

A PERSUASIVE APPROACH TO RESOLUTION OF BUSINESS DISPUTES CONTAINING CRIMINAL ELEMENTS FROM A JUSTICE PERSPECTIVE BASED ON PANCASILA

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Abstract: Most business dispute resolution is carried out using litigation or dispute resolution through the trial process, which is the oldest method of dispute resolution in the world. 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. In addition to dispute resolution through the litigation process, there is also dispute resolution through non-litigation, which is dispute resolution carried out using methods outside of court or using alternative dispute resolution institutions. 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.

Keywords: Disputes, Business, Justice.

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 is earned 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, etc. (Cita Yustisia Serfiyani, R. Serfianto D. Purnomo and Iswi Hariyani, 2013).

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 which have advanced and retreated according to developments over time (Munir Fuady, 2002). A business entity is an economic juridical entity that establishes a business to carry out any type of business that is permanent and continuous, established, working and domiciled within the territory of the State of Indonesia with the aim of obtaining profits.

The form of business entity in the company law literature is generally divided by company law experts into 2 (two) large groups, namely business entities that are not legal entities and business entities that are legal entities. Business entities that are not legal entities consist of:

1. Trading company, namely a private company run by an entrepreneur. A trading company can be managed by 1 (one) person or more, with their own capital (Sentosa Sembiring, 2004).

2. Civil partnership (*maatschap*), is a general form of firm partnership and limited partnership. According to the classical view, *maatschap* is a general form of Limited Liability Company (PT). It's just that, because nowadays PT has developed a lot, there is an opinion that says PT is no longer a special form of *maatschap* (Rudhi Prasetya, 2002).
3. Firma (*venootschap onder firm*) or often also called *Fa*, is a form of business entity for running a business between two or more people using a joint name or one name that is used together to expand the business. According to Manulang, a partnership with a firm is a partnership to run a company using a joint name. So there are several people who are allied to run a company. The company name is generally a joint name with the aim of sharing the profits obtained from the partnership. A firm can be said to be a partnership (*maatschap*) if people work together, usually colleagues, or professional colleagues or friends in trading.
4. Limited partnership (*Comanditaire Venootschaaf/CV*), is a partnership to run a joint business, established by one or more active partners with one or more limited/passive partners.

Meanwhile, legal business entities consist of:

1. Limited Liability Company (PT), the term "Company" refers to the method of determining capital, which is divided into shares, and the term "limited" refers to the limit of shareholder responsibility, namely the nominal number of shares owned. PT is a legal entity, which is an independent legal subject. The independence of the PT can carry out its own actions, if there are actions related to third parties then the PT can be considered like a human but does not have hands and feet. In principle, shareholders in a PT do not participate in controlling the company.
2. Cooperatives are a collection of people who have common goals or interests. This group of people become members of the cooperative that was founded. The formation of cooperatives is based on the principles of kinship and mutual cooperation, especially to help members who need assistance in the form of goods or cash loans. This common goal or interest is an economic interest in the form of increasing mutual prosperity. For example, this cooperation is in activities in the fields of production, consumption, services and credit.
3. Foundation, is an organization that carries out social activities (charity) that do not aim to make a profit. Juridically, a foundation is a legal entity consisting of separated assets and intended to achieve certain goals in the social, religious and humanitarian fields, which does not have members..

However, in practice, business entities, both legal entities and non-legal entities, in carrying out business activities have the potential to give rise to unavoidable disputes. Various business activity disputes are actually something that is not expected to happen because they can result in losses for the parties in the dispute, both those who are in the right position and those in the wrong position. However, sometimes disputes cannot be avoided due to misunderstandings, whether due to violations of legislation, broken promises, conflicting interests, and/or losses to one of the parties. (Sanusi Bintang dan Dahlan, 2000).

Literature Review

1. Business Disputes

Business disputes are disputes that occur between parties involved in various kinds of business or trade activities. These disputes can arise from a variety of factors, from differences of opinion in the interpretation of the contract to disputes over payment or implementation of the agreement.

Effective and efficient business dispute resolution is the key to maintaining the continuity of company operations and maintaining good relations between the parties involved. One business dispute resolution that is considered quite effective is resolution through mediation, because with mediation business disputes can be resolved in a win-win solution, where the disputing parties both benefit.

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Business Dispute Resolution

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 dispute is generally caused by various factors, namely: (Joni Emirzon, 2002).

- a. Data conflicts can occur due to lack of information, misinformation, differences in views, differences in interpretation of data, and differences in interpretation of procedures.
- b. 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.
- c. Relationship conflict, this occurs due to strong emotions, misperceptions, poor communication, or communication errors, and repeated negative behavior.
- d. 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.
- e. Value conflict, this occurs due to differences in evaluation criteria for opinions or behavior, differences in views of life, ideology and religion, self-assessment 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 world.

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 (Satjipto Raharjo, 1991).

In addition to dispute resolution through the litigation process, there is also dispute resolution through non-litigation, which is dispute resolution carried out using methods outside of court or using alternative dispute resolution institutions. 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 we resolve business disputes that contain criminal elements, 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).

Problems or disputes often occur in social life. Problems or disputes usually occur in various lines of economic and business activities. Differences of opinion, conflicts of interest, and even fear of being harmed are often the reasons why these problems or disputes occur.

Business dispute resolution is mostly carried out using litigation or dispute resolution through the trial process. Settlement of the dispute begins with filing a lawsuit with the district court and ends with a judge's decision. However, apart from resolving disputes through the litigation process, there is also dispute resolution through non-litigation.

What is meant by non-litigation settlement? Settlement through non-litigation is dispute resolution carried out using methods outside of court or using alternative dispute resolution institutions. In Indonesia, there are two types of non-litigation resolution, namely Arbitration and Alternative Dispute Resolution in accordance with Law Number 30 of 1999 Arbitration and Alternative Dispute Resolution (UU AAPS).

Linguistically, arbitration comes from the word *arbitrare* (Latin) which means the power to resolve a case based on discretion. Arbitration is the voluntary submission of a dispute to a neutral third party, namely an individual or ad hoc arbitration. According to Abdul Kadir, arbitration is the voluntary submission of a dispute to a qualified person to resolve it with an agreement that the arbitrator's decision will be final and binding. Meanwhile, according to Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in article 1, 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.

From this definition, it can be interpreted that arbitration is a civil agreement made based on the agreement of the parties to resolve their dispute which is decided by a third party called an arbitrator who is appointed jointly by the disputing parties and the parties declare that they will comply with the decision taken by arbitrator.

How can the parties resolve their disputes at an arbitration institution? Dispute resolution through an arbitration institution must first be preceded by a written agreement between the parties to carry out the settlement using an arbitration institution. The parties agree and bind themselves to resolve the dispute that will occur by arbitration before a real dispute occurs by adding a clause to the main agreement. However, if the parties have not included it in the main

agreement clause, the parties can make an agreement if a dispute has occurred by using a compromise deed signed by both parties and witnessed by a Notary.

Dispute resolution using an arbitration institution will result in an Arbitration Award. According to law number 30 of 1999, the arbitrator or arbitration panel must immediately hand down the arbitration award no later than 30 days from the completion of the dispute examination by the arbitrator. If there is an administrative error in the decision handed down, the parties within 14 days of the decision being handed down are given the right to request corrections to the decision. An arbitration award is a decision at the final level and is directly binding on the parties. An arbitration award can be implemented after the decision is registered by the arbitrator or his proxy with the clerk of the district court. Once registered, the chairman of the district court is given 30 days to issue an order to implement the arbitration award.

Apart from the arbitration process, non-litigation dispute resolution can also be done through alternative dispute resolution (ADR). Alternative dispute resolution 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 assistance of neutral third parties. According to Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in article 1 number 10, alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

The number of business dispute cases containing criminal elements in the North Sumatra Regional Police Region from 1 September 2021 to 5 September 2022 totaled 5002 cases. Of this number, 573 cases continued with litigation in court, 319 cases were stopped due to a settlement, while 4,110 cases are still in the investigation process. This means that there are still many business cases that contain criminal elements that are resolved through the courts, rather than peace being the priority. In fact, the basis of business is an agreement as regulated in Article 1320 of the Civil Code, and based on Article 1338 of the Civil Code, the agreement that has been made by the parties becomes law for the parties to comply with the agreement.

Even if one of the parties feels disadvantaged in the business case agreement, the process that must be taken is through reconciliation, and even if they have to go to court then based on Article 1365 of the Civil Code it must be taken through a civil lawsuit to the District Court, not resolved by being charged with criminal elements.

Conclusion

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 world. 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. In addition to dispute resolution through the litigation process, there is also dispute resolution through non-litigation, which is dispute resolution carried out using methods outside of court or using alternative dispute resolution institutions. 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.

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