

Alternative Dispute Resolution as Soft Approach for Business Dispute in Indonesia

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Abstract— Alternative Dispute Resolution (ADR) is one solution that can be used as a solution by people in resolving their civil disputes. The dispute that often arises today is related to capital or loans. People need to fulfill their needs for life, either in the form of personal needs or the need for business development. Alternative Dispute Resolution is an institution to resolve disputes or differences of opinion through procedures agreed upon by parties, out-of-court settlement by consultation, negotiation, mediation, conciliation, or expert judgment. However, in Indonesia itself, this solution is not yet well known and not widely used. Many doubts arise over the outcome of ADR. The Research method in writing this article was using a normative juridical approach. The aims in writing this article are to show that Indonesia has an awesome solution in private dispute and to explain how it works including the risk and the benefit.

Keywords— *Alternative Dispute Resolution, Dispute, Business, Finance Service, Commercial Law*

I. INTRODUCTION

Indonesia has noble values inherited by the founding fathers to solve disputes, it's called "*musyawarah mufakat*".¹ Deliberation is the philosophy of the ancestors of the Indonesian people who have developed during society, for example, communities between conflicting regions prioritize completing it in the form of "deliberation".

Deliberation was appointed to the society and stated in the 1945 Indonesia National Constitution.² Disputes are a necessity that is present in society in carrying out their daily lives. Law is present in society to regulate people's behavior in order to create order. Based on current legislation, Dispute Resolution that occurs during the society can be resolved through litigation by taking a judicial process, or non-litigation, this method often called with the resolution of disputes outside or without the court process.

Non-judicial dispute resolution process, better known as Alternative Dispute Resolution (ADR), is regulated through the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The regulations of Alternative Dispute Resolution³, basically is a form of dispute resolution outside the court, which is based on the agreement of the parties to the dispute. Alternative Dispute Settlement is voluntary and therefore cannot be forced by one party to another party to the dispute.

Alternative Dispute Resolution is one solution that can be used as a solution by people in resolving their civil disputes. The dispute that often arises today is related to

capital or loans. People need to fulfill their needs for life, either in the form of personal needs or the need for business development.

Business dispute resolution is required to present as a quick and simple process. If a business dispute is resolved before the court, it will go through a process that is not short term, it must be faced with a long queue in the trial process because of the accumulation of cases in the court. So, the alternative dispute resolution for business disputes is a real solution for business actors who experience disputes in a business contract.

However, in Indonesia itself, this solution is not yet well known and not widely used. Many doubts arise over the outcome of ADR, one of which is whether the outcome of the dispute can be executed by the court.⁴

Based on the description above, the author states the problem statements as follows; (1) How the Alternative Dispute Resolution for business in Indonesia works? (2) How are the risk and benefit of resolving disputes through Alternative Dispute Resolution?

The aims in writing this article are to show that Indonesia has an awesome solution in private dispute and to explain how it works including the risk and the benefit.

II. LEGAL MATERIALS AND METHODS

The Research method in writing this article was using a normative juridical approach⁵ with library research. Normative research is often referred to as doctrinal research⁶, research whose object of study is a statutory document and library material. In this study, researchers conducted a study of ADR

¹ Indonesia terms for deliberation

² Supriadi, *Hukum Lingkungan di Indonesia Sebuah Pengantar*, Sinar Grafika, Jakarta, 2006, p 206.

³ Number 10 Article 1 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution "Alternative Dispute Resolution is an institution to resolve disputes or differences of opinion through procedures agreed upon by parties, out-of-court settlement by consultation, negotiation, mediation, conciliation, or expert judgment.

⁴ Suyud Margono, *Penyelesaian Sengketa Bisnis*, Ghalia Indonesia, Bogor, 2010, p. 9

⁵ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, Bandung: PT. Citra Aditya Bakti, 2004, p. 57

⁶ Soejono dan H. Abdurahman, *Metode Penelitian Hukum*, Jakarta, Rineka Cipta, 2003, p. 56

as a choice as a solution to a settlement of disputes outside the court. Based on the type of research, the approach that will be used in this study is a normative or legal dogmatic approach⁷ as the main approach.

Legal materials consist of primary and secondary. Primary legal material has binding power in, including legislation relating to Arbitration and Alternative Dispute Resolution, primary legal material contained in Indonesian positive law, the provisions of the basic principles of the Civil Code, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution or in other laws and regulations.

Secondary legal material is a material that provides an explanation of primary legal material, which includes the explanation of legislation, the results of research and the results of the thoughts of experts on Arbitration and Alternative Dispute Resolution contained in literary books and scientific writings. Tertiary legal material is a legal material that gives instructions on primary and secondary legal materials, in the form of dictionaries and encyclopedias that are relevant to the problems in this study. Various information and data obtained in this study will then be analyzed using the method of content analysis⁸, as well as legislation, to draw conclusions.

III. RESULT AND DISCUSSION

A. THE CONCEPT OF ALTERNATIVE DISPUTE RESOLUTION FOR BUSINESS DISPUTE IN INDONESIA

Initiate of a dispute resolution model outside the court is inseparable from the feeling of disappointment and frustration over the resolution of the dispute through the court. As stated by Thomas J. Harron, the public is not satisfied with resolving disputes through the courts because the system inherent in the court tends to be detrimental, in the form of: a waste of time, very expensive, problematic past and not resolving the future, make people enemy, and paralyze people.⁹

But nowadays the way of dispute resolution through the judiciary has received quite sharp criticism, both from practitioners and legal theorists. The role and function of the judiciary are overloaded. Slow and a waste of time. The cost is very expensive) and less responsive (unresponsive) to the public interest. Judiciary process is considered too formalistic and too technical. The business world demands a simple, fast way of resolving disputes and costs of light or informal procedures and can be put quickly.

During the collapse of public trust in the judiciary, it should be endeavored to make improvements, both in legislation and facilities and infrastructure, including the morality of human resources directly involved in the judiciary. Historically, the judiciary was strange to the Indonesian people because it was introduced by the Dutch Colonial

Government, the fact and its existence were unavoidable. As a leading institution that becomes a mirror where people can see legal life in Indonesia guarded, maintained so as not to experience setbacks and defects in the legal system.

For this reason, various ways to reduce setbacks and disabilities in the legal system are to form other forms of dispute resolution efforts, it called of alternative dispute resolution that is prioritized under Law No. 30 of 1999 needs to be developed and promoted, because basically ADR is easier to solve the business dispute, if alternative institutions for settling disputes are familiar to the society, case accumulation can be reduced.

According to Priyatna Abdurrasyid¹⁰, Alternative Dispute Resolution is a set of procedures and mechanisms that function to provide an alternative or choice of procedures for resolving disputes or arbitration in order to obtain a final decision and bind the parties. In general, not always involving the intervention and assistance of an independent third party requested helps to resolve the dispute.

The high public demand for capital encourages an increase in loans to financial service institutions in the community. Unconsciously Financial Services Institutions (OJK¹¹) have a role in everyday life, for example in terms of saving, repaying homes, vehicles, getting business loans, and much more. In its journey, customers and LJK¹² can be faced with a dispute.

Cooperative Loans and Savings (KSP) is a business entity that having an essential role as an alternative capital fund which is faster and based on the Membership Principle. KSP is cannot be separated with finance dispute between the member and the KSP chief/manager. However, the reality, there are still numerous frauds in the process of collecting and distributing funds to raise the deposit and the high interest and the high late charge. The problem appeared is how the actual management of cooperatives loans and savings to carry out their duties and functions.¹³

Tight business competition among business actors also triggers disputes between business actors themselves.¹⁴ Therefore, the presence of an alternative dispute resolution body is the right choice for business actors.

The Financial Services Authority as a state institution regulated the regulation Number 1 / POJK.07/2014 concerning the Alternative Dispute Settlement Institution (LAPS¹⁵) in the Financial Services Sector. LAPS are a dispute resolution mechanism that covers the entire territory of Indonesia for ADR in Financial Dispute and is easily accessible by telephone, e-mail, mail, and fax, the process is fast, inexpensive and impartial.

The procedure carried out in resolving a dispute through LAPS, especially arbitration, is in the agreement

⁷ Sunaryati Hartono, *Penelitian Hukum Di Indonesia Pada Akhir Abad ke-20*, Cet.1 (Bandung : Penerbit Alumni, 1994), p. 74.

⁸ Imam Suprayogo, Tobroni, *Metodologi Penelitian Sosial-Agama*, Bandung: Remaja Rosdakarya, 2001, p. 6

⁹ Suparto Wijoyo, *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*, Airlangga University Press.2003, p. 92

¹⁰ A Professor in Alternative Dispute Resolution and Ex Chief of Indonesia National Arbitration Institution (BANI)

¹¹ Indonesian terms for Financial Services Institutions

¹² Indonesian terms for financial service company

¹³ Ningsih, A. S., & Suprpti, D. D. (2019). The Importance of Applying the Membership Value Toward Savings and Loans Cooperatives in Indonesia. *Sriwijaya Law Review*, 3(2), 225-234.

¹⁴ Ningsih, A. S. (2019). Implikasi Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat pada Pelaku Usaha Mikro Kecil dan Menengah (UMKM). *Jurnal Penelitian Hukum De Jure*, 19(2), 207-215.

¹⁵ Indonesian terms for the Alternative Dispute Settlement Institution for finance services

made by the parties must contain a clause concerning the settlement of disputes made through the arbitration institution. If the principal agreement does not contain the clause, an additional agreement must be made.

Article 2 POJK Number 1 / POJK.07/2014 concerning Institutions for Alternative Dispute Resolution in the Financial Services Sector regulate the procedures for resolving complaints. Where, the mechanism for settling complaints first must be resolved directly with the PUJK¹⁶. This step is called Internal Dispute Resolution (IDR) or settlement within the respective financial service institutions.

If the settlement within PUJK does not produce results, consumers still have other efforts that can be taken, the choices are resolving in court or outside the court. If it is resolved through a court, the consumer simply registers a claim to the commercial court. Meanwhile, if completed through Alternative Dispute Resolution, consumers still have two steps that can be taken, through limited facilitation by the OJK and through LAPS.

Dispute resolution by internal PUJK.

The consumer can submit a complaint to the PUJK through a work unit or complaint handling function that is formed by each PUJK specifically to handle consumer complaints with conditions at least, there are agreement discrepancies, there are material losses, related to financial aspects, and in the condition of consumers has fulfilled its obligations to PUJK.

Related to the process, if the consumer complaint is correct the PUJK can make a complaint settlement in the form of a statement of apology or offering compensation (redress/remedy). Especially for compensation, it can be taken if the losses experienced by consumers occur due to financial aspects. If consumers and PUJK agree, consumers are not permitted to carry out further legal actions. Meanwhile, if there is no agreement, consumers and PUJK can settle the dispute to the next stage, through OJK or LAPS.

Within no later than 20 days after receipt of complaints from consumers, PUJK must follow up and settle complaints. However, under certain conditions, PUJK can extend it back for 20 working days by first notifying the customer before the first 20 days expire. At this step, PUJK is not permitted to charge consumers a penny.

Limited facilitation by OJK.

The steps that must be taken by consumers at this stage, is completing several documents, among others, in written application which contains the chronology and supporting documents of complaints, proof of identity, proof of reporting to PUJK, and a statement explaining that the dispute is not in the court process or other dispute resolution institutions.

OJK itself opens five lines as a means of communication with consumers, through a letter addressed to Members of the OJK Field Board of Commissioners; the website is located at <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Home>, email, fax, and telephone at 150065. In addition, other requirements which must be considered is the financial losses incurred by PUJK specifically for the banking sector, capital market,

pension funds, life insurance, financing, mortgage companies or guarantees of at most IDR 500,000,000.

Meanwhile, at the most for losses in the general insurance sector, a maximum of IDR 750,000,000.- If it is in accordance with the requirements requested by the OJK, the next step is that the OJK will appoint a facilitator to settle the complaint. Furthermore, between consumers and PUJK together agreed on facilitation agreement from the OJK which essentially agreed on both parties to comply and comply with the facilitation rules set by the OJK.

At the latest 30 working days after the signing of the facilitation agreement, the settlement of complaints between consumers and PUJK must obtain results. If it is felt that additional time is needed, there is an opportunity to extend the settlement period for the next 30 working days after the first period has been completed. From the results of limited facilitation, it turned out that both parties agreed, and then the agreement was stated in the Deed of Agreement signed by consumers and PUJK. If there is no agreement in limited facilitation by the OJK, consumers can submit a settlement through LAPS.

Settlement through LAPS.

This is the last step consumers can take if they try to resolve disputes outside the court. The process in LAPS itself is pursued through three paths, namely mediation, adjudication, or arbitration. However, consumers cannot directly take adjudication or arbitration if they have not previously taken the mediation process first. The first thing that must be done by consumers is to submit a dispute resolution application to an independent institution registered with LAPS and supervised by the OJK.

The required documents are not much different from the documents included in the two previous stages. Furthermore, the institution will verify and provide confirmation in the form of receiving a dispute settlement application. After fulfilling the previous steps, the document entered the stage of examination of the substance of the dispute submitted by consumers. In the mediation stage, both the consumer and the PUJK both designate and determine the mediator themselves.

At this stage of mediation, the mediator is only limited to facilitating and seeking peace between the two parties. The parties themselves agreed to reconcile and then the Peace Act was made. If it is not successful, consumers still have one last step that can be taken, it called adjudication or arbitration. Which must be remembered, at this stage either the adjudicator or the arbitrators, both are equally authorized to make decisions.

The difference is that adjudication can be taken if the value of the claim submitted is included in the small and retail groups. Meanwhile, Arbitration can be pursued if the value of large claims and the level of complexity of the dispute are complex. For its own costs, the settlement through LAPS for the value of financial demands in small quantities where each LAPS institution has its own value is free.

LAPS registered with OJK included BMAI¹⁷ which was established on May 12, 2006 and began operations on

¹⁶ Indonesian term for financial services business actor

¹⁷ <http://www.bmai.or.id/Content.aspx?id=10> accessed on 26th February 2019 14.00 WIB

September 25, 2006. This establishment is in line with the Joint Decree of four Ministers namely a) Coordinating Minister for Economic Affairs No.KEP.45 / M.EKON / 07/2006; b) Bank Indonesia Governor No.8 / 50 / KEP.GBI / 2006; c) Minister of Finance No.357 / KMK.012 / 2006; and d) State Minister for State-Owned Enterprises No. KEP-75 / MBU / 2006 concerning the Financial Sector Policy Package established in Jakarta on 5 July 2006.

It is also in line with the provisions of Annex III Non-Bank Financial Institutions concerning Protection of Insurance Policy with Responsible Ministry of Finance of the Republic of Indonesia. BMAI is an institution that is easily accessible to the Insured or Insurance Policy. Through the Mediation and Adjudication process, BMAI helps resolve claims disputes (compensation claims) and provides an easy solution for the Insured or Insurance Policy who do not understand insurance and are less able to settle a case through a district court. BMAI strives to settle claims dispute more quickly, fairly, cheaply and informally.

The establishment of BMAI was initiated by several Association of Indonesian Insurance Companies under the FAPI (Federation of Indonesian Insurance Associations) namely the Indonesian General Insurance Association (AAUI), the Indonesian Life Insurance Association (AAJI) and the Indonesian Social Security Insurance Association (AAJSI) and fully supported by the Bureau Insurance, the Capital Market and Financial Institution Supervisory Agency (Bapepam LK), RI Financial Ministry.

BMAI was established with the aim of providing professional and transparent services based on satisfaction and protection as well as enforcement of the rights of the Insured or Insurance Policy through the process of Mediation and Adjudication.

BMAI is formed with the aim of providing a balanced representation between the Insured and/or Insurance Policy and Insurers (Insurance Companies). The Insured or Insurance Policy who does not approve the rejection of the claim for compensation or policy benefits by the Insurer (Insurance Company) may request assistance from BMAI to resolve the dispute between them.

BMAI always strives to resolve disputes in insurance claims more quickly, fairly, cheaply and informally. For the Mediation and Adjudication process, the value of the claim for compensation or disputed policy benefits does not exceed IDR 750,000,000 (seven hundred fifty million rupiah) per claim for loss / general insurance and IDR 500,000,000 (five hundred million rupiah) per claim for life insurance or social security insurance.

With the issuance of the Financial Services Authority Regulation (POJK) Number: 1 / POJK.07 / 2014 concerning the Institute for Alternative Dispute Resolution (LAPS) in the Financial Services Sector, BMAI must make some adjustments so that it can be accepted as a LAPS recognized by the OJK. Therefore, BMAI has expanded its activities with the function of the arbitration organizer and changed its name to the Indonesian Insurance Mediation and Arbitration Agency.

The second institution is BAPMI¹⁸, which provides dispute resolution services if requested by disputing parties

through an out-of-court dispute settlement mechanism. However, not all disputes can be resolved through BAPMI. The disputes that can be resolved by BAPMI must meet the following requirements:

- a. only a civil dispute arising between parties in the field or related to the Capital Market;
- b. there is an agreement between the parties to the dispute that the dispute will be resolved through BAPMI;
- c. there is a written request (case registration) from the parties to the dispute with BAPMI;
- d. the dispute is not a matter within the scope of criminal law and or administrative law.

BAPMI provides 4 types of alternative dispute resolution services that can be selected by the parties to the dispute, as follows:

- a. Binding opinions
- b. Mediation
- c. Adjudication
- d. Arbitration

In carrying out its functions as an alternative institution for dispute resolution, BAPMI guarantees its independence and impartiality. It can be seen that no one is permitted by BAPMI to act as Mediator / Adjudicator / Arbitrator for a dispute if the person concerned has a conflict of interest with the case handled or with one of the parties to the dispute or his attorney. If a situation of conflict of interest is discovered later, then the Mediator / Adjudicator / Arbitrator must be replaced with another who has no conflict of interest.

After the enactment of Law No. 21 of 2011 concerning the Financial Services Authority, the issue of consumer protection, especially consumers in the financial services sector, is under the authority of the OJK as stipulated in article 31 of Law Number 21 of 2011. Through OJK Regulation number 01 / POJK.07 / 2013 and OJK Regulation Number 01 / POJK.07 / 2014, consumers are paid financial services if they experience problems with financial service institutions, can solve their problems through Alternative Dispute Settlement Institutions in each service institution finance.

OJK ordered the financial services association to establish a Dispute Settlement Institution and for Pension Funds, because ADPI¹⁹ had established BMDP²⁰ in 2011, BMDP had to adjust itself to the POJK provisions. With this development, the Association of Pension Fund Financial Institutions (ADPLK) later joined as the founding partner of BMDP.

The establishment of the Indonesian Institute for Alternative Banking Dispute Settlement (LAPSPI²¹) was based on the Financial Services Authority Regulation (POJK) number 1 / POJK.07 / 2014 concerning the Alternative Dispute Settlement Institution in the Financial Services Sector, which was followed by an MoU between 6 (six) Banking Associations, as follows National Bank Association (PERBANAS), Association of State-Owned Banks (HIMBARA), Regional Development Bank Association (ASBANDA), Indonesian Sharia Bank Association

¹⁹ Indonesia terms for Indonesia Pension Fund Association

²⁰ <http://bmdp.or.id/layanan-bmdp/jenis-layanan/mediasi/> accessed on 26th February 2019 14.40 WIB

²¹ <https://lapspi.org/profile/> accessed on 26th February 2019 at 14.43 WIB

¹⁸ http://bapmi.org/in/about_scopeofservices.php accessed on 26th February 2019 14.20 WIB

(ASBISINDO), Association of Bank-International Bank Indonesia (PERBINA) and Association of Indonesian Rural Banks (PERBARINDO) on May 5, 2014.

Mediation is a method of resolving disputes outside the court through the negotiation process to obtain a Peace Act assisted by the Mediator. Mediation was chosen because of the desire of the parties to resolve disputes without harming each other (a win-win solution) and maintaining a long-term relationship. Types of disputes that can be resolved through LAPSPI Mediation must meet all of the following criteria:

- a. Is a civil dispute in the banking sector or related to the banking sector;
- b. Disputes regarding rights which according to law and legislation are fully controlled by the parties to the dispute;
- c. Disputes which according to legislation can be held peace;
- d. Disputes that have taken deliberation, but the Parties have not succeeded in achieving peace; and
- e. Between the Petitioner and the Respondent have been bound by the Mediation Agreement

Adjudication is a way of resolving disputes other than arbitration and general justice conducted by the Adjudicator to produce a decision that can be accepted by the Applicant so that the said decision shall bind the Parties. Types of disputes that can be resolved through LAPSPI. Adjudication must meet all of the following criteria:

- a. Is a dispute in the field of Banking and/or related to the Banking sector;
- b. Disputes regarding rights which according to law and legislation are fully controlled by the parties to the dispute;
- c. Disputes which according to legislation can be held peace;
- d. Disputes that have taken Mediation efforts on Probono's services, but the Parties have not succeeded in achieving peace;
- e. Between the Petitioners and the Respondent are bound by the Adjudication Agreement

Arbitration is a method of resolving civil disputes in the banking sector and related to the banking sector outside the general court based on an Arbitration Agreement, which is made in writing by the Parties to the dispute. Disputes that can be resolved through LAPSPI Arbitration must meet all of the following criteria:

- a. Is a dispute in the banking sector and/or related to the banking sector;
- b. Disputes regarding rights which according to law and legislation are fully controlled by the parties to the dispute;
- c. Disputes which according to legislation can be held peace;
- d. Between the Petitioners and the Respondent are bound by the Arbitration Agreement

As is known, the Financial Services Authority (OJK) continues to encourage the development of infrastructure to increase the capacity of the financial services industry. One of the infrastructures created by the OJK together with the financial services industry is the provision of external dispute resolution (EDR) services by mediation institutions in each financial service sector or commonly called the Alternative Dispute Resolution Institution (LAPS).

The Indonesian Guarantee Corporation Arbitration & Mediation Agency (BAMPPI²²), is a forum for and for Guarantee Companies that have obtained business licenses from the Ministry of Finance of the Republic of Indonesia or

the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK) or Service Authority Financial (OJK) of the Republic of Indonesia or the authorized agency through the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector.

The BAMPPI Association was formed to comply with the regulations of the OJK to carry out out-of-court dispute resolution in the Financial Services Sector / Guarantee Company which has been urgently needed under Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Financial Services Authority Regulation Number 1 / POJK.07 / 2013 Concerning Consumer Protection in the Financial Services Sector and Financial Services Authority Regulation Number 1 / POJK.07 / 2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector.

The next institution is the financial mediation, pawnshop, and venture (BMPPVI²³) mediation body. With the motto of reconciling and resolving, an effort is made to help the parties to the dispute to be able to agree on a situation that can be accepted by each party in dispute as a settlement of the dispute faced and followed up with a mutual agreement to end all forms of disputes in disputed problems in the future.

This motto illustrates that BMPPVI in carrying out its role in resolving financing disputes and pawnshops always prioritizes mediation efforts with the aim of achieving peace between the parties to the dispute, but if it is not achieved then the agreement or mediation will help the parties resolve the dispute through a model of settlement of adjudication and arbitration where BMPPVI adjudicators and arbitrators will examine the dispute that occurs and determine the decision based on facts, evidence and legal considerations in force.

Indeed, currently the OJK has many institutions that handle ADR in the field of financial services, but in the Year of 2020 OJK has a plan to make all of these institutions integrated. Even though it is not yet integrated, the OJK's steps to regulate and realize all of these institutions as an ADR need to get good appreciation. Through these institutions, society has many choices to solve their financial dispute with ADR rather than litigation in court.

The explanations above are regarding the institutions under OJK and in finance institutions field. Now, here the explanations regarding the Alternative Dispute Resolution based on the ADR Act. According to Article 1 The ADR Act, there are three types of alternative dispute resolution outside the court, as follows arbitration, mediation, and negotiation. In Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it was stated that: "*Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.*"

Arbitration in Indonesia has developed since 1977 with the establishment of the Indonesian National Arbitration Board (BANI) at the initiative of the Indonesian Chamber of Commerce. The development in the practice of arbitration consists of two lines, ad hoc arbitration and institutional arbitration. In ad hoc arbitration, the parties submit a

²² <https://bamppi.or.id/tentang/> accessed on 27 February 2019 07.00 WIB

²³ <http://www.bmppvi.com/profil/> accessed on 27 February 2019 07.10 WIB

settlement of the dispute to someone or some person who is not an arbitration institution to be decided. Institutional arbitration is the process of resolving disputes whose decisions are determined by one or several people from the arbitration institution.

Referring to the name or title used by this law, it appears that arbitration is a form of dispute resolution obtaining broader arrangements without overriding alternative forms of dispute resolution. This law states that dispute resolution through alternative dispute resolution can only be carried out on disputes relating to problems that are within the scope of the trade law that covers everything that is fully within the authority of the parties to decide.

B. ADVANTAGES AND DISADVANTAGES OBTAINED IN RESOLVING DISPUTES THROUGH ALTERNATIVE DISPUTE RESOLUTION

In its journey, arbitration in Indonesia, in general, is not going well and effectively. In the report submitted by the ELIPS Project²⁴ summarizes several reasons why arbitration does not work well in Indonesia. These reasons are lack of general knowledge, public information about arbitration, and attention to concepts and their advantages, concerns that arbitral awards in Indonesia cannot be executed through the court, the existence of provisions regarding arbitration does not guarantee the entry into force of arbitration agreements and the arbitration award, and BANI²⁵ as arbitration institution only gets political or economic pressure.²⁶

There are many considerations that are usually considered in choosing one from a dispute resolution method, including the laws governing and implementing both. Law is a system that consists of legal substances, but also includes the whole legal process that includes legal structure and legal culture. This component of the legal system will influence the choice of business people regarding the dispute resolution method that will be used.²⁷

The development of society and the dynamic pace of the business world today are taking place so rapidly. The dynamics and agitation that occurred in economic and business activities turned out to have quite basic implications for institutions and legal institutions.²⁸

Meanwhile, the implications of rapid business activities on legal institutions have also resulted in courts deemed unprofessional to handle business disputes, not independent, even the judges have lost the moral integrity of the duty to uphold law and justice when receiving, examining, prosecuting, and resolving any disputes submitted, are

²⁴ M. Husseyn Umar, Supriyani Kardono, *Hukum dan Lembaga Arbitrase di Indonesia* (Jakarta, Komponen Hukum Ekonomi Elips Project, 1995) p.2

²⁵ Indonesia terms for Indonesia National Arbitration Institution

²⁶ Normin pakpahan, "His Report on accomplishment, plans, and objectives of the law development component of the ellips project, oktober 1996.

²⁷ Nugroho, J. 2005. *Kajian Kritis Thd UU No 3 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa Dalam Kaitannya Dengan Prinsip Kebebasan Berkontrak di Indonesia.* *Jurnal Hukum Argumentum*, 5(1)

²⁸ Adi Sulistiyono, *Mengembangkan Paradigma Penyelesaian Sengketa Non-Litigasi dalam Rangka Pendayagunaan Alternatif Penyelesaian Sengketa Bisnis / Hak Kekayaan Intelektual* (Semarang: Disertasi, PDIH, 2002), p. 4.

considered as a place to resolve disputes that are ineffective and inefficient.

The procedures for resolving disputes outside the court (Alternative Dispute Resolutions) according to law number 30 of 1999, as follows:

a. Consultation

There is no formula or explanation given in Law No. 30 of 1999 concerning the meaning and meaning of consultation. If you look at the Black's Law Dictionary, what is meant by consultation is: "*Act of consulting or conferring: e.g. patient with a doctor, client with the lawyer. Deliberation of persons on some subject*"²⁹. In principle, consultation is a personal action between a party, called a client with another party who is a consultant, who gives his opinion to the client to meet the needs and needs of his client.

b. Negotiation and Mediation

In Article 6 paragraph (2) of Law Number 30 of 1999, said that basically, the parties can and have the right to resolve their own disputes that arise between them. The agreement regarding the settlement must then be written in a form agreed upon by the parties. This provision is reminiscent of similar provisions regulated in Articles 1851 to 1864 Chapter Eighteenth Book III of the Civil Code of Peace. Based on the definition given, it is said that Peace is an agreement with which both parties, by surrendering, promising or holding an item, terminate a case that is dependent or prevent the occurrence of a case.

Negotiations according to the formulation of Article 6 paragraph (2) of Law No. 33 of 1999 is given a grace period of completion of no longer than 14 days, and resolution of the dispute must be carried out in the form of a direct meeting between and between the parties to the dispute. Negotiations are carried out by both parties without a third party.

Arrangements regarding mediation can be found in the provisions of Article 6 paragraph (3), paragraph (4) and paragraph (5) of Law Number 30 of 1999, Provisions regarding mediation stipulated in Article 6 paragraph (3) of Law No. 30 of 1999 is an activity process as a continuation of the failure of negotiations conducted by the parties according to the provisions of Article 6 paragraph (2) of Law Number 30 Year 1999.

According to the formulation of Article 6 paragraph 3 of Law Number 30 the Year 1999 it is said that the above-written agreements of the parties to disputes or differences of opinion are resolved through the assistance of one or more expert advisors or through a mediator. The mediation process requires third parties, both individuals and in the form of an independent and neutral and impartial institution, which will function as a mediator.

The mediation process can be carried out in several alternative dispute resolution institutions, including the National Mediation Center, known as PMN, established in 2003. PMN is a non-profit foundation that provides mediation services and training. PMN consists of mediators from the program in the fields of law, banking, and business.

²⁹ Bryan A. Garner, *Black's Law Dictionary*, Editor in Chief, 2004, p. 1003.

The PMN guideline was developed from the experience of the Jakarta Initiative Task Force (JITF), the established Indonesian government mediation body in connection with the 1997 Asian financial crisis.³⁰

c. Conciliation

As stipulated in articles 1851 to 1864 of the eighteenth chapter of Book III of the Civil Law, it means that everything intended to be resolved through conciliation is subject to the provisions of the Civil Code, and specifically Articles 1851 to 1864. This means the results of an alternative agreement Even the settlement of the conciliation dispute must be made in writing and signed jointly by the parties to the dispute.

In accordance with the provisions of Article 6 paragraph (7) in conjunction with Article 6 paragraph (8) Law No. 30 of 1999, the written agreement resulting from the conciliation must also be registered in the District Court within 30 (thirty) days from the date of registration in the District Court. Written agreements resulting from conciliation are final and binding on the parties.

Conciliation can not only be done to prevent the implementation of the litigation process, but also can be done by the parties, at every level of the ongoing trial, both inside and outside the court, with the exception of matters or disputes where a judge's decision has been obtained conciliation cannot be held by a permanent legal force.³¹

Law No. 30 of 1999 also recognizes the term expert opinion as part of an alternative dispute resolution. And that it turns out that arbitration in an institutional form is not only the task of resolving differences or disputes in opinion and disputes that occur between the parties in an agreement. Giving an opinion or legal opinion can be an input for the parties.

Legal opinions given by arbitration institutions, which are binding in order to resolve a form of difference of understanding, or disagreement or about an ambiguity about a legal relationship or formulation in the agreement, which is faced by the parties in an agreement with an arbitration clause, as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Arbitration is an alternative legal institution for resolving disputes outside the court. An arbitration institution is nothing but a path of deliberation involving a third party as its referee. In other words, arbitration is a way of resolving disputes or business disputes with the help of a third party, not a judge, even though the implementation of the decision must be with the help of a judge. If one of the parties is then reluctant to provide assistance for decision making or does not comply with the decisions that have been made by the person, they gave authority to the dispute, that party is considered to have a breach of the contract or violate the agreement.

Choosing a method outside the district court to resolve commercial disputes in the field of business is basically part of the parties' freedom in making

agreements regarding various object agreements. The agreement to choose a method can be carried out in two ways, as follows *before* the dispute occurs and is included in the main agreement, called *pactum de compromilendo*; or *after* a dispute occurs, made in a separate written form from the principal agreement, called a compromise deed.

However, according to Indonesian law, not every dispute can be resolved through an arbitration chosen by the parties. Moreover, arbitration is recognized as an alternative dispute resolution model that puts forward the achievement of justice with a consensus approach and bases it on the interests of the parties in order to achieve a win-win solution.³²

Alternative Dispute Settlement in out the court promises several *advantages* over the court. Some advantages that can be stated are: **First**, Arbitrators chosen by the parties are experts in their fields so that they understand the disputed issues. The element of specialization plays an important role in arbitration, and expertise is one guarantee of the existence of the trust, the **second** is Confidentiality As stated above arbitration is for private dispute resolution. The parties, in general, do not want that the public, moreover its competitors can know the secrets of the company so as to harm the reputation of the company concerned.

Third, Dispute resolution through arbitration is relatively faster when compared to the court. Provisions regarding the time period as in arbitrator arbitration voters and settlement of disputes that are agreed upon by the parties or specified in institutional arbitration rules in which the parties submit themselves have binding properties for the arbitrator or the arbitrators.

Because of that, service to these periods of time faces claims from parties who feel disadvantaged. The dispute resolution mechanism through the court positions the parties facing each other (advisability). Instead, dispute resolution through arbitration emphasizes the importance of maintaining business relationships in the future.

Fourth, the guarantee of confidentiality. The confidential nature of arbitration procedures is known as "the right to privacy". This guarantee of confidentiality does not only apply to ad hoc arbitration, but also to institutional arbitration.

IV. CONCLUSION AND SUGGESTION

Today's Indonesian society is somewhat being concerned because when watching the news, it is filled with criminal news and endless court disputes. This has become a separate phenomenon amid our society, which is famous for its friendly culture and full of noble values, one of which is *musyawarah mufakat*. We must return to the identity of our nation, as a person who is full of hospitality and upholds the noble values as a soft approach. With a soft approach the results will be expected to be maximized. ADR is a solution to dispute resolution using the soft approach method. If we look at the explanation in the previous chapter, the steps and rules about ADR are very soft approaches. Especially in business disputes, ADR is the right solution to be used by businessmen

³⁰ Suyud Margono, Loc.Cit, p.131-133

³¹ Munir Fuadi, *Arbitrase Nasional Alternatif Penyelesaian Sengketa Bisnis*, (Bandung: Citra Aditya Bakti, 2000), p. 42.

³² Eman Suparman, *Pilihan Forum Arbitrase dalam Sengketa Komersial Untuk Penegakan Keadilan*, (Jakarta: Tatanusa, 2004), p. 333.

or entrepreneur. The government and related institutions are expected to be more popularized in this ADR to the public and businessmen, more aggressively to conduct socialization and it would be better if companies in the financial services sector were given the obligation to carry out ADR dispute resolution as a clause in their business agreement.

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