Concept of Business Dispute Resolution from a Justice Perspective

Herikson P. Siahaan, Triono Eddy, Ramlan
heriksonpsiahaan@gmail.com

Doctoral Program in Law, Universitas Muhamamdiyah Sumatera Utara, Indonesia

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Abstract

Business activities are broader than trade, because the scope of business activities is not only trade, but covers broader fields such as production, processing, distribution, trade/marketing, export-import, procurement of goods/services, labor recruitment services, business consulting services , credit, credit guarantees, insurance, business cooperation, investment, mass media, property, capital markets, and others. The concept of resolution is that a private judge is not bound by various formalities, is quick in giving decisions, because it is in the final instance and is binding, which is easy to implement because the parties will obey it. Juridically based on Article 1 point 1 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UUAAPS) arbitration is a method of resolving a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute. The Supreme Court of the Republic of Indonesia said that ADR is a concept of cooperative resolution of conflicts or disputes outside of court which is directed at an agreement or solution to a conflict or dispute that is "win-win". What is meant by a "win-win" solution is a solution or agreement that is able to reflect the interests or needs of all parties involved in the conflict (shared interest).

I. Introduction

In living this life, we must meet the needs of life, including clothing, food, shelter, education, health, recreation and so on. To fulfill their needs, humans must have money. Money obtained when someone does work, either working in someone else's business or working in their own business by doing business.

Business activities are broader than trade, because the scope of business activities is not only trade, but covers broader fields such as production, processing, distribution, trade/marketing, export-import, procurement of goods/services, labor recruitment services, business consulting services , credit, credit guarantees, insurance, business cooperation, investment, mass media, property, capital markets, and others.[1]

In running a business, various forms of business entity are adopted by business people according to the nature and essence of the business. Because since ancient times various forms of business have been formed that have advanced and retreated according to developments over time.[2]

Joni Emirzon said that disputes or disputes that occur in business activities can occur after before the agreement is agreed, such as regarding the object of the agreement, price of goods, and contents of the agreement, as well as at the time of implementation of the agreement. However, the emergence of these forms of disputes is generally caused by various factors, namely:[3]

1. Data conflicts can occur due to lack of information, misinformation, differences in views, differences in interpretation of data, and differences in interpretation of procedures;
2. Conflict of interest, the emergence of a conflict of interest can occur due to several things, such as feelings of competition, substantive interests of the parties, procedural interests, and psychological interests. This can give rise to a high sense of competition so that the cooperation that is fostered does not produce good results;
3. Relationship conflict, this occurs due to strong emotions, misperceptions, poor communication, or communication errors, and repeated negative behavior.;
4. Structural conflict will occur due to destructive patterns of behavior or interaction, unequal control, unequal ownership or distribution of resources, unequal power and strength, unequal geography, psychology, or environmental factors that hinder cooperation, as well as little time;
5. Value conflict, this occurs due to differences in evaluation criteria for opinions or behavior, differences in views of life, ideology and religion, self-judgment without paying attention to other people's assessments.

Resolving business disputes is mostly carried out using litigation or dispute resolution through the trial process, which is the oldest method of dispute resolution in the

[1] Cita Yustisia Serfiyani, R. Serfianto D. Purnomo dan Iswi Hariyani, *Bisnis Online dan Transaksi Elektronik* (Jakarta: PT Gramedia Pustaka Utama, 2013), hlm. 9. Lihat juga Iswi Hariyani, Cita Yustisia Serfiyani, "Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa PM-TEKFIN", dalam *Jurnal Legislasi Indonesia*, Vol. 14, No. 03 (September 2017), hlm. 345.

[2] Munir Fuady, *Pengantar Hukum Bisnis* (Bandung: PT. Citra Aditya Bakti, 2002), hlm. 35.

[3] Joni Emirzon, *Hukum Bisnis Indonesia* (Jakarta: Prenhalindo, 2002), hlm. 503-505.

world.[4] Settlement of the dispute begins with filing a lawsuit with the district court and ends with a judge's decision. Dispute resolution through the judicial process can be referred to as law enforcement.[5]

In Indonesia, there are two types of non-litigation resolution, namely arbitration and alternative dispute resolution in accordance with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Alternative dispute resolution (ADR) is a form of dispute resolution outside of court based on an agreement (consensus) carried out by the parties to the dispute either without or with the help of a neutral third party. Based on Article 1 point 10 of Law Number 30 of 1999, ADR can be carried out by means of consultation, negotiation, mediation, conciliation or expert assessment.

Whether dispute resolution through arbitration, consultation, negotiation, mediation, conciliation or expert assessment is dispute resolution where the object of the dispute is purely a business dispute without any criminal elements. So how do business disputes that contain criminal elements be resolved, which have so far been resolved through the courts with the application of criminal sanctions, even though the initial element of the act was business (in general civil).

2. Research Method

The type of research used in this research is normative legal research. Normative legal research is research conducted or aimed at written regulations because the research is carried out based on statutory regulations, namely the relationship between one regulation and another and its relationship to its application in practice.[6] Normative legal research is research on library materials (secondary data) that are relevant to the problem to be analyzed, whether in the form of primary legal materials, secondary legal materials, or tertiary legal materials.[7]

3. Results and Discussion

Business Dispute Resolution in the Commercial Civil Aspect

A business dispute is a dispute that requires resolution in a short time. Business disputes can be resolved through litigation as an ultimum remedium through a court that is authorized or has the competence to examine and decide the dispute.

Kartini Mulyadi said that business disputes are difficult to provide a precise definition.[8] Commercial disputes that can be included in the business dispute group include; application for bankruptcy declaration, postponement of debt payment obligations, disputes relating to limited liability companies and/or their organs, and other matters regulated in the first and second books of the Commercial Code, such as regarding Firms, CVs, Commissioners, Expeditors, Transporters, letters securities (money orders, checks, promissory notes, L/C),

[4] Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya* (Jakarta: Prenada Media Group, 2015), hlm. 1.

[5] Satjipto Raharjo, *Ilmu Hukum*, Edisi Revisi (Bandung: Citra Aditya Bakti, 1991), hlm. 181.

[6] Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), hlm. 52.

[7] Soerjono Soekanto dan Sri Mamudji, *op.cit*., hlm. 14. Lihat juga C.F.G. Sunaryati Hartono, *op.cit*., hlm. 134.

[8] Rudy A. Lontoh, Denny Kailimang, dan Denny Ponto, *Penyelesaian Utang Piutang: Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang* (Bandung: Alumni, 2001), hlm. 82.

insurance, shipping, banking, capital markets, and intellectual property rights.

The position of the Commercial Court is a special court within the general judiciary to exercise judicial power. Referring to Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), that in achieving the objectives of law enforcement and justice, the institution of judicial power is run by:[9]

a. Supreme Court;
b. State Judicial Agency;
c. Islamic Judiciary Agency;
d. Military Justice Board;
e. State Administrative Justice Agency;
f. Constitutional Court.

Referring to this institution, the Commercial Court is part of a special court located within the general judiciary. As emphasized in Article 27 paragraph (1) UUKK, special courts can only be formed in one of the judicial environments under the Supreme Court.

According to Munir Faudy, PKPU is a period given by law through a Commercial Judge's Decision where during this period creditors and debtors are given the opportunity to discuss ways to pay their debts by providing a plan to pay all or part of their debts, including restructuring their debts.[10] Syamsudin Manan Sinaga said that the existence of PKPU is an offer to pay debts from debtors to creditors, whether paid in part or in full to resolve bankruptcy disputes.[11]

Settlement of Business Disputes Through Arbitration Institutions

Arbitration is the main alternative in efforts to resolve business disputes between parties. As a dispute resolution forum that is different from other non-litigation dispute resolution forums, including mediation and negotiation, arbitration is generally the main choice for the parties in resolving their disputes.[12]

According to Sudargo Gautama, arbitration is a method of resolution by private judges who is not bound by various formalities, is quick in giving decisions, because it is in the final instance and is binding, which is easy to implement because the parties will obey it.[13] Juridically based on Article 1 point 1 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UUAAPS) arbitration is a method of resolving a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute.

Arbitration is basically a form of dispute resolution outside of court in the commercial

[9] Rahayu Prasetyaningsih, "Akuntabilitas Kekuasaan Kehakiman," *Jurnal Konstitusi*, Vol. 8, No. 5 (2011), hlm. 835.

[10] Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)* (Bandung: PT. Citra Aditya Bakti, 2010), hlm. 175.

[11] Umar Haris Sanjaya, *Penundaan Kewajiban Pembayaran Utang dalam Hukum Kepailitan Kewenangan Kantor Pelayanan Pajak Untuk Mengeksekusi Harta Debitor Setelah Terjadinya Perdamaian Dalam Kerangka PKPU*, Cetakan Pertama (Yogyakarta: Gama Media Printing, 2014), hlm. 26.

[12] Dhaniswara K. Harjono, *Arbitrase Sebagai Sarana Penyelesaian Sengketa Bisnis Di Indonesia* (Jakarta: UKI Press, 2022), hlm. 2.

[13] Sudargo Gautama, *Arbitrase Dagang Internasional* (Bandung: Alumni, 1979), hlm. 5.

sector carried out by an arbitrator or panel chosen by both parties to the dispute. The resulting decision is final and binding and the decision must be obeyed.

Dispute resolution through arbitration is carried out based on an agreement that the parties will submit to and comply with the decision given by the judge. Therefore, arbitration is referred to as a peace trial, where the disputing parties want their dispute to be examined and tried by a judge who is fair and impartial to one of the disputing parties, and produces a binding decision for both parties.[14]

There are several reasons why disputing parties prefer the method of resolving business disputes by arbitration, apart from the freedom, trust and security, they are as follows:[15]

a. Expertise;
b. Fast and cost effective;
c. Confidential;
d. Non-precedent in nature;
e. The sensitivity of the arbitrator;
f. Implementation of decisions; And
g. There are modern tendencies.

The method of resolving disputes by arbitration is preferred by parties or business actors in resolving business disputes because arbitration has the following advantages:[16]

a. The procedure is not complicated and decisions can be reached in a relatively short time;
b. Cheaper costs;
c. Can avoid exposure of the decision in public;
d. Laws regarding procedures and evidence are more relaxed;
e. The parties can choose which law the arbitration will enforce;
f. The parties can choose their own arbitrators;
g. Arbitrators can be selected from among experts in their field;
h. Decisions can be more related to situations and conditions;
i. Decisions are generally final and binding (without the need for appeal or cassation);
j. Arbitration awards can generally be enforced and executed by courts with little or no review;
k. The arbitration process/procedure is easier to understand by the wider community;
l. Close the possibility of forum shopping (forum smuggling or bad faith to divert the

[14] M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan, Edisi Kedua (Jakarta: Sinar Grafika, 2003), hlm. 60.

[15] Sri Retno Widyorini, "Penyelesaian Sengketa Dengan Cara Arbitrase", *Hukum dan Dinamika Masyarakat*, (Oktober, 2006), hlm. 60.

[16] Munir Fuadi, *Hukum Bisnis dalam Teori dan Praktik*, Buku Kedua (Bandung: PT. Citra Adity Bakti, 1999), hlm. 130-131. Lihat juga Munir Fuady, *Arbitrase Nasional: Alternatif Penyelesaian Sengketa Bisnis* (Bandung: Citra Aditya Bakti , 2003), hlm. 94. Priyatna Abdurrasyid, *Suatu Pengantar Arbitrase dan Alternatif Penyelesaian Sengketa* (Jakarta: Fikahati Aneska, 2002), hlm. 63. Tri Ariprabowo dan R. Nazriyah, "Pembatalan Putusan Arbitrase oleh Pengadilan dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014", *Jurnal Konstitusi*, Vol. 14, No. 4 (Desember 2017), hlm. 708. Bambang Sutiyoso, "Akibat Pemilihan Forum dalam Kontrak yang Memuat Klausula Arbitrase", *Mimbar Hukum*, Vol. 24, No. 1 (Februari 2012), hlm. 160.

subject);

m. The arbitral tribunal proceedings are confidential and can therefore guarantee confidentiality and undesirable publicity;
n. Arbitration procedures are more informal than court procedures and therefore are open to obtaining and providing amicable and amicable settlement procedures..

For parties who wish to resolve business disputes through arbitration, based on Article 8 UUAAPS, the applicant must notify the respondent by registered letter, telegram, telex, facsimile, e-mail or expedition book that the arbitration conditions held by the applicant or respondent apply.

When resolving disputes through arbitration, claims or answers must be based on the law and the facts that occurred. The parties must be able to strengthen the legal basis and facts presented including being strengthened by presenting witnesses as specified in Article 49 UUAAPS, ordered by the arbitrator, arbitration panel or at the request of the parties. Witnesses or expert witnesses who will provide information must be sworn in first. Information provided by expert witnesses can be provided in writing to the arbitrator or arbitration panel, which will then be forwarded to the parties in the form of a copy. Expert witnesses who have provided written information may be asked to attend.

In the implementation of arbitration awards there are differences between the implementation of national arbitration awards and international arbitration. National arbitration awards must be submitted and registered at the District Court clerk's office, while international arbitration awards must be registered at the Central Jakarta District Court, including an authentic award and an official translated text in Indonesian.[17]

Settlement of Business Disputes Through Alternative Dispute Resolution

Alternative dispute resolution (ADR), which is translated into Indonesian as alternative dispute resolution, is a non-litigation dispute resolution process where the parties to the dispute can help or be involved in resolving the dispute or involve a neutral third party.[18]

The Supreme Court of the Republic of Indonesia said that ADR is a concept of cooperative resolution of conflicts or disputes outside of court which is directed at an agreement or solution to a conflict or dispute that is "win-win". What is meant by a "win-win" solution is a solution or agreement that is able to reflect the interests or needs of all parties involved in the conflict (shared interest).[19]

Juridically, based on Article 1 number 10 UUAAPS, it is determined that alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment.

The concept of resolving conflicts or disputes outside of court cooperatively which is

[17] Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), hlm. 74.

[18] Joni Emirzon, *Alternatif Penyelesaian Sengketa di luar Pengadilan (Negosiasi*, *Mediasi*, *Konsiliasi*, *dan Arbitrase)* (Jakarta: Gramedia Pustaka Utama, 2001), hlm. 38.

[19] Mahkamah Agung Republik Indonesia, "Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Altematip) dan Court Connected Dispute Resolution (Penyelesaian Sengketa yang Terkait dengan Pengadilan)" *Proyek Penelitian dan Pengembangan Mahkamah Agung RI* (Jakarta, tp., 2000), hlm. 6.

directed at an agreement or solution to a conflict or dispute that is a win-win solution. ADR is the resolution of disputes or differences of opinion which are resolved through an agreement procedure between the parties carried out outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment.

4. Conclusion

In conclusion, the above writing states that the completion efforts are within a short time. Business disputes can be resolved through litigation as an ultimum remedium through an authorized court. Through stages and processes in resolving business disputes with the aim of obtaining justice for the parties.

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