

Bringing The Technology to Be Applied with Arbitration

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Abstract

The objectives of this paper were to: (1) study principles and regulations of E-Arbitration in Thailand; (2) study process of E-arbitration in Thailand, China and United States of America; (3) compare legal measures for E-arbitration in Thailand with foreign countries; and (4) find guidelines of legal measures for e-arbitration in Thailand. This paper is qualitative research with a method of documentary research. Data used for investigation are from the THAC of Online Disputes Resolution Rules B.E. 2563(A.D. 2020) and the laws in foreign countries such as the United States of America, People's Republic of China and related laws, books, articles, academic papers, research, thesis, and information from the Internet, both in Thai and English. The results of the research were as in the followings: (1) the process of E-arbitration is not accessed by people; and (2) the process of E-arbitration is not efficient. Therefore, the researcher suggests that E-arbitration should be the suitable legal measures in Thailand.

Keywords: Alternative Dispute Resolution, Technology, E-arbitration

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I. INTRODUCTION

Normally, when there was a conflict caused by disagreement between persons or people in general, it may be an infringement, a claim, or the maintenance of legal rights until there are different needs causing both parties to disagree with each other, making a claim to the person with different opinion to act according to or accept one's opinion is known as a "dispute."

Conflict management in order to make a settlement when there is a dispute, if one party does not want to terminate a claim through the court, which is in the process of the mainstream judicial process, he may choose the method of Alternative Dispute Resolution (ADR), which consist of :1) negotiation, 2) mediation, and 3) arbitration. In this article, the author will place emphasis mainly on arbitration, which is the most complicated one of ADR. Its characteristic is similar to court proceedings, which parties appoint persons to become arbitrators to make the award with willingness of both parties to allow an arbitrator, who is an impartial person or faculty jointly selected by both sides. Accordingly, the results of the award will be a legal binding for both parties if there is an infringement of the award afterward, either party is able to file a lawsuit in court or a government agency.

Nowadays, there has been coronavirus 2019 (COVID-19) pandemic in many countries around the globe including Thailand. There are a number of infected people who have been treated at hospitals and some of them died. The World Health Organization (WHO) made an announcement that it is a global pandemic disease and obviously at the present time there are no proper guidelines to treat COVID-19. This has caused the government to use intensive measures to control the outbreak of COVID-19 as suggested by WHO, especially social distancing and Dispute Resolution process, particularly Arbitration through electronic method, which has been used to make the process of seeking justice to be executed without coming to a sudden stop. Consequently, Dispute Resolution via electronic method will be convenient, rapidly and cost saving, which is the significant principle of justice.

II. RESEARCH OBJECTIVES

The objectives of this article were to: 1) study principle and regulation of e-arbitration in Thailand; 2) study process of

e-arbitration in Thailand, People's Republic of China and the United State of America; 3) compare legal measures for e-arbitration in Thailand with those from foreign countries; and 4) find guidelines of legal measures for e-arbitration in Thailand.

III. RESEARCH METHODS

This paper is qualitative research with a method of documentary research. Data, used for investigation are from the THAC of Online Disputes Resolution Rules 2563 B.E.(2020 A.D.) and the laws in foreign countries such as the United States of America, China and related laws, books, articles, academic papers, research, thesis, and information from the Internet, both in Thai and English

IV. RESULTS

From the study, it was found that the court of justice faces with an increase in a large number of cases annually affected by economic and social growth together with the complicated characteristic of cases brought to the court resulted in the long duration of time used for trial and make a judgement. Consequently, parties turn to the method of arbitration instead of court proceedings because COVID-19 pandemic makes the proceeding of face-to-face arbitration impossible. Thus, there is the implementation of technology known as online arbitration, which is one method of dispute resolution. In so doing, disputing parties agree to eradicate the disputes by having arbitrators as their mediators. The arbitrator is one who has the power to adjudicate while people concerned with the process do not need to travel or meet with one another in order to execute the consideration process. However, the new form of technology is used with Arbitration in order to communicate among people involved in arbitration whether they are communication, testimony, and trials between parties and an arbitrator or between parties themselves, or among parties, the arbitrator and a service providing institute.

In Thailand, there are two agencies providing dispute resolution service by means of online arbitration, namely 1) Thailand Arbitration Institute, Office of the Court of Justice (TAI), TAI has used technology to facilitate arbitration apart from having electronic arbitration system, the institute extends providing service of video conferencing system or meeting via electronic media. This causes online dispute resolution by

means of online arbitration effective and becomes more full-service operation. TAI has laid down principle in the regulation related to Guidelines of Using Arbitration System via Electronics 2020 A.D. and 2) Thailand Arbitration Center (THAC) is the institute, which provides arbitration service and conciliation on a global scale. It has been in operation since 2014 A.D. with the objective to support and encourage an international arbitration system together with providing arbitration service which is independent with international standard. Moreover, THAC has developed "TalkDD" system, which is the platform of Online Dispute Resolution(ODR) for online arbitration and online mediation. Moreover, there are the Arbitration Institute's rules related to online ODR A.D. 2021 to be used with "TalkDD" system.

In an execution of online arbitration of TAI, there is the development of e-arbitration system, and one has to sign in the system every time. And a system user is able to tender a dispute through the system all the time when the system is accessible. Tendering disputes is assumed complete when a system user acts in accordance with stages in the system and pays for the expenses of arbitration class as specified by the institute. Legal proceedings are to be executed via VDO conferencing system or meetings through electronic media. Venues and dates of executing the proceedings through VDO conferencing system or meetings through electronic media have to be prescribed by the arbitration tribunal in accordance with parties' agreement. The officials prepare the system at the Arbitration Institute and cooperate in executing legal proceedings. Moreover, it is deemed that VDO conferencing system or the meetings through electronic media are those the arbitration committee and parties agree to bind legally, and are prohibited to neglect hearings of electronic information gained from an execution of arbitration through VDO conferencing system or meetings through electronic media whereas the arbitral awards may be executed through VDO conferencing system or meetings through electronic media. [1].

"TalkDD" system, which was developed by THAC, has started its operation since 2015 A.D., but it is not successful enough. Then, THAC updated and developed its forms of usage with the following stages:



Fig. 1 The Process of TalkDD system

However, in Thailand Dispute Resolution by means of online arbitration has not been prevalent whereas in other countries like the United State of America, and the People's Republic of China, both government agencies and a private sector are service providers. In the United State of America, there is an agency called Arbitration Resolution Services, Inc., which is one of the private sector providing service of dispute resolution by means of online arbitration by classifying rules in two types, namely rules and regulations of the first type of online arbitration known as Rules &

Regulations Business To Business Program, and the second type is known as Rules & Regulations Businesses To Individuals Program.

From rules and regulations by ARS, there are the prescriptions of details from the initial stage to the stage of making an award. That is, according to Section 3 of Rules & Regulations Businesses To Individuals Program just in case when a petitioner wants to use dispute resolution by means of online arbitration, he must subscribe with Arbitration Resolution Services, Inc. (ARS) first, then he will be able to file a claim. Once, the petitioner has become a member, it is deemed that the process of claim filing has started and Arbitration Resolution Services, Inc. (ARS) will notify a respondent that a claim was sent, and he must submit a reply within 30 days. Moreover, he is able to view a claim and documentary evidences submitted by a petitioner on a personal management system page of the Arbitration Resolution Services, Inc. (ARS) website. If the respondent has an objection to the claim, he is able to file it to the petitioner. Anyway, if he does not confirm his right to file an objection, it is assumed that he waives his right to do so. Accordingly, the respondent has to submit documentary evidences related to the claim filed by the petitioner, or those related to what have been sent back by the respondent. Just in case, when the respondent files an objection to the petitioner, the latter must respond within 30 days, together with submitting documentary evidences to support his claims. Furthermore, section 4 of Rules & Regulations Businesses To Individuals Program, it has provided disputing parties with the alternatives. That is, while executing a process, disputing parties are able to use the method of mediation, if they need to. And mediation method must be used only through VDO conferencing system.

In the proceeding, it has been specified by section 5 of the rules that proceedings of arbitration should be performed not by formal one except for either side of the parties ask for considerations by means of telephonic or VDO conferences. This means that considerations by Arbitration, which will have an award depending on the argument from the inspection of evidences such as contracts, receipts, photographs or e-mail. In case of formal consideration whether it is telephonic or VDO conference, it should be notified in advance in not more than three weeks before the consideration. Moreover, if there is no formal trial, Arbitration considers it from documentary evidences submitted in the system by disputing parties.

When taking an award into consideration, Arbitration should have an award in accordance with duration of time as specified in section 6 of the rules. That is to say, in case of informal consideration, Arbitration must have an award within 30 days after documentary evidences are submitted in the system whereas in case of formal consideration, after consideration by means of telephonic or VDO Conference, the Arbitration should be executed within 30 days after that method is completed. Therefore, it is obvious that rules and regulations of online Arbitration in the case of Rules & Regulations Businesses To Individuals Program of Arbitration Resolution Services, Inc. (ARS), there is the specification of Arbitration process and the duration of time to be used for the execution, which does not take a long period of time.

In the People's Public of China, there are Online Arbitration Rules of China International Economic and Trade Arbitration Commission (CIETAC), which is the oldest and the biggest Arbitration Institute in this country. Rules of

CIETAC mention specifically about dispute resolution by means of online Arbitration, but they do not mention about online negotiation and mediation. Those rules are divided into 5 chapters and 55 sections, and obviously there is the specification of process in details. It has also legislated the process of online arbitration consisted of three steps as in the followings:

Stage 1 Submitting a claim and sending it, which are identified in chapter 2 from section 10 to 16, which mention rules in submitting a claim that it must consist of which types of documents.

Stage 2 The process of Arbitration, which is formulated in chapter 3 from section 10 to 37.

Stage 3 The making of an award which is formulated in chapter 3 from section 38 to 40. In this stage, the arbitral tribunal is assigned to make decision within 4 months since there is a gathering of people unless the parties agree otherwise.

From an investigation of rules and regulations of Arbitration Resolution Services, Inc. (ARS) of the United State of America and Online Arbitration Rules of China International Economic and Trade Arbitration Commission (CIETAC) and compare with those of TAI as well as THAC can be concluded as in the following table:

Table 1. The comparison of online arbitration

Agency/ Country	Name of agency providing ODR service	Rules, regulations or laws pertaining to online Arbitration	Types of cases to be used	Law enforcement
United State of America	Arbitration Resolution Services, Inc. (ARS) / private sector	Online Arbitration Rules& regulations used in case of disputes between business sector and an individual including those between the business sector and its counterpart	To settle a dispute between an entrepreneur and a consumer and there are restrictions on use since it can be applied with contracts or disputes, especially those occurring in the United State of America	There is no prescription of enforcement and legal condition
People's Republic of China	People's Republic of China International Economic and Trade Arbitration Commission :CIETAC)	Online Arbitration Rules	Used with Dispute Resolution pertaining to electronic transaction and may be used with other disputes related to economy and trade agreed by disputing parties	Arbitration awards are legally binding upon parties
Thailand	Thailand Arbitration Center : THAC and Thailand Arbitration Institute : TAI, Office of the Court of Justice	Each institute has their own rules and regulations to be used with Online Arbitration process	Used with civil dispute such as purchase agreements, infringement cases, and etc. Also used with disputes from electronic transaction	In case of successful compound, a conciliator prepares a settlement contract for both sides of disputing parties to sign, and there is a preparation of arbitration award in case of online Arbitration

From the investigation mentioned earlier, the researchers encountered with problems on online arbitration as can be concluded in the followings:

1. Although Regulations of the Arbitration Institute related to Guidelines on the Use of Arbitration System via Electronics , 2021 A.D of TAI , and Rules of the Arbitration Institute Related to Online Dispute Resolution, 2021 A.D. have had a formal procedure starting from registration to the making of an award, data gained from the interviews with the arbitrators who used Arbitration system by means of electronics revealed that there has been some problems in part of identity verification of an individual who becomes witnesses in the case. Since when it is an online review process, one has to verify his identity by means of OTP system, which is hard to prove that he is the real personal witness or not. Furthermore, when it is an online testimony, it will cause some hardships to view appearances, facial

expression, tone of voice or manner of the witness while it is in the process of online testimony, which is different from a face-to-face one.

2. In Thailand, the time frame for the process of considerations of online arbitration has not been clearly fixed whether it will be finished in how many days together with the duration of time used in each stage. However, a person who executes his duty as an arbitrator will be allowed to use his decision power. Consequently, this makes online arbitration inefficient because there is no exact time frame causing disputing parties, who would like to use the service, not to feel confident with the system. Eventually, this results in the less successful online arbitration in the country.

3. In an execution of Online Dispute Resolution (ODR) by means of online arbitration, it is inevitable to use technology or electronic method. Practically, current technology is modern and complicated. Thus, it is necessary to be knowledgeable about technology and taken care of by experts.

V. RECOMMENDATIONS

The researchers would like to propose the following suggestions:

1. Problems related to an application of technology. Technology in the form of VDO conferencing or mediation through Skype should be used, and the government sector should support the use of technology to gain some knowledge and development. Since the preparation of platform of Online Dispute Resolution is related directly to technology which is totally executed through electronic system. In so doing, it is considerably necessary to be supported by experts who are efficient in this matter.

2. Practically, when putting the problem into consideration, it was found that Thai people are not efficient enough in terms of knowledge and understanding about Arbitration, and this has an impact particularly on online arbitration. Moreover, there are no construction and development of techniques or technology to accommodate the system. This has brought about the lack of trustworthiness of Thai people. Accordingly, the researchers would like to give some suggestions that related government agencies and the private sector should support and disseminate knowledge about arbitration. Specifically, the government agencies should assist in terms of infrastructure, for example income tax exemption or investment promotion for an agency executing Online Arbitration and, etc. Because the preparation for online arbitration system requires high investment capital.

CONCLUSION

Technology Revolution has brought about changes in methods of trade execution between entrepreneurs and consumers. Patterns of commodity trading have been changed from the past. That is, trading in goods or services is becoming online trading or trading through Website system, which is called “electronic commerce.” Consequently, the patterns of business disputes have also been changed. That is to say, business disputes occur not only from making written contracts, but also from online trading. Coincidentally, there has been COVID-19 pandemic in many countries across the globe including Thailand, and the number of people infected with COVID-19 and being treated in hospitals is dramatically

high whereas the death toll continues to climb. This has made Alternative Dispute Resolution or the prosecution not suitable for the current situation. Thus, it is necessary to use dispute resolution by means of Online Arbitration in order to solve those problems

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