COMPARING CIVIL AND COMMON LAW (INDONESIA AND UNITED STATES OF AMERICA) ON ALTERNATIVE DISPUTE RESOLUTION IMPLEMENTATION

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Abstract

Disputes are inevitable in any relationship, often resulting from conflicting interests between the parties involved. Employers aim to avoid budget deficits, while employees focus on maximizing profits. These conflicts necessitate effective mechanisms for resolution. Alternative Dispute Resolution (ADR) provides a cooperative, informal method to resolve conflicts outside of court, offering a mutually acceptable solution. Delays in resolving business disputes can lead to inefficient economic development, decreased productivity, and higher production costs, ultimately harming workers and consumers. To address this, parties are free to choose their preferred dispute resolution method. ADR offers a timely solution, preventing prolonged conflicts that may cause significant losses. This paper examines the application of ADR in business competition disputes, comparing the practices in Indonesia and the United States of America. Using a normative juridical approach, it analyzes the relevant laws and regulations governing ADR in both countries. The writer utilizes secondary data, including legal texts and publications from law enforcement institutions. The study highlights the potential for expanding ADR's role in resolving business disputes efficiently, providing valuable insights for improving dispute resolution practices in Indonesia and the USA.

Keywords: *Alternative Dispute Board; ADR Indonesia; ADR USA; ADR Civil Law; ADR Common Law*

INTRODUCTION

Disputes are inevitable in any relationship and may occur apart from the involved parties' efforts to prevent them, because each party is inclined to defend its own interest and standing. The interest of an employer, for example, is to avoid budget deficits or cost overruns, while an employee's interests are to increase revenue as much as possible, minimizing loss and maximizing profits. This inherent conflict of interests often leads to disputes, which necessitate effective mechanisms for resolution (Hardjomuljadi, S., 2019).

This makes it possible to make it easier for the public to resolve business disputes through arbitration. The process of resolving disputes/conflicts in the community is fractured and developed. Then came an alternative dispute resolution (ADR). This form emphasizes the development of cooperative methods of conflict resolution outside the

court. ADR dispute resolution methods are consensus, acceptable to the parties to the dispute (mutual acceptable solution) with "informal procedure" (Destaloka, A., 2022).

Most jurisdictions hold that arbitration clauses do not need to specifically reference the governing laws to require arbitration for claims under those laws. However, in Indonesia, disputes handled by the Business Competition Supervisory Commission (KPPU) are generally resolved through litigation, with no clear option for Alternative Dispute Resolution (ADR). In contrast, the United States of America has specific regulations that integrate ADR into the resolution of business competition disputes.

The dispute resolution process must align with the legal system of each country. Generally, disputes are resolved in courts based on jurisdictional competencies, where parties are required to submit evidence to support their claims. As a result, court-based resolutions tend to be costly and time-consuming. This has led to growing public interest in alternative dispute resolution methods, seen as more cost-effective and efficient. This has paved the way for the recognition and adoption of ADR mechanisms like arbitration.

In Indonesia, arbitration for resolving disputes can be conducted through either national or international arbitration institutions. International arbitration is used to settle civil disputes, particularly in the business sector, between parties in international agreements, often based on arbitration clauses within these contracts. This article will compare the legal frameworks for resolving business competition disputes through Alternative Dispute Resolution (ADR) in Indonesia and United States of America, and explore the relevance of these methods in both countries.

METHOD

The study method used is normative juridical or what is known as legal research that examines academic journals, legal documents, government papers, and institutional publications that are specifically relevant to ADR in Indonesia and USA. This normative legal research utilizes a comparative approach that explores the actual applications of ADR in both countries.

DISCUSSION AND ANALYSIS

The resolution of business competition disputes in Indonesia through Alternative Dispute Resolution (ADR) is examined from the perspective of Indonesia's business competition law. The analysis of this process requires supporting factors to strengthen the legal arguments. These factors, which will be discussed by the writers, aim to answer the problem formulation outlined in earlier chapters. Before delving into the feasibility of ADR in resolving business competition disputes, the writer will first analyze the current regulations regarding business competition dispute resolution in Indonesia.

In analyzing the regulations on competition dispute resolution in Indonesia, the writer will present a legal argument to determine whether the current regulations allow for disputes to be settled through Alternative Dispute Resolution (ADR). The study will further explore how business competition disputes are resolved in Indonesia, ultimately providing a rationale for the potential application of ADR in these cases. The focus of this research is on the dispute resolution process handled by the Business Competition Supervisory Commission (KPPU) after identifying violations. This sub-chapter will examine the procedural framework for resolving competition disputes and analyze the relevant legal provisions that govern these resolutions ((Destaloka, A., 2022).

Competition Dispute Regulation Through ADR in Indonesia, as follows:

1. **Law no. 5 of 1999 on Prohibition of Monopoly Practice and Unfair Business Competition**

Regarding the settlement of business competition disputes in Indonesia that govern widely and become the main basis for handling business competition cases in Indonesia in the provisions governing the resolution of disputes after the emergence of the decision of KPPU contained in Article 44, with reads:

1. "within 30 (thirty) days since the business person receives the notification of the Commision's decision as referred to in Article 43 paragraph (4), the business person shall implement the award and submit the implementation report to the Commission".
2. "business can submit objections to the District Court no later than 14 (fourteen) days after receiving the notification of the verdict".

3. "Business actors who do not object within the period as refered to in paragraph (2) shall be deemed to accept the commission's decision".
4. "If the provisions as referred to in paragraphs (1) and (2) are not executed by business actors, the Commission submits the decision to the investigator for investigation in accordance with the provisions of the prevailing laws and regulations".
5. The decision of the Commission as referred to in Article 43 paragraph (4) is sufficient preliminary evidence for investigators to conduct an investigation."

Based on the provisions above, if a report is found to violate Indonesian business law, the commission panel will issue a ruling stating that the accused party has legally and convincingly breached the provisions of Law No. 5 of 1999, including an explanation of the violation and the imposition of legal sanctions as outlined in Article 47 of Law No. 5 of 1999. Once the KPPU delivers its decision, businesses accused of antitrust violations can choose to accept the ruling and comply with the administrative sanctions imposed by KPPU (Destaloka, A., 2022).

The decisions made by KPPU, however, are not final or binding, as the judicial process allows for appeals to safeguard the rights of the involved parties. Under competition law, any party dissatisfied with KPPU's decision has the right to file an appeal with the district court in the jurisdiction where the reported party is based. This must be done within 14 days of receiving the decision, either via an official copy or through the publication of the decision on KPPU's website. Objections must be submitted to the clerk of the relevant district court and include a copy of the objection addressed to KPPU, following civil dispute registration procedures. If the reported party does not object, the KPPU's decision will be executed with authorization from the district court, and the ruling will carry the force of law. From this, it can be concluded that Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition does not include provisions for resolving disputes through alternative dispute resolution (ADR) or other non-litigation methods (Destaloka, A., 2022).

All dispute resolution mechanisms under this law are conducted through litigation. From the moment KPPU issues a ruling, the only available recourse for the reported

business is to file an objection with the district court. Furthermore, if necessary, the reported party may escalate the case to the Supreme Court through a cassation process.

2. Regulation of the Business Competition Supervisory Commission No. 1 of 2019 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition

Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unfair Business Competition is not the sole regulation governing business competition disputes. It is supported by Regulation of the Business Competition Supervisory Commission No. 1 of 2019 issued by the Supervisory Commission on Case Handling Procedures, which clarifies and supplements the provisions of the law. Both regulations outline mechanisms for dispute resolution, including appeals to the District Court and cassation to the Supreme Court if the reported party rejects the ruling. Additionally, Article 202 of the Convention addresses arbitration agreements and awards arising from legal relationships, whether contractual or otherwise, deemed commercial.

Based on the above presentation on the rules of settlement of business competition disputes and their application in Indonesia can be concluded that in the case of business competition in Indonesia has not used alternative dispute resolution in its settlement. In Indonesia has invited Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which in the regulation regulates the limits that can not be done through ADR contained in article 5, namely;

1. "Disputes that can be resolved by arbitration are only disputes in the field of trade and concerning rights that under law and legislation are fully controlled by the parties to the dispute".
2. "Disputes that cannot be resolved through arbitration are disputes that according to the laws and regulations cannot be held peace".

Despite the absence of explicit prohibitions, ADR remains unexplored in resolving business competition disputes in Indonesia. Traditional dispute resolution mechanisms, while thorough, often involve lengthy investigations and legal proceedings, which can increase costs and delay outcomes. These processes may not fully meet the

needs of businesses seeking efficient solutions to maintain their competitive operations. ADR offers a collaborative and flexible alternative, emphasizing tailored resolutions that can preserve business relationships. Furthermore, the confidentiality inherent in ADR proceedings can protect sensitive business information, a key advantage over public court trials. However, ADR's limited adoption may stem from concerns about its ability to handle complex competition issues and a general lack of awareness among businesses and legal practitioners about its benefits. Addressing these challenges requires proactive efforts to promote ADR as a viable complement to existing legal mechanisms.

Adopting ADR in business competition cases aligns Indonesia with global best practices. Countries like the United States and the European Union have successfully integrated mediation and arbitration into their competition frameworks, demonstrating how ADR can balance efficiency with legal rigor. For Indonesia, incorporating ADR would not only reduce the burden on judicial systems but also provide businesses with an effective and mutually beneficial way to resolve disputes. The lack of explicit restrictions on using ADR in business competition cases underscores its untapped potential. By embracing ADR, Indonesia could foster a more cooperative business environment while enhancing its competitiveness in the global market.

Competition Dispute Regulation Through ADR in USA

Antitrust laws in the United States, such as the Sherman Act, Federal Trade Commission (FTC) Act, Clayton Act and so on primarily address general violations of unfair competition. While the FTC and DOJ Act outline the agencies' authority in handling disputes, ADR regulations are not included in competition laws but are detailed in supporting regulations for their application in resolving business competition disputes.

1. **Arbitration Fairness Act 2018**

   The Arbitration Fairness Act of 2018 amended the Federal Arbitration Act (FAA), extending its provisions to cover disputes in employment, consumer, antitrust, and civil rights matters. Congress noted that the FAA was originally intended for disputes between commercial entities of equal bargaining power but has since been applied to consumer and labor disputes, often limiting individuals' rights without their full awareness. Arbitration is deemed acceptable only if entered into voluntarily and after

a dispute has arisen. The amendment ensures arbitration can be used for dispute resolution when consent is fully voluntary and equitable for all parties involved.

2. **Federal Arbitration Act/9 United States Code Arbitration**

The Federal Arbitration Act (FAA), codified as 9 United States Code of Arbitration, establishes the foundational legal framework for alternative dispute resolution (ADR) in the United States. This framework operates in accordance with the New York Convention, as outlined in Chapter 2, Article 201 of the FAA, which mandates the enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, in U.S. courts. This international commitment underscores the U.S. government's support for arbitration as a tool for resolving disputes, including those involving cross-border business issues.

In the context of business competition, U.S. federal law actively promotes arbitration for settling private legal disputes, encompassing both domestic and international antitrust claims. The Federal Arbitration Act grants parties the flexibility to resolve these disputes outside traditional court systems, recognizing arbitration as a legitimate avenue. However, judicial scrutiny remains significant in determining the scope and appropriateness of arbitration for specific competition cases, ensuring that public interest and regulatory objectives are not compromised. This balance demonstrates the adaptability of ADR mechanisms under the FAA, even as courts refine their application in antitrust contexts.

Furthermore, federal agencies such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division have legal authorization to employ ADR methods, including arbitration and mediation, in resolving competition disputes. Despite this statutory authorization, these agencies have not fully leveraged arbitration in antitrust enforcement, opting instead for more traditional methods. (Destaloka, A., 2022), while the law provides opportunities for ADR in antitrust enforcement, its practical implementation by these agencies remains limited. This raises questions about the potential for expanding ADR's role in achieving more efficient and collaborative resolutions in complex competition cases.

The relevance of ADR business competition in Indonesia and USA:

The settlement of business competition disputes in Indonesia has traditionally been dominated by litigation, with no clear regulation supporting Alternative Dispute Resolution (ADR). This contrasts with the United States, where ADR, including arbitration, is explicitly supported by legislation like the Federal Arbitration Act and the Administrative Dispute Resolution Act. These provisions enable arbitration in business competition cases, particularly for claims related to damages or mergers, while excluding class actions. In contrast, Indonesia has regulations under Law No. 30 of 1999 on Arbitration and ADR, which provides a framework for arbitration. However, there is a lack of specific regulations that focus on applying ADR to business competition disputes. The absence of such provisions has raised questions about why Indonesia has not fully integrated ADR into its competition law framework.

Given the success of ADR in the United States, the writer found the examination and consideration of adopting similar provisions is needed. This would support a more flexible and efficient approach to resolving business competition disputes, especially those involving private parties or competitors. The application of international arbitration could also strengthen Indonesia's position in global competition law enforcement. While Indonesia has the legal infrastructure for arbitration, there is a gap in specifically regulating ADR for business competition disputes. By learning from the U.S. regulatory model, Indonesia could enhance its legal framework to better handle these types of disputes

CONCLUSION

Business competition disputes in Indonesia cannot be resolved through Alternative Dispute Resolution (ADR) based on the current business competition laws, as there are no specific regulations supporting ADR in such disputes. However, the existence of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution allows for the application of ADR in business competition disputes, offering it as a potential method for resolving such disputes if the parties agree.

In comparison, the regulations governing ADR in business competition disputes in the United States differ in that they have specific provisions for resolving these types of disputes through ADR mechanisms. The U.S. actively implements ADR in business

competition cases. This regulatory framework in the U.S. could serve as a model for Indonesia to consider. It can be concluded that Indonesia should delve deeper into the regulatory approaches adopted in the U.S. regarding ADR in business competition disputes. ADR, including mediation for loss and mass claims, and arbitration for loss claims and mergers, would be a relevant approach for Indonesia in resolving private business competition disputes. For the Indonesian government and the KPPU (Komisi Pengawas Persaingan Usaha), it is crucial to review the implementation of ADR in business competition disputes thoroughly. This would help in formulating policies and establishing dynamic legal frameworks that would make ADR a viable and recognized option for dispute resolution, similar to how it is handled in the United States.

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