The International Journal of Social Sciences World
TIJOSSW is Available Online at:
https://www.growingscholar.org/journal/index.php/TIJOSSW
Vol. 5 No. 1, January-June 2023, pages: 195~200
DOI: https://doi.org/10.5281/zenodo.7690296
ISSN **2690-5167**
Growingscholar Publisher

The Urgency of Indonesian National Arbitrage Agency in Dispute Settlement of Trade Agreements

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Article history:
Received: December, 23, 2022; Accepted: February, 20, 2023; Displayed Online: March, 02, 2023; Published: June, 30, 2023

Keywords

BANI;

Dispute Settlement;

Trade Agreement;

Abstract

The objectives of this study is to describe the process of settling the trade agreement dispute by the Indonesian National Arbitrage Agency (*BANI*). Based on the facts in Manado, Indonesia -as our research place- it is found that, of course, in the parties' agreements, there is a high risk of disputes occurring. It is, for sure, the opportunity for the existence of *BANI* to help resolve the Non-Litigation Trade Dispute in that area. This research found that permanent dispute resolution is one of the most important aspects of business transactions at any time. *BANI*'s scope of work is the resolution of disputes arising from agreements on trade, industry, and finance (business contracts), namely corporate, insurance, finance, patents, copyright, aviation, telecommunications, space, cooperation, mining, sea and air transportation, environment, fabrication, industry, trade, licensing, agency, intellectual property rights, design, consulting, distribution, maritime, construction, shipping, and remote sensing.

1. Introduction

In the last two decades of resolving trade disputes worldwide, arbitration institutions have experienced a tremendous increase (Gélinas, 2000). The main reason for this increase is the increasing cross-border trade transactions. In the view of entrepreneurs, one of the advantages that is sufficiently calculated for resolving disputes through arbitration compared to the court is the final and binding nature of the arbitration verdict or decision. Dispute resolution through arbitration is

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confidential. Meanwhile, publicity in settlement of disputes in the district court is difficult to avoid (Moore, 2001). The district court is bound by the principle of the nature of the trial, which allows everyone to present and hear the case.

Arbitration is a peace court where the parties to a dispute or disagreement want their dispute about personal rights (Van Den Hout, 2008). The settlement of disputes in arbitration is based on the agreement that the disputing parties will submit and obey the decisions given by the judge or the judges they choose or appoint directly. Therefore, arbitration means a peace court, where people get disputes about personal rights to be fully controlled, examined, and tried by a fair judge who does not side with any disputing parties and producesverdicts or decisions binding on both parties.

Disputes or conflicts in various business activities are not expected to occur because they can cause harm to the parties to the dispute, whether they are in the right or wrong positions (Haning et al., 2022). Therefore, business disputes must be avoided to maintain a good reputation and relationships. However, disputes are sometimes unavoidable because of misunderstandings, violations of legislation, broken promises, opposing interests, and losses to one party.

The dispute occurs because there is no meeting point (Follett, 2022; Labobar, 2020) between the parties. Two parties with different stances or opinions can move to adispute. The Indonesian National Arbitrage Agency (*BANI*) is one of the national arbitration institutions. It is an independent institution that provides various services concerning arbitration and other forms of settlement out of court. *BANI* is also an autonomous entity to guarantee integrity. It is stated that *BANI* cannot be interfered with by any other power. The Indonesian Chamber of Commerce and Industry established the Indonesian National Arbitrage Agency (BANI) (Santosa, 2003).

BANI issued an arbitration procedure that came into force on 3rd December 1977. *BANI* is based in Jakarta, and other branches are spread across Indonesia (Israhadi, 2018). *BANI* has representatives in several major cities in Indonesia, namely Surabaya, Bandung, Pontianak, Denpasar, Palembang, Medan, andBatam. To be able to submit an arbitration issue through *BANI*, an agreement or a clause written in the agreement of both parties must state "submit the dispute to *BANI*" or an arbitration procedure by "submitting to the procedural rules to *BANI*. "

2. Materials and Methods

This study is a normative or doctrinal legal research that propose prescriptive (Cf. Christiani, 2016). Legal research is conducted by examining library materials or mere secondary data. There are several approaches taken in this research activity, namely the statute approach, which is the approach to legislation related to the urgency process of *BANI* in settling the trade agreement dispute in Manado. Furthermore, for Empirical Research through empirical data sources obtained from the collection of questionnaires and key informant interviews, namely: the Manado City Government, the relevant Government Department of Trade and Manado, Law Enforcement, and Trade Agreement Actors.

In the first stage, the collection of materials is carried out with various techniques and methods. Data which consists of Primary legal materials, namely legally binding materials in the form of relevant laws and regulations, was collected. Materials that explain primary legal materials, such as legal literature, legal and economic journals, and related papers, are also taken as data—legal materials collected from various literature within the country and abroad. The next stage of legal materials is arranged systematically and comprehensively based on the order of legal materials.

In obtaining accurate and significant results, data is collected through library studies,collected and processed by performing a normative juridical approach. The data is intended to obtain conceptions, theories or doctrines, opinions, or conceptual thoughts from previous studies related

to the study review's objective.

Data analysis organizes and sorts data into basic description categories and units so that themes can be found and work hypotheses can be formulated as the data suggests. The data collected with the library study is then analyzedusing qualitative analysis methods supported by the logic of deductive thinking.

3. Results and Discussions

The issue of permanent dispute resolution is one of the most important aspects of business transactions at any time in Manado-Indonesia, where this research was conducted. Act No. 30 or 1999 concerning Arbitration and Alternative Dispute Resolution is one of the laws governing the settlement of disputes or differences of opinion between parties in acertain legal relationship that has entered into an arbitration agreement which expressly statesthat all disputes or differences of opinion arising or that may arise from the legal relationship will be resolved by way of arbitration or through an alternative dispute resolution (Ningsih, 2019).

Philosophically, Act No. 30or1999 concerning Arbitration and Alternative Dispute Resolution is stipulated to end the legal relationship of the parties that had entered into the arbitration agreement so they can enter into further agreements (Abdunayimova, 2020). The sociological foundation stipulated in Act No. 30 or 1999 concerning arbitration, and Alternative Dispute Resolution is due to the number of disputes that occur between the parties that make an arbitration agreement disputes through arbitration are no longer compatible with the development of the business world and law in general.

The rules for arbitration (consensually based conflict settlement) are laid forth in this 1999-enacted law. The extent of this Law's applicability, which covers conflicts whose resolution is predetermined by the parties in the agreement or contract, is discussed in article 2. Nevertheless, the use of arbitration in administrative Alternative Dispute Resolution (ADR), such as in the resolution of disputes involving labor, the environment, and consumer protection, also corresponds to the guidelines established by Law No. 30/1999.

There is only one article (article 6) concerning ADR in Law No. 30/1999 (consensually based dispute settlement). The Law's principal arbitration-related sections are mentioned. The promotion of using discussion, mediation, and conciliation as consensual based settlements before arbitration as an adjudication is the spirit embodied in this Statute. In other words, the ADR clause that is a part of this Statute is not its primary component.

ADR is divided into three stages under Law No. 30/1999: institutional mediation, ad hoc mediation with an expert, and direct bargaining within 14 days (30 days). If the parties are unable to come to an agreement, they may choose between institutionalized and ad hoc arbitration. If they are able to come to an agreement, the parties submit and file the arbitration agreement with the appropriate district court. According to article 2, the Law only applies to disputes that can be resolved through ADR or arbitration if this is specifically agreed to by the parties in the contract. But, if it is not predetermined, the parties may nonetheless choose to arbitrate their disagreements in accordance with this Article if they agree in writing to do so after the disagreements occur. Article 9 of this Legislation establishes the standards for what constitutes a written agreement.

Other sections in this Legislation include the necessity of an arbitrator, the parties' limited right to have the arbitrator dismissed, procedural issues, the arbitrator's binding views and decision, and the enforcement of arbitral awards, including those made in international arbitration. Next, it is also related to the consumer dispute settlement Board.

The Consumer Dispute Settlement Board (*Badan Penyelesaian Sengketa Konsumen-BPSK*),

which is formed by the government in each district level with the aim of serving out-of-court resolution through mediation, as described in the Law on Consumer Protection (Law No. 8/1999). The members of BPSK are representatives from the government, the consumer, and business, and among their duties are to: (1) offer services for mediation, conciliation, and arbitration; (2) monitor compliance levels; (3) issue subpoenas; (4) accept complaints; and (5) perform regulatory duties. Finding BPSK members who are capable of doing the different tasks listed above is difficult. It would be fascinating to observe if the ADR service providers' dual roles as regulators and sanction-makers can be carried out successfully. To build BPSK, the Ministry of Commerce & Industry collaborates with reputable local government. No district has set up BPSK as of yet.

Kind of private sector ADR has two subtypes: the independent type and the business association type. ADR service providers fall under the category of business associations. One such association is the Indonesian National Arbitration Board (BANI), which was founded by the Indonesian Chamber of Commerce & Industry (KADIN). The Self Regulatory Organizations (SROs) of Stock Exchange (JSX and Surabaya Stock Exchange) and professional groups with a focus on capital markets founded the Indonesian Capital Market Arbitration Board (BAPMI). Both organizations offer ADR services like arbitration. the self-sufficient kind ADR is a service offered by independent organizations, such as the 2001-founded Indonesian Institute for Conflict Transformation (NGO based organization which is interested in public interest case settlement, dispute system design and capacity building works). The National Mediation Centre (PMN), which was founded in September 2003 and is a continuation of Jakarta Initiative Task Force (JITF) 3, provides mediation services for private and commercial cases in this category. JITF 3 served as a mediator and facilitator for specific debt restructuring cases when needed, particularly those involving foreign lenders in the wake of Indonesia's economic crisis.

The philosophical, juridical, and sociological foundations of Act No.7or2012 concerning Social Conflict Management are found in these legal considerations. Philosophically, the existence of Act No. 7 of 2012 concerning Social Conflict Management is an effort to create an atmosphere that is safe, serene, orderly, peaceful, and prosperous, both physically and mentally, as a manifestation of every person's right to religion, personal, family, honor, dignity, and property. The sociological foundation stipulated in Act No. 7or2012 concerning Social Conflict Management is that the occurrence of conflicts andoror clashes between community groups can lead to social conflicts which result in disruption of national stability and hampered national development. The juridical basis stipulated in Act No. 7or2012 concerning Social Conflict Management is due to the provisions of laws and regulations relating to handling social conflict are still partial and comprehensive, following the dynamics and legal needs of the community.

Dispute settlement can be settled through the court system, alternative dispute resolution, and customary institutions. The method of resolving disputes regulated in the Civil Procedure Code is namely through the court system; meanwhile the method of dispute resolution regulated by Act No. 30or1999 concerning Arbitration and Alternative Dispute Resolution, which is namely through alternative dispute resolution (ADR). There are five means to resolve disputes through ADR: consultation; negotiation; mediation; conciliation; or expert judgment.

Consultation is a discussion between parties without involving third parties in resolving their dispute. Negotiation is a means for both parties to hold a two-way communication designed to reach an agreement due to differences in views on things and against the similarity or inequality of interests between them. Mediation is the participation of third parties in the dispute resolution process, where these third parties act as advisors. Conciliation is an attempt to bring together the desires of the disputing parties to reach an agreement and resolve their dispute. Expert judgment is a method of resolving disputes in which the parties designate a neutral expert to make the finding binding or not or even make the material directed in a binding manner as a lack of information about

the process of filing a complaint to the court, lack of access toa judicial institution, or are deliberately not processed in court due to the estimate that theloss would be greater than the profit (both in the material and psychological meaning).

Avoidance is the party that feels aggrieved and chooses to reduce relations with those who had harmed them or completely stop the relationship. Coercion is when one party imposes a solution on another party. This is unilateral. These imposing actions or threats to use violence generally reduce the possibility of a peaceful settlement. In negotiation, namely, the two parties try to make mutual decisions. The solution to the problems faced by the two parties is agreed upon the interference of a third party. Both parties try to convince one another. Therefore they make their own rules, and they do not solve them by starting from the rules that already exist. Mediation is where a third party helps both parties find an agreement to settle on.

The third party can be determinedby both parties to the dispute or appointed by someone authorized to do so. Whether the mediator is chosen by both parties or appointed by authorized personnel, the two parties to the dispute must agree that the services of a mediator will be used to find a solution. In small communities, it is possible for figures who act as mediators to also act as arbitrators and judges. Arbitration is where two parties to a dispute agree to request a third-party intermediary, an arbitrator, and from the beginning, agree that they will accept the decision of the arbitrator. Adjudication is where a third party has the authority to interfere with the problem-solving, regardless of the desires of the disputing parties. The third party also has theright to decide and enforce that decision which means that the decision is followed through.

These seven methods can be simplified into three dispute resolution means customary, ADR, and court. These include customary means such as leavingor lumping it, avoidance, and force. These three methods are not found in laws and regulations. The means included in using ADR are negotiation, mediation, and arbitration.

4. Conclusion

The natural wealth of food crops,plantations, farms, fisheries, forestry, mining, North Sulawesi energy, sea transportation, tourism, *post and giro*, and telecommunications measures business developments in Manado. *BANI*'s opportunities in Manado as a place for Parties to choose Non-Litigation Dispute Settlement Institutions, not only through Litigation Institutions departing from Manado North Sulawesi Gate by Land, Sea, and Air connected with 13 Cities in Asia, 19 Cities in Indonesia, 10 Airlines operating, and 3 International Airlines operating. Based onthe above facts, of course, in the Contracts of the Parties, it is very risky to have a Dispute Issue. It is, of course, the opportunity for the existence of *BANI* to resolve the Non- Litigation Trade Dispute in Manado.

Dispute settlement remains one very important aspect of business transactions every time (Taylor & Pryles, 2006). *BANI*'s scope of work is the settlement of disputes arising from agreements on trade, industry, and financial matters (business contracts). Therefore, it is concluded that the arbiter's scope of work covers cases of corporate, insurance, finance, patents, copyrights, aviation, telecommunications, space, cooperation, mining, sea and air transportation, environment, fabrication, industry, trade, licensing, agency, intellectual property rights, design, consulting, distribution, maritime, construction, shipping, and remote sensing.

Acknowledgments

The authors wish to express their sincere gratitude to the publisher of TIJOSSW, who gave permission and a great chance for the Authors to publish their research. The next appreciation is given to the TIJOSSW publisher reviewers who have spent more time making valuable corrections dealing with technical writing styles or ideas about this writing.

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