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MODEL OF LEGAL DISPUTE RESOLUTION OF BUSINESS CONTRACT DEFAULT: A STUDY OF VARIOUS CASES LAW

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Abstract

Business contracts are an essential element underlying every commercial relationship. The contract serves as a legal tool that regulates the rights and obligations of the parties involved in a business transaction. However, in practice, business contract disputes often occur, either due to a mismatch in understanding of the contents of the contract, violation of the contract provisions, or changes in conditions that affect the implementation of the contract. This research is a qualitative research with a normative juridical approach, where the main data is obtained from primary data sources in the form of laws, and legal doctrines. The results of this study indicate that default occurs when the debtor does not fulfil obligations according to the agreement, which has an impact on business relations. In addition, ethics in civil law enforcement, particularly in business contracts, are important to maintain the integrity of the legal system. Ethics, which include the principles of justice, truth, and integrity, serve as the foundation for law enforcement.

Keywords: Business, Contract, Default, and Legal Dispute

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INTRODUCTION

Business contracts are an essential element underlying every commercial relationship. The contract serves as a legal tool that regulates the rights and obligations of the parties involved in a business transaction.[1] However, in practice, it is not uncommon for contract disputes to occur that can disrupt the smooth operation of the business and harm one or both parties. Business contract disputes can arise from a variety of sources, such as a mismatch in understanding of the contents of the contract, a breach of contract provisions, or changes in conditions affecting the implementation of the contract.[2] Therefore, an in-depth understanding of business contract dispute resolution is essential for businesses to protect their interests.

One of the main reasons why contract disputes can occur is the vagueness of the contract clauses themselves.[3] Contracts that are written ambiguously or incompletely can lead to different interpretations between the parties. For example, terms that are not clearly defined can lead to disputes later on about the rights and obligations of each party. In addition, external factors such as changes in government policies, market fluctuations, or force majeure conditions can also affect the execution of the contract, giving rise to disputes.[4]

In dealing with contract disputes, there are various settlement methods that can be chosen by the parties. These include negotiation, mediation, arbitration and litigation.[5] Each method has its own advantages and disadvantages, and the choice of the appropriate method largely depends on the characteristics of the dispute at hand. Negotiation and mediation are often chosen as more and efficient ways to resolve disputes, as they can maintain good relations between the parties. Meanwhile,

[1] Martinelli, F. Reinhart, C. Natalie, and Y. Milianty, "Openness and Legal Certainty in Roscoe Pound's Contract Theory," (UNES Journal of Law 6, no. 2, 2023), pp. 4100, https://doi.org/10.31933/unesrev.v6i2.

[2] Cahayani, Dian. "Implementation of Contract Planning in the Business Contract Structuring Process." (JISOS: Journal of Social Science 2, no. 7, 2023), p.1914

[3] Jamaludin Jamaludin and Reza Syafrizal, "Basic Concepts of Economics According to Islamic Law," (Muamalatuna 12, no. 1, 2020), pp. 38.

[4] Sri Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: Journal of Law and Justice* 7, no. 1 (June 10, 2023): 1–23, https://doi.org/10.1234/JURISTA.V7I1.42.

[5] I Gede Surata and I Gede Arya Wira Sena, *Settlement of Civil Disputes Through the Procedural Process* (Yogyakarta: PT. Nas Media Indonesia, 2022).

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arbitration and litigation tend to be more formal and can result in legally binding decisions, but can also be time-consuming and costly.[6]

This research discusses the legal arrangements and implementation in business contracts in both national and international contexts, particularly in terms of dispute resolution. For dispute resolution, there are forum options such as Arbitration and court, which have their own advantages and disadvantages. The choice of law to be applied can be specified explicitly in the contract or through the courts if agreement is difficult to reach.[7]

In today's digital era, where business transactions are increasingly conducted online, contract dispute resolution is also changing[8] . Online dispute resolution (ODR) is gaining popularity as an alternative to traditional resolution methods. ODR allows parties to resolve disputes without having to meet in person, using information technology to facilitate communication and negotiation. This certainly provides convenience and efficiency in the dispute resolution process, especially for business actors who have limited time and resources.[9]

In addition, a country's contract law also plays an important role in dispute resolution. Different countries have different regulations and legal principles when it comes to contracts and settlements. Therefore, an understanding of the applicable legal system, both at the national and international level, is necessary to avoid disputes and understand the rights and obligations stipulated in the contract.[10]

By considering the various aspects above, this research is expected to make a significant contribution to understanding business contract dispute resolution. In addition, it is hoped that this research can also be a

[6] Niagara, Serena Ghean, and Candra Nur Hidayat. "Non-Litigation Dispute Resolution Viewed From Law Number 10 of 1998 on Banking and Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution." Surya Kencana Dua 7 (2020).

[7] Gijoh, Lileys Glorydei Gratia. "Implementation of Law in International Business Contracts." (Lex Et Societatis 9, no. 1, 2021).

[8] Sopang, Fandi Iskandar, and Andi Maysarah. "Online Dispute Resolution for Business Transactions in the Digital Age." (Bisnis-Net Journal of Economics and Business 7, no. 1, 2024), pp. 155-163.

[9] Hidayati, Maslihati Nur, and Mardiana Saraswati. "Initiating Online Dispute Resolution in Electronic Transaction Activities in Indonesia." (Sang Pencerah: Scientific Journal of Muhammadiyah Buton University 10, no. 1, 2024), pp. 225.

[10] Kurniawan, Oktriadi, Aria Zurnetti, and Suharizal Suharizal. "Dispute Resolution of Defaults in Online Sale and Purchase Agreements (E-Commerce) Leading to the Crime of Fraud." (Journal of Syntax Transformation 1, no. 7, 2020), pp. 353.

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source of information and reference for academics, legal practitioners, and business people in formulating effective strategies in resolving contract disputes. Through this paper, it is also expected to create awareness of the importance of good contract management and constructive dispute resolution in an increasingly competitive and challenging business world.[11] A good understanding of business contract dispute resolution will not only assist businesses in protecting their interests, but will also contribute to the creation of a healthier and more sustainable business climate. As such, this research will serve as a strong foundation to further investigate the complexity of business contract disputes and effective methods of resolution.

RESEARCH METHODS

This research is a qualitative research with a normative juridical approach, where the main data is obtained from primary data sources in the form of laws, and legal doctrines.[12] In addition, data is obtained from secondary data, both case law, journals and articles related to this research. The data obtained is analysed with a descriptive-analytical approach, where the author will analyse various cases of business dispute resolution with existing legal norms.

RESULTS AND DISCUSSION

A. Default dispute resolution

Default is defined as the failure of the debtor to fulfil its obligations in accordance with the agreement, which can occur in various forms, such as not performing obligations, performing obligations in an inappropriate manner, or performing obligations but late.[13] This phenomenon is one of the main causes of disputes in court, with data showing that around 60% of civil cases are related to default. To categorise an action as a default, it is necessary to have a valid agreement, an obligation that is not fulfilled, and the loss suffered by the creditor due to the default.

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[11] Agustina, Rini Eka. "The Effectiveness of Arbitration as Dispute Resolution." (Ethics and Law Journal: Business and Notary 2, no. 1, 2024), pp. 263.

[12] Muhammad Siddiq Armia, *DETERMINING LEGAL RESEARCH METHODS & APPROACHES*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

[13] Abdul Rasyid Saliman and Adisuputra, *Business Law for Companies Theory and Case Examples (Eighth Edition)*, *Business Law for Companies*, 2021.

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Furthermore, the determination of damages due to default is crucial in the dispute resolution process. Compensation may include costs incurred, losses suffered, and interest payable by the debtor. The criteria for determining compensation must consider the actual losses suffered by the creditor, both material and immaterial losses. The causal relationship between the default and the loss must also be clear, so that the loss experienced can be traced directly to the debtor's default. In addition, the good faith of both parties in carrying out the agreement is an important aspect that is considered by the court.[14]

The legal principles underlying this dispute resolution include freedom of contract, good faith, legal certainty, and proportionality. Freedom of contract provides room for parties to make agreements, as long as they do not conflict with applicable law. Good faith demands that each party act honestly in carrying out the agreement, while legal certainty guarantees consistency in the implementation of legal decisions. The principle of proportionality ensures that each decision is adjusted to the level of loss suffered by the injured party.[15]

In alternative dispute resolution, mediation is a commonly used method, especially in default cases. The mediation process involves a neutral mediator who helps parties reach an agreement without going through litigation, which is often time-consuming and costly. Statistics show that mediation has a high success rate, with around 70% of mediation cases ending in an amicable agreement. Despite the challenges of mediation, such as the mediator's inability to impose an agreement, it remains an effective alternative for resolving disputes fairly and efficiently. Mediation not only saves time and money, but also allows parties to formulate solutions that are creative and suited to their needs, maintaining good relations between the parties.

[14] Meirina Nurlani, "Alternative Dispute Resolution in Business Disputes in Indonesia," *Journal of Legal Certainty and Justice* 3, no. 1 (May 2022): 27, https://doi.org/10.32502/khdk.v3i1.4519.

[15] Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN CIVIL LAW AND ISLAM," *Al-Mudharabah: Journal of Islamic Economics and Finance* 4, no. 2 (2023), https://doi.org/10.22373/al-mudharabah.v5i2.3409.

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1. Settlement of Dispute over Sale and Purchase of Pinky Guard Franchise Outlet in Manado City: Case Study of Decision Number 18/Pdt. G/2018/Pn SKh

The sale and purchase agreement of the Pinky Guard franchise in Manado experienced significant obstacles. This agreement has been agreed between the franchisor and franchisee, but there are violations committed by the franchisor that cause disputes to arise.[16] In this case, the plaintiff felt aggrieved because the promised delivery and operational obligations were not fulfilled. The delay in delivery that lasted for five months without any clear progress showed a default on the part of the franchisor.

The legal process showed that although the franchise agreement met the legal requirements under the Civil Code, the realisation of the agreement did not go according to the agreement. The plaintiff filed a claim for compensation due to the losses suffered, which he was entitled to receive based on the statutory provisions. In addition, there was also a breach of promise related to the borrowing of funds by the franchisor for other purposes, which added to the complexity of this dispute.[17]

Alternative dispute resolution through mediation was attempted, but failed to reach an agreement that satisfied both parties. Therefore, litigation was the last resort to resolve this dispute. This research also emphasises the importance of a clearer regulation of franchising in Indonesia to prevent the recurrence of similar cases in the future. By prioritising the principle of freedom of contract, parties should be more careful in drafting agreements so that all obligations can be fulfilled as expected, reducing the risk of disputes in the future.

2. Binding of Security in Muḍa Financing Contract rabah¯

In the implementation of the muḍha¯ rabah financing contract, the binding of collateral has an important role as a risk mitigation measure for Islamic banks.[18] With collateral, the bank can ensure that the disbursed

[16] Iwandi, Efendi, and Fahmi.

[17] A Yudha Harnoko; Ika Yunia Ratnawati, "PROPORTIONAL ASAS IN FRANCHISE AGREEMENTS," *Journal of BUSINESS* LAW, no. Vol 1 No 1 (2015) (2015), https://jurnal.narotama.ac.id/index.php/hukumbisnis/article/view/54/52.

[18] Ahmad Luqman Hakim and Irfa Munandar, "THE LEGALITY OF MURABAHAHAH CONTRACTS SYSTEM IN ISLAMIC FINANCING INSTITUTIONS," *JURISTA: Journal of Law and Justice* 7, no. 1 (2023): 24–36, https://doi.org/10.1234/JURISTA.V7I1.66.

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funds are used as intended and reduce the potential for default from the debtor. Islamic banks, through in-depth analysis, must be convinced of the ability and good faith of customers to fulfil their obligations. This is important so that banks can disburse financing with full confidence, without neglecting the principle of prudence. Collateral in the form of mortgage rights is also strengthened by the Supreme Court's decision which states the validity of the imposition of collateral in this contract, so that when the business actor defaults, the collateral can be taken over to compensate for the losses suffered by the bank.[19]

In addition, the binding of collateral aims to encourage customers to be more serious in managing the financed business. Collateral is a form of responsibility that requires customers to strive to return the capital and expected results. If the customer defaults, the collateral provided can be used as compensation, giving the bank the right to execute the collateral object. With a clear regulation on collateral, the law enforcement process becomes more secure, because the binding of this guarantee is based on strong legal principles.[20]

Finally, the existence of collateral in a muḍārabah contract is not only a safety device for the Islamic bank, but also creates a climate of trust between the bank and the customer. This is important to maintain a mutually beneficial business relationship. In other words, the binding of collateral not only serves as a protection for the bank, but also encourages the debtor to be committed in running his business.

B. Ethical Considerations in Civil Law Enforcement: A Case Study in the Field of Business Contracts

Ethical decisions in civil law enforcement, particularly in relation to the role of notaries in business contract cases, are critical to maintaining the integrity of the justice system. Ethics, which includes the principles of justice, truth, and integrity, provide the foundation for law enforcers to perform their duties fairly. Notaries, as an integral part in the creation of contract deeds, are required to adhere to the Notary Code of Ethics, which serves as a moral guideline. In the event of a breach, the sanctions that can

[19] Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," June 10, 2023.

[20] Abdul Wahab Abd Muhaimin, "Review of Islamic Law on Insurance," *Mizan: Journal of Islamic Law* 3, no. 1 (2019): 71, https://doi.org/10.32507/mizan.v3i1.434.

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be imposed include administrative, civil, criminal, and ethical sanctions, so the ethical decision taken must consider the extent of the breach as well as its impact on justice.[21]

The application of ethical principles in the handling of business contracts has the potential to create a stronger and more reliable legal system, thereby increasing public confidence in legal justice. In addition, the principles of independence, honesty and transparency are also very important in the legal process. However, law enforcement faces various challenges, such as varying contract interpretations, slow dispute resolution, and changing economic conditions. Therefore, the continued application of ethics in law enforcement is crucial to overcome these complexities.[22]

The principle of freedom of contract contained in the Civil Code provides room for parties to determine the terms of the agreement, while the principle of consensuality emphasises the importance of agreement.[23] The challenges faced in enforcing business contracts require a careful approach, where advocates and judges must always adhere to ethical principles in providing legal advice and decisions. Thus, the continued application of ethics not only ensures fair enforcement of the law but also upholds the moral values that underpin justice for all individuals.

C. Business Dispute Resolution and Its Implementation Between the Indonesian National Arbitration Board and the Singapore International Arbitration Centre

The systems of business dispute resolution through the Indonesian National Arbitration Board (BANI) and the Singapore International Arbitration Centre (SIAC) show a number of similarities and differences that influence the choice of business actors in resolving their disputes. One

[21] Abdul Rachman, Sri Tamara Devi, and Widi Astuti, "THE ROLE OF THE NATIONAL SYARIAH ARBITRASE BOARD OF MAJELIS ULAMA INDONESIA (BASYARNAS-MUI) IN RESOLVING SYARIAH BANKING DISputes IN INDONESIA," *Madani Syari'ah* 5, no. 2 (2022), https://doi.org/10.51476/madanisyariah.v5i2.385.

[22] Artha Ully, "APPLICATION OF ISLAMIC PRINCIPLES IN THE REGULATION OF CORPORATE SOCIAL RESPONSIBILITY IN INDONESIA," *LAW REFORM* 7, no. 2 (2012), https://doi.org/10.14710/lr.v7i2.12413.

[23] Tentiyo Suharto and Andri Soemitra, "Contribution of Muhammad Syafi'i Antonio's Thought on Islamic Banking in Creating Economic Welfare in Indonesia," *J-Reb: Journal Research of Economic and Business* 1, no. 02 (2022), https://doi.org/10.55537/jreb.v1i02.182.

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of the main similarities between the two institutions is that arbitration can be conducted based on an agreement that has been concluded by both parties to the dispute. In this case, the agreement may be a clause contained in the agreement or a separate clause. The procedure for requesting arbitration is also almost identical, where the disputing parties have to submit a request through a letter of request or notice of arbitration to the secretariat of each institution.[24]

In addition, the place of arbitration is determined by agreement of the parties and approval of the arbitral institution. In terms of the number of arbitrators, both BANI and SIAC allow the use of a single arbitrator or three arbitrators, as agreed by the parties. The arbitration process in both institutions is closed and confidential, and the resulting award is final and binding. Both institutions also provide for a right of recusal mechanism against arbitrators who are deemed to be non-neutral or have a conflict of interest. While there are many similarities, significant differences arise in terms of the legal basis applied and the legal traditions of each country.

BANI uses the Arbitration Act which refers to the 1958 New York Convention, while SIAC is based on the International Arbitration Act which adopts the UNICITRAL Model Law, providing a more flexible legal basis for international arbitration. This difference creates differences in the understanding and application of the law between the two institutions, with the SIAC being more familiar to international investors, particularly from common law countries such as the US and UK.[25]

The arbitration clause also shows differences in that BANI has a default clause for dispute resolution, while SIAC does not provide for a specific default clause. In addition, the response time to arbitration requests is also different, with BANI requiring a response within thirty days, while SIAC only two weeks. The hearing process also differs; BANI favours the written method, while SIAC requires the presence of the parties at the hearing. Finally, the timing of the announcement of the award also varies,

[24] Saliman and Adisuputra, *Business Law for Companies Theory and Case Examples (Eighth Edition)*.

[25] Atharyanshah Puneri, "Dispute Resolution for Islamic Banks in Indonesia," *International Journal of Islamic Economics and Finance (IJIEF)* 4, no. SI (2021), https://doi.org/10.18196/ijief.v4i0.10084.

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with BANI announcing its award in thirty days and SIAC in forty-five days.[26]

The implementation of foreign arbitral awards in the Indonesian judicial system adds another dimension to this analysis. Procedures for the enforcement of foreign arbitral awards that are final and binding must be registered at the Central Jakarta District Court for execution. Conditions that must be met include the principle of reciprocity, being within the scope of commercial law, and not being contrary to public order. This poses a challenge, as interpretations of public order often vary and may hinder the enforcement of arbitral awards. In addition, the overlapping authority between arbitration institutions and district courts adds to the complexity of resolving business disputes in Indonesia.[27] The availability of clear legal channels and proper understanding of these procedures are important to increase business people's confidence in the arbitration system, both at BANI and SIAC.

D. Dispute Resolution Model for International Business Transactions Using E-Commerce

Dispute resolution models in international business transactions using e-commerce can be categorised into several mechanisms, with courts and arbitration as the main options. In this context, Article 18 paragraphs (4) and (5) of the Electronic Information and Transaction Law (ITE Law) provides a strong legal basis for choosing a dispute resolution forum, be it through the courts, arbitration, or other alternative dispute resolution institutions.[28]

Courts, or litigation, give parties the freedom to choose the forum authorised to resolve disputes. In practice, litigation often involves adversarial provisions. While courts have the advantage of understanding

[26] Alvita Novanilia and Elza Syarief, "QUO VADIS RESOLUTION OF INSOLVENCY CASES AND SUSPENSION OF DEBT PAYMENT OBLIGATIONS (PKPU) ON SYARIAH FINANCIAL INSTITUTIONS," *Journal of Law and Policy Transformation* 6, no. 2 (2022), https://doi.org/10.37253/jlpt.v6i2.6315.

[27] Wahyu Akbar et al., "Optimisation of Sharia Banking Regulations in Developing the Halal Cosmetic Industry in Indonesia," *Al-Syir'ah Scientific Journal* 22, no. 1 (June 30, 2024): 1–12, https://doi.org/10.30984/JIS.V22I1.2611.

[28] Misbahul Munir Makka, Chairul Fahmi, and Jefry Tarantang, "Religiosity of Muslim Customers as a Motivation to Save at Bank Syariah Indonesia," *Kunuz: Journal of Islamic Banking and Finance* 4, no. 1 (June 30, 2024): 1–16, https://doi.org/10.30984/KUNUZ.V4I1.838.

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the applicable law, this process can be time-consuming and costly, and often creates animosity between the parties involved. Therefore, while courts may be an option, many experts argue that resolving disputes through this route does not always reflect the desired goals in the business world.[29]

Alternatively, arbitration offers a more flexible approach and can be agreed upon by the disputing parties. In arbitration, both parties agree to settle their dispute before a judge of their choosing. The award resulting from arbitration is final and binding, thus providing legal certainty. In this regard, arbitration can be divided into two main types: ad hoc arbitration and institutional arbitration. Ad hoc arbitration is set up to resolve specific and incidental disputes, while institutional arbitration is organised by permanent institutions established to handle business disputes.

One of the main advantages of arbitration is its generally faster process and lower costs compared to litigation. In many cases, arbitration allows for faster resolution, which is particularly important in the context of dynamic international business transactions. However, it should be borne in mind that the choice of arbitral forum can also pose challenges, especially if the place of execution of the arbitral award is not in line with the expectations of one of the parties.

In addition, arbitral awards are easier to enforce in different countries compared to court judgements. This is important in an international context where assets may be spread across multiple jurisdictions. Thus, parties may choose arbitration as a way out to avoid difficulties that may arise due to the different legal systems in the countries involved.

Although litigation remains one of the most commonly used dispute resolution models, arbitration is emerging as a more effective alternative in the context of international business transactions using e-commerce. The choice between court and arbitration should take into account various factors, including cost, time, and the nature of the dispute at hand. Parties are advised to formulate clear dispute resolution clauses in their contracts to ensure a smoother and more efficient resolution process. The decision

[29] Jarmanisa et al., "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT," *JURISTA: Journal of Law and Justice* 5, no. 2 (October 1, 2021): 126–46, https://doi.org/10.1234/JURISTA.V5I2.11.

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taken in this regard will greatly affect the success of the business transaction and the long-term relationship between the parties.

D. Renegotiation as an Effort to Settle Defaults in Business Contracts During the Covid-19 Pandemic

The Covid-19 pandemic has had a significant impact on various sectors of the economy, including the implementation of business contracts. Government policies that require social restrictions and the closure of a number of activities have resulted in many businesses, especially micro, small, and medium enterprises (MSMEs), experiencing difficulties in fulfilling contractual obligations. A number of sectors, such as banking, have felt the direct impact, with debtors struggling to pay their previously agreed loan instalments.[30]

For example, Toko Kain Putri Rahmani, an MSME in Padangsambian, Denpasar, was forced to take out a loan to expand its business before the pandemic. However, with the pandemic, people's purchasing power has drastically decreased, which has affected the store's sales. This situation made it difficult for Putri Rahmani Fabric Store to fulfil its debt repayment obligations, which could potentially lead to default. In this context, default is defined as the inability of the debtor to fulfil the performance agreed upon in the credit contract.

The existence of Covid-19 as an unforeseen factor raises questions about the debtor's responsibility for obligations that they cannot fulfil. In this situation, contract renegotiation is a solution that allows debtors to re-discuss the terms of the contract and seek a new agreement that is more in line with current conditions. Through renegotiation, creditors are expected to provide leeway in debt repayment, either through extending the payment period or adjusting the number of instalments. This is important so that the debtor does not get entangled in more complex legal problems due to default.[31]

Contract renegotiation not only protects debtors but also provides certainty for creditors in maintaining the continuity of business relationships. In the context of existing regulations, such as Law Number 2

[30] Monica Dwipi Salam and Ananta Prataman, "The Role of Local Government in Umkm Development," *Journal of Public Policy* 13, no. 2 (2022).

[31] Dermina Dsalimunthe, "Legal Consequences of Default in the Perspective of the Civil Code (BW)," *Al-Maqasid* 3 (2017): 16.

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of 2020, the government provides a legal basis for the implementation of this renegotiation. In this case, OJK regulations also provide policies that support credit restructuring for debtors affected by the pandemic. By renegotiating, it hoped that debtors can maintain their business, while creditors also do not lose their receivables.[32]

The government has an important role in overcoming the economic impact of the pandemic, including in the settlement of business contract defaults. In this context, the government is working to create regulations that can help debtors continue to fulfil their obligations despite the difficult conditions. These efforts include the implementation of countercyclical policies that provide credit relaxation and restructuring for affected debtors.

Regulations issued by the Financial Services Authority (OJK) as well as relevant ministries demonstrate the government's commitment to providing special treatment to debtors, especially MSMEs, who are struggling to cope with the severe economic impact. One tangible example is the postponement of principal instalments and adjustment of credit terms, which gives debtors the space to adapt to new conditions without having to worry about legal sanctions.

Through Toko Kain Putri Rahmani, it can be seen that the government has implemented a risk management strategy to ensure that entrepreneurs can still fulfil their obligations. In this case, every instalment payment made, even if it is a small amount, is accepted by the bank. This approach demonstrates the importance of co-operation between debtors and creditors to reach a mutually beneficial settlement, and confirms that there are ways to mitigate the risks faced during times of crisis.

Thus, the government's efforts to support credit restructuring and provide special treatment for debtors during the pandemic are important steps in maintaining national economic stability. Through adaptive policies, it is hoped that business actors can continue to operate and contribute to economic recovery, so as to minimise the number of defaults and create better conditions for all parties involved.

[32] Rudi Abdullah, Asrianti Dja'wa, and Endang Tri Pratiwi, "Law and the Scope of Business Law," *Journal of Law and the Scope of Business Law*, 2018.

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E. Arbitration as an Ideal Alternative in Resolving Business Contract Disputes

Arbitration is a form of dispute resolution that is increasingly popular among business people, both at the national and international levels.[33] The existence of an arbitration clause in a business agreement is very important because it provides a legal basis for the parties to resolve disputes that may arise in the future. An arbitration clause may take the form of a written agreement made before a dispute arises, or as a separate agreement agreed upon after a dispute occurs. In this context, the validity of the arbitration agreement depends on the requirements set out in the Civil Code, particularly Article 1320, which governs the subjective and objective terms of the agreement.[34]

Arbitration agreements can involve legal subjects from both the public and private sectors. Although public law subjects are also allowed to be involved, it is important to note that arbitration cannot be used to adjudicate any matters related to public law. This is stipulated in Article 5 paragraph (1) of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, which confirms that disputes that can be resolved through arbitration must be limited in nature and related to the field of trade and rights that are fully controlled by the disputing party.

In terms of the form of the arbitration agreement, the law stipulates that it must be in writing. This includes an arbitration clause included in the main agreement or a separate agreement. This written form provides legal certainty and prevents disputes relating to the enforceability of the agreement. With an arbitration clause, the parties explicitly state that they agree not to submit the dispute to the district court, but rather resolve it through an appointed arbitration institution. This creates absolute competence for the parties to determine their preferred means of dispute resolution.

Arbitration is also considered an ideal alternative in dispute resolution, as the process is more flexible and expeditious compared to

[33] Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *Https://Doi.Org/10.1177/11771801241235261* 20, no. 1 (March 8, 2024): 157–66, https://doi.org/10.1177/11771801241235261.

[34] Muhammad Adil Maulana and Abdullah Kelib, "The Position of Islamic Banks in Dispute Resolution through Arbitration (Comparative Study of Indonesia and Malaysia)," *Notarius* 16, no. 1 (2023), https://doi.org/10.14710/nts.v16i1.42790.

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litigation in the courts.[35] In practice, both institutional and ad hoc arbitration provide dispute resolution services required by the parties involved. Examples of well-known arbitration institutions include the ICC, AAA, and BANI. The use of international arbitration generally involves a foreign element, which requires an understanding of the different legal systems that apply. Meanwhile, national arbitration focuses more on the domestic legal context.

Arbitration clauses are often the final part of contract negotiations, sometimes referred to as the "midnight clause." Although business disputes are not expected to occur, the existence of these clauses is important as a form of anticipation. Without an arbitration clause, disputes cannot be resolved through arbitration, which demonstrates the importance of including such clauses in every business agreement.[36]

In this case, the essence of arbitration lies in the agreement between the parties to choose dispute resolution through a neutral institution, rather than through an official court. The arbitration agreement does not address the performance of the agreement, but rather the manner and institution authorised to resolve any disputes that may occur. As such, arbitration serves as an efficient and effective method of addressing disputes, benefiting all parties involved.[37]

In dispute resolution, arbitration clauses are one of the important elements that need to be considered in contract drafting. This clause provides an alternative for the parties to settle disputes outside the public courts. While Indonesian positive law recognises the importance of quick and low-cost dispute resolution, the reality is that litigation often falls short of these expectations. Therefore, arbitration emerges as a more efficient solution. In Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, arbitration is defined as a means of settling civil disputes out of court based on a written agreement by the parties. Only certain disputes, especially in the field of trade, can be resolved through arbitration, while disputes that are prohibited from being settled cannot go through this route.

[35] Tengku Rahmah Ramadhani, Andri Brawijaya, and Imam Abdul Aziz, "The Role of the Indonesian Banking Dispute Resolution Alternative Institution (LAPSPI) in Resolving Financing Disputes in Islamic Banks," *TAWAZUN: Journal of Sharia Economic Law* 4, no. 1 (2021), https://doi.org/10.21043/tawazun.v4i1.8996.

[36] Edi Santoso, *The Impact of Globalisation on Business Law in Indonesia*, 2018.

[37] Abdullah, Dja'wa, and Pratiwi, "The Law and Scope of Business Law."

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The advantage of arbitration over the courts is that the process is faster and more effective. The parties have the freedom to choose judges or arbitrators who they consider neutral and have the necessary expertise in resolving the dispute. In addition, the parties can also determine the law to be applied in the arbitration, thus providing greater legal certainty. The confidentiality of the arbitration process is also an added value, as all matters discussed in arbitration will not be disclosed to the public, in contrast to open court proceedings. With a maximum settlement time limit of 180 days, arbitration provides a guarantee that disputes will be resolved faster than in court.[38]

The Arbitration Law clearly regulates the prohibition for courts to intervene in cases that have been bound by an arbitration agreement. In this case, the arbitral award is final and binding on the parties, which indicates that the court does not have the authority to hear disputes that have been agreed upon through arbitration. Thus, if the parties agree to use arbitration, there is no room for the court to intervene, except under certain conditions regulated by law.

Although the law has placed clear limits on the court's authority to intervene in disputes that have been bound by an arbitration clause, there are cases where court intervention does occur. In practice, this intervention usually arises after an arbitral award has been issued, when one of the parties files a petition to set aside the award. In this case, the court will consider certain reasons before deciding to set aside the award, such as the existence of falsely declared documents or fraud committed by one of the parties during the arbitration process.[39]

An example of a case that illustrates this dilemma is the case between PT Sapta Sarana Personaprima and PT Conoco Phillips. In this case, despite the existence of an arbitration clause in the signed contract, the district court took over the case on the grounds that the dispute fell under the category of tort. This suggests that the trial judge may not have considered the

[38] Abdur Rahman Adi Saputera and Muhammad Yaasiin Raya, "Dilematics of Sharia Economic Dispute Resolution and Reflections on Islamic Law for Non-Muslims in Dispute," *Iqtishaduna: Scientific Journal of Sharia Economic Law Students* 2, no. 2 (2020), https://doi.org/10.24252/iqtishaduna.v2i2.15630.

[39] Lanang Sakti and Nadhira Wahyu Adityarani, "The Authority to Settle Sharia Business Disputes in Indonesia," *Journal of Fundamental Justice*, 2021, https://doi.org/10.30812/fundamental.v2i1.1059.

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specificity of the arbitration law and instead referred to general provisions that may not be appropriate in the context of the dispute at hand.[40]

This difference of view between common law and specialised law creates a dilemma in the conduct of arbitration. Ideally, the existence of an arbitration clause in a contract should override the authority of the district court to hear the dispute. However, in reality, courts sometimes still intervene, which can disrupt the arbitration process and create legal uncertainty. Therefore, there needs to be a better understanding of the limits of the court's authority and the role of arbitration in resolving disputes, so that parties can optimally utilise arbitration clauses without worrying about court intervention.

Arbitration offers a number of advantages that make it an attractive option for parties in resolving disputes. In addition to time and cost efficiency, arbitration gives parties the flexibility to choose arbitrators who have competence in the relevant field. This not only enhances the quality of the decision reached, but also creates a sense of fairness for all parties involved. With the ability to determine the law to be applied, parties have more control over their dispute resolution process.[41]

Confidentiality is also an important aspect of arbitration. In the business world, where strategic information is highly valuable, a private arbitration process can protect sensitive information from publicity. This provides a sense of security for the parties, who may be reluctant to disclose internal issues in a public forum such as a court. In addition, a more flexible arbitration process allows parties to formulate procedures that suit their needs, creating a more customised dispute resolution experience.[42]

Overall, arbitration offers a better alternative to the courts when it comes to resolving business disputes. Despite the challenges associated with court intervention, the advantages of arbitration make it a viable option to consider. Contracting parties should understand and formulate

[40] Sri Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: Journal of Law and Justice* 7, no. 1 (June 10, 2023): 1–23, https://doi.org/10.22373/JURISTA.V7I1.42.

[41] Indah Ahdiah, "The Roles of Women in Society," *Journal Academica* 05, no. 02 (2013).

[42] Ribut Baidi and Deni Setya Bagus Yuherawan, "RESPONSIBILITY FOR BANKING CRIMES PERSPECTIVE OF THE CRIMINAL LAW AND THE BANKING BILL," *Journal Justiciabelen (JJ)* 3, no. 1 (2023), https://doi.org/10.35194/jj.v3i1.2112.

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arbitration clauses properly in order to maximise the benefits offered by this dispute resolution mechanism.[43]

With a better understanding of how arbitration functions and its advantages over the courts, parties can be more confident in choosing arbitration as a remedy when disputes arise. Through this approach, it is hoped that disputes can be resolved effectively and efficiently, without the unnecessary interference of the courts.

As such, it is important for all parties to have an awareness of the importance of arbitration clauses and ensure that such provisions are well integrated in every contract they make. This will help create a more stable and predictable legal environment, where any disputes can be resolved quickly and fairly through arbitration.

CONCLUSIONS

Dispute resolution in business is very important and involves an understanding of various legal mechanisms. There are several approaches to resolving disputes, such as damages for default, the application of Chinese law in international business disputes, and the binding of collateral in muḍārabah financing contracts.

First, in the case of damages for default, default occurs when the debtor does not fulfil its obligations under the agreement, which impacts the business relationship. Compensation is an important step in this process, covering the costs incurred, the losses suffered, and the relationship between the default and the losses suffered by the creditor. Principles such as freedom of contract, good faith, and legal certainty play a role in the resolution of these disputes. Mediation is often chosen as an alternative to reduce the cost and time of litigation, with success rates reaching around 70%.

Second, in franchising, the case of Pinky Guard outlets in Manado shows how default can lead to serious disputes. Delayed delivery of goods by the franchisor caused losses to the franchisee, leading to litigation after mediation failed. This emphasises the need for clearer regulation of

[43] Chairul Fahmi et al., "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State," *Samarah: Journal of Family Law and Islamic Law* 8, no. 3 (August 24, 2024): 1566–96, https://doi.org/10.22373/SJHK.V8I3.19992.

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franchising in Indonesia to prevent similar cases from recurring. The principle of freedom of contract is highlighted, where each party must be careful in drafting the agreement so that obligations can be fulfilled. The binding of collateral in a muḍa¯rabah financing contract is also important for risk mitigation for Islamic banks. A strong collateral not only protects the bank's interest but also encourages the debtor to commit to the business. The Supreme Court decision authorising the imposition of collateral in contracts provides clarity in the enforcement of the bank's rights when default occurs.

Finally, ethical considerations in civil law enforcement, particularly in business contracts, are important to maintain the integrity of the legal system. Ethics, which includes the principles of justice, truth, and integrity, serve as the foundation for law enforcement. Consistent application of ethics in business dispute resolution will strengthen public trust in the legal system and ensure that every decision is made based on fair and transparent principles. By understanding the various dispute resolution mechanisms available, businesses can be better prepared to deal with conflicts in their business activities.

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