

Forms And Mechanisms Of Business Dispute Resolution In Indonesia

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ABSTRACT

In Indonesia, there are two types of non-litigation settlement, namely arbitration and alternative dispute resolution in accordance with UUAAPS. Alternative dispute resolution or ADR is a form of dispute resolution outside the court based on an agreement (consensus) carried out by the disputing parties either without or with the assistance of a neutral third party. Settlement of business disputes containing criminal elements through a restorative justice approach is used if there is sufficient evidence to prosecute the perpetrator of the crime and is accompanied by the freedom and voluntariness of the victim and perpetrator. Settlement is carried out as much as possible for the recovery of the victim, and is carried out if the perpetrator realizes and admits his mistake and the consequences for the victim and the community, and the perpetrator is willing to take responsibility voluntarily. By involving the community who can act as organizers, observers or facilitators.

Keywords: Business Dispute, Resolution In Indonesia.

A. Introduction

In resolving business disputes, most are carried out using litigation or dispute resolution through the trial process, which is the oldest dispute resolution method in the world. The dispute resolution begins with the filing of 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.¹

In addition to dispute resolution through litigation, there is also non-litigation dispute resolution, which is a dispute resolution carried out using methods outside the court or using alternative dispute resolution institutions. Alternative dispute resolution outside the court (restorative justice) philosophically based on Pancasila is found in

¹ Satjipto Raharjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2014), hlm. 181.

the 4th principle of Pancasila. This principle contains the philosophy of deliberation or deliberation which means prioritizing deliberation in decision making for the common interest. Deliberation to reach consensus includes a spirit of kinship, so that if the philosophy of deliberation is broken down, it contains the following five principles. First, conferencing (meeting to hear and express desires); second, search solution (finding a solution or common ground for the problem being faced); third, reconciliation (making peace with each other's responsibilities); fourth, repair (repairing all the consequences that arise); Fifth, circles (mutual support). Based on these five principles, constitutionally, restorative justice finds its basis in the philosophy of the 4th principle of Pancasila.²

In Indonesia, there are two types of non-litigation settlement, namely arbitration and alternative dispute resolution in accordance with UUAAPS. Alternative dispute resolution or ADR is a form of dispute resolution outside the court based on an agreement (consensus) carried out by the disputing parties either without or with the assistance of a neutral third party. Based on Article 1 number 10 of UUAAPS, ADR can be carried out by means of consultation, negotiation, mediation, conciliation, or expert assessment. Regarding dispute resolution through arbitration, consultation, negotiation, mediation, conciliation, or expert assessment, it is a dispute resolution whose object of dispute is purely a business dispute without any criminal elements. Then how is the resolution of 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 is business (generally civil).

B. Research Methods

Legal research is a series of systematic mechanisms in conducting research.³ In this case, legal research is conducted to find solutions and answers to a problem

² Edi Ribut Harwanto, *Keadilan Restorative Justice Implementasi Politik Hukum Pidana Bernilai Filsafat Pancasila* (Lampung: CV. Laduny Aifatama, 2021), hlm. 76

³ Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative legal research.⁴ This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

C. Analysis And Discussion

Legally referring to the provisions of Article 1239 of the Civil Code, it can be said that a dispute is an act of default by one party who does not fulfill his obligations and results in violating the rights of the other party. Based on the description above, it can be said that a dispute is a conflict that occurs between individuals, individuals and groups or groups with groups that have the same relationship or interests, where one party maintains its perception that is contrary to the perception of the other party or one party commits a default to the other party on the agreement that they have agreed to together.

There are several reasons that cause disputes, Soekanto said that disputes arise because of disharmony between the parties who have a relationship because the rights of one party are disturbed or violated. While Sembiring said that disputes arise due to several factors such as differences of opinion or disputes between the parties. It can also be the result of rigid regulations that hinder and hinder the parties from achieving their goals, so that disputes/conflicts arise.⁵

Regarding various business activities, the occurrence of business disputes actually needs to be avoided to maintain a good reputation and relationship in the future. However, business disputes are sometimes difficult to avoid. According to

⁴ Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

⁵ J.J Sembiring, *Cara Menyelesaikan Sengketa di Luar Pengadilan* (Jakarta: Visi Media, 2011), hlm. 4.

Bintang, business disputes cannot be avoided due to misunderstandings, violations of laws, broken promises, conflicting interests, and or losses to one of the parties.

Business disputes are one of the disputes that require efforts to be resolved in a short time. Business disputes can be resolved through litigation as *ultimum remedium* through a competent court or has the competence to examine and decide the dispute. Kartini Mulyadi said that business disputes are indeed difficult to give a precise definition. Commercial disputes that can be included in the business dispute group include; applications for bankruptcy, postponement of debt payment obligations, disputes related 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, Carriers, valuable documents (money orders, checks, promissory notes, L/C), insurance, shipping, banking, capital markets, and intellectual property rights.

Legally based on Article 1 number 1 UUAAPS arbitration is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Based on the description above, arbitration is basically a form of dispute resolution outside the court in the commercial field carried out by an arbitrator or panel chosen by both disputing parties. The resulting decision is final and binding and its decision must be obeyed.⁶

Settlement of disputes through arbitration is carried out based on an agreement that the parties will submit to and obey 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 decision that is binding on both parties.

D. Conclusion

⁶ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Edisi Kedua (Jakarta: Sinar Grafika, 2003), hlm. 60.

Settlement of business disputes containing criminal elements through a restorative justice approach is used if there is sufficient evidence to prosecute the perpetrator of the crime and is accompanied by the freedom and voluntariness of the victim and perpetrator. Settlement is carried out as much as possible for the recovery of the victim, and is carried out if the perpetrator realizes and admits his mistake and the consequences for the victim and the community, and the perpetrator is willing to take responsibility voluntarily. By involving the community who can act as organizers, observers or facilitators.

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