

# THE INFLUENCE OF ARBITRATION COST ON THE COMMENCEMENT OF INTERNATIONAL COMMERCIAL ARBITRATION DISPUTES EXAMINATION

WRITTEN BY: RIMA BASKORO, S.H., ACIARB.  
(PERADI LICENSED LAWYER, LISTED LAWYER IN FOREIGN  
EMBASSIES IN INDONESIA, AND ASSOCIATE OF  
CHARTERED INSTITUTE OF ARBITRATORS

**The utilization of arbitration forums as an alternative dispute resolution is one of the important consideration for entrepreneurs in their strategy for handling cases. Selection of a dispute resolution forum will greatly affect the rolling of the case examination.**

This is because what happens in the case examination process will become a legal consideration for the panel to decide this case. The following is a description of the advantages of arbitration forums in relation to case handling strategies:

1. Private and closed, no other party may enter the courtroom. With this condition, neither the media nor other parties will know about the parties' disputes. In other words, the image and brand of the parties can be maintained. Moreover, the arbitral panel is free from public opinion and pressure, in which it can influence the arbitration award;

2. Freely to choose the arbitrator. By choosing an arbitrator who understands the substance of the dispute, it will be easier for the parties to convey the dispute.

3. The procedural is flexible, not as rigid as in a court. Even the parties are given the freedom to form their own procedural law as long as they do not against the prevailing laws and regulations;

4. Quick period. Because there is a belief for business people that "time is money". The longer the handling time of a case, the more time, money and energy it will waste. With arbitration, such matters can be mitigated;

5. The decision is final and binding. So that the parties, like it or not, must carry out the decision in good faith.

Apart from those mentioned above, one important factor that will affect the course of the case is the arbitration cost.

### **Arbitration Cost**

Two types of costs which is usually applied based on international arbitration such as SIAC, HKIAC, LCIA, etc are administrative fees paid to the arbitration institution, and arbitrator compensation and expenses. Both of these costs are initially collected by the arbitration institution then sends the arbitrator compensation and expenses directly to the arbitrator.

Administrative fees include filing fees and final/hearing fees. Filing fees are paid when a party files a claim against the other party. In some rules, the filing fee is based on the amount of money requested in the claim. Final/Hearing fees are paid for cases that proceed to an evidentiary hearing, and are payable in advance at the time the first hearing is scheduled. This hearing is where the parties meet in-person or on the telephone to present their case to the arbitrator.

The amount of compensation the arbitrator receives depends on how much work they have to do on the case. The arbitrator is paid based on a rate of compensation. Depending on the rules and case, this rate may be set in the applicable fee schedule or by the arbitrator. Thing we must remember here is the arbitrator is a neutral person selected to decide your case. They does not work for arbitration institution. Instead, they receive payment from the parties for handling the case.

### **Charging Of Arbitration Fees And Commencement Of Arbitration**

The amount of Arbitration cost depends on the value of the dispute and will vary in each Arbitration forum. For example, the percentage of arbitration fees at SIAC will be different from the percentage of arbitration fees at HKIAC. This is because each forum has its own arbitration rules. The arbitration cost percentage in each arbitration forum can be seen on the respective websites.

Arbitration Fee is usually and appropriately charged to the parties, namely the Claimant and the Respondent. Each party bears an equal share, namely 50 - 50 of the total arbitration costs. The Arbitration Institution selected by the parties will send a letter to the Claimant and Respondent regarding the amount of arbitration fee to be paid.

If the Arbitration Fee has not been paid off, the investigation of the dispute will not begin. Respondents who are observant of this opportunity usually take advantage of it by not paying the arbitration fees that the arbitration institution bills him. With the unpaid arbitration fee by Respondent, the case examination at the arbitration forum will not be commenced. The longer this dispute being delayed for examination, it will give special pressure to the Claimant. However, the Claimant has an option to pay the entire arbitration fee in advance if the Respondent does not pay the arbitration fee according to its portion. Therefore what often happens is that in the end the Claimant must first cover the arbitration fee in order to commence the examination of the arbitration dispute. Because the longer the time is delayed for examination, the parties will also get justice delayed.