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Business Dispute Resolution Through Arbitration Legal Remedies

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ABSTRACT

Business activities always allow for a dispute (dispute/difference) between the parties involved. As a result of the dispute, the parties always want a quick resolution and settlement. Delays in resolving trade disputes will result in inefficient economic development, decreased productivity, and conversely increased production costs. This not only hinders the improvement of workers' welfare and progress, but also harms consumers. Arbitration is a very simple and informal method of dispute resolution, which is essentially private. The simplicity of Arbitration is reflected in its process: the disputing parties agree to submit their dispute to a person who is recognized by both parties as having expertise and wisdom, this person is called the Arbitrator. The Arbitrator listens to arguments from both parties, considers the facts and arguments presented, and ultimately renders a decision. In essence, the purpose of the parties in resolving disputes through Arbitration is to find a solution that is beneficial to all parties, maintain the confidentiality of their dispute, and achieve a resolution that is fast, efficient, and does not take a long time. The parties who resolve this dispute usually have expertise in their fields and their integrity has been tested, and they maintain neutrality.

Keywords: Business Dispute, Arbitration Legal Remedies.

A. Introduction

In the current global era, the business world has the characteristics of competition and cooperation. Moreover, at this time the world is increasingly integrated, as if without borders (the borderless world), while competition between business actors is getting tighter, but at the same time it opens up wide opportunities for the development of cooperation in various business fields. Conflict in the business field is something that is inherent in competition and cooperation, therefore the increasing potential for business disputes is something that cannot be avoided. One of the popular and much sought after methods now is dispute resolution through arbitration. Even now, the developed world is reluctant to enter into business relations

without being associated with an arbitration agreement. Indeed, for the developed world, commercial arbitration is considered a business executive'court as an alternative to resolving business disputes through formal courts, which generally take a long time.[1]

Business activities always allow for a dispute (dispute/difference) between the parties involved. As a result of the dispute, the parties always want a quick resolution and settlement. Delays in resolving trade disputes will result in inefficient economic development, decreased productivity, and conversely increased production costs. This not only hinders the improvement of workers' welfare and progress, but also harms consumers. To resolve business disputes, the parties have the freedom to choose which dispute resolution forum to choose. The principle of freedom of the parties (partij vrijheid) is recognized in the legal system applicable in Indonesia. This can be found in Article 1338 paragraph (1) of the Civil Code which stipulates that "all agreements made legally apply as laws for those who make them".

Based on Article 58 of Law No. 48 of 2009 concerning Judicial Power above, it can be seen that the parties are given the freedom to choose dispute resolution, either through a court forum or alternative dispute resolution. One alternative dispute resolution that can be chosen by the parties is through the arbitration mechanism. The emergence of this alternative dispute resolution through arbitration is motivated by a reality, that the resolution of business disputes through judicial institutions has recently received quite harsh criticism from various groups, including from business actors themselves, academics, professionals, the press and the public in general. The judicial institution is seen as being overloaded. On the one hand, the number, type, and type of cases received from time to time continue to increase sharply, while on the other hand, the ability to resolve disputes by the courts is not comparable to the number of cases received, so that it cannot be resolved effectively and efficiently. The

[1] Nugroho, J. Kajian Kritis Thd UU No 3 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesain Sengketa Dalam Kaitannya Dengan Prinsip Kebebasan Berkontrak di Indonesia. Jurnal Hukum Argumentum, 5 (1), (2005), 32.

judicial process that is so complicated, bureaucratic, and long-winded, will clearly have an impact on the length of time, energy, and expensive costs. This is certainly not in line with the "Principle of Justice Being Carried Out Simply, Quickly and at Low Cost". The costs that must be incurred to handle the case cannot be predicted with certainty.[2]

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 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

1. Legal Regulations Relating to the Arbitration Process

In resolving disputes entrusted to him, the arbitrator is subject to arbitration laws and regulations, although this does not reduce the freedom of the parties to comply with the procedural rules (rules) of the institutional arbitration institution. Arbitration as a private dispute resolution mechanism, the selection of arbitrators must also be agreed upon by the parties. Arbitrators can be either a panel or a sole arbitrator. In the event that the parties agree on a panel of arbitrators, the usual procedure is for each party to nominate a candidate for arbitrator, and then the two arbitrators nominated by each party elect a third arbitrator to be the chairman. To arrive at the

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[2] Hayadi, M. Penyelesaian Bisnis Internas Melalui Arbitrase. Jurnal ilmu hukum, 4 (7), (2009), 98.

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

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

selection of an arbitrator agreed upon by the parties, the process is not always easy. Therefore, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and various procedural rules applicable in various institutional arbitrations provide a way if the process reaches a deadlock. According to the UNCITRAL Rules, to anticipate bottlenecks in the selection and appointment of arbitrators, the parties have the freedom to determine the appointing authority. However, if the appointing authority chosen by the parties refuses or fails to appoint an arbitrator within the specified time, the parties may request assistance from the Secretary General of the Permanent Court of Arbitration based in The Hague, to determine the appointing authority (Article 6 paragraph (2) and Article 7 paragraph (2) letter b UNCITRAL Rules). Based on the ICC Rules, the parties also have the freedom to choose an arbitrator and if the parties fail to agree on this, the arbitrator is appointed by the ICC arbitration body (the International Court of Arbitration).

Dispute resolution through arbitration, theoretically and practically, has two forms, namely ad hoc arbitration and institutional arbitration. Ad hoc arbitration is incidental and bound to a particular institution. Ad hoc arbitration is formed and is not bound to a particular institution. Ad hoc arbitration is formed and has the authority to handle only certain cases, and the arbitrators are selected and determined based on the agreement of the parties. Unlike ad hoc arbitration, institutional arbitration is a permanent form of arbitration held under the supervision of a permanent institution (permanent arbitral body). The jurisdiction of institutional arbitration can be national, regional or international.

There are several advantages in choosing institutional arbitration. First, each institutional arbitration provides a model arbitration clause that can be used by the parties as a reference in creating an arbitration clause. For business people, the availability of this model clause is very helpful when compared to making it yourself, because arriving at an agreed formulation is generally not always easy. Second, each institutional arbitration has procedural rules that provide an overview of how the

arbitration process will take place under the institutional arbitration, from the initial stage to the final stage of the arbitration process. These rules bind the parties when they have agreed to submit to the procedural rules. Therefore, with the availability of these procedural rules, the parties can already estimate how the arbitration process will take place, and in some cases can even predict the desired results. Third, each institutional arbitration provides a list of arbitrators with various expertise. Thus, this list helps the parties in selecting the arbitrators to be selected according to the interests of the dispute being faced. Fourth, and no less important, is institutional arbitration which is equipped with administrative staff who assist the parties, for example in sending summonses, correspondence, and sending other documents, as well as assisting the arbitration hearing, for example in making minutes of the hearing, sending summonses, and so on.

In dispute resolution through arbitration, if there is a delay in making a decision, the arbitrator can be punished by paying damages caused by the delay to the parties. The ratio of this penalty of paying damages is that these arbitrators have been paid to make this decision. So it must be done as if they had promised to "lever the goods that have been purchased". Indeed, these arbitrators receive payment to "produce" a decision, for which they have been paid.

2. The Role of Arbitration Law in Resolving National Business Disputes

When there is a dispute between business actors, they tend to utilize the general court system. However, according to entrepreneurs, the use of this court is difficult to predict both in terms of time and cost. The litigation process generally creates an atmosphere of hostility that may continue for the parties involved in the case. Imagine if this situation occurs between entrepreneurs or families who depend on long-term cooperative relationships. In addition, litigation requires significant time and costs, and is sometimes hampered by technical reasons such as the backlog of cases in court. Observing these conditions in dispute resolution, alternatives to resolving disputes become increasingly important.

Delaying dispute resolution has the potential to harm overall development by causing inefficiency, decreasing productivity, stagnation in the business world, and inhibiting improvements in social welfare. This condition creates an urgent need to find a method for resolving disputes that is fast, informal, but still maintains the reputation and trade interests of the disputing parties. Currently, one alternative resolution that is considered fast, appropriate, and measurable in terms of cost is through the Arbitration Board. This method is considered effective because the arbitration decision is final and binding, making it an attractive option for the parties involved in the dispute.[5]

Arbitration, as regulated in Law No. 30 of 1999, refers to the settlement of civil disputes outside the general courts, which is based on a written agreement between the disputing parties. Arbitration law has an important role in resolving national business disputes. Arbitration can provide legal certainty and justice for the parties involved in a business dispute. In addition, arbitration can also provide advantages in terms of the time and costs required to resolve a business dispute. In arbitration, the parties involved can choose an arbitrator or panel of arbitrators who have expertise and experience in the field related to the business dispute being disputed. The role of Arbitration in resolving disputes is growing rapidly today. Both local entrepreneurs now understand and rely more on Arbitration as a way to resolve their trade disputes.[6]

Arbitration is a very simple and informal method of dispute resolution, which is essentially private. The simplicity of Arbitration is reflected in its process: the disputing parties agree to submit their dispute to a person who is recognized by both parties as having expertise and wisdom, this person is called the Arbitrator. The Arbitrator listens to arguments from both parties, considers the facts and arguments

[5] Syah, Mudakir I. *Penyelesaian sengketa di luar pengadilan via arbitrase*. (Yogyakarta: Calpulis, 2016), hlm. 7.

[6] Adolf, H. *Dasar-Dasar, Prinsip & Filosofi Arbitrase Cetakan ke-2*. (Bandung: KENI Media, 2015), hlm. 1.

presented, and ultimately renders a decision.

In essence, the purpose of the parties in resolving disputes through Arbitration is to find a solution that is beneficial to all parties, maintain the confidentiality of their dispute, and achieve a resolution that is fast, efficient, and does not take a long time. The parties who resolve this dispute usually have expertise in their fields and their integrity has been tested, and they maintain neutrality. Thus, the ultimate goal of resolving disputes through Arbitration is to achieve justice for all parties involved in the dispute. The role of arbitration in carrying out legal functions and ensuring justice is seen in its authority, such as its ability to make decisions and encourage peace.13 The justice sought by arbitration refers to substantial justice. This is reflected in its process which tends to seek substantial truth even though it is only based on evidence presented by the parties.

D. Conclussion

Arbitration is a very simple and informal method of dispute resolution, which is essentially private. The simplicity of Arbitration is reflected in its process: the disputing parties agree to submit their dispute to a person who is recognized by both parties as having expertise and wisdom, this person is called the Arbitrator. The Arbitrator listens to arguments from both parties, considers the facts and arguments presented, and ultimately renders a decision. In essence, the purpose of the parties in resolving disputes through Arbitration is to find a solution that is beneficial to all parties, maintain the confidentiality of their dispute, and achieve a resolution that is fast, efficient, and does not take a long time. The parties who resolve this dispute usually have expertise in their fields and their integrity has been tested, and they maintain neutrality.

References

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

Adolf, H. *Dasar-Dasar, Prinsip & Filosofi Arbitrase Cetakan ke-2*. (Bandung: KENI Media, 2015).

Hayadi, M. Penyelesaian Bisnis Internas Melalui Arbitrase. Jurnal ilmu hukum, 4 (7), (2009).

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

Nugroho, J. Kajian Kritis Thd UU No 3 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesain Sengketa Dalam Kaitannya Dengan Prinsip Kebebasan Berkontrak di Indonesia. Jurnal Hukum Argumentum, 5 (1), (2005).

Syah, Mudakir I. *Penyelesaian sengketa di luar pengadilan via arbitrase*. (Yogyakarta: Calpulis, 2016).