CHAPTER I

INTRODUCTION

1.1 Background

Disagreements between businesses can easily arise from having different understandings of the terms of a contract, to blatant non-performance of an obligation set under a multiparty contract. That is why dispute resolution provisions are considered boilerplate provisions to a contract, especially for a contract for parties with different nationalities. There are two options which the parties can include in their dispute resolution provision. First is to submit to a national Court. Second is to settle the dispute with an alternative dispute resolution method.

Choosing the first option of going to the Courts will certainly have the dispute processed with several benefits. Courts are able to render a decision with definite power of enforcement, and lack of performance post-decision will be met with coercive measures by the Court. However, it may also indicate that at least one party will have the disadvantage of having the proceedings done in a foreign nation, perhaps with foreign languages and procedure, and no sense of familiarity. Moreover, cases brought to courts tend to take a long period of time, may cause disruptions in the business relationship of the two parties; as everything will be able to get publicized.[1] To some, these disadvantages may be sufficient to change

[1] Redfern; Alan Hunter; Martin Blackaby; Nigel Partasides, Law and Practice of International Commercial Arbitration 4th Ed. (New York: Sweet & Maxwell, 2004); Gary B. Born,

their preference, and have their disputes solved by alternative dispute resolutions instead.[2]

The second option is for the parties to seek alternative methods of settling the dispute. The traditional alternative dispute resolutions consists of negotiation, mediation and/or arbitration. The use of any particular method(s) will depend on the parties' mutual agreement, the type of issue between the parties, and their nature of business. Negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter.[3] Mediation is a voluntary process where a third party assists two or more parties, to prevent, manage or resolve a conflict by helping the parties develop mutually acceptable agreements.[4]

There is also the option to arbitrate. Arbitration has actually been one of the favored methods of dispute resolution for a long time.[5] In the 1980s, approximately 90% of international economic contracts included an arbitration agreement in case of disputes, and the number had only intensified further.[6] Between 1993 to 2003, the number of applicants requesting arbitration administered by leading arbitral institutions had increased by almost 100%; those

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International Commercial Arbitration: Cases and Materials (New York: Kluwer Law International, 2011).

[2] Huala Adolf, Arbitrase Komersial Internasional (Edisi Revisi) (Jakarta: PT Raja Grafindo Perkasa, 2002), pg. 52

[3] John W. Cooley, *Mediation Advocacy 2nd Ed.,* National Institute for Trial Advocacy (Indiana: 2002).

[4] United Nations, "Guidance for Effective Mediation", annex to the report of the Secretary-General on Strengthening the role of mediation in the peaceful settlement of disputes, con ict prevention and resolution A/66/811 (2012).

[5] Peter J.W. Sherwin; Douglas C. Rennie , "Interim Relief Under International Arbitration Rules And Guidelines: A Comparative Analysis" (2009) 20 American Review of International Arbitration 317.

[6] Karen Halverson Cross, "Arbitration as a Means of Resolving Sovereign Debt Disputes" (2008) 17 American Review of International Arbitration 335, 337-38 .

administered by the American Arbitration Association [hereinafter "AAA"] had increased by 200%. [7]

A recent survey stated that 73% of in-house counsels at multinational companies who has international experience preferred arbitration over litigation to solve transnational disputes.[8]

The reason for such an overwhelming amount of preference, is because of the advantages which some companies may prefer having while solving their disputes. These advantages are, *inter alia*, the speed of the procedure, privacy; away from the public's eye, and neutrality. More over, arbitration gives more power to the parties than litigation; parties have the decision over the arbitrators, on whether or not to go to arbitration, on which laws to apply, and so on.

The arbitral tribunal, chosen by the parties who have consented to arbitration along with the applicable institutional rules, and other applicable law, would then consider the case submitted by each party. Their decision would be made in writing in the form of an award, and it will usually set out the reasoning behind the decision. The award will bind the parties and is then enforced in the State Courts.

Arbtiration is widely used, and it has faced many developments from its days of origin. Presently, one of the most common 'genre' of arbitration is international commercial arbitration. International commercial arbitration is committed by two or more parties in a commercial-relationship where had agreed to arbitrate in a neutral third-party country while being governed by mutually

[7] *ibid*.
[8] *ibid*.

agreed rules of an certain arbitral institution mentioned in the signed contract.[9] Arbitration also emphasizes the concept of mutual agreement,[10] in which both parties must willingly choose to arbitrate; and cannot be unilaterally forced to join an arbitral proceeding when lacking any inclination to do so.

Arbitration itself is one of the more formal-like ADR, and requires the application of a considerable number of rules, which the parties should agree to, before ensuing arbitration.[11] There are certain rules that applies to parties during arbitration; the law governing the contract, the rule of the chosen arbitral institution, *lex arbitri*, and the law of the nation where the award is rendered.[12] The application of a multitude of rules is because the application of a specific rule will be done over the other, depending on the situation. For example, in choosing an arbitrator, parties shall choose their respective candidate arbitrator based on the conditions and procedure of their chosen arbitral institution.

All these rules cumulatively applies the moment that a party received notification of the other side's intent to pursue arbitration.[13]

Arbitration has certain similarities to the litigation system. One of those similarities are interim measures. Interim measures acts as "failsafe", which, *inter alia*, aims to protect the plaintiff from irreparable injury.[14] Though it is usually

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[9] Mauro Rubino-Sanmartano, International Arbitration: Law and Practice (The Hague: Kluwer Law International, 2001), pg. 9; Moses, Margaret L., The Principles and Practice of International Commercial Arbitration, (New York: 2008) pg. 3

[10] Phillipe Fouchard, Emmanuel Gaillard, International Commercial Arbitration (The Hague: Kluwer Law International, 1999), pg. 16

[11] Redfern; Alan Hunter; Martin Blackaby; Nigel Partasides, Law and Practice of International Commercial Arbitration 4th Ed. (Sweet & Maxwell, 2004).

[12] *ibid*.

[13] *ibid.*

[14] The Issuance of Interim Measures In International Disputes: A Proposal Requiring A Reasonable Possibility Of Success On The Underlying Merits, by *Jarrod Wong, Berkeley*

brought forward by parties before the Courts, arbitration is also a forum which can provide interim measure.[15]

Emergency arbitration is a very recently "found" procedure which can grant interim measures through arbitration even before the main tribunal of the case has been formed, and it is developing.[16]

The urgent nature of *Emergency Arbitration,* had led to several arbitral institutions' adoption to their respective rules.[17] The International Chambers of Commerce [hereinafter "ICC"] has adopted a provision regarding *Emergency Arbitration* into Annex V of its rules since 2010. Now, *Singapore International Arbitration Centre* [hereinafter "SIAC"] and *Hong Kong International Arbitration Centre* [hereinafer "HKIAC"], and a few other arbitral institutions show interest to adopt *Emergency Arbitration* into its rules. This, however, does not include Badan Arbitrase Nasional Indonesia [hereinafter "BANI"].

Considering the abovementioned background, the Author is interested to pursue and analyze emergency arbitration as way to provide pre-tribunal interim measure in international commercial arbitration.

[15] United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 [hereinafter "UNCITRAL Model Law"], Art. 17
[16] Bose, Meredith, Emergency Arbitration Procedures: A Comparative Analysis, 2012.
[17] Sarah Vasani. " The Emergency Arbitrator - An Effective Option for Urgent Relief" (2015) 17 Young Arbitration Review 4

1.2 Formulation of Issues

Based on the abovementioned background, the Author formulates three issues to better explore the details of her thesis:

1) How does interim measure function in international commercial arbitration?
2) How well does emergency arbitration grant pre-arbitral interim measures in international commercial arbitration?

1.3 Purposes of Research

The main purpose that the Author would like to reach during this research are:

1) To explore, find and analyze the details revolving around interim measures in international commercial arbitration.
2) To analyze and answer the effectiveness of emergency arbitration in granting pre-arbitral interim measures in the international commercial arbitration.

1.4 Benefit of Research

Following the completion of her research, the Author hopes that this thesis will benefit both the academic and practical standpoint in its specialized field.

1.4.1 Academic Benefits

Emergency Arbitration is a recent procedure that is continuously accumulating interest. Recently, the success and clear

interest of arbitration applicants to have this option available in granting urgent interim relief led to the writing of more academic-oriented legal research focus on the topic. However, it is still relatively unknown to those who does not specialize in arbitration. The concurrent fact of having a procedure that the protection of rights that interim measures have, and the concurrence that it may be any insurance of of As interim measures is one of the failsafe ways to make any legal person interested in arbitration, this research aims to provide further clarification of such a 'lure', and provide a degree of elaboration on the benefits and potential downsides of Emergency Arbitration.

1.4.2 Practical Benefits

This Author hopes that this research may be useful for legal academics as well as practitioners who deals with emergency arbitration, and interim measures in international commercial arbitration. Hopefully, it may also aid possible as legal reasoning for any modification of the arbitration law in Indonesia. In addition, businessmen who are probable applicants to international commercial arbitration may further their understanding on one of the newer procedures that may be a good option to grant interim reliefs in urgent times.

1.5 Systematic Writing

With the purpose of properly framing the discussion of the thesis, the Author shall divide the different segments of discussions into five interconnected chapters, which are as follows:

CHAPTER I: INTRODUCTION

The first chapter provides the background of international commercial arbitration, the purpose of interim measures and the the uniqueness of emergency arbitration. This chapter also lays down the core issues to be dealt with in the thesis as well as its purpose. The Author hopes will provide both an academic and practical advantage to the field itself. Overall, the first chapter should hopefully enhance the knowledge of the reader to the point that they may better understand the coming chapters.

CHAPTER II: LITERATURE REVIEW

The second chapter shall elaborate the principles and theories in the arbitration. Akin to anything else in this world, international commercial arbitration has its own governing rules. Although these rules may vary from one nation to the other, it will usually be written similarly or is based under the same principles. The foremost basic theory

revolving around international arbitration that must be discussed, is to its definition. Thereby, we will discuss that first. Second, the focus of discussion will shift to the principles behind international commercial arbitration. Third, we will discuss the procedure of arbitration. Fourth, there will be a discussion on the types of arbitration and the scope covered for this research. Fifth, and last, we will briefly go over arbitral rules particularly concerning Interim Measures, and emergency arbitrations. This will include brief mentions of several rules relevant to this point; the Singapore International Arbitration Center [hereinafter "SIAC"] rules, the International Chamber of Commerce [hereinafter "ICC"] rules, the Indonesian Arbitration Law, and the New York Convention on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [hereinafter "New York Convention"]. The aforementioned rules shall be the basis for the analysis presented in chapter four.

CHAPTER III: METHOD OF RESEARCH

Chapter three covers the research methods which the Author had used for this thesis. She shall

include the types of research which allowed the Author to focus in on the present issues, and present the information herein. It shall also include the obstacles the Author came across, and the solution found to counter it.

CHAPTER IV: ANALYSIS

The fourth chapter shall provide the analysis for emergency arbitration in international commercial arbitration. First, there shall be a brief introduction on the topic and how certain concerns in arbitration had led to the development of emergency arbitration. Second, there shall be a definition, categorization, and mention of the conditions in which interim measures can be granted in the Courts and Tribunals, along with the advantages and weaknesses of interim measures. Third, emergency arbitration will be defined and its application by certain arbitral tribunals will be elaborated. Fourth, there will be a discussion on the possible enactment of emergency arbitration in Indonesia, and whether Indonesia's framework of arbitration law allows it. Hopefully, this will answer

the formulation of issues mentioned in the first chapter.

CHAPTER V: CONCLUSIONS AND SUGGESTIONS

In chapter five, the Author would summarize the entire thesis and provide suggestions to the discussed issue, with the hopes that it would provide benefits to the future development of the subject in Indonesia, as well as the international law regime.

BAB I

PENDAHULUAN

1.1 Latar Belakang

Perselisihan antar bisnis dapat dengan gampangnya dihasilkan dari berbedanya pengertian kedua pihak dalam ketentuan kontrak mereka, ataupun dari satu pihak sama sekali mengabaikan ketentuan kontrak tanpa malu. Maka dari itu, provisi mengenai penyelesaian sengketa dianggap sebagai ketentuan yang wajib ada di dalam suatu kontrak (*boilerplate provision*), terutama di dalam kontrak antara dua pihak yang memiliki kewarganegaraan yang berbeda. Terdapat dua opsi bagi pihak yang ingin memiliki ketnetuan *dispute resolution* di dalam kontrak mereka. Pertama adalah untuk melalui proses pengadilan di dalam satu negara. Kedua, adalah menyelsaikan masalah melalui metode-metode alternatif.

Memilih opsi pertama berarti Pengadilan Negara akan menyelesaikan *dispute,* dan hal ini tentu akan memiliki beberapa keuntungan. Pengadilan dapat mengeluarkan keputusan dengan kepastian pelaksanaannya (*enforcement*), dan kegagalan untuk menjalankan keputusan Pengadilan akan menghadapi langkah-langkah koersif dari pengadilan. Namun, opsi ini juga mengindikasikan bahwa setidaknya satu pihak akan dirugikan karena prosedur pengadilan dari negara yang dipilih berbeda dengan negara asalnya, mungkin bahkan memiliki bahasa yang berbeda, sehingga tidak adanya *sense of familiarity* dalam melaksanakan pengadilan tersebut. Terlebih lagi, kasus yang dibawa ke pengadilan cenderung lama penyelesaiannya, mungkin mengacaukan relasi bisnis antar dua pihak, dan

tidak konfidensial.[1] Bagi beberapa orang, kerugian-kerugian yang baru saja dijabarkan sudah cukup untuk mengganti pikiran mereka dan justru memilih metode penyelesaian sengketa alternatif.[2]

Opsi kedua adalah bagi pihak yang bersangkutan untuk menyelesaikan sengketa melalui metode alternatif; seperti konsultasi, negosiasi, mediasi, konsiliasi, atau penilaian ahli. Metode penyelesaian sengketa internasional yang alternatif dan tradisional adalah negosiasi, mediasi dan arbitrase. Pemilihan metode tertentu akan tergantung dari persetujuan pihak yang bersangkutan, tipe permasalahan atau relasi antar pihak, dan hakikat bisnis yang terkait antar pihak. Negosiasi adalah suatu upaya penyelesaian sengketa para pihak tanpa melalui proses pengadilan dengan tujuan mencapai kesepakatan bersama atas dasar kerja sama yang lebih harmonis dan kreatif.[3] Mediasi adalah cara penyelesaian sengketa melalui proses perundingan untuk memperoleh kesepakatan para pihak dengan dibantu oleh mediator.[4]

Ada juga opsi untuk arbitrase. Arbitrase merupakan salah satu metode alternatif favorit dalam penyelesaian sengketa internasional.[5] Dalam tahun 1980an, kurang lebih 90% dari kontrak ekonomi internasional mencakup arbitrase

[1]Redfern; Alan Hunter; Martin Blackaby; Nigel Partasides, Law and Practice of International Commercial Arbitration 4th Ed. (New York: Sweet & Maxwell, 2004); Gary B. Born, International Commercial Arbitration: Cases and Materials (New York: Kluwer Law International, 2011).

[2]Huala Adolf, Arbitrase Komersial Internasional (EdisiRevisi) (Jakarta: PT Raja Grafindo Perkasa, 2002), hlm. 52.

[3] John W. Cooley, Mediation Advocacy 2nd Ed., National Institute for Trial Advocacy (Indiana: 2002) ; Frans Winarta, Hukum Penyelesaian Sengketa (Jakarta: Sinar Grafika, 2012), pg.7-8.

[4] Frans Winarta, Hukum Penyelesaian Sengketa (Jakarta: Sinar Grafika, 2012), pg.7-8; United Nations, "Guidance for Effective Mediation", annex to the report of the Secretary-General on Strengthening the role of mediation in the peaceful settlement of disputes, con ict prevention and resolution A/66/811 (2012).

[5] Peter J.W. Sherwin; Douglas C. Rennie , "Interim Relief Under International Arbitration Rules And Guidelines: A Comparative Analysis" (2009) 20 American Review of International Arbitration 317.

agreement, dan sejak itu angkanya meningkat.[6] Dalam periode 1993 sampai 2003, jumlah pihak yang mendaftarkan diri untuk arbitrase di institusi yang ternama meningkat hampir 100%; American Arbitration Association ["AAA"] sendiri mengalamai peningkatan sebanyak 200%. [7]

Terdapat survei yang mengatakan bahwa 73% *in-house counsels* di perusahaan multinational yang memiliki pengalaman internasional lebih memilih arbitrase daripada litigasi untuk menyelesaikan sengketa transnasional.[8]

Alasan dari preferensi tersebut adalah karena keuntungan yang dapat dinikmati oleh pihak tertentu yang memilih arbitrase. Keuntungan tersebut adalah, *inter alia*, cepatnya proses arbitrase, privasi, kerahasiaan, dan netralitas. Juga, arbitrase memberikan lebih banyak kebebasan bagi para pihak dari pada litigasi untuk; memilih hukum yang diberlakukan, arbitrator yang ada di panel, dan lainnya.

Majelis yang telah dipilih oleh para pihak yang telah setuju untuk arbitrase dengan peraturan arbitrase dan hukum tertentu, akan dapat mendengar dan menyelesaikan sengketa yang ada. Putusan mereka akan tertulis dan akan menjabarkan alasan dan pikiran dibalik putusan tersebut. Putusan akan mengkiat bagi kedua belah pihak dan dapat dilaksanakan (*enforced*) oleh Pengadilan Negeri.

Arbitrase telah sering digunakan dan telah banyak berkembang sejak waktu asal muasalnya. Pada saat ini, salah satu aliran arbitrase yang paling umum

[6] Karen Halverson Cross, "Arbitration as a Means of Resolving Sovereign Debt Disputes" (2008) 17 American Review of International Arbitration 335, 337-38 .
[7] *ibid*.
[8] *ibid*.

adalah arbitrase komersil internasional. Arbitrase komersil internasional dilakukan oleh dua atau lebih pihak yang berada di dalam hubungan komersil yang telah setuju untuk arbitrase di negara pihak ketiga yang netral.[9] Arbitrase sangat menekankan konsep permufakatan bersama,[10] dimana kedua belah pihak harus secara sukarela memilih arbitrase, dan tidak bisa masuk ke dalam proses arbitrase melalui paksaan sepihak.

Arbitrase itu adalah metode penyelesaian sengketa alternatif yang lebih formal, dan memerlukan penerapan beberapa peraturan sebelum, semasa, dan sesudah arbitrase itu sendiri.[11] Peraturan-peraturan ini adalah, antara lain, hukum kontrak, *lex arbitri,* peraturan institusi arbitrase, dan hukum negara dimana putusan akan dilaksanakan.[12] Semua peraturan ini langsung berlaku sejak pihak termohon mendapatkan notifikasi akan keinginan untuk menyelesaikan sengketa melalui arbitrase sesuai dengan perjanjian sebelumnya dari pihak.[13]

Arbitrase memiliki beberapa hal yang sama dengan litigasi. Salah satu hal yang sama adalah mengenai putusan sela. Putusan sela bertujuan untuk mengatur ketertiban jalannya pemeriksaan sengketa dengan cara, *inter alia*, penetapan sita jaminan, memerintahkan penitipan barang kepada pihak ketiga, atau menjual barang yang mudah rusak.[14] Walaupun biasanya putusan sela diajukan ke pihak

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[9] Mauro Rubino-Sanmartano, International Arbitration: Law and Practice (The Hague: Kluwer Law International, 2001), hlm. 9; Moses, Margaret L., The Principles and Practice of International Commercial Arbitration, (New York: 2008) hlm. 3

[10] Phillipe Fouchard, Emmanuel Gaillard, International Commercial Arbitration (The Hague: Kluwer Law International, 1999), hlm. 16

[11] Redfern; Alan Hunter; Martin Blackaby; Nigel Partasides, Law and Practice of International Commercial Arbitration 4th Ed. (Sweet & Maxwell, 2004).

[12] *ibid*.

[13] *ibid.*

[14] The Issuance of Interim Measures In International Disputes: A Proposal Requiring A Reasonable Possibility Of Success On The Underlying Merits, by *Jarrod Wong, Berkeley.*

Pengadilan, arbitrase juga merupakan forum yang dapat memberikan putusan sela kepada pihak yang mengajukan.[15]

Emergency Arbitration merupakan prosedur yang baru-baru ini ditemukan, yang dapat memberikan putusan sela melalui arbitrase bahkan sebelum Majelis yang utama terbentuk. [16] Prosedur ini, walaupun baru ditemukan, terus bertumbuh dan berkembang.[17]

Natur *Emergency Arbitration* yang mendesak telah mendorong sejumlah institusi arbitrase untuk mengadopsi prosedur ini ke dalam peraturan mereka.[18] *International Chambers of Commerce* ["ICC"] mengadopsi prosedur mengenai *Emergency Arbitration* ke Annex V di Peraturannya sejak tahun 2010. Now, *Singapore International Arbitration Centre* ["SIAC"] dan *Hong Kong International Arbitration Centre* ["HKIAC"], dan beberapa institusi lainnya menunjukkan ketertarikan mereka untuk mengadopsi *Emergency Arbitration* ke dalam peraturan mereka. Tetapi, ini tidak termasuk Badan Arbitrase Nasional Indonesia ["BANI"].

Mempertimbangkan latar belakang diatas, Penulis tertarik dalam mendalami dan menganalisa *Emergency Arbitration* sebagai cara untuk mendapatkan putusan sela pre-arbitrase di dalam arbitrase komersil internasional

[15] United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 ["UNCITRAL Model Law"], Pasal 17
[16]Bose, Meredith, Emergency Arbitration Procedures: A Comparative Analysis, 2012.
[17]*Ibid.*
[18] Sarah Vasani. " The Emergency Arbitrator - An Effective Option for Urgent Relief" (2015) 17 Young Arbitration Review 4

1.2 Rumusan Masalah

Berdasarkan latar belakang diatas, Penulis mempunyai dua rumusan masalah untuk didalami sepanjang skripsi ini:

1) Bagaimana cara kerja putusan sela dalam arbitrase komersil internasional?
2) Sebagaimana effektifitas *Emergency Arbitration* dalam mengabulkan putusal sel dalam arbitrase komersil internasional?

1.3 Tujuan Penelitian

Tujuan utama dibalik penulisan riset ini adalah agar Penulis dapat:

1) Mengamati, menemukan dan menganalisa detil-detil dibalik putusan sela di dalam arbitrase komersil internasional.
2) Menganalisa dan menjawab mengenai efektivitas *Emergency Arbitration* di dalam mengabulkan putusan sela pre-arbitrase di dalam arbitrase komersil internasional.

1.4 Manfaat Penelitian

Setelah selesainya riset, Penulis berharap bahwa skripsi ini dapat bermanfaat dari sisi akademis dan praktis di dalam bidangnya yang sangat khusus ini.

1.4.1 Manfaat Akademis

Emergency Arbitration adalah suatu prosedur yang akhir-akhir ini mendapat banyak perhatian. Adanya kesempatan bagi pemohon untuk

mendapatkan putusan sela selagi masih di dalam forum arbitrase yang dipilihnya bahkan sebelum Majelis utamanya terbentuk merupakan suatu umpan untuk tetap menyelesaikan sengketa via arbitrase, dan bukan metode lain. Sehingga, skripsi ini diharapkan menjadi salah satu cara bagi mereka yang teratrik, untuk lebih mengerti 'umpan' tersebut dengan adanya penjelasan yang mempunyai informasi yang penting mengenai prosedur nya bersama dengan keuntungan dan kerugian dari *Emergency Arbitration*.

1.4.2 Manfaat Praktis

Penulis berharap bahwa riset ini juga dapat berguna bagi akademisi maupun mereka yang praktek di dalam bidang arbitrase komersil internasional, ataupun mereka yang berpapasan dengan putusan sela, darurat ataupun tidak, di arbitrase. Kiranya riset ini juga dapat membantu legal reasoning dibalik penambahan atau perubahan dalam hukum arbitrase Indonesia. Juga kepada pebisnis yang mungkin merupakan calon pemohon dalam perihal arbitrase komersil internasional, dapat memperdalam pengertian mengenai salah satu prosedur yang baru yang dapat membantu melindungi hak-hak mereka melalui putusan sela darurat di forum arbitrase.

1.5 Sistematika Penulisan

Dengan tujuan membingkai diskusi yang dilakukan di dalam skripsi ini, Penulis akan membagikan diskusi tersebut menjadi lima bab yang saling berhubungan, yaitu:

BAB I: PENDAHULUAN

Bab pertama akan memberikan latar belakang arbitrase komersil internasional, tujuan putusan sela dan keunikan *Emergency Arbitration*. Bab ini juga memaparkan inti dari permasalahan yang dibawa di skripsi ini, bersama dengan tujuannya. Penulis berharap bahwa skripsi ini dapat memberikan manfaat akademis dan praktis. Secara keseluruhan, bab pertama diharapkan untuk memberikan pengetahuan secara dasar untuk membantu pembaca mengerti bab-bab kedepan.

BAB II: TINJAUAN PUSTAKA

Bab kedua menjelaskan mengenai prinsip dan teori di dalam arbitrase. Arbitrase komersil internasional memiliki peraturan-peraturannya itu sendiri. Walaupun undang-undang arbitrase dari satu negara dan negara lain dapat berbeda, peraturan-peraturan tersebut cenderung ditulis berdasarkan prinsip yang sama. Pertama, teori yang mendasar di arbitrase komersil internasional juga akan didiskusikan, bersama dengan definisinya. Kedua, fokus diskusi akan berpindah kepada prinsip-prinsip dibalik arbitrase komersil internasional. Ketiga, akan adanya diskusi mengenai prosedur arbitrase secara

general. Keempat, adanya diskusi mengenai tipe arbitrase dan lingkup yang akan di*cover* di skripsi ini. Kelima, dan terakhir, diskusi akan fokus pada peraturan arbitrase mengenai putusan sela dan *Emergency Arbitration*s. Pada poin ini, Penulis akan me*mention* beberapa peraturan arbitrase seperti; peraturan Singapore International Arbitration Center ["SIAC"], peraturan International Chamber of Commerce ["ICC"], Hukum Arbitrase Indonesia dan New York Convention on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ["New York Convention"]. Peraturan-peraturan ini akan menjadi dasar untuk analisa yang dijabarkan di bab empat.

BAB III: METODOLOGI PENELITIAN

Bab tiga melingkupi metodologi penelitian yang Penulis gunakan untuk skripsi ini. Penulis akan *include* tipe-tipe riset yang digunakan Penulis untuk fokus dalam isu yang ada, dan informasi yang tertata dalam skripsi ini. Bab ini juga akan mendikusikan segelintir permasalahan Penulis dan solusi yang akhirnya Penulis gunakan untuk menyelesaikan masalah tersebut.

BAB IV: ANALISA

Bab keempat akan menganalisa *Emergency Arbitration* di dalam arbitrase komersil internasional. Pertama, akan ada penjabaran mengenai putusan sela, dari definisinya, kategorinya, kondisi dimana putusan sela dapat diberikan di Pengadilan maupun oleh Majelis, seiring dengan keuntungan dan kerugian dari putusan sela. Kedua, akan adanya pembahasan mengenai *Emergency Arbitration* yaitu dari definisinya, asal muasalnya, dan pengaplikasian *Emergency Arbitration* oleh institusi arbitrase internasional. Diskusi mengenai kemungkinannya *Emergency Arbitration* diadopsi oleh Indonesia sebagai hukum tertulis, dan keselarasannya dengan hukum arbitrase Indonesia juga akan dibahas di poin kedua. Penulisan dan fokus pada Bab ini harus fokus mengenai sesuai atu tidaknya prosedur *Emergency Arbitration* dalam kerangka hukum Indonesia. Bab ini ditulis dengan terjawabnya isu yang disebutkan di Bab 1.

BAB V: KESIMPULAN DAN SARAN

Pada Bab lima, Penulis akan menyumpulkan satu skripsi ini dan memberikan sugesti atas isu yang dibawa. Penulis juga akan menuliskan saran-saran yang terpikir agar dapat bermanfaat untuk pengembangan subyek dimana dan dari manapun mereka berada.