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ALTERNATIVE DISPUTE RESOLUTION (ADR) IN LAW IN INDONESIA

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Abstrak

Alternative Dispute Resolution **(**ADR) merupakan alternatif yang paling efektif dan efisien dalam menyelesaikan sengketa atau konflik kepentingan dan pemenuhan kebutuhan. Para pihak yang bersengketa duduk secara bersama-sama, merumuskan jalan keluar untuk mengakhiri perbedaan kepentingan dan pemenuhan kebutuhan individual menjadi kepentingan dan kebutuhan bersama. Jalan keluar yang dirumuskan berisi penyelesaian yang memuaskan kedua belah pihak yang sedang bersengketa. Selain itu, cara penyelesaiannya dirumuskan pula secara bersama oleh para pihak, baik dengan maupun tanpa bantuan pihak ketiga. Pada tanggal 12 Agustus 1999 disahkan Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa. Dalam undang-undang ini diatur mengenai arbitrase, dan juga mengenai ADR. Secara yuridis formal, pelembagaan arbitrase dan ADR ini dimungkinkan dalam sistem kekuasaan kehakiman di Indonesia. Semula pelembagaan ini diatur dalam UU No. 14 Tahun 1970 tentang KetentuanKetentuan Pokok Kekuasaan Kehakiman yaitu sebagai berikut: "Penyelesaian perkara di luar pengadilan atas dasar perdamaian atau melalui arbitrase tetap diperbolehkan, tetapi putusan arbiter hanya mempunyai kekuatan eksekutorial setelah memperoleh izin atau perintah untuk dieksekusi dari pengadilan." Di samping itu, ketentuan dalam Pasal 14 ayat (2) UU No. 14 Tahun 1970 menyatakan bahwa: "Ketentuan dalam ayat (1) tidak menutup kemungkinan untuk usaha penyelesaian perkara perdata secara perdamaian.

Kata kunci : Alternative Dispute Resolution, hukum positif, arbitrase.

Abstract

Alternative Dispute Resolution (ADR) is the most effective and efficient alternative in resolving disputes or conflicts of interest and meeting needs. The disputing parties sit together, formulating solutions to end differences in interests and fulfill individual needs into common interests and needs. The solution formulated contains a solution that satisfies both parties to the dispute. Apart from that, the way to solve it is also formulated jointly by the parties, either with or without the assistance of a third party. On August 12, 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was passed. This law regulates arbitration and ADR. In formal juridical terms, the institutionalization of arbitration and ADR is possible in the judicial power system in Indonesia. Initially this institutionalization was regulated in Law no. 14 of 1970 concerning Basic Provisions of Judicial Powers, which are as follows: "Settlement of cases out of court on the basis of peace or through arbitration is still allowed, but the arbitrator's decision only has executive power after obtaining

permission or an order to be executed from the court." In addition, the provisions in Article 14 paragraph (2) of Law no. 14 of 1970 states that: "The provisions in paragraph (1) do not rule out efforts to settle civil cases in a peaceful manner.

Keywords: Alternative Dispute Resolution, positive law, arbitration

Introduction

The process of dispute resolution through ADR in Indonesia is not something new in the cultural values of the nation, because the soul and nature of the Indonesian people are known for their flexibility and cooperative nature in solving problems. Various ethnic groups in Indonesia usually use deliberation and consensus settlement methods to make decisions. For example, in Batak, the traditional runggun forum resolves disputes through deliberation and kinship, in Minangkabau, it is known that there is a peace judge institution that generally acts as a mediator and conciliator in resolving problems faced by the local community (S. Margono 2004, 38).

A dispute or dispute in various business activities is actually something that is not expected to occur because it can result in losses to the disputing parties, both those in the right position and in the wrong position. Therefore, the occurrence of business disputes needs to be avoided in order to maintain a good reputation and relationships going forward. However, disputes are sometimes unavoidable because of misunderstandings, violations of laws, broken promises, conflicting interests, and / or losses to one party (Dahlan 2000, 113).

The problem of dispute resolution remains a very important aspect of business transactions at all times. With a variety of disputes faced, especially in the 21st century where disputes are increasingly widespread and have many disputes. The dispute that occurs can be in the form of an internal meeting between the parties who entered into an agreement because one of the parties broke the agreement unilaterally.

Gary Goodpaster, through his writing on Reviews of Dispute Resolution in the book Arbitration in Indonesia, says the following: Every community has various ways to obtain agreement in the process of cases or to resolve disputes and conflicts. The method used in a particular dispute clearly has consequences, both for the disputing parties and the community in the broadest sense. Because of these consequences, it is very necessary to channel certain disputes to a dispute resolution mechanism that is most appropriate for them. (Widjaya and Yani 2000, 3).

This means that in resolving a conflict there are various ways that a person or society can take. Each dispute resolution has different consequences. Therefore, in a dispute resolution process, the customs of the local community must also be considered in order to obtain an appropriate dispute resolution. Alternative dispute resolution in Indonesian called Alternative Dispute Resolution consists of three invented words, namely settlement, dispute and alternative. The word dispute comes from the root word "difference" which gets the prefix "per" and the suffix "an". Etymologically, the word "difference" means "different", while "disagreement" means: contradiction, disagreement, dispute. The term dispute is often referred to as "case" or "dispute" or dispute which also means "conflict" (Zaeny 2005, 301). This article will discuss the position of Alternative Dispute Resolution (ADR) in Indonesian Law.

Discussion

Definition of Dispute

Disputes can happen to anyone and anywhere. Disputes can occur between individuals and individuals, between individuals and groups, between groups and groups, between companies and companies, between companies and countries, between countries and one another. In other words, disputes can be public or civil in nature and can occur both locally, nationally and internationally. A dispute is a situation where there is a party who feels aggrieved by another party, which then submits this dissatisfaction to the second party. If the situation shows a difference of opinion, then what is called a dispute occurs.

In the legal context, especially contract law, what is meant by dispute is a dispute that occurs between the parties due to a violation of an agreement that has been stated in a contract, either in part or in whole. In other words, there has been a default by the parties or one of the parties (Nurnaningsih Amriani, 2012: 12). According to Nurnaningsih Amriani (2012: 13), what is meant by dispute is a dispute that occurs between the parties to the agreement because of a default committed by one of the parties in the agreement. The same thing was conveyed by Takdir Rahmadi (2011: 1), which means that conflict or dispute is a situation and condition in which people experience disputes that are factual or disputes that exist in their perceptions only.

Thus, what is meant by dispute is a dispute that occurs between two or more parties who mutually defend their respective perceptions, where the dispute can occur because of an act of default by the parties or one of the parties to the agreement. 2. Causes of Disputes The following are some theories about the causes of disputes, including:

a. The theory of public relations The theory of public relations, emphasizes the existence of distrust and rivalry groups in society. Adherents of this theory provide solutions to conflicts that arise by increasing communication and mutual understanding between groups experiencing conflicts, as well as developing tolerance so that people can more accept each other's diversity in society (Takdir Rahmadi, 2011: 8).
b. Principle negotiation theory Principle negotiation theory explains that conflict occurs because of differences between the parties. Proponents of this theory argue that in order for a conflict to be resolved, the perpetrator must be able to separate his personal feelings from problems and be able to negotiate based on interests and not in a fixed position (Takdir Rahmadi, 2011: 8).
c. Identity theory This theory explains that conflict occurs because a group of people feels their identity is threatened by other parties. Identity theorists propose conflict resolution because identity is threatened through facilitating workshops and dialogue between representatives of groups experiencing conflict with the aim of identifying the threats and concerns they feel and building empathy and reconciliation. The ultimate goal is to achieve a collective agreement that recognizes the basic identity of all parties (Takdir Rahmadi, 2011: 9).
d. The theory of intercultural misunderstanding The theory of intercultural misunderstanding explains that conflict occurs because of incompatibility in communication between people from different cultural backgrounds. For this reason, dialogue is needed between people who experience conflict in order to know and understand the culture of other communities, reducing the stereotypes they have against other parties (Takdir Rahmadi, 2011: 9).

e. Transformation theory This theory explains that conflict can occur because of problems of inequality and injustice as well as inequality that are manifested in various aspects of social, economic and political life. Adherents of this theory argue that conflict resolution can be carried out through several efforts such as changes in structures and frameworks that cause inequality, enhancing relationships, and long-term attitudes of parties experiencing conflict, as well as developing processes and systems to realize empowerment, justice, reconciliation and recognition of each other's existence (Takdir Rahmadi, 2011: 9).

f. The theory of human needs or interests In essence, this theory reveals that conflicts can occur because human needs or interests cannot be met / hindered or feel blocked by other people / parties. Human needs and interests can be divided into three types, namely substantive, procedural, and psychological. Substantive interests (substantive) relate to human needs related to materials such as money, clothing, food, housing, and wealth. Procedural interests (procedural) relate to the order in the community, while psychological interests (psychological) relate to non-material or non-material such as appreciation and empathy (Takdir Rahmadi, 2011: 10).

Dispute Resolution through Litigation

The dispute resolution process is carried out through the court or what is often referred to as "litigation", which is a dispute settlement carried out by proceeding in court where the authority to regulate and decide is exercised by the judge. Litigation is a process of dispute resolution in court, where all disputing parties face each other to defend their rights in court. The final result of a dispute resolution through litigation is a decision stating a win-lose solution (Nurnaningsih Amriani, 2012: 35).

Procedures in this litigation path are more formal and technical in nature, result in a win-lose agreement, tend to cause new problems, are slow to resolve, require high costs, are not responsive and cause hostility between the disputing parties. This condition causes people to look for other alternatives, namely dispute resolution outside the formal justice process. Settlement of disputes outside the formal court process is what is called the "Alternative Dispute Resolution" or ADR (Yahya Harahap, 2008: 234).

Dispute Resolution through Non-Litigation

In dispute resolution through non-litigation, we are familiar with the existence of alternative dispute resolution (ADR), which in the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Alternative Dispute Resolution is a dispute settlement institution outside the court based on the agreement of the parties by ruling out the dispute resolution by litigation in court. Recently, the discussion about alternatives in dispute resolution has been increasingly discussed, it even needs to be developed to overcome congestion and the buildup of cases in court and at the Supreme Court (PERMA Question and Answer Book No. 1 of 2008 on Mediation Procedures in Courts, 2008: 1). There are many alternatives in dispute resolution including:

a. Arbitration

Article 1 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains that arbitration (referee) is a way of resolving a

civil dispute outside a public court based on an arbitration agreement made in writing by the disputing parties. Arbitration is used to anticipate disputes that may occur or are currently experiencing disputes that cannot be resolved by negotiation / consultation or through third parties and to avoid dispute resolution through the Judiciary, which has been felt to take a long time.

b. Negotiation
According to Ficher and Ury as cited by Nurnaningsih Amriani (2012: 23), negotiation is a two-way communication designed to reach an agreement when both parties have the same or different interests. This is in line with what is expressed by Susanti Adi Nugroho (2009: 21) that negotiation is a process of bargaining to reach an agreement with other parties through a process of interaction, dynamic communication with the aim of obtaining a solution or a way out of the problems currently being faced by the two. both parties.

c. Mediation
Mediation is basically a negotiation that involves a third party who has expertise regarding effective mediation procedures, which can help in conflict situations to coordinate their activities so that they can be more effective in the bargaining process (Nurnaningsih Amriani, 2012: 28). Mediation can also be interpreted as an effort to resolve disputes between the parties by mutual agreement through a mediator who is neutral, and does not make decisions or conclusions for the parties but supports the facilitator to carry out dialogue between parties in an atmosphere of openness, honesty, and exchange of opinions to reach consensus (Susanti Adi Nugroho, 2009: 21).

d. Conciliation
Conciliation is a continuation of mediation. Mediator changes function to conciliator. In this case the conciliator carries out a more active function in finding forms of dispute resolution and offering them to the parties. If the parties can agree, the solution made by the conciliator will be the resolution. The agreement that occurs is final and binding on the parties. If the disputing parties are unable to formulate an agreement and the third party proposes a way out of the dispute, this process is called conciliation (Nurnaningsih Amriani, 2012: 34).

e. Expert Assessment
Expert assessment is a way of resolving disputes by the parties by asking for an opinion or an expert's assessment of the ongoing dispute (Takdir Rahmadi, 2011: 19).

f. Fact finding
Fact finding is a way of resolving disputes by the parties by asking for the help of a team which usually consists of an odd number of experts who carry out the function of investigating or finding facts which are expected to clarify the problem and can end the dispute (Takdir Rahmadi, 2011: 17).

Alternative Dispute Resolution (ADR) Position In Indonesian Law

Alternative Dispute Resolution (ADR) is a foreign term that needs to be found its equivalent in Indonesian. Various terms in Indonesian have been introduced in various forums by various parties, such as: Dispute Resolution Options (PPS),

Alternative Dispute Resolution Mechanisms (MAPS), Non-Judicial Dispute Resolution Options and Cooperative Resolution Mechanisms. In addition, ADR is defined as cooperative conflict management (cooperation conflict management). Thus, seen from the aforementioned terms, ADR is actually an out-of-court dispute resolution which is carried out amicably.

In the Legal Dictionary, the terms of alternative dispute resolution and ADR are distinguished, as explained below: Alternative Dispute Resolution "An option for dispute resolution selected through a procedure agreed upon by the disputing parties, namely settlement outside the court by means of consultation, negotiation, mediation. or by using expert judgment. " ADR "A concept that includes various forms of dispute resolution options besides the judicial process, namely through lawful means, whether based on a consensus approach or not."

The provisions in article 6 of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution regulate options in dispute resolution through deliberation by the disputing parties, under the title "Alternative Dispute Resolution", which is a translation of Alternative Dispute Resolution. Juridically in Law no. 30 of 1999, defines alternative dispute resolution as follows: "Alternative Dispute Resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment."

So it can be concluded that ADR is an out-of-court dispute resolution institution, whose mechanism is based on an agreement of the parties by ruling out litigation dispute resolution in court, either through consultation, negotiation, conciliation, or expert judgment. ADR is a dispute settlement carried out by the disputing parties with or without the help of other people who will help resolve disputes or differences of opinion between the disputing parties. This ADR can only be pursued if the parties agree on the settlement through the dispute settlement options institution. Disputes or differences of opinion that can be resolved by the parties through the dispute resolution option are only disputes or differences of opinion in the civil field. Settlement in the form of peace will only achieve its goals and objectives if it is based on good faith between the disputing parties or disagreements by overriding the dispute settlement by litigation in court.

The history of the emergence of ADR began in 1976 when the Chief Justice of the United States of America, Warren Burger, spearheaded this idea at a conference in Saint Paul, Minnesota, United States. This was motivated by various factors of the reform movement in the early 1970s, at which time many observers in the legal sector and the academic community began to feel serious concerns about the increasing negative effects of litigation in court. Finally, the American Bar Association (BAR) realized the plan and further added the ADR Committee to their organization followed by the inclusion of the ADR curriculum in law schools in the United States and also in economic schools.

If we look at the history of ADR development in the country where it was first developed (United States), ADR development is motivated by the following needs: 1. Reducing congestion in court. The large number of cases brought to court means that the court process is often lengthy, costly and often yields unsatisfactory results. 2. Improve public order in the dispute resolution process.

ADR has enormous potential to develop in Indonesia for the following reasons: 1. Economic factors ADR has the potential to be a more economical means of dispute

resolution, both from a cost and time perspective. 2. Scope Factors Discussed ADR has the ability to discuss the problem agenda more broadly, comprehensively, and flexibly. This can happen because the rules of the game are developed and determined by the disputing parties according to their interests and needs. 3. Fostering Factors for Good Relationships ADR, which relies on cooperative resolution methods, is very suitable for those who emphasize the importance of fostering existing and future human relations.

Since the 1980s, various dispute resolution options have begun to develop as the third wave of business dispute settlement systems because settlement does not require formal rules, is quick and fast, provides satisfaction and hope, costs must be cheap for efficiency, results that are it is desirable that it contains dispute resolution to move forward not to question the past and the handling is left to professionals by a truly expert.

Christopher W. Moore stated a number of advantages or benefits of dispute resolution using ADR, namely:

1. The nature of volunteerism in the process;
2. Prompt procedures;
3. Non-judicial decisions;
4. Control by managers who know best about the organization's needs;
5. Confidential procedures (confidential);
6. Greater flexibility in designing problem-solving conditions;
7. Save time;
8. Save cost and time;
9. Protection and maintenance of working relations;
10. High possibility to implement the agreement;
11. Higher levels of control and easier estimation of results;
12. Agreements that are better than just compromise or a result of a lose / win settlement;
13. Decisions that last all the time

Meanwhile, M. Yahya Harahap mentioned several other reasons for the need for alternative dispute resolution besides going through the litigation process, namely as follows:

1. There are demands from the business world to resolve disputes in a simple, fast, and low cost manner.
2. The existence of various general criticisms leveled against the world of justice.

Thus, it can be said that the presence of ADR is a critical answer to formalistic dispute resolution methods carried out by judicial bodies. This kind of situation is not in line with basic legal values and the function of the law to minimize the occurrence of prolonged conflicts. Therefore, it is necessary to establish a new institution as an alternative that can fulfill responsive justice for the parties in resolving disputes by accommodating dispute resolution patterns that exist in traditional primitive societies. Alternative dispute resolution has varying degrees of interest in the rules of the game, from the most rigid in implementing the rules of the game to the most relaxed. Not all alternative dispute resolution models are good for the disputing parties.

Thus, it can be concluded that ADR is the most effective and efficient alternative in resolving disputes or conflicts of interest and meeting needs. The disputing parties sit together, formulating solutions to end differences in interests and fulfill individual needs into common interests and needs. The solution formulated contains a solution that satisfies both parties to the dispute. Apart from that, the way to solve it is also

formulated jointly by the parties, either with or without the assistance of a third party. On August 12, 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was passed. This law regulates arbitration and ADR. In formal juridical terms, the institutionalization of arbitration and ADR is possible in the judicial power system in Indonesia. Initially this institutionalization was regulated in Law no. 14 of 1970 concerning Basic Provisions of Judicial Powers, which are as follows: "Settlement of cases out of court on the basis of peace or through arbitration is still allowed, but the arbitrator's decision only has executive power after obtaining permission or an order to be executed from the court." In addition, the provisions in Article 14 paragraph (2) of Law no. 14 of 1970 states that: "The provisions in paragraph (1) do not rule out efforts to settle civil cases in a peaceful manner."

Conclusion

Alternative Dispute Resolution (ADR) is an out-of-court dispute settlement mechanism, the mechanism of which is based on an agreement from the parties by ruling out litigation dispute resolution in court. The presence of ADR is a critical answer to formalistic dispute resolution methods carried out by judicial bodies. ADR has enormous potential to develop in Indonesia for several reasons as follows: economic factors, scope factors discussed and good relationship building factors.

In Indonesia, on August 12, 1999, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law stipulates the provisions of arbitration and ADR. In formal juridical terms, the institutionalization of arbitration and ADR is regulated in Law no. 14 of 1970 concerning Basic Provisions of Judicial Power. In the development and empowerment of ADR in Indonesia, the Supreme Court with Perma Number 2 of 2003 concerning Mediation Procedures in Courts, which was later updated with Perma Number 1 of 2008, has integrated the mediation process in the judicial system. In Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it has been stated that Alternative dispute resolution consists of settlement out of court using the methods of consultation, negotiation, mediation, conciliation, or expert judgment.

Business actors and the community can choose from these alternative types of dispute resolution to resolve civil disputes they experience on a non-litigation basis according to the agreement of the parties. Because the dispute settlement using the ADR mechanism is carried out based on an agreement from the disputing parties, therefore the form of ADR's decision on the dispute that occurs arises from the agreement to be issued by the parties to the dispute. In other words, 'agreement' is what ADR looks for. In the Indonesian context, the institutionalization and correctionalization of ADRs have various opportunities based on various supporting factors such as: political and cultural factors, ADR is not a new thing, ADR is in line with the development of community participation.

Thus, it can be concluded that ADR is the most effective and efficient alternative in resolving disputes or conflicts of interest and meeting needs on a non-litigation basis. The disputing parties sit together, formulating solutions to end differences in interests and fulfill individual needs into shared interests and needs. The solution formulated contains a solution that satisfies both parties to the dispute. Apart from that, the way to solve it is also formulated jointly by the parties, either with or without the assistance of a third party.

Bibliography

Harahap, M. Yahya. Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa. Bandung: PT Citra Aditya Bakti. 1997.

Imaniyati, Neni Sri. Perbankan Syariah dalam Perspektif Hukum Ekonomi. Bandung: CV. Mandar Maju. 2013.

Mardani, Hukum Perikatan Syariah di Indonesia. Jakarta: Sinar Grafika. 2013.

Moleong, Lexi J, Metodologi Penelitian Kualitatif, Edisi Revisi, Bandung:PT Rosda Karya. 2006.

Muhammad, Abdul Kadir, Hukum Perdata Indonesia, Bandung: PT Citra Aditya Bakti. 2010.

Rahmadi, Takdir, Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat, Jakarta: Rajawali Pers. 2011.

Usman, Rachmadi. Pilihan Penyelesaian Sengketa di Luar Pengadilan. Bandung: PT Citra Aditya Bakti. 2013

Winarta, Frans Hendra. Hukum Penyelesaian Sengketa. Jakarta: Sinar Grafika. 2013. Undang-undang No. 14 Tahun 1970 tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternative Penyelesaian Sengketa.