

THE IMPACT OF PANDEMIC ON LEGAL SYSTEM: IMPACT ON ARBITRATION LAW

Huala Adolf

Center for International Trade Law and Arbitration,
Faculty of Law, Universitas Padjadjaran, Jl. Imam Bonjol No 21 Bandung.
E-mail: huala.adolf@gmail.com

Abstract

One of the impacts of the outbreak of COVID-19 is the state legal system. Legal system in a broad sense consists of legislation, the state's legal personnel (executive) and the judicial system. A part of the judicial system is a private settlement of dispute by arbitration. Arbitration is subject to the arbitration law. The COVID-19 has forced the closure of the arbitration proceedings. This is a problem for arbitration. This article tried to analyse the possible solution to the closure of the proceedings. This article used the normative method by analysing the existing arbitration law and arbitration rules. This article argued, although arbitration may not be able to be commenced amid pandemic, that future arbitration law (and amendment of existing arbitration law) should foresee feasible events with a smaller "pandemic", i.e., epidemic and other force-majeure related events. This article recommended firstly, the introduction of provision(s), which recognizes virtual arbitration. Secondly, changes of some procedural issues in the arbitration proceedings.

Keywords: COVID-19, arbitration law, virtual arbitration.

A. Introduction

One of the impacts of the spread of COVID-19 Pandemic on the legal system in Indonesia is arbitration law. Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution, lays down the substantive provisions on arbitration. The Law also provides regulations on the conduct of arbitration proceedings which includes hearings of the parties, hearings of the experts or factual witnesses, if appropriate, and issuance of the award.

When the pandemic hit severely Indonesia in early February 2020, the

government announced the imposition of social distancing and the lock down of some major cities. The announcement of lock down first began in Jakarta and later other major cities followed suit. The policy seemed to follow several states in the world. Governments of Japan, United States, European Union, Russia, or even Kingdom of Saudi Arabia have already imposed strict social distancing protocol and locked down their cities to prevent the spread of the pandemic.

Following the government's announcement, the leading arbitration

organization in Indonesia, BANI (Indonesian National Board of Arbitration), released a notice concerning the postponement of all the arbitration proceedings. The announcement is posted on the website as well as the temporary closure of the office.¹

The postponement of the arbitration without a doubt affects the arbitration proceedings. The halt of arbitration proceedings would also mean the postponement of the hearing of already new registered arbitration request and the postponement of the issuance of awards. This article examined whether Arbitration Law No 30 of 1999 provides certain provision to allow the arbitration proceedings in a non-conventional way or traditional arbitration going in the light of the pandemic? Secondly, whether the arbitration proceedings by means of virtual communication might possibly be commenced given the existing arbitration rules? Since the conduct of arbitration would be subject to the arbitration rules, this article would also try to look at the arbitration rules under BANI Arbitration.

B. Research Method

This article was written based on normative research. It analysed legal norms, including rules, on arbitration. It is a descriptive-analysis article based on systematic interpretation. This article took the analytical and qualitative approach to

address the problem. The data used was the Indonesian laws on arbitration, Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution, and UNCITRAL Model Law on International Commercial Arbitration 1985/2006. The article also looked into the arbitration rules of the BANI arbitration.²

A number of terms used in this article among others:

1. *Global force majeure*. This term is used to indicate the occurrence of force majeure in a global scale. Force majeure is the condition where one is prevented from doing or not doing something due to severe, unpredicted conditions. These include the outbreak of pandemic or epidemic, war, natural disaster such as tsunami, mass demonstration, etc.
2. *Virtual arbitration*. This term is used to indicate an arbitration conducted without the presence of the parties (in a venue of hearing). It is an arbitration that is conducted through internet platform or other form of internet-based communication.
3. *Platform*. Referring to the term of platform provided by techopedia.com, it means "... a group of technologies that are used as a base upon which other applications processes or technologies are developed. In personal computing, a platform is the basic hardware (computer) and

¹ See the announcement of BANI concerning the temporary closure of the office at: <http://www.baniarbitration.org> [accessed at 08 May 2020]

² BANI Arbitration Rules as posted at: [http:// https://www.baniarbitration.org/ina/procedures.php](http://https://www.baniarbitration.org/ina/procedures.php) [accessed at 08 May 2020]

software (operating system) on which software applications can be run”.³

4. *Pandemic*. The World Health Organization (WHO) defines Pandemic as the “worldwide spread of a new disease”.⁴ The new virus COVID-19 is the pandemic recently announced by WHO. It initially appeared in Wuhan China and spread globally in a short matter of time.
5. *Epidemic*. WHO describes epidemic as the spread of a new virus within a certain region or area.⁵ The SARS (severe acute respiratory syndrome) is a well-known epidemic that emerged in China in 2002. Another example is the outbreaks of *cutaneous leishmaniasis* taking place in the southern part of Sing and Beluchistan Provinces in Pakistan in 2004, and in Ban, a village in the Islamic Republic of Iran in 2003, and in Sudanese refugee camps of Treguine and Koukou, Chad in 2007.⁶

C. Discussion

1. Arbitration in the Time of Pandemic

a. Arbitration as the Traditional System of Dispute

Arbitration under this article is a settlement of a commercial dispute by third party. The basic principle of arbitration is the existing of an agreement between

the parties. It is the parties’ autonomy and agreement to determine how to settle their disputes. This procedure is the product of the agreement that must be made in writing. The agreement between the parties indicates that arbitration is a private parties’ settlement of disputes.

Arbitration is subject to the substantive law of a state. It is also bound by the arbitration rules. Major arbitration institution such as the London Court of Arbitration (LCA), the Indonesian National Board of Arbitration (BANI) or the Thai Arbitration Centre (THAC) has its own arbitration rules. The Rules is also called procedural rules of arbitration. It is the law of the procedure of arbitration to determine how the dispute be submitted, the composition of the tribunal, the parties’ hearing and the arbitration award.

The parties in dispute may also agree to settle their dispute by an *ad hoc* arbitration.⁷ It is a temporary and one-time arbitration set up by the parties to settle their dispute. The parties shall first agree on the rules of arbitration and the financial matters necessary for the administration of the dispute.

Arbitration, either institutional or *ad hoc* arbitration under the substantive law and rules, is commonly conducted in private. The tribunal and the parties’ hearings are

³ <https://www.techopedia.com/definition/3411/platform> (accessed at 11 May 2020).

⁴ https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/ [accessed at 09 May 2020]

⁵ <https://www.who.int/leishmaniasis/epidemic/epidemics/en/> [accessed at 09 May 2020]

⁶ *Ibid.*

⁷ Article 6 para. 9 Arbitration Law No 30 of 1999 provides: “If attempts to reach an amicable settlement, as contemplated in paragraphs (1) to (6), are unsuccessful, the parties, based on a written agreement, may submit the matter to resolution by *an arbitration institution or ad-hoc arbitration.*” (Italics added).

held in a private room. Only the parties in dispute may attend the hearings. Physical presence of all the parties as found in the traditional court system, are necessary. The hearings are generally conducted orally. The parties, the applicant and the respondent, must be present in person before the tribunal.⁸ Rarely arbitration is conducted via teleconference, or other internet-based communication- (virtual arbitration).⁹

An exceptional arbitration where the presence of the parties are not required and the process is held virtually (through the internet) is the Domain Name Arbitration. It is a special arbitration also called the UDRP or the Uniform Dispute Resolution Policy to settle the domain name ownership dispute. It is a special arbitration established by the cooperation between WIPO (World Intellectual Property Organization) and ICANN (the Internet Corporation for Assigned Names and Numbers). ICANN is the organization concerned with managing the assignment of domain names and internet protocol addresses.

The dispute under UDRP is settled without the presence of the parties. All the 'hearing' conducted through the internet. In addition, the decision of the UDRP arbitration is final and binding. The decision of the UDRP arbitration concerning the

rightful ownership of domain name is enforced and executed as soon as the award is rendered.¹⁰

b. The Emergence of COVID-19 Pandemic

The outbreak of a new virus called COVID-19 emerged at the end of 2019. The deadly virus is the most contagious virus ever known. It spreads rapidly to the whole world within a short period of times. The spread is fast. The rapid development of air transport and the fast movement of person travelling across continents contribute to the spread of the virus.

The pandemic has affected how the governments change their economic and financial policy. The governments in five continents have locked down their territories. They also ordered and closed down the government's and companies' offices, shops and markets, schools and universities, industries and all social and cultural, and sport activities. Public transports including train and interstate buses, stopped operating. They also released the protocol-for people to stay and work at home. The order and protocol have halt the administration of arbitration, including as shown below, BANI and other major arbitration intuitions in the world.

c. International Arbitration Law and Practice

⁸ Basic understanding on arbitration see among others, Huala Adolf, *Dasar-dasar, Prinsip dan Filosofi Arbitrase (transl. Basics, Principles and Philosophy of Arbitration)*, Bandung: Keni Media, 2014.

⁹ However, according to Redfern and Hunter, it is a common practice in international arbitration to have their first or preliminary meeting through teleconference. It is initiated by the chairperson of the tribunal to talk via telephone with the parties discussing the procedural matters of the dispute. (See: Nigel Blackaby et.al., *Redfern and Hunter on International Arbitration*, Oxford: Oxford U.P., 5th.ed., 2009, p. 371).

¹⁰ <http://www.icann.org/> [Accessed at 30/09/2008].

UNCITRAL Model Law on International Commercial Arbitration of 1985 (amended in 2006) is the most important and incorporated it in legislation on arbitration. About 83 jurisdictions have adopted Model Law into their arbitration law. Most members of ASEAN adopt the Model Law. Indonesia, Laos and Viet Nam are not in the list.¹¹

The Model Law however is silent about the conduct of arbitration via teleconference or internet. The major provisions of Model Law deal with the conduct of arbitration: from the registration of the case, the composition of the tribunal, the arbitration proceedings and the awards. They are applicable for arbitration under normal condition. Normal condition means the conduct of arbitration with the actual presence of the parties and the tribunal in a certain designated venue.

In respect to arbitration, no law or rules regulate the conduct of arbitration during the pandemic. Moreover, observation found that amid the pandemic major arbitration institutions in the world; the International Chamber of Commerce (ICC) arbitration and the American Arbitration Association (AAA) are not operating. No arbitration cases have been reported during the pandemic. No hearings were held during the pandemic for a certain period of time.¹²

Obviously, the observation above might be challenged. Since the arbitration proceedings are confidential, the arbitration may be conducted in other countries or regions where these activities are not reported because of its confidential nature of arbitration. Accordingly, presuming that the above observation reflects the actual fact, it is proposed that the absence of arbitration in the world is plausible given the strict enforcement of lock down in major cities in the world, including Paris, London or New York.¹³

d. Indonesian Arbitration Law

1) Status of the Arbitration Law

Indonesian Arbitration Law was made following the financial crisis in South East Asia. The crisis stormed major states in the region. Started with Thailand, later the storm hit the neighbouring states badly, including Indonesia. The crisis pushed the law reform including arbitration law necessary to mitigate the crisis. Financial crisis has triggered financial disputes that would be better resolved by arbitration.

The old law on arbitration applying the Dutch procedural Law, (*Reglement op de Rechtsvordering* or *Rv*) Articles 615 to 651 were removed. The old arbitration law was left behind the progressive development of arbitration law in the world. It was a colonial law on arbitration. Woman for

¹¹ Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status (accessed 8 May 2020).

¹² ICC Issues Guidance on Possible Measures to Mitigate Effects of COVID-19, <https://www.morganlewis.com/pubs/icc-issues-guidance-on-possible-measures-to-mitigate-effects-of-COVID-19-cv19-lf> (accessed 17 April 2020); The AAA announced that *AAA-ICDR remains active and operational, no hearings will take place in AAA-ICDR hearing facilities until at least June 1, 2020*. (<https://go.adr.org/covid19.html>) (accessed 17 April 2020).

¹³ *Ibid.*

example was not qualified as arbitrator. The New Law No 30 of 1999 was installed.

The Arbitration Law is understandably made in an urgent speed under the financial crisis condition. It does not follow the *UNCITRAL Model Law on International Commercial Arbitration*. Most of its provisions, crafted under the emergency condition, are made for domestic arbitration. Most of its provisions are devoted for arbitration held within the Indonesian territory. There are however five articles for international arbitration. Nonetheless, these provisions are only for the recognition and enforcement of international arbitration awards.¹⁴

2) Provisions on Proceedings-based-Internet

The Arbitration Law contains quite surprising provisions. The Arbitration Law envisages the possibility of commencing arbitration in special conditions. The Law provides a possibility of utilising technology or electronic communication for the commencement of arbitration. This includes:

a) Article 4 (3) Arbitration Law on Arbitration Agreement

Article 4 para. (3) Provides, the agreement to arbitration made by among others email or any other form of communication. No explanation what the so called any other form of communication would mean. This provision suggests, firstly, any forms of communication would be accepted as long as the parties agree.

This would include any communication indicating the agreement of the parties to submit their dispute to arbitration.

Secondly, since the agreement to arbitration is made by "email or any other form of communication", this would imply that the Law does not question the means or mode of communication the parties use for their communication. If this interpretation were correct, the form of communication would be the freedom of the parties. It would be the parties alone to decide to use a certain form or mode of communication available to both of the parties and agreed by them.

The freedom to use the form of communication would also signify the mode of communication would be applicable to the tribunal. The parties may agree that their communication with the tribunal be conducted by using a certain mode of communication, this for example would be internet-based-communication. This construction suggests that the use of mode for communication for example applying teleconference or video-conference is doable. The only requirement is that the parties agree, and the tribunal gives its consent. The limitation for using this communication is that they do not violate the mandatory provisions of the law. These include the secrecy of the proceedings, the adherence to the principle of *audi alteram et partem*, etc.¹⁵

b) Article 14.4 BANI Rules on Place of Hearing

¹⁴ Articles 65-69 Arbitration Law.

¹⁵ Article 28 (1) Arbitration Law states: "The parties in dispute shall have the same right and opportunity to put

BANI Arbitration Rules allow the parties and the tribunal to have their hearings made through internet means. BANI Arbitration Rules provides a broader power to arbitration tribunal to give its consent or refusal. Enshrined in Article 14.4 BANI Rules, this provision concerns the place of arbitration. As this article suggests, the place of hearing is closely related with the place of where the communications is conducted. The communication made by the Internet may take place by applying various platforms as agreed by the parties and the arbitration tribunal. Article 14.4 BANI Rules provides:

4. Place of Hearings

Hearings shall be conducted at a place determined by BANI and the agreement of the parties but may also be at another place if the Tribunal deems necessary with the agreement of the Parties. The Arbitration Tribunal may request that meetings be held to examine assets, other goods, or documents at any time and at the required place, with notice as required to the parties, to allow them to be able to attend the examination. Internal meetings and sessions of the Tribunal may be held at any time and place, including over the internet, if the Tribunal deems appropriate.

2. Possibility of Arbitration during Pandemic

Indonesian Arbitration Law and the BANI Rules above advocate the arbitration proceedings conducted through communication by internet. The Law

allows the arbitration proceedings to be commenced using internet devices or other form of communication including virtual communication or telecommunication-based technology as long as the parties and the tribunal consent.

The availability of technology for communication is supportive. There are a number of platforms where people may easily communicate virtually. The platforms are supporting the virtual communication among people living in different places, cities, or even continents. People in the world have utilized this instrument during the pandemic to communicate virtually with their families, friends, or colleagues.

The scheme above theoretically and practically may be used by the parties and the arbitration tribunal for arbitration process including the hearings (virtual arbitration). The spirit is, first, technology could support arbitration proceedings where the parties and the tribunal agree to use it.¹⁶ Second, the parties find hardship in attending the place of hearing.

3. Possibility of Problems

The reliance on the existing law and rules and technology may be well served to the possibility of arbitration hearing through virtual communication. However, it is of the opinion that potential legal problems might arise ahead. Arbitration and arbitration proceedings cannot rely fully on virtual communication. There are some provisions that require physical

forward their respective opinions”.

¹⁶ As comparison, the Indonesian Supreme Court has issued Supreme Court’s Regulation No 4 of 2020 on the use of electronic means in the courts’ proceedings.

actions during or after arbitration hearing.

In addition, the reliability of communication-based internet might arise another problem. This article suggests that the use of virtual communication might not be appropriate to be applied for arbitration, at least during COVID-19 pandemic. To I will start the argument potential problem of communication-based internet will be elaborated and followed with the discussion on the potential legal problems related to virtual arbitration.

a) Problems of the Secrecy of Proceedings

The popularity of a certain platform for virtual communication has been an unprecedented development in the world. Fear of virus infection and the governments order to stay and work at home, have driven people to use the internet for communication.

There are nonetheless reports stating that certain government or office urged its staff not to use a certain virtual communication platform. They fear this certain platform is not free from intrusion. A possible breach of privacy is imminent. Nonetheless, the reliability of the reports needs to be tested. The reports may be a hoax. Yet, whether they are hoax or not, the issue of breach of privacy is not disputed.¹⁷

It has been widely reported that once one connects his devices to the internet,

other people somewhere might be able to access his computer. Others may know what websites he is surfing, what content saved in the computer, the private number of his personal account, etc. In short, the fear of potential breach of privacy has been a common knowledge. Only when the platform has been safe and free from intrusion, can the virtual arbitration hearings be safely and confidently held.

b) Infrastructure of the Telecommunication Devices

The potential problem of telecommunication infrastructure is worth noting. Big cities like Jakarta, Surabaya or Bandung, enjoy a relatively stable internet connection. The stable connection brings stable communication and conveniences. On the other hand, for small cities, such connection is still a luxury. The internet connection is occasionally poor and poor connection brings poor communication. Hence, it would be unlikely to conduct arbitration hearings in rather poor communication as it may damage the credibility of the hearings.

c) Determination of the Place of Arbitration

Another problem which needs a solution is the determination of the place of arbitration. Place is a relevant matter in arbitration. Law requires the mention of place of arbitration. The award among others shall state the place of arbitration.¹⁸

¹⁷ The ban of using a certain popular platform has been once widely reported. For comparison concerning the safety of privacy in internet, see for example: Assafa Endeshaw, *E-commerce, Internet Law and E-commerce Law: With a Focus on Asia-Pacific*, Singapore: Prentice Hall, 2001 (discussing among others the consumer protection in cyberspace. As Endeshaw put it, "Indeed, every indication is that the previously acquired rights of protection and safeguards put in place on behalf of the general consumer in "realspace" are increasingly being eroded to the detriment of the Net consumer (that is, in cyberspace)) (page. 404).

The place of arbitration is more relevance in international arbitration. The place of arbitration will determine the state where the award is made. The state will determine the status of the award. The state, that is a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, would get the guarantee that the award will be recognized and enforced in other members' courts.¹⁹

d) Site Visit to the Object of the Dispute

During the hearings, sometimes the tribunal wants to see the object of dispute directly. The decision is made mainly because the tribunal sometimes want to ensure themselves the status of the object of dispute. Particularly in a dispute involving physical object, such as failed infrastructure as an example. It is critical for the tribunal to see the infrastructure condition since by observing the site, the tribunal would make its own judgment concerning the reasons or status of the failed infrastructure. This would mean the tribunal and the parties should visit the object of the dispute in a location within the province, in other parts of the islands, or even foreign soil.

e) Taking of Oath

Under the Arbitration Law, taking oath of factual witness and experts are mandatory. Article 48 Arbitration Law provides that witnesses or expert witnesses shall testify upon oath. During pandemic, it is not

possible for factual witness or expert to visit the venue of arbitration to take oath.

f) Signature of the Award

The arbitration award must be signed by the member of the arbitration tribunal. The award must be printed, made in a hardcopy. Article 54 (1) Arbitration Law requires that the award must contain among others, the signature(s) of the arbitrator or arbitration tribunal.

g) Registration of the Arbitration Award

Another likely problem with the arbitration award during the pandemic is the requirement of registration of arbitration award. Article 59 of Arbitration Law provides, domestic arbitration award shall be registered with the district court. The registration must be made within 30 days since the award is rendered.

The international arbitration award faces the same requirement. Article 67 (1) Arbitration Law provides that application for enforcement of an international arbitration award shall be made after the award is submitted for registration to the Clerk of the District Court of Central Jakarta by the arbitrator(s) or the legal representative thereof.

The different requirement on registration of award between national and international award is as follows. First is the time limit for registration. Under the domestic arbitration award, the arbitrator or its representative must register the award

¹⁸ Article 54 (1) of Arbitration Law requiring the mention of place of arbitration in the arbitration award.

¹⁹ New York Convention of 1958 is the most important convention on arbitration. About 160 countries in the world have ratified the convention. (See, for instance, Huala Adolf, *Arbitrase Komersial Internasional (transl. International Commercial Arbitration)*, Jakarta: Rajawali Pers, 2002; Huala Adolf, *Hukum Arbitrase Komersial Internasional (transl.: International Commercial Arbitration Law)*, Bandung: Kencana Media, 2016).

within 30 days since the award is rendered. Under BANI Arbitration Rules, when the award is rendered, the parties have 14 days to check the typographical errors of the award. When the check is completed, the arbitrators or its representative has 14 days to register the award to the district court. International arbitration awards do not have the time limit for registration.

Second is the court of registration. The domestic arbitration award shall be registered at the district court where the defendant is domiciled. International arbitration award is to be registered with the Clerk of the District Court of Central Jakarta.

Third is the person registering the award. The party submitting the registration of the domestic arbitration award is the arbitrators or its representatives. In international arbitration awards, the parties seeking the recognition and enforcement of the award are the ones who register the award to the Clerk of the District Court of Central Jakarta.

As the requirement above indicated, the failure of the arbitrators or its representative to submit and register the domestic award is quite considerable. There has not been any reported case where the court refused enforcement of the award because the requirement of this time limit is breached. However, when this occurs, the consequence of the court's refusal of enforcement of arbitration award

is a possibility.

Another dilemma with the registration of award and the requirement of signature (above) would be the violation of lockdown order and the protocol to stay at home. The requirement of signature and the registration of award require a person to travel from one place to another.

My propositions in this respect are twofold. *First*, public law principally prevails over private agreement (agreement of parties to arbitrate). Private agreement may not set aside the application of the public law. *Second*, government order including protocol may be classified as rules or bylaws, soft law, or any other applicable terms. Whatever terms used, they are "commands".²⁰ All subjects, citizens, or persons staying or domiciling in the state territory concerned shall be subject to those rules or bylaws.

4. Future Law Reform on Arbitration

The analysis above indicated the impossibility of arbitration hearings to carry out during the outbreak of pandemic. In terms of theory and practice, the common policy of government in the world to lock down their cities and to enforce the protocol to stay and work from home, make it impossible for arbitration hearing to be commenced.

Nonetheless, COVID-19 pandemic has a strong impact on legal system, including part of its sub-system of settling dispute through arbitration. As arbitration law is

²⁰ I borrowed this terms from John Austin's. See: H.L.A. Hart, *The Concept of Law*, Oxford: Oxford U.P, 3rd.ed., 2012, pp. 6, 7; Huala Adolf, *Filsafat Hukum Internasional: Perspektif Negara Sedang Berkembang* (transl. *Philosophy of International Law: Developing Countries Perspective*), Bandung: Keni Media, 2020, pp. 41-42.

concerned, it needs to adapt itself to the unpredicted circumstance including the outbreak of viruses or other diseases-related occurrence including force majeure.

Second proposition would be as follows. Arbitration proceedings may not be commenced during the global force majeure; however, arbitration proceedings may be conducted during epidemic or certain force majeure in a certain areas or regions. Since the force majeure takes place in a certain region, and not in other regions, arbitration proceedings should be able to be commenced in areas where the force majeure does not exist. When one or more parties or one or more arbitrators are affected by force majeure, virtual arbitration is the best option for the parties and the tribunal to keep arbitration process moving.

As arbitration is concerned, no law or rules regulate the virtual arbitration for the resolution of commercial disputes during the epidemic. Neither UNCITRAL Model Arbitration Law of 1985, the Arbitration Law No 30 of 1999 nor BANI Arbitration Rules regulates this condition.

Outbreaks and spread of virus causing epidemic in the history of mankind have occurred several times. Epidemic happens more frequently than pandemic. It is fairly plausible then to act vigilantly in response to the future outbreak of epidemic. It is high time to compose law and rules on virtual arbitration during epidemic or other force

majeure events or similar emergencies.

Since the nature of epidemic is within regions and its impact might affect other regions, arbitration law regulating virtual arbitration must be made under international arbitration law. It was proposed in the earlier publication that Indonesia should have its international arbitration law.²¹ And this law would be a separate law from the existing Arbitration Law No 30 of 1999.

The future international arbitration law should be in parallel with the amendment of Arbitration Law No 30 of 1999. The future legislation, international arbitration law and the amendment of Arbitration Law, should incorporate provisions allowing the practice of virtual arbitration in case of the epidemic or other force majeure events. However, several issues, either technical or legal, should be solved first. They include:

a. Technical Issues

Technical issues concern on the availability of reliable platform for virtual arbitration. To address the issue arbitration institution may consult experts on information and technology regarding the availability and reliability of the platform and the technicians to run the platform. Technology is developing progressively. New inventions on information technology are developing rapidly. It is envisaged, new platforms would emerge in the near future. Thus, it is believed that they would suffice to cater the need for safe and

²¹ See: Huala Adolf, "Perlu Dibentuk Undang-Undang Tentang Arbitrase Internasional," (transl.: "International Arbitration Law should be established"), *Majalah Hukum Nasional*, No 1 (2016).

reliable platform of virtual communication.

b. Legal Issues

Legal issues are more complicated. The contemplated legal issues that need to be settled in light of the present Indonesian Arbitration Law includes:

1) Provisions on the Recognition of Virtual Arbitration

Future arbitration law should lay down certain provisions allowing parties to use virtual arbitration to settle their commercial dispute. The provisions should also specify under what circumstances virtual arbitration may be utilized. These provisions are essential. They give guarantee and recognition of the implementation of virtual arbitration. They would also provide legal assurance that the award or the decision of virtual arbitration will be recognized and enforced by law.

2) Arbitration Documents

All documents submitted by parties should no longer be in a physical format. In virtual arbitration, all documents must be made electronically. For example, documents now may be easily converted into pdf format. All these pdf documents should be submitted by email.

3) Site Visit

One of the legal issues most probably arises in virtual arbitration is site visit. Site visit is visiting and seeing the object of dispute. Future arbitration law may no longer be necessary. The future law may require the parties to provide the tribunal

complete pictures including recordings of the object of dispute. By doing this, the tribunal will not be necessary to visit the site visit.

4) Requirement of Oath

Under the traditional arbitration and arbitration law (above), taking oath of factual witness and experts are required. In virtual arbitration, two possibilities may be considered. *First*, oath is optional. A written statement signed before public notary shall be sufficient. Alternatively, if the oath is mandatory, it may be taken virtually. Hence, the future law should recognize such oath.

5) Reading the Award

Under traditional arbitration, arbitrator or the arbitration tribunal read the award before the parties. A certain date is set for reading the award. The requirement of reading the award is stated in Arbitration Law.²² In virtual arbitration, it is no longer necessary to read the arbitration award. UNCITRAL International Arbitration Law and major international arbitration laws and practices do not recognise the reading of the award. The arbitration tribunal only send the award by registered mail to the parties because arbitration is a private procedure of settlement of disputes. It is not a public court or domestic court where the reading of award is mandatory.

6) Signature of the Award

The future law should recognize electronic signature as today it has been

²² Arbitration Law Article 55 states: "When the examination of the dispute is complete the hearing shall be concluded, and a date shall be fixed for *the reading* of the arbitration award." Article 57 reads: "The award shall *be read* not later than thirty (30) days after the conclusion of hearings." (Italics added).

widely used. Electronic signature therefore should be allowed in virtual arbitration.

7) Requirement for Registration of Award

Requirement for registration of award should be made flexible. First, the requirement concerning the time limit of 30 days as required by Arbitration Law should be deleted. Arbitration Law does not require any time limit for its registration. Such distinction should be abolished.

8) Online Submission of Award for Registration

The future law should also allow the registration of award sent by online. Parties who like to register their award may do so by sending the award through email to the district court. This would imply, the district court should also be ready to accept and recognise this scheme.

Lastly, besides the reform of law above, the arbitration rules under arbitration institution should follow suit. They should draft their own rules and expand it to other practical matters to ensure and enable virtual arbitration to be conducted property and orderly.

D. Closing

This article concluded that the present arbitration law needs amendment given the recent development of the pandemic. The amendment should include the possibility of the parties to use electronic means in the proceedings. The arbitration rules need to adopt more rules on electronic means in the arbitration proceedings.

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Curriculum Vitae of the Author

Prof. Huala Adolf, S.H., LL.M., Ph.D. (huala.adolf@unpad.ac.id) is professor of law at the Faculty of Law, Padjdjaran University, Bandung, Indonesia. He graduated from Faculty of Law, Padjdjaran University (Bachelor of Law), Sheffield University, United Kingdom (Master of Laws) and Philosophical Doctor (National University of Singapore). He is chairman of the Centre for International Trade Law and Arbitration (CITLA) at Faculty of Law, Padjdjaran University.