

Commercial Litigation And Individual Litigation In Pharmaceutical Companies

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Abstract

Literature studies are carried out by each researcher with the main objective of finding a foothold/foundation to obtain and build a theoretical basis, frame of mind, and determine provisional conjectures or also known as research hypotheses. This study uses a qualitative method with a literature and literature study approach. The results of the study explain that dispute resolution through ADR has advantages compared to dispute resolution through litigation, including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial decisions, confidential procedures, flexibility in determining terms. problem solving, time-saving and cost-effective, high probability of executing agreements and maintenance of working relationships. There needs to be synchronization between legal aspects (in this case litigation aspects) with commercial and technical aspects. In ideal conditions, litigation aspects must be able to go hand in hand with commercial and technical aspects. However, if these ideal conditions are not achieved, it is necessary to carry out risk mitigation by taking into account the company's risk appetite and risk tolerance. The court as the executor of judicial power has the main task of receiving, examining, and adjudicating and resolving any disputes submitted to it in order to uphold law and justice based on Pancasila, for the sake of the implementation of the legal state of the Republic of Indonesia.

Keywords : Commercial Litigation, Individual Litigation, confidential procedures

1. Introduction

As understood, the agreement was actually made to facilitate the achievement of the goals (goals) of the parties making the agreement within the framework of a mutually beneficial business relationship (mutual business relationship). The legal work unit prepares clauses that protect the rights and obligations of the parties in achieving the objectives of the agreement

Problems or disputes often occur in social life. Problems or disputes usually occur in various lines of economic and business activity. Differences of opinion, conflicts of interest, and the fear of being harmed are often the causes of these problems or disputes. The settlement of business disputes is mostly carried out using litigation or dispute resolution through the trial process. Settlement of the dispute begins with filing a lawsuit to the district court and ends with a judge's decision. However, besides resolving disputes through the litigation process, there is also a settlement of disputes through non-litigation. Proof is a vital activity in litigation. If we cannot prove legally and convincingly the arguments we put forward, then the claim or lawsuit is invalid and granted. Thus, it becomes important, a series of evidentiary activities in the agreement. Where according to civil procedural law, evidence as stipulated in Article 164 HIR/Article 284 RBG and Article 5 of the ITE Law.

The settlement offered is regulated in Law No. 30 of 1999 article 1 paragraph 10. The Law on Arbitration and Alternative Dispute Resolution indicates that disputes can be resolved through the courts or alternative courts (litigation or non-litigation). This alternative is given a lot, especially in disputes that go into civil cases. As is well known, the litigation process means bringing disputes to legal channels, while the non-litigation process is based on the good faith of

the disputing parties. Dispute resolution outside the courtroom according to a mutual agreement and written in an agreement is also known as arbitration.

2. Literature Review

2.1. Dispute Resolution Theory

Dispute resolution theory is a theory that examines and analyzes the categories or classification of disputes or conflicts that arise in society, the factors that cause disputes and the methods or strategies used to end these disputes. According to John Burton (2004) Settlement of disputes in which there is authority and law, which can be requested by the parties by a group of mediators to be carried out. In this case the traditional approach to dispute management and regulation is generally based on mediation and negotiation. This approach will only work if the disputing parties agree to negotiate and have something tangible to offer.

C.W. Moore (2001) states that the dispute resolution model through mediation can be described as intervention in a dispute or negotiation by a third party that is acceptable, impartial and neutral, does not have the authority to make decisions in helping the disputing parties as an effort to reach an agreement voluntarily. In resolving the disputed issues of the parties. Meanwhile, Dean G. Pruitt and Jeffrey Z. Rubin (2010) say that conflict is a perception of differences in interests (perceived divergence of interest), or a belief that the aspirations of conflicting parties are not achieved simultaneously (simultaneously). Dean G. Pruitt and Jeffrey Z. Rubin (2004) put forward a theory about dispute/conflict resolution strategies, namely: (1) Contending (competing); (2) Yielding (yielding); (3) Problem solving (problem solving); (4) With drawing (withdraw); and (5) Inaction (silence)

Laura Nader and Harry F Todd Jr. (1979) also put forward 7 ways of resolving disputes. The seven ways include: (1) just letting it go (lumping it); (2) Avoidance; (3) coercion; (4) Negotiation; (5) Mediation; (6) Arbitration; and (7) Justice (adjudication). From the description above, dispute resolution can be simplified into two parts, namely: (1) Alternative Dispute Resolution, including: consultation, negotiation, mediation, conciliation, final judgment, or arbitration; and (2) the court.

Litigation itself is a term in law regarding the settlement of a dispute that is faced through the courts. This process involves disclosing information and evidence related to the dispute being tried. The point is to avoid unexpected problems in the future. The dispute was resolved under the auspices of the judiciary. Article 22 of the 1945 Constitution states that the judicial system is under the authority of the Supreme Court and the judicial bodies under it.

What is meant by non-litigation settlement? Settlement through non-litigation is the settlement of disputes that are carried out using methods that exist outside the court or using alternative dispute resolution institutions. In Indonesia, there are two types of non-litigation settlements, namely Arbitration and Alternative Dispute Resolution in accordance with Law Number 30 of 1999 Arbitration and Alternative Dispute Resolution (UU AAPS).

Commercial litigation is a legal action taken by one company against another. Where trials are conducted and judgments are given to the winning side. Partnerships in business generally involve promises to provide services or products in exchange for money or similar consideration. If one party fails to fulfill its promise, the other party can enforce the agreement or contract filling out a civil lawsuit. To this day, commercial litigation remains the primary method of resolving high-value and complex disputes in the UAE. These judicial bodies include general courts, religious courts, state administrative courts, military courts and constitutional courts.

The litigation process is expected to provide justice to the parties concerned in case disputes. In this judicial process, a party is needed that can help win the case dispute. Choosing a truly qualified law firm is essential. Disputing with the other party is not a favorable state of affairs. Many have to be sacrificed including time and money. Before moving on to the actual solution, what is a dispute? The term dispute in the Big Indonesian Dictionary (KBBI) is a situation where there is something that causes a dispute. It can be in the form of a small dispute or a major dispute. Parties who are dissatisfied with the dispute can negotiate to find a settlement.

Litigation is a form of dispute resolution in court proceedings in general courts. While non-litigation is a form of dispute resolution outside the general court. Non-litigation according to Law Number 30 of 1999 is divided into 2 (two), namely: (1) arbitration and (2) alternative dispute resolution. Settlement by way of arbitration and alternative dispute resolution has proven to be effective in resolving disputes in general and so of course construction disputes in particular.

The settlement offered is regulated in Law No. 30 of 1999 article 1 paragraph 10. The Law on Arbitration and Alternative Dispute Resolution indicates that disputes can be resolved through the courts or alternative courts (litigation or non-litigation). This alternative is given a lot, especially in disputes that go into civil cases. There are various types of dispute resolution through litigation. Types of litigation cases such as: a) Regarding land acquisition, b) Banking, c) Civil

disputes, d) Corporate crime (fraud), e) Settlement of false accusations or struggles over child custody (facilitated by religious courts)

In language, arbitration comes from the word *arbitrare* (Latin) which means the power to resolve a case based on discretion. Arbitration is voluntary submission of a dispute to a neutral third party, namely an individual or ad hoc arbitration. According to Abdul Kadir, arbitration is the voluntary submission of a dispute to a qualified person to resolve it with an agreement that an arbitrator's decision will be final and binding. Meanwhile, according to Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in article 1, Arbitration is a method of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.

2.2. Difference between Litigation and Non Litigation

Disputing with the other party is not a favorable state of affairs. Many have to be sacrificed including time and money. Before moving on to the actual solution, what is a dispute? The term dispute in the Big Indonesian Dictionary (KBBI) is a situation where there is something that causes a dispute. It can be in the form of a small dispute or a major dispute. Parties who are dissatisfied with the dispute can negotiate to find a settlement. The settlement offered is regulated in Law No. 30 of 1999 article 1 paragraph 10. The Law on Arbitration and Alternative Dispute Resolution indicates that disputes can be resolved through the courts or alternative courts (litigation or non-litigation).

This alternative is given a lot, especially in disputes that go into civil cases. As is well known, the litigation process means bringing disputes to legal channels, while the non-litigation process is based on the good faith of the disputing parties. Dispute resolution outside the courtroom according to a mutual agreement and written in an agreement is also known as arbitration.

Various types of dispute resolution using non-litigation methods include:

a) Consultation

This is a non-litigation method in which a client (dispute party) comes and asks for his opinion on the problem at hand. Currently the consultant gives his opinion according to the needs and requirements of his client. This consultation is personal.

b) Negotiation

This method does not require experts or consultants to mediate the disputes encountered. The parties to the dispute meet to reach a solution to the problem. These negotiations will result in a collective agreement on a more harmonious and creative basis.

c) Mediation

Other dispute resolution methods in the non-litigation process. The mediation process itself is almost the same as negotiation, that is, both are negotiating. The difference is that the mediation process uses the help of a mediator in the negotiation process from the parties involved.

d) Conciliation

In fact, the disputing parties who use the non-litigation method negotiate with each other. If using the conciliation method, there will be an intermediary called a conciliator. This party will try to resolve the dispute at hand.

e) Expert Assessment

This process is a non-litigation method in which the parties to the dispute ask or seek the opinion of competent experts according to their expertise.

There are differences in dispute resolution with litigation and non-litigation show in Table 1.

Table 1. The differences in dispute resolution with litigation and non-litigation

Process	Mediation/Conciliation	Arbitration	Litigation
Process control	The parties	Arbitrator	Judge
Procedure	informal	Somewhat Formal	formalistic
Time period	3-6 Weeks (speed)	3-6 Months (Quick)	5-12 years (waste of time)
Cost	Cheap (nominal cost)	Between cheap and expensive	Very expensive
Rules of Proof	No proof needed	Rather formal, document, expert witness	Formal, technical, official
Publication	Personal	Personal	Open to the public

Parties relationship	cooperative	Hostile	Hostile
Solving focus	To the future	Regarding the past	Regarding the past
Negotiation way	Compromise	Just as hard as defending principles	Just as hard as defending principles
Communication	Fixing the past	Facing a dead end	Facing a dead end
The results achieved	Win together	Lose and win	Lose and win
Fulfillment	Willingly and happily	Always rejected in the match	Rejected by all means and effort
Emotional mood	Emotion free	emotional	Emotions agitated

3. Methods

The data collection technique used in this study was literature study by identifying the contents of the data, namely legislation, articles from the internet, national seminar papers, journals, documents, and other data. While the data analysis technique used in this paper uses a deductive mindset (Azzahra et al., 2022). The type of research used is a literature study. The literature study method is a series of activities related to methods of collecting library data, reading and taking notes, and managing research materials (Zed, 2008). Literature study is an activity that is required in research, especially academic research whose main objective is to develop theoretical as well as practical aspects. Literature studies are carried out by each researcher with the main objective of finding a foothold/foundation to obtain and build a theoretical basis, frame of mind, and determine provisional conjectures or also known as research hypotheses. So that researchers can group, allocate organize, and use a variety of literature in their fields (Fahmi et al., 2022). By conducting a literature study, researchers have a broader and deeper understanding of the problem to be studied. Conducting a literature study is carried out by researchers between after they determine the research topic and determine the formulation of the problem, before they go into the field to collect the necessary data (Darmadi, 2011)

4. Result and Discussion

4.1. Result

The process of resolving disputes through justice or litigation is often referred to as *ultimum remedium*. So that means, litigation is the final means of dispute resolution. The end result of litigation has binding legal force against the parties involved in the dispute.

The settlement of business disputes is mostly carried out using litigation or dispute resolution through the trial process. Settlement of the dispute begins with filing a lawsuit to the district court and ends with a judge's decision. However, besides resolving disputes through the litigation process, there is also a settlement of disputes through non-litigation. Settlement of disputes through an arbitration institution must be preceded by an agreement of the parties in writing to make a settlement using an arbitration institution. The parties agree and bind themselves to resolve disputes that will occur by arbitration before a real dispute occurs by adding clauses to the main agreement. However, if the parties have not included it in the main agreement clause, the parties can make an agreement if a dispute has occurred using a compromise deed signed by both parties and witnessed by a Notary.

One of the biggest case disputes related to litigation is that conducted by PT Asia Pulp Paper. It started when PT Asia Pulp & Paper (APP) issued bonds totaling US\$ 550 million. On the sale of the bonds, a loan agreement was drawn up between Lontar and APP in 1995. After the loan agreement expired in 2001 and 2003, Lontar, who felt he had made payments, did not want to pay the debt. Lontar's attorney from Hotman Paris & Partners believes that law smuggling has occurred, namely by making two types of agreements with different contents for one debt transaction. It was on this basis that Lontar filed a lawsuit against 14 parties.

One of the attorneys for the defense explained that the loan agreement, Indenture and Underwriting Agreement were legally binding agreements and regulated by New York Law. Although based on New York law, the plaintiff's attorney filed a lawsuit in Indonesia.

On the basis that one of the defendants was in Kuala Tungkal, Indonesia, on 16 September 2004, the Kuala Tungkal District Court decided to grant Lontar's lawsuit. Almost similar to the decision in the Tripolyta case, the Kuala Tungkal District Court Panel of Judges stated that there were unlawful acts committed by the defendants, but no compensation was granted.

Dispute resolution by using an arbitration institution will result in an Arbitration Award. According to law number 30 of 1999, the arbiter or arbitration panel must immediately issue an arbitral award no later than 30 days after the

completion of the dispute examination by the arbitrator. If there is an administrative error in the decision handed down, the parties within 14 days from the date the decision is made are given the right to request corrections to the decision. The arbitral award is a decision at the final level (final) and directly binds the parties. The arbitration award can be enforced after the decision has been registered by the arbitrator or his attorney at the district court clerk. After being registered, the chairman of the district court is given 30 days to issue an order to enforce the arbitral award. Apart from going through the arbitration process, non-litigation dispute resolution can also be carried out by means of alternative dispute resolution or alternative dispute resolution (ADR). Alternative dispute resolution is a form of dispute resolution outside the court based on an agreement (consensus) carried out by the parties to the dispute either without or with the help of neutral third parties. According to Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in article 1 number 10, alternative dispute resolution is a dispute settlement institution or dissent through procedures agreed upon by the parties, namely settlement outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.

Dispute resolution through ADR has advantages compared to dispute resolution through litigation, including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial decisions, confidential procedures, flexibility in determining the terms of problem solving, economical time and cost-effective, high likelihood of executing agreements and maintenance of working relationships.

4.2. Discussion

One way that is commonly done is to take the court route (litigation). As with dispute resolution in general, this route requires relatively more time, effort and costs. As an alternative consumer dispute settlement option, since 2000 the government through the Consumer Protection Law (UUPK) has formally provided a pathway for consumer dispute resolution outside of court (non-litigation). This non-litigation (non-litigation) dispute resolution can assist consumers in settling their claims for losses at very minimal cost and in time that can be calculated. There are several institutions or bodies that are usually able to resolve consumer disputes through this route, namely: 1) Government; through agencies or fields that specifically handle consumer dispute resolution, such as the Indonesian Ministry of Trade, Provincial Trade Office, Financial Services Authority and others. 2) Community Self-Help Consumer Protection Agency (LPKSM); is an institution formed by the community (self-help) that specifically deals with consumer protection whose existence is recognized by the government through a Certificate of Registration for the Non-Governmental Consumer Protection Agency (TDLPKSM). 3) National Consumer Protection Agency (BPKN); is an institution formed by the government whose members consist of elements of government, elements of society (LPKSM), elements of business actors, elements of academics and elements of professionals/experts and are domiciled in the Capital City of the Republic of Indonesia. 4) Consumer Dispute Settlement Agency (BPSK); is an institution formed by the government whose members consist of government elements, community elements, and business actors and are domiciled in each district/city in all provinces in Indonesia

The provisions of the Judicial Power Act basically accommodate the settlement of business disputes through litigation and non-litigation. Some of the articles of the Law on Judicial Power and the Law on Arbitration and APS regarding dispute resolution. The number of articles required, but more importantly how well the arrangement guarantees can support a simple, fast, and low cost solution (Sari et al., 2022). Provisions between articles that are not harmoniously related result in not being able to work together to achieve the main objective of judicial regulation. Previously, it should be stated that civil court procedures under the HIR (Updated Indonesian Regulation) procedural law have not supported the settlement of business disputes because there is no standard time for complete settlement.

Article 2 paragraph (1) of the Law on Judicial Power states that trials are conducted "for the sake of justice based on belief in one and only God". This principle seems too theocratic, in theory assuming the judge as God's representative. As a result, all disputes tend to be considered resolved in court. Many disputes require amicable resolution, and international business people use dispute resolution through non-litigation. The legal needs of society which are always developing are not fulfilled by this theocratic principle but by things that are rational in nature. This principle is excessively related to the role of the court. As a result, there is a concentration of expectations on judges, the distribution of cases becomes disproportionate, furthermore the principle of speedy justice and low costs is difficult to achieve.

Legal certainty is a way to achieve justice, but it must be realized that certain laws are not always fair. In paragraph (4) of Article 2 of the Judicial Powers Law, various channels are more in the hands of the parties, so matters related to how to make things happen quickly become things that need to be fixed. The administration of justice is carried out by a Supreme Court and judicial bodies under it within the general court, religious court, military court, state administrative court, and by a constitutional court. The court as the executor of judicial power has the main task of receiving, examining,

and adjudicating and resolving any disputes submitted to it in order to uphold law and justice based on Pancasila, for the sake of the implementation of the legal state of the Republic of Indonesia.

5. Conclusion

The provisions of the Judicial Power Act basically accommodate the settlement of business disputes through litigation and non-litigation. Some of the articles of the Law on Judicial Power and the Law on Arbitration and APS regarding dispute resolution. The end result of litigation has binding legal force against the parties involved in the dispute. The settlement of business disputes is mostly carried out using litigation or dispute resolution through the trial process. The dispute settlement begins with filing a lawsuit with the district court and ends with a judge's decision. However, besides resolving disputes through the litigation process, there is also a settlement of disputes through non-litigation. Settlement of disputes through an arbitration institution must be preceded by an agreement of the parties in writing to make a settlement using an arbitration institution. One way that is commonly done is to take the court route (litigation). As with dispute resolution in general, this route requires relatively more time, effort and costs. As an alternative consumer dispute resolution option, since 2000 the government through the Consumer Protection Law (UUPK) has formally provided a pathway for resolving consumer disputes outside of court (non-litigation).

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