, after 7 days from the date on which the Response was due. The time it takes to complete the appointment process varies from case to case, depending on a number of factors, including: the number of arbitrators to be appointed; the time it takes for a candidate arbitrator to return his/her statement of independence and availability; any disclosure made by a candidate arbitrator; any mechanism agreed between the parties for the selection of the Arbitral Tribunal (such as a list procedure) and the timeframes under that mechanism. The default position under the Rules is that the LCIA Court will select the arbitrators.

4) Setting A Timetable For The Arbitration

The LCIA will write to the parties once an Arbitral Tribunal has been appointed by the LCIA Court. The Secretariat will also write to the Arbitral Tribunal to provide to them any relevant background

held by the LCIA about the arbitration and to invite the Arbitral Tribunal to make contact with the parties as soon as practicable to discuss the future conduct of the arbitration. In accordance with Article 14 of the 2014 Rules, the Arbitral Tribunal and the parties are encouraged to make contact within 21 days of the appointment of the Arbitral Tribunal. The parties may agree on joint proposals for the conduct of their arbitration and the Arbitral Tribunal may exercise its discretion to set a timetable appropriate for the particular case, bearing in mind its duty to act fairly and impartially and to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

5) Use Of Written Evidence and The Right To An Oral Hearing

A party should file, with its Statement of Claim or its Statement of Defence, copies of all essential documents. If a party wishes to rely on witness evidence to support its case, then it should inform the Arbitral Tribunal. The Arbitral Tribunal may request that a party present the testimony of any witness in written form, whether as a signed statement or otherwise and, in accordance with Article 20.3 of the Rules, the Arbitral Tribunal may decide the time, manner and form in which that written testimony should be exchanged between the parties and presented to the Arbitral Tribunal.

Then, under Article 19 of the LCIA Rules, any party has the right to request a hearing before the Arbitral Tribunal at any appropriate stage of the arbitration unless the parties have agreed in writing upon a documents-only arbitration.The Arbitral Tribunal has discretion as to the conduct of a hearing, including as to any time-limits to be applied and as to the date, time and geographical location of any hearing. Unless otherwise agreed in writing by the parties, all hearings of LCIA arbitrations are held in private.

Conclusion

For the dispute resolution process both at BANI and LCIA are basically the same, which are registration, arbritator appointment and the arbitration execution. However, in LCIA for case registration, since 2014 the online filling system has been used. This certainly simplifies and speeds up the dispute resolution process. Procedures for submitting dispute resolution through BANI by registering a dispute resolution request letter at the BANI secretariat which includes an arbitration clause made in writing statements and if in the agreement the parties do not include an arbitration clause then the dispute that arises between them cannot be resolved by arbitration. The important thing is the existence of an arbitration clause which states that all disputes arising from this agreement will be resolved in the first and last stages according to BANI's procedural rules by arbitration appointed according to the regulation. And also there is an agreement from the parties to settle the dispute through arbitration. The legal consequence and execution of BANI's decision is that the party defeated in the dispute examination must implement the decision voluntarily within 30 (thirty) days after the request for execution is registered and then the decision can be carried out by the District court. Likewise BANI, in LCIA which is one of the oldest arbitration institutions in the world and has resolved 303 cases annually. The LCIA procedure provides efficient, flexible, impartial resolution of disputes regardless of the location of the parties and based on any legal system whatever the parties desire. For the registratipn stages, the process are done fully through online filling system. Furthermore, the LCIA has sufficient access to reliable arbitrators and arbitration experts and experience from various jurisdictions. Then for the arbitration excecution, the process must be in accordance with the existing procedures in the LCIA Rules. Also in LCIA, any party has the right to request a hearing before the Arbitral Tribunal at any appropriate stage of the arbitration unless the parties have agreed in writing upon a documents-only arbitration. Unless

otherwise agreed in writing by the parties, all hearings of LCIA arbitrations are held in private.

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