ALTERNATIVE DISPUTE RESOLUTION IN BUSINESS RELATIONS TO ACHIEVE GLOBAL PARTNERSHIP IN DEVELOPMENT

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Abstract

Nowdays business activity is developing to be more complex, both in terms of numbers, and also in terms of complexity which forms various of business cooperation. Business cooperation that occurs is very diverse, depending on what area of business that are running. The Diversity in business cooperation of course gave birth to new problems and challenging, therefore the law should be ready to anticipate any development that arise. Cases involving legal issues in Indonesia at present almost always become headline news in the newspaper as well as in other electronic media. Any cases arise between parties in community are often resolved through legal channels in court. That is knownn as resolution through litigation channels. Resolution of disputes through litigation channels can in practice affect the business world and the parties in dispute feel dissatisfied with the judicial degree in court. Besides, the relation between the parties has become disharmonious, which had the effect of destroying the partnership that has been built. Partnership constitutes an essential aspect that needs to be prioritized in the efforts to enhance development considering that a strong partnership will accelerate the increase of public welfare. For that purpose, an alternative method to resolve disputes that makes for partnership needs to be developed, to create harmonious business relations as foundation for global partnership. Alternative Dispute Resolultion has many different types. Alternative Dispute Resolution procedures can be resolved in a good and satisfactory way for the parties involved so that eventually it is hoped that Alternative Dispute Resolution can be resorted to as a good means to resolve business disputes and to accommodate the interest of the parties concerned to achieve global partnership in development.

Keywords : Partnership, Alternative Dispute Resolution, Global Partnership in Development

1. The Basis of Business Relationship

1.1. Backgrounds

The move towards market orientation (liberalization) in many countries has been reflected in deregulatory policies by governments, including the reduction of tariff barriers, facilitating the flows of capital and investment, and privatization of state owned enterprises. Liberalization has preceded or been forced by globalization (involving greater integration in world markets, and increased international economic interdependence). Both phenomena have been facilitated by the significant growth in world trade and foreign direct investment in recent years, and by information technology which has facilitated rapid financial transactions and changes in production and service locations around the world.

In year 1991-93 indicates that about two thirds of the inflow of foreign direct investment (FDI) is to advanced industrialized countries, which are also the source of some 95% of the outflows of such investment (UNCTAD 1994:12) . The most significant sources of FDI are multinational corporations (MNC's) based in the US, Japan, UK, Germany and France.

During the period 1981-92, FDI valued at $US203 million flowed to the ten largest developing and newly industrializing countries (This represented 72% of the total FDI to such countries). The ten countries or territories concerned were (from highest to lowest): China, Singapore, Mexico, Malaysia, Brazil, Hong Kong, Argentina, Thailand, Egypt and Taiwan [China] (UNCTAD 1994:14).

The proportion of East Asian countries in this group is notable, as is the growing significance of Singapore, Taiwan [China] and Korean MNC's as investors in China and other Asian developing countries. In this regard, between 1986-92, about 70% of FDI flows into China, Indonesia, the Philippines and Thailand, originated in other Asian countries,' with about 18% coming from Japan and 50% from Hong Kong, Singapore, Taiwan [China] and Korea (ILO/JIL 1996: page 3, note 2). The flow of FDI within the region can be expected to increase with the further development of the trading areas constituted by the Association of South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC).

In November 2011, Presidents Obama and Yudhoyono reaffirined their support for the U.S.-Indonesia Comprehensive Partnership, a long term commitment to elevate bilateral relations by intensifying consultations and developing habits of cooperation on key bilateral, regional, and global issues. First proposed by President Yudhoyono in November 2008, the two presidents officially launched the Comprehensive Partnership in November 2010 during President Obama's historic visit to Jakarta.

Cooperation under the Comprehensive Partnership is outlined in a Plan of Action consisting of three pillars: political and security; economic and development; and socio cultural, education, science, and technology cooperation. Six working groups have been tasked with coordinating strategies and highlighting policy initiatives and priorities under the Plan of Action. These groups focus on energy, security, trade and investment, democracy and civil society, education, and climate and environment.

For example in technology cooperation under the U.S.-Indonesia Science and Technology Cooperation Agreement that came into force this year, the United States and Indonesia will launch a new high-level dialogue in 2012 to bolster joint research and science development. In addition, the United States is also launching a $600,000 science capacity building program to sirengthen Indonesian scientists' ability to obtain competitive research awards, enhance peer review processes, and increase Indonesian scientific publication rates. We also launched a program under which the United States will provide $1.1 million in new funding to support collaborative research between U.S. and Indonesian scientists.

1.2. Problem Statements (Disputes in Business Relationship)

When disputes between partners in a business arise, they can threaten the business more than any competitor can. Even partners with the best intentions are likely to end up at each other's throats even though they had hoped to avoid such conflict. Disputes between business partners can present situations every bit as frustrating and perplexing as those that spouses face.

Negotiating legal frameworks for cooperation. The Global Partnership addresses areas of extreme sensitivity for both donors and recipients. This burden of sensitivity has made the negotiation of legal frameworks for cooperation a key pacing factor. New donors and donors initiating work in new project areas must negotiate legal agreements largely from whole cloth. Even donors with prior experience, such as the United States, when they meet Indonesia must renew agreements on a regular basis. Several factors contribute to the sluggish negotiation process for legal frameworks. One important chokepoint has been the Indonesian bureaucracy approval process and bureaucratic reorganization.

The biggest obstacles to faster progress in the Global Partnership can be found in the gap between money promised and money spent. For every single Global Partnership donor country, one or more of the following problems have obstructed progress: negotiating legal frameworks for cooperation, disputes over liability, and access to facilities.

1.3. Research method

This research is done by normative juridical method. That means the study of research object is done in normative fields. Johnny Ibrahim (2006, p.57) explained that normative juridical method is a scientific research procedure to find the truth based on legal science logical from normative sides. Data that will be analyzed is connected with regulations prevailed. (Ronny Hanitijo Soemitro, 1982, p.10). Soerjono Soekanto (1986, p.52) talk about data that will be used are secondary data such as:

1. Primary legal materials such as regulations, judge made law, and any other legal sources that related to the problems.
2. Secondary legal materials such as scientific articles in criminal law, law journal, etc.
3. Tertiary legal materials such as law dictionary and any other relevant literatures.

2. Explanation

2.1. Most Frequently Occurring Business Relations Disputes

Employment disputes: Employment Disputes can arise for almost any reason. However, there are a number of employment disputes that are more likely to occur. These include: Discrimination based on sex, race, age disability, marital status, or any other form of employee discrimination; disagreement over salary or payment; maternity leave disputes; unfair dismissal charges; and disputes over representation at employment tribunals.

Disputes between businesses: Business to business relationships can be very helpful in creating larger deals and gaining support in the business world. But these relationships can be complicated and delicate. When disagreements arise between companies they usually involve something larger than a personal dispute between two parties and require some serious and professional mediation or legal action.

Partnership disputes: Disputes within the leadership of a company can be almost as sticky to deal with as disputes between companies. Partnerships in business can face irreparable damages, just like marriages partners can. They usually revolve around a change in leadership, a disagreement of direction, hiring disputes, and financial disputes.

Breach of contract and breach of financial agreements: A breach of contract or financial agreement is a serious concern for business leaders. Contracts are legally bindlng documents that make agreements which must be upheld, either voluntarily or through legal enforcement. In a breach of contract a legal agreement is not honored by one or more of the involved parties, either through a failure to act or through direct violation of the agreement.

These agreements cover a wide spectrum of disputes that can arise in a business setting, but they do not capture the full spectrum. Arguments and disputes can happen in a business over almost anything. Luckily effective management and quick mediation can resolve many smaller disputes. But when larger disputes happen, such as those listed above, it can be helpful to get some professional assistance.

2.2. Global Partnership

Historically each country was responsible for its otn trade, monetary policies, and advancements in technology, as well as research and development. Gradually the walls have broken down with North American free trade agreements and European countries adopting universal currencies. But there is sill a large divide between what industrialized countries are able to do and what developing nations receive. Specifically, poorer nations have little or no access to things that are considered necessities in other countries.

One area that is of particular interest is the availability and distribution of drugs and medicine. There appears to be a double-edged sword at work here. Where pills for particular illnesses cost pennies in the rest of the world, they are still not available to reduce preventable deaths in developing countries. Then, there are the drugs that are expensive in North America, so they are cost-prohibitive in Africa for example. Either way, people outside the industrialized country or continent lose. In fact, most people do not benefit from medical advancements either in the way of pharmaceuticals or treatments. Further, basic services such as hydro, telephone, and internet are non-existent. While richer countries use these services for entertainment purposes, poorer nations do not even have access for emergencies. Countries landlocked by other countries or by water have problems specifis to them alone.

All of these issues are everyone's problem and the world, as a whole, must commit and contribute to improve the plight of the less fortunate. Consequently, for the eighth and final MDG, the following five targets where set.

3. Disputes in Business

3.1. Business's dispute resolution in general

The impact of human occupation are changing the characteristics of the natural world, or perhaps more accurately our perception of it (particularly its limitations). Law must, as it has previously done, adapt such thut the social and environmental implications of change (in this instance sustainability and the precautionary utilization of natural resources) are incorporated into the legal framework and normative value construct. The approach to environmental dispute resolution must also adapt to suit these needs:

It is a truth of some importance that for the adequate description of not only law but of many other social institutions, a place must be reserved, besides definitions and ordinary statements of fact, for a third category of statements: those the truth of which is contingent on human beings and the world in which they live retaining the salient chaiacteristics which they have.

It is an urgent condition in business disputes to seek alternative methods to prevent and resolve disputes. So much energy and innovation that come from law expert that creating various way to resolve business disputes. These are various models of dispute resolution both formal and informal which can be used as a reference to answer the disputes that may arise:

3.1.1 Adjudicative Process

3.1.1.1 Litigation

Litigation is the process of taking a case through court. The litigation or legal process is most common in civil lawsuits. In litigation, there is a plaintiff (one who brings the charge) and a defendant (one against whom the charge is brought).

Litigation can also decipherable as administration proceedings and court. Eisenberg said that Court and Administrative Proceedings, the most familiar process to lawyer, features a third party with power to imposed a solution upon the disputants. It usually produces a "win/lose" results. (Eisenberg, p 637)

3.1.1.2. Arbitration

Arbitration is form of adjudication in which the neutral decisionmaker is not a judge or an official of an administrative agency. There is no single, comprehensive definition of arbitration that accurately describes all arbitration system.

3.1.2 Consensual Processes

3.1.2.1.Ombudsman

Ombudsman is an official, appointed by an institution, whose job is to investigate complaints and either prevent disputes or facilitate their resolution within that institution. Method include investigating, publicizing and recommending.

3.1.2.2.Negotiation

Negotiation is a consent process that parties used to achieve some agreement between them. Negotiation usually applicable for not peculiar disputes, ie condition of communication between the warring parties are also still good and there is mutual trust and a desire immediately resolve the problem.

3.1.2.3.Mediation

Mediation is an informal process in which a neutral third parties helps other resolve a dispute or plan a transaction but doesn't impose a solution. Mediation, as used in law, is a form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties. A third party, the mediator, assists the parties to negotiate their own settlement (facilitative mediation). In some cases, mediators may express a view on what might be a fair or reasonable settlement, generally where all the parties agree that the mediator may do so (evaluative mediation). (Suyud Margono, p.19-25)

Mediation has a structure, time table and dynamics that "ordinary" negotiation lacks. The process is private and confidential. The presence of a mediator is the key distinguishing feature of the process. There may be no obligation to go to mediation, but in some cases, any settlement agreement signed by the parties to a dispute will be binding on them.

Mediators use various techniques to open, or improve, dialogue between disputants, aiming to help the parties reach an agreement (with concrete effects) on the disputed matter. Much depends on the mediator's skill and training. The mediator must be wholly impartial. Disputants may use mediation in a variety of disputes, such as commercial, legal, diplomatic, workplace, community and family matters. A third-party representative may contract and mediate between (say) unions and corporations. When a worker's union goes on strike, a dispute takes place, the parties may agree to a third party to settle a contract or agreement between the union and the corporation.

3.1.2.4. Conciliation

Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute (including future interest disputes) agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement.

Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimeze parties needs, takes feelings into account and reframes representations.

In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator.

3.1.3 Quasi Adjudicatory

In the United States, alternative dispute resolution is the most rapidly developed areas, applied various process that designed to drive the disputed parties to resolve their disputes with any available alternative ways.

The following process is designed to give the parties a more objective view of their conflict from their own resolving ability.

3.1.3.1 Med-Arb (Mediation-Arbitration)

"Med-Arb," short for "mediation-arbitration," is a two-step dispute resolution process that borrows from both methods of dispute resolution. Parties attempt to resolve their dispute in mediation, and, if they fail to resolve some or all of their issues, the remaining issues are automatically submitted to arbitration. As it was originally conceived in the 1970s, the same "neutral" (objective facilitator) serves as both mediator and arbitrator, and, therefore, must be skilled in both roles.

Over the years, a number of variations of Med-Arb have been established, some using two neutrals and others varying the order of the mediation and arbitration processes. This method can provide the opportunity to reach collaborative settlements with the understanding that any unresolved issues will be decided by a third-party decision-maker. This can reduce pressure on the parties to reach complete agreement in the mediation stage.

3.1.3.2 Mini Trial

The minitrial is an alternative dispute resolution (ADR) procedure that is used by businesses and the federal government to resolve legal issues without incurring the expense and delay associated with court litigation. The mini-trial does not result in a fonnal adjudication but is a vehicle for the parties to arrive at a solution through a structured settlement process. It is used most effectively when complex issues are at stake and the parties need or wish to maintain an amicable relationship.

Though minitrials can be arranged under rules negotiated by the parties, they usually conform to procedures used by facilitators of ADR. The parties sign an agreement consenting to a minitrial and then each chooses a management representative to sit on the panel. These representatives have the authority to negotiate a settlement. The parties also select a “neutral adviser" to sit on the panel. The adviser must be independent and impartial, as this person will moderate the minitrial. If the parties cannot agree on a neutral adviser, the ADR facilitating agency may make the selection. The parties pay an equal share of the adviser's fees and bear their own minitrial costs.

Prior to the minitrial the parties select and then provide the neutral adviser with background materials. The parties also file legal briefs and exhibits with the adviser that contain information they intend to present at what is termed the "information exchange." This exchange is, in effect, the minitrial. The parties must agree on the length of briefs and the due dates for documents.

At the information exchange eaclt party makes presentation, and each party is entitled to make a rebuttal. As with all other procedures, the parties must either agree on the lengths of their presentations and rebuttals or let the nerltral adviser set the time limits.

During this information exchange the neutral adviser acts as a moderator rather than a judge. Factual witnesses and expert witnesses may also make presentations. The members of the panel may ask questions of the presenters. In addition to the lawyers representing the parties, each management representative may have advisers in attendance.

After the conclusion of the information exchange, the management representatives meet by them self to see if they can resolve the dispute. The information exchange should have revealed the strengths and weaknesses of each party's case and motivated the representatives to settle the dispute. If they cannot resolve the dispute on their own, they may ask the neutral adviser to meet with them separately, or jointly, and give an oral opinion on the issues and the likely outcome at trial of each issue

The representatives way also ask the neutral adviser to issue a written opinion and to mediate the negotiations and settlement terms. If an agreement is reached it is set out in writing and signed by the representatives. The agreement is legally binding on the parties. If the parties cannot settle, the proceedings will terminate 30 days after the date of the information exchange.

3.1.3.3 Summary Jury Trial

Summary jury trial is an alternative dispute resolution technique, increasingly being used in civil disputes in the United States. It is one of the new forms of dispute resolution being advanced by the regular courts in an effort to reduce docket congestion. In essence, a mock trial is held; a jury is selected and, in some cases, presented with the evidence that would be used at a real trial. In other cases, live evidence is not presented. The parties are required to attend the proceeding and hear the verdict that the jury brings in. After the jury verdict, the parties are required to once again attempt a settlement before going to a real trial.

The major advantages of the summary jury trial are simply the savings for all concerned if it is successful in prompting a settlement. If the parties reach a settlement, they may save time in conducting discovery and presenting motions and, of course, in conducting the trial. And the appeal process is also avoided.

In addition, the summary jury trial is a mechanism for forcing parties to hear what an unbiased jury really thinks of their case. All too often, parties in litigation have occasional communications via attorneys, with little or no outside correction or feedback given on the course of their litigation. ln the summary jury trial, either the verdict returned will be a "split the difference" type decision, in which the parties will have been given, an outline of a settlement, or the verdict will cause one party to worry about its chances trial. In that event, that party is likely to be much more receptive to settlement offers from the other side.

However, there are a number of disadvantages to the summary jury trial. The summary jury trial exposes one party to an earlier "dry run" of the points of the other side. Many disputants may not wish to prejudice their cases in this manner. Also, summary jury trials are not particularly simple; they are quick and cheap only when compared to traditional litigation. By the time the summary jury trial takes place, the parties have engaged in much discovery have already incurred many costs.

Another disadvantage of the system is that it affords a "foot dragging party," another opportunity for stalling and delay tactics to wear out the other side. A party that knows it has no real case but refuses to settle will naturally seek every opportunity available to achieve an unexpected success or at least a delay.

In addition, by its nature as a jury centered proceeding, the summary jury trial does not give the parties any useful clues about the outcome of issues of law. If a trial is likely to turn on issues of law, the summary jury trial is of little, if any, value.

There is also a built-in problem with the summary jury trial's nature as an adversarial proceeding. Since it is likely that one party will "win" the summary trial and one party will "lose", the parties may find themself with a slightly different balance of power after the trial but as far apart as ever. The party that "wins" the summary jury trial is unlikely to gain very much motivation to settle and might even become less willing to settle.

Alternative dispute resolution (ADR) is a term that refers to several different (but philosophically linked) methods of resolving business-related disputes outside traditional legal and administrative forums. These methodologies, which include various types of arbitration and mediation, have surged in popularity in recent years because companies and courts became extremely frustrated over the expense, time, and emotional toll involved in resolving disputes through the usual avenues of litigation.

3.1.3.4 Early Netral Evaluation

Early neutral evaluation is a process, both in court and out of court, in which an experienced lawyer gives an indication, as strong and as detailed as the disclosure and representation at that stage allows, of what would be the outcome if the matter were to be finally adjudicated in court.

Early neutral evaluation in court includes the FDR hearing at which the judge is required by the rules to predict what would happen if the matter were to go to a final hearing. It has its limitations for example because of time. Nevertheless there is a very high success rate. It is acknowledged as one of the primary achievements of the ancillary relief procedure. To a lesser extent, the process at the First Appointment is an early neuutral evaluation as the judge is required to consider the points in dispute with a view to narrowing the issues.

Early neutral evaluation out of court is much less frequent and prevalent. Indeed, there is almost only apocryphal knowledge of what is going on. In this regard, it is also, perhaps confusingly, described sometimes as private judging.

3.2. Analysis to Solve Business Disputes Resolutions in Indonesia

3.2.1 Legal Basis

In Indonesia based on the Law No. 30/1999 concerning Alternative Dispute Resolution and Arbitration, ADR is interpreted as alternative to adjudication as it is reflected in the title of the Law No. 30/1999 which separates ADR and arbitration. Therefore ADR includes negotiation, mediation, conciliation, early neutral evaluation and other hybrid type of ADR. As it happens in other Asian countries, Indonesia has been practicing ADR in traditional community long time ago. In traditional community Pasemah, South Sumatera for example, customary dispute resolution uses Jurai Tue or Sungut Jurai as third party conciliator. In West Sumatera, it is known Kerapatan Adat Nagari ot Kerapatan Ninik Mamak which functions to settle disputes baséd on their customary rules. Although, traditional type of ADR has been widely practiced throughout the islands archipelago,

institutionalization of ADR to resolve contemporary/modern problems has been left behind compare to some Asian countries such as Japan with Chotei (conciliation by Commissioners) and Wakai (consiliation by presiding judge), Philippines with Barangay Justice, and Singapore with Court Annexed ADR in Subordinate Courts. Principles Smart business operators always look for effective, low impact ways to resolve disputes. As you conduct your business, disputes can occur with suppliers, landlords, builders, neighbours, advisers, financial institutions and other businesses. Disagreements can range from minor misunderstandings, such as confusion over a delivery time, to major disputes, such as contract breaches.

Judicial type ADR or Court Connected ADR (CC-ADR) starts to develop as September 11, 2003, Supreme Court (SC) issued the Supreme Court Regulation No. 2/2003 concerning Mediation Procedures Within the Court. The SC Regulation functions as a guidance for settlement judges or non judges mediator to implement article 130 Civil Law Procedure which obliges the judges to try the aimicable settlement before the civil proceeding starts. The article 130 Civil Law Procedure has not been effective yet as judges have little motivation to mediate and they have a limited knowledge and skill on how to mediate the case.

3.2.2 Principles in Alternative Dispute Resolution

Of various rules of international law, it can be explained some of the principles of international dispute settlement: (Huala Adolf, p.15-18)

3.2.2.1. Good Faith

The principle of good faith can be said as the most central and fundamental principle in Multinational dispute settlement. This principle mandating that parties both to solve their dispute with good faith. It is not a surprising that these principles are listed as the first principle contained in the Manila declaration (Section 1 paragraph 1)

In Treaty of Aimity and Cooperation in Southeast Asia (Bali Concord 1976), Good Faith requirements is placed as well as the requirement of major terms.

3.2.2.2. The Principle of Prohibition of The Use of Force in Resolving Disputes

This principle contained in article 13 Bali Concord and forth preambule Manila Declaration, this article states :

“... in case of disputes on matters directly affecting them, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations. “

3.2.2.3.The Principle of Freedom to Choose The Way of Resolving Disputes

This is another important principle that in this principle every parties have a freedom to choose how they want to solve their disputes. (principle in free choice of means)

This principle stated in Article 33:1 United Nations Charter and Section 1 Paragraph 3 Manila’s Declarations.

3.2.2.4. The Principle of Fredom to Choose Applicable Law Against Main Disputes

The freedom of parties to choose which applicable law also including the freedom appropriateness and feasibility (*ex aequo et bono*).[23]

3.2.2.5. The Agreement Principle of the Disputed Parties

This Principle is the basis implementation of the third and fourth. The third and fourth principle above can only be realized if the parties already agreed before.

3.2.2.6. The Principle of Exhaustion of Local Remedies

In this principle any alternative steps to solve any disputes must be tried before going to International Court. For example in the Interhandel case (1959), International Court of Justice affirm that before resort may be had to an international court, the state where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system.

3.2.2.7. The Principle of International Law on Sovereignty, Independence, and Teritorial Integrity of States.

This principle set every disputed parties to obey any mandatory law that has a connection to national territorial integrity as condition

3.2.3. Various Type of ADR in Indonesia.

Private sector type ADR has two sub types: (1) business association type; independent type. Business association type is ADR service provider which is established, attached or facllitated by business association such as Indonesian National Arbitration Body (BANI) which was established by the Indonesian Chamber of Commerce & Industry (KADIN) .The Indonesian Capital Market Arbitration Body (BAPMI) which was established by Self Regulatory Organizations (SROs) of Stock Exchange (JSX and Surabaja Stock Exchange) and capital market related professional associations. Both institutions provide arbitration and other ADR services. The independent type ADR is a service provider run by independent organization such as the Indonesian Institute Conflict Transformation wich was established in 2001 (NGO based organization which is interested in public interest case settlement, dispute system design and capacity' building works)

** Article 38:2 statutes of international tribunals : This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree hereon.

In this category, The National Mediation Centre (PMN) which was established in September 2003 provides the mediation service of private and commercial cases as PMN is a continuation of Jakarta Initiative Task Force (JITF) . The establishment of The Jakarta Initiative Task Force (JITF) together with the Indonesia Bank Restructuring Agency (IBRA) which tasks is to restructure the debts of banks which were collapse during the crisis was one requirement of the International Monetary Fund (IMF) to expedite the accomplishment of debt restructuring programs for banks and companies which were collapsed during the crisis. JITF serves whenever needed as mediator and facilitator of specific debt restructuring cases, particularly those involving foreign lenders following the economic crisis experienced by Indonesia. On a case by case basis, the JITF applies a set of international "best practice" guidelines for debt restructuring. In applying the guidelines, JITF establishes and enforces a schedule, specifying the timing and expected result of meetings between the parties. If, during the course of the negotiations, specific issues arise that are appropriate for mediation, JITF personnel can intervene and act as mediators. [24]

The Law on Consumer Protection (Law No. 8/1999) introduces Consumer Dispute Settlement Body (Badan Penyelesaian Sengketa Konsumen-BPSK) which is established by government in each district level for the purpose to serve out court settlement through medation. The members of BPSK consists of representatives of government, consumer and business which functions among others: (1) provide mediation, conciliation and arbitration services; (2) supervision of the compliance level; (3) to issue subpoena; (4) to receive complaint; (5) regulatory function. It is not easy to find the members of BPSK who are able to carry out the various jobs as stated above. It is also interesting to see whether the function of ADR service provider can effectively be implemented as they also function as regulator who can impose sanctions. The Ministry of Trade & Industry respected local government is responsible to establish BPSK. To date, no one district has established BPSK.

The Law No. 30/1999 only provides one article (article 6) about ADR (consensually based dispute settlement). The major provisions included in the Law relates to arbitration. The spirit reflected in this Law is the encouragement to use negotiation, mediation, conciliation as consensual based settlement prior to arbitration as an adjudication. In other words, the ADR provision included in this Law is not the main part of the Law.

[24] See M.Husseyn Umar, The Application of ADR in Indonesia in "ADR, in Asian and Pacific Countries: Now and in the Future". Proceeding of International Symposium on Civil and Commercial Law, February 15, 2002, ICD-RTI, Japan Ministry of Justice, March 2003

Regarding ADR, Law No. 30/1999 introduces ADR into three layers: (1) direct negotiation within 14 days; (2) ad hoc mediation/expert (14 days); and (3) institutional mediation (30 days). If the parties fail to reach agreement then the parties can utilize ad hoc as well as institutionalized arbitration, If they reach agreement, the parties submit and register the agreement to the respected district court.

Regarding arbitration, the article 2 mentions that the Law only applies for dispute that the settlement through ADR and arbitration is predetermined by parties in the agreement/contract. However, If it is not predetermined, the parties can sill settle the disputes through arbitration under this Law after the parties make a written agreement to settle thru arbitration after the disputes arises. The article 9 of this Law sets the rules how the written agreement looks like. The other provisions in this Law include the requirement of arbiter, right of the parties to dismiss the arbiter under certain circumstances; procedural matters, arbiter's binding opinions and award; the execution of arbitral award, including the recognition and execution of international arbitration award.

4. Conclusion

Escalating disputes to litigation, or leaving them unresolved, carries high business risks and costs. With the help of an impartial mediator, many formal complaints can be resolved using approaches such as alternative dispute resolution (ADR) without involving the courts.

In every type of ADR in Indonesia requires concrete steps to be publicly accepted and effectively implemented. Judicial type, administrative, private sector and traditional type of ADR has its own strengths and problems. The special appointment within the government agencies must be made to function as a reforms concept designer, coordinator, facilitator of the development of ADR in Indonesia. The Ministry of Justice and National Law Commission are both appropriate institutions to be a focal point of institutionalizing ADR in Indonesia.

The national and local government must provide genuine support for the development of the traditional type of ADR by preventing them to intervene too much to their affairs, providing legal recognition, providing and opening the opportunity for them to broaden their knowledge and skill by bringing relevant other countries experiences , and providing facilities for the operation of caditional type of ADR.

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