



The Role of Civil Law in Resolving Business Disputes in Court and Arbitration: A Comparison

¹Rodiatul Adawiyah Harahap, ²Dhea Ananada Puspita Yusuf, ³Afwan Lutfi Natoras Pohan, ⁴Zaidan Azmi, ⁵Surya Rahman Lubis

^{1,2,3,4,5}Universitas Islam Negeri Sumatera Utara

E-mail: ¹rodiatulharahap@gmail.com

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Abstract

Business disputes can be resolved outside the court by arbitration and in court. What is the role of civil law as a basis for resolution. This research is descriptive normative research. The types and sources of legal materials used are secondary data. The technique for collecting legal materials uses library research. The legal material analysis technique used is normative. Settlement of business disputes can be carried out using the alternative of arbitration, then if it cannot be resolved then it is resolved in court.

I. INTRODUCTION

The 1945 Constitution serves as the legal foundation for the Republic of Indonesia. As Indonesian citizens, we are obligated to abide by the prevailing laws and regulations. This guideline is applied in various aspects of daily life, including social, political, educational, health, human rights, and other areas of community and state life.

Not everything that occurs in society and the state is subject to law. To become a law-abiding nation, society does not fully rely on the legal system to resolve its issues for various reasons. Moreover, the causes can change over time, become more complex, and lead to numerous complaints. This frequently happens when individuals attempt to resolve disputes in court (M. Hakim & Taufiqul, 2023).

The economy is one of the pressing issues under discussion. Business and the economy are closely interrelated. Various forms of corporate collaboration have emerged as a result of rapid and complex economic expansion, and these forms continue to evolve daily. The level of disputes between parties involved in commercial partnerships increases in parallel with this growth (Prabowo, 2017).

Every aspect of human life involves conflict, disputes, issues, and disagreements. No one desires a dispute with others. Particularly in commercial operations, individuals must be prepared for the possibility of future disputes. In this case, business actors will choose the method

of dispute resolution that best aligns with their interests (Ulum & Anggaini, 2020).

Commercial activities logically lead to business disputes. Business conflicts can strain relationships between parties, decrease workplace productivity, or disrupt ongoing business operations (Fadillah & Putri, 2021).

Conventionally, disputes are resolved through a court body. This has been practiced for hundreds or even thousands of years. On the other hand, the resolution process is often difficult and time-consuming. Arbitration, mediation, consultation and conciliation, or expert judgment are other methods of resolving business disputes outlined in Law No. 30 of 1999. Peacekeeping is not tried in court. Arbitration is one method of resolving civil disputes outside the court system, according to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Arbitration is based on a written arbitration agreement signed by the disputing parties. A written agreement between the parties prior to the dispute, which includes an arbitration clause, or a separate arbitration agreement formed between the parties after the dispute arises, is known as an arbitration agreement. The district court, an arbitration organization, or the disputing parties may appoint one or more arbitrators to decide which disputes should be sent to arbitration. The institution chosen by the disputing parties to resolve a specific dispute is known as the arbitration institution. If there is no dispute, the

institution can also issue a legally enforceable opinion on the relevant legal relationship.

Arbitration or peaceful techniques for resolving disputes outside the legal system remain acceptable; however, the arbitrator's decision can only be enforced with the court's consent or an enforcement order. During the resolution process, the disputing parties must explicitly declare their desire to resolve their dispute through arbitration. They must also specify who will serve as the arbitrator and what procedures will be followed. The parties must also explicitly state how the dispute resolution process works, how long the dispute will take to resolve, and what type of decision the arbitrator will render (Winarta, 2022).

Business dispute cases are resolved either in court or outside of court through arbitration and are based on civil law. Herein lies the critical role of civil law in resolving business disputes (Situmorang, 2020).

The legal framework known as civil law governs the rights and interests of individual citizens with respect to one another. Civil law can be either written or unwritten. The Civil Code (KUH Perdata) governs written civil law. Customary law governs unwritten civil law (Hasan et al., 2023). This research will discuss the function of civil law in resolving business conflict cases in court and arbitration based on the provided definitions.

II. RESEARCH METHODS

This type of research is descriptive normative research. The types and sources of legal materials used are secondary data. The technique for collecting legal materials uses library research. The legal material analysis technique used is qualitative (Purwati, 2020).

III. RESULTS AND DISCUSSION

The role of civil law in resolving business disputes is inseparable, as civil law forms the foundation for business dispute resolution. In this study, the role of civil law is analyzed in the resolution of business disputes in court and through arbitration. Business disputes resolved in court represent a conventional approach. Civil law governing the resolution of business disputes in court is outlined in the written Civil Code. The issues are adjusted based on the type of business dispute.

When a business dispute is resolved in court, the case becomes public and is known to the general public. The dispute can be resolved

thoroughly and decisively. The advantage of resolving business disputes in court is that it prevents further complications. However, its downside is that the process is lengthy and sanctions tend to be harsher.

Meanwhile, resolving business disputes through arbitration is not too different from court proceedings. In this case, the party that feels aggrieved and brings the dispute to arbitration is given the opportunity to file a claim, while the opposing party is given a chance to respond in a back-and-forth process. However, there are several key differences between arbitration and litigation, such as:

- 1) Only parties bound by an arbitration agreement can submit their case to arbitration. In this context, the parties agree to settle their disputes through arbitration, but anyone can file a case in court against any party.
- 2) Arbitration proceedings are private and closed, while court hearings are open to the public. The confidentiality of arbitration proceedings is sometimes necessary for corporate actors to protect their reputation.
- 3) Court proceedings follow a strict and formal civil procedure, whereas arbitrators can choose the procedure in arbitration based on the nature of the dispute, making it less formal, more flexible, or less rigid.
- 4) Arbitration cases are considered by a panel of arbitrators or a single arbitrator. If there is a panel of three arbitrators, each party usually appoints one arbitrator to the panel, and the two arbitrators then select a third to act as the chairperson. The parties in dispute can choose their arbitrators. In many cases, the arbitrators are experts in the subject matter being disputed, in addition to being knowledgeable about the law. As a result, arbitrators are well-versed in all the issues at hand, including any technical details related to the disputed field. In contrast, judges are appointed by the head of the court to serve on the bench during legal proceedings.
- 5) Court decisions can be appealed, cassated, and even reviewed, while arbitration decisions are final and binding. As a result, arbitration hearings are generally faster and more efficient than court trials (Kolopaking & SH, 2021).

The speed in resolving business disputes is important for all parties, as delays can lead to inefficiencies in economic development,

decreased productivity, and increased production costs. Such delays not only hinder worker welfare and progress but also harm consumers. In resolving business disputes, parties have the freedom to choose the forum for dispute resolution. This principle of party autonomy (partij vrijheid) is recognized in Indonesia's legal system. Article 1338 paragraph (1) of the Indonesian Civil Code states that "all agreements made legally are binding as law for those who make them" (Ali & Fitriani, 2022).

Arbitration results in a final decision that binds the disputing parties and carries legal permanence. Written as an arbitral award, this is based on the author's experience using arbitration institutions to resolve disputes outside the courts. Arbitration is one of the most widely used alternative dispute resolution methods today, as it allows parties to resolve their disputes outside of court (Albar, 2019).

Parties may choose to resolve their disputes either in court (litigation) or outside of court (non-litigation). Law No. 48 of 1999 on Judicial Power explicitly provides the legal basis for parties to choose a forum for resolving commercial disputes. Article 58 states that arbitration or alternative dispute resolution can be used to settle civil disputes outside state courts (M. A. Hakim, 2022).

As a result, the importance of civil law is equivalent to the significance of arbitration and litigation in resolving business disputes in court. Arbitration is appropriate when disputes can be settled outside the courts. However, going to court may become necessary if the business dispute can no longer be resolved peacefully. An example is a trademark business dispute that was initially brought to arbitration but was not satisfactorily resolved; the trademark business dispute was then litigated in a commercial court (Hutagalung, 2022).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Business disputes can be resolved in court or through arbitration, where the role of civil law is crucial, as the foundation for business dispute resolution is regulated under civil law. If a business dispute needs to be resolved quickly and neutrally, arbitration can be used as an alternative. However, if the business dispute cannot be resolved through any alternative, or if the parties desire a more decisive and confidential resolution, then litigation may be the preferred option.

B. Suggestion

Based on the conclusion above, it is recommended that businesses carefully evaluate their options for dispute resolution, considering both arbitration and litigation. Arbitration can be a more efficient and neutral method for resolving disputes, especially when time and confidentiality are priorities. However, for disputes that require a more formal and binding resolution, or when alternative methods fail, litigation in court should be pursued. It is essential to choose the most appropriate approach based on the complexity of the case and the desired outcome to ensure fair and effective resolution.

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