



Non Litigation Dispute Resolution in Settlement of Civil Disputes

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Abstract

Dispute resolution through the courts is considered the main way of solving problems. The judiciary, which is basically formed to adjudicate and resolve problems, but in reality sometimes it is unable to solve the problems faced by the parties, sometimes it even creates new problems. This research discusses how Non-Litigation settlement legal efforts in Civil dispute resolution and Non-Litigation dispute resolution obstacles according to Civil Law. The research method used is an empirical research method by examining and getting answers to problems regarding the settlement and obstacles to non-litigation dispute resolution according to civil law. The result of this research is the settlement of civil disputes, namely by means of non-litigation, which has several forms, namely Negotiation, Mediation and Arbitration. Meanwhile, the obstacle to non-litigation settlement in civil law cases of sale and purchase is about mediation and the validity of the results of the parties' reconciliation.

Keywords: Non litigation; Case; Dispute resolution.

1. Introduction

Humans are one of the legal subjects. Aristotle, an Ancient Greek philosopher stated in his teachings that "Humans are destined to be social beings" or in Latin it is called "Zoon Politicon", which means that humans are basically creatures who always want to hang out and gather with other creatures and like to be sociable. Therefore, humans are called social beings. No human being can live alone and apart from other societies throughout the history of life. Humans live in group bonds as a social unit, and always need help from others. To establish a relationship with each other, humans interact, in this case called social interaction.

Disputes can happen to anyone and anywhere. Both for individuals with individuals, individuals with groups, groups with groups, between companies and companies, between companies and countries, from one country to another, and so on. In other words, disputes can be public or civil in nature, and can occur both in the national and international environment. Disputes or conflicts are perceived as something that disturbs life, because basically everyone wants to live in harmony and peace. Humans, as God's most perfect creatures, have been given reason and thoughts to find a way out in resolving conflicts or disputes they experience, either by means of

peace or through legal channels. In Indonesia, there are known dispute resolution efforts in 2 (two) ways, namely through the litigation process which is the settlement of disputes through court channels, and non-litigation, namely the process of resolving disputes outside court channels.

Humanity still sees the existence of the judiciary as the executor of judicial power which is still needed. Dispute resolution through litigation or court channels is often seen as the primary means of resolving problems. So that whenever there is a conflict that occurs, in human thinking the best solution is through a court and the disputing parties hope that only the court is able to provide a fair decision for the parties.

The emergence of criticism and distrust from the public for dispute resolution through the judiciary makes the assumption that the litigation process is less effective and efficient, so scholars try to find alternative dispute resolution apart from the court. Another alternative besides this court is called Alternative Dispute Resolution (ADR) or what we are familiar with as alternative dispute resolution. The definition of alternative dispute resolution according to article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely: "Alternative Dispute Resolution is a dispute resolution institution or difference of opinion through a procedure agreed by the parties, namely settlement outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.

One of the alternative forms of dispute resolution that is developing quite rapidly is mediation. In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the definition and arrangement of mediation is not clearly stated, but in Article 6 paragraphs (3), (4), and (5) it can be seen that mediation is also recognized as one of the alternative forms of dispute resolution. Basically, mediation which aims to achieve peace is already in the foundation of the Indonesian state, namely Pancasila, which in its philosophy implies that the principle of dispute resolution is deliberation to reach consensus. This is also spelled out in the 1945 Constitution and other statutory regulations.

The agreement reached through mediation occurs because the disputing parties have succeeded in reaching a mutual understanding. Together they formulate a dispute resolution with the help of directions by a third party. The binding power of the mediation results is the same as an agreement because it is made based on the free agreement of the parties. For that, it must be carried out in good faith. Mediation that is carried out outside the court is an alternative to voluntary or optional dispute resolution. However, in the context of mediation in court, mediation is mandatory.

This implies that the mediation process in resolving disputes in court must first be resolved through peace or negotiation with the assistance of a mediator. The provisions on the obligation to carry out mediation procedures are contained in article 2 paragraph (3) of the Supreme Court Regulation (PERMA) Number 1 of 2008 which reads "Not taking a mediation procedure based on this rule is a violation of Article 130 HIR and / or Article 154 of the RBG which results in the verdict being null and void by law. Based on the description of the background of the problem above, the writer can formulate the problems that will be discussed in this scientific work, namely how are Non-Litigation settlement legal efforts in dispute resolution

according to Civil Law and what are the obstacles to resolving non-litigation disputes according to Civil Law.

2. Approach Method

The research method used is an empirical research method that is guided by data collection techniques by direct interviews with those who are competent using the theory of peace, the theory of effectiveness in the concept of a rule of law to study and get answers to existing problems, namely about the settlement and obstacles to non-dispute resolution. litigation according to civil law with descriptive field research discusses the symptoms in people's lives with primary data sources obtained directly from competent sources as the main data in addition to secondary data in the form of legal materials from literature. The nature of this research is descriptive in the aspect of empirical research, namely by accurately describing the traits, symptoms and other symptoms that occur in society so that it can strengthen existing theories and the function of law in society. Data and data sources used in the preparation of this scientific paper include primary data or main data in the form of interviews from several competent sources about this research as well as observations in the field regarding the functioning of law in society or not and secondary data generally exists in ready made state.

The data collection technique used is the snowball technique, which is rolling continuously with reference to field interviews, collection of laws and regulations and law books according to bibliography, where the interview is not just asking someone, but is done by asking questions - questions that have been systematically designed to obtain answers that are relevant to the problems in this study which are useful for obtaining the correct answers to the formulation of problems in the research that the author did. Data processing is carried out by collecting natural data based on a qualitative analysis system consisting of primary data, secondary data and even tertiary data which are processed and analyzed by systematically compiling data, classified into patterns and themes, categorized and classified, in connect one another and after that an interpretation is made which is then presented descriptively qualitatively and systematically.

3. Result And Discussion

Dispute in the Big Indonesian dictionary dispute means conflict or conflict, Conflict means the existence of opposition or conflict between people, groups, or organizations on one object of the problem. Disputes usually start from a situation where there is a party who feels that the other party has aggrieved. Feelings of dissatisfaction will surface when there is a conflict of interest. Formal dispute resolution develops into an adjudication process consisting of processes through court / litigation and arbitration / refereeing, as well as informal conflict resolution processes based on the agreement of the disputing parties through negotiation and mediation.

The judiciary is one of the conflict (dispute) resolution institutions that has played a role so far. However, the decision given by the court has not been able to create satisfaction and justice for both parties to the dispute. Court decisions tend to satisfy one party and do not satisfy the other. The party who is able to prove that he

has the right to something, will be won by the court. On the other hand, a party who is unable to present evidence that he has rights to something, then that party must be defeated by the court, even though in essence that party has the right. In this context, dispute resolution through the courts demands "formal proof", regardless of the ability of the parties to present evidence. Winning and losing is the final result that will be reaped by the parties, if the dispute is resolved through court channels.

Mediation is an alternative dispute resolution that can be used by the parties. This institution provides an opportunity for the parties to take the role of taking the initiative to resolve their disputes assisted by a third party as a mediator. The principle of mediation is win-win solution, so that the parties involved in the dispute feel that there are no winning and losing parties. Mediation not only speeds up the dispute resolution process, but also eliminates grudges and strengthens friendly relations.¹

The development of the diamond buying and selling business that is increasingly in demand for entrepreneurs and the upper middle class is due to the beauty and glamorous nature of diamond jewelry. Middle and upper class people argue that using expensive items such as diamonds is an achievement or prestige from the success of their business and their families. Buying and selling diamonds is done by means of transactions in a shop in cash or credit with payment terms that are done personally - personally using agreements and letters of ownership of diamonds such as receipts or certificates of purchase of diamonds and others.

If we look closely at the explanation regarding the sale and purchase contract agreement, it turns out that the problematic sale and purchase contract agreement occurs because a series of sentences in the agreement set forth in a contract between those who bind themselves in one contract are not implemented or cannot be implemented, even though all the elements required for a valid sale and purchase contract agreement has been fulfilled. This situation often occurs when parties who are obliged or asked to carry out their obligations in accordance with the contents of the sale and purchase contract do not want to carry out by submitting various reasons for objections. Therefore, trade law experts always cautiously warn of the relevance of being careful and careful in entering into a contract.²

The factor that causes the problem of the contract agreement is that it comes from the sale and purchase contract agreement which contains weaknesses, mistakes or errors in the formulation of sentences in a sale and purchase contract agreement which will be the basis for not implementing the sale and purchase contract agreement and will give birth to a problematic sale and purchase contract, where all of these include injuries in disguise and is a mystery problem that colors the sale and purchase contract agreement or binding agreements of the parties.

Resolving Civil cases, there are usually two channels that are offered to disputing parties in the litigation and non-litigation lines, what is meant by Litigation is a form of handling cases through the process in court, both civil and criminal cases, while Non-Litigation is the resolution of legal problems outside the process. Justice.

¹ *Op. Cit.* Hlm.11

² Wyasa Putra Ida Bagus, 2002, *Aspek-aspek Hukum Perdata Internasional Dalam Transaksi Bisnis Internasional*, PT.Rafika Aditama, Bandung, hlm..64

This non-litigation is generally carried out in civil cases only because it is more private in nature.

Non-litigation has several forms to resolve disputes, namely:

- a. Negotiation
- b. Mediation
- c. Arbitration

Right Based is a dispute management approach based on the concept of rights (law), namely the concept of right and wrong based on juridical parameters through adjudication procedures, both in court and in arbitration. Thus, justice seekers who wish to resolve their dispute must first submit their case to the competent court or through arbitration. Such an approach generally leads to a win-lose solution, where there are parties that are won and there are parties that are defeated on the other side. Interest Based is a dispute management approach based on the interests or needs of the disputing parties, not looking at their respective positions. The solution is sought to reflect the interests of the disputing parties mutually (win-win solution). Including an interest-based approach including negotiation, mediation, and conciliation.

The scope of non-litigation dispute resolution is as broad as the scope of legal dispute resolution methods except for compelling laws and public law. Thus it can be said that the scope of non-litigation dispute resolution includes legal actions or legal actions that can encourage people to choose to settle their legal problems peacefully, because the parties realize that the choice of non-litigation methods is the most effective, efficient and safe for resolving disputes. To achieve this peace, the non-litigation option takes into account the explanatory materials of legal articles, litigation costs, the importance of complete dispute resolution, leaving no grudge, touching conscience, and not hurting it with debate.

Non-litigation dispute resolution is basically a way of resolving disputes through peace. The basis for the settlement of the dispute is law, however, the construction of the settlement is adjusted to the wishes of the parties with the aim that the parties are satisfied with the method of resolving the dispute. Settlement of disputes amicably is based on the existence of an agreement which is considered by the parties to be the best. Considered good means that although the way of agreement to resolve this dispute must be done with the willingness to sacrifice each other, this sacrifice is considered the most reasonable and at an inexpensive cost, when compared to dispute resolution through litigation.

Obstacles to resolving each problem are of course different according to the existing case or case, and are concerned with the settlement of non-litigation legal remedies in the settlement of civil law disputes for buying and selling diamonds, the author can divide them in two, namely juridically or in the provisions of applicable laws and regulations, and non-juridical or parties related to the dispute. These obstacles can be explained as follows:

- a. Juridical Barriers

Based on law number 30 of 1999 concerning arbitration and alternative dispute resolution, it does not clearly state the mediation and the validity of the results of the parties' reconciliation so that sometimes the public doubts the final result of dispute resolution through mediation which is usually the result of this is

under hand because the parties has a commitment to carry out the contents of the peace, even though the results of the peace are binding for the parties who have agreed to the agreement. If the parties want to get a clear status from the results of the settlement, the parties can register and record the results of the settlement of the diamond sale and purchase dispute settlement agreement with the notary or authorized official. However, if both parties already have good intentions to carry out the results of the settlement, then there is no need to register them with a notary or authorized official. However, it is better if the peace agreement is registered with a notary, so that if there is default, there will be strong evidence if you will reprimand one of the parties who defaulted on the peace.

b. **Non-juridical Barriers**

Non-juridical obstacles are obstacles that occur because the parties directly involved in the diamond sale and purchase dispute prioritize emotions in resolution so that in practice it becomes very difficult to solve problems or cannot find the right problem resolution solution with good desire or ethics and a cool head of both parties., the emotional factor here can be as follows:

- 1) The parties each feel that they are the right party or in other words the parties have strong selfishness and consider themselves innocent, so that the selfishness of these parties makes the process of mediation and negotiation a little difficult in finding a middle way for both parties.
- 2) The parties felt that they were mutually disadvantaged, so that one of the players in the diamond buying and selling transaction asked for severance pay or compensation, because he felt that he was disadvantaged from the diamond sale and purchase transaction that had occurred.

4. Conclusion

- a. Legal efforts to settle diamond buying and selling disputes in civil law cases, namely by non-litigation, are generally carried out in civil cases only because they are more private in nature and have several forms to resolve disputes, namely:

- 1) Negotiation
- 2) Mediation
- 3) Arbitration

The three forms of dispute resolution are carried out by parties who feel that they have been disadvantaged or that there are differences of opinion between individuals, groups and between business entities. Dispute resolution through non-litigation channels is carried out to resolve disputes by way of deliberation and consensus and the results of conflict or dispute resolution in a family manner.

- b. The obstacles to non-litigation settlement in the settlement of civil law cases for buying and selling diamonds can be divided into two, namely:

1) **Juridical Barriers**

Based on law number 30 of 1999 concerning arbitration and alternative dispute resolution, it does not clearly state the mediation and the validity of the results of the peace of the parties so that sometimes the public doubts

the final result of dispute resolution through mediation which is usually the result of this is under hand because the parties has a commitment to carry out the contents of the peace, even though the result of the peace is binding for the parties who have agreed to the agreement.

2) Non-juridical Barriers

Non-juridical barriers are obstacles that occur because the parties directly involved in the diamond sale and purchase dispute put forward emotions in problem solving. The emotional factor with arrogance considers all parties in the right position, so they don't want to give in.

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