

Strengthening Alternative Law for Business Dispute Resolution between State-Owned Enterprises and Peace-Oriented Private Enterprises (Benefit-Benefit Solution)

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Abstrak

The settlement of business disputes in the current State- Owned Enterprises Law accommodates Alternative Dispute Resolution through consensus. However, the ADR regulation only governs disputes between state- owned enterprises and private enterprises. In fact, ADR as a non- litigation instrument is very suitable and popularly used by business companies at the global and national levels with the principle of beneficial solutions. The absence of ADR provisions for dispute resolution between SOEs and private companies is an issue that has been raised with the following objectives: 1. To analyse the applicable legal provisions on alternative dispute resolution in handling business disputes between SOEs and private companies; 2. Strengthen alternative dispute resolution laws in resolving business disputes between SOEs and private companies with a focus on mutual benefit for the disputing parties (benefit-benefit solution). The results of the study show that: 1. APS regulations are found in different laws and regulations governing various business sectors, but they are not fully and specifically regulated in the State-Owned Enterprise Law, Limited Liability Company Law, Arbitration Law, and the APS itself. 2. Legal reinforcement is needed to regulate ADR in the SOE Law, the PT Law and the establishment of a special ADR Law in order to create peace oriented ADR that is beneficial to disputing SOEs and BUMS.

I. Introduction

Business activities essentially always involve legal relationships through Business activities always involve contracts that provide legal certainty regarding the rights and obligations of the parties (Winarta, 2013). However, disputes often arise due to differences in interpretation, default, or unlawful acts (Margono, 2004). Such disputes result in decreased productivity, increased costs, and disruption to the business climate (Asyhadie, 2011). Litigation through the courts, although provided by the state, is considered less than ideal for businesses, especially in international transactions. This is due to the win-lose nature of litigation, its openness to the public, its lengthiness, and the fact that it often damages the reputation of the disputing parties (Priyatna Abdurrasyid, 2011). The lengthy process and publication of the parties' identities make entrepreneurs tend to avoid court (Mohune, 2013).

On the contrary, arbitration emerges as a more suitable forum because it offers a fast, confidential, final, and legally binding process (Widjaja & Yani, 2000). Arbitration is also considered more strategic for maintaining confidentiality and business continuity, while helping to reduce the backlog of cases in the courts (Widjaja, 2005). Thus, there has been a shift in preference from litigation to arbitration, both in domestic and international business contracts, as it is better able to provide legal certainty and win-win solutions for the parties involved (Atmadjaja, 2012).

The process of resolving disputes through the courts (litigation) has been known for a long time, but tends to create new problems because it is win-lose, time-consuming, and open to the public (Winarta, 2013). Many businesses avoid litigation because they are concerned that their identity and reputation will be made public, and that the lengthy process could disrupt their business and have a negative impact on production and economic costs (Husni, 2008).

Alternatively, arbitration is becoming an increasingly popular option because the process is faster, final, legally certain, maintains confidentiality, and allows for win-win solutions. Arbitration forums, such as the Indonesian National Arbitration Board (BANI), encourage negotiation and mediation during the process, making it more effective for both domestic and international businesses (Adolf, 2015).

In Indonesia, the Indonesian National Arbitration Board (BANI) is becoming an increasingly popular institution for settling business disputes outside of court (Arsal, 2024). Settlement through BANI is faster, final, legally certain, maintains confidentiality, and enables win-win solutions, making it strategic for the business continuity of business actors (Natamiharja, 2022). This alternative also helps reduce the backlog of cases in court and encourages negotiation and

mediation during the arbitration process (Winarta, 2013).

In 2020, 17 (seventeen) state-owned enterprises were involved in disputes that ended up in court (Sukmawijaya, 2020). Minister of State-Owned Enterprises Erick Tohir recognises this issue as a serious one, but on the other hand, institutionally there is a desire to resolve disputes between state-owned enterprises through APS without having to go to court. Of the 17 SOEs, the Ministry of SOEs, through its Deputy for Law and Legislation, is attempting to resolve internal disputes between SOEs. This means that litigation is being avoided as a first resort, and disputes are being resolved amicably, with a target completion time of 100 (one hundred) days (Afriyadi, 2020).

Based on the Supreme Court's website putusan3.mahkamahagung.go.id, there have been approximately 55 business disputes between state-owned enterprises (BUMN) and private companies (BUMS) from 2010 to 2023 that have been reviewed up to the cassation level. Some of these conflicts occurred, for example, in the case of SOE Istaka Karya against PT JAIC throughout 2010-2012 regarding breach of contract through decision number 124 K/Pdt.Sus/2011, the case of PT TIMAH (Persero) Tbk against PT Somit Trakonad in a breach of contract case decided through Supreme Court Decision Number 165 K/ PDT/2018 dated 19 April 2018. There was also a business dispute between PT Indo Mega Maritim and PT PANN Multi Finance (Persero) over maritime financing and asset disputes executed by financial parties or unlawful acts. Generally, business disputes that occur between SOEs and private companies are cases of unlawful acts and can also take the form of breach of contract committed by one of the parties.

Based on data from the Indonesian National Arbitration Board (BANI), in the last 5 years (2012 to September 2018) there has been an increasing trend in the number of cases decided, namely 657 cases (64.54%) of the total 1018 cases submitted to BANI since 1999, and some of these cases are disputes between State Owned Enterprises (Kartasasmita, 1996). The role of arbitration is becoming increasingly important as many national and international contracts emphasise this forum as a more efficient dispute resolution mechanism than the courts, maintaining confidentiality and expediting the resolution of business disputes (Natamiharja, 2022).

Arbitration is part of Alternative Dispute Resolution (ADR), but technically closer to adjudication institutions because it produces court-like decisions. Although ADR is widely referred to in business regulations as a dispute resolution mechanism, its regulation in law is still limited. Law No. 30 of 1999 predominantly discusses arbitration, while ADR is only mentioned to a limited extent, as is the case in Law No. 48 of 2009, which defines ADR as the settlement of disputes outside of court through consultation, negotiation, mediation,

conciliation, or expert assessment. To date, comprehensive regulations on ADR are not yet available, even though there is a high legal need for them, especially in business dispute resolution. The latest development can be seen in Law No. 1 of 2025 concerning the third amendment to the SOE Law, which begins to regulate ADR institutions within SOEs, even though the first and second amendments to the SOE Law did not accommodate this. In the third amendment, the settlement of business disputes is regulated in Article 87F paragraphs (1) to (4) of the amended SOE Law:

- 1) Any dispute arising between SOEs, SOE subsidiaries, and/or affiliated companies shall be resolved through deliberation to reach a consensus.
- 2) In the event that deliberation to reach consensus as referred to in paragraph (1) is not achieved, upon written agreement of the parties, disputes, differences of opinion, or disagreements shall be resolved through a mediator.
- 3) In the event that the parties fail to agree on the appointment of a mediator within 14 (fourteen) calendar days, the ministry that administers government affairs in the field of SOEs shall appoint a mediator.
- 4) The agreement to settle disputes, differences of opinion, or disagreements shall be final and binding on the parties to be implemented in good faith.

Article 87F of the State-Owned Enterprises Law opens up opportunities for dispute resolution within state-owned enterprises through consensus, providing legal certainty for the parties concerned. However, this regulation does not yet cover disputes between state-owned enterprises and private enterprises, creating a legal vacuum regarding non-litigious dispute resolution between the two.

The absence of clear APS regulations, including concepts, principles, forms, institutions, parties involved, and the binding force of dispute resolution, poses a challenge in creating orderly non-litigious dispute resolution. Although mediation is regulated in Supreme Court Regulation No. 1 of 2016, the regulation is internal and related to conventional litigation, so there is no specific legal basis that comprehensively regulates ADR in Indonesia.

Based on the above description, there is an urgent and serious legal need to accommodate the principles and technicalities of ADR, which should serve as guidelines and a foundation for the implementation and application of ADR in dispute resolution, not only between SOEs but also between SOEs and private companies, in order to create a conducive business environment in Indonesia. Therefore, based on the above description, the researcher is interested in examining and researching the problems of APS in this study.

2. Research Methods

This research was conducted using a normative legal approach, which focuses on the study of written legal materials. The researcher examined legislation, court decisions, and other official documents as primary legal materials, as well as legal literature, books, journals, and scientific articles as secondary legal materials to strengthen the analysis. Data was collected through a literature study, by systematically searching, reviewing, and interpreting legal documents. The analysis is conducted qualitatively and descriptively, by linking relevant legal principles, concepts, and foundations to gain an in-depth understanding of the application and issues of Alternative Dispute Resolution (ADR), particularly in the context of business dispute resolution between SOEs and other parties.

3. Findings and Discussions

Alternative Dispute Resolution Legal Provisions Applicable in Handling Business Disputes between State-Owned Enterprises and Private Enterprises

Alternative Dispute Resolution (ADR) not only serves to resolve disputes, but also to build and maintain good relations between the disputing parties. A collaborative approach through mediation or arbitration allows for open dialogue, mutual understanding, and satisfactory agreements, thereby creating a healthy business climate, increasing productivity, trust, and long-term cooperation.

Normatively, ADR has been regulated in various laws and regulations, ranging from laws, government regulations, presidential regulations, to ministerial regulations, particularly in the business sector as a dispute resolution mechanism. At the law level, researchers found 25 (twenty-five) laws that regulate ADR, namely:

1) Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution

Namely in Article:

- a. Article 1 Paragraph 10 Alternative Dispute Resolution constitutes a mechanism for settling conflicts or divergences of interest by procedures mutually assented to by the parties, i.e extra-judicial settlement undertaken via consultation, negotiation, mediation, conciliation, or appraisal by an expert.
- b. Article 2: This statute governs the resolution of controversies or divergences between parties bound by a specific juridical relationship who have concluded an arbitral covenant expressly stipulating that every dispute or divergence arising, or potentially arising, from such relationship shall be adjudicated by arbitration or through alternative modalities of dispute resolution.
- c. Article 6 Paragraph 1: Civil controversies or divergences of standpoint may be

reconciled by the parties through alternative mechanisms of dispute resolution predicated upon bona fides, thereby eschewing adjudication before the District Court.

2) Law No. 8 of 1999 on Consumer Protection

Article 44 Paragraph 2: Consumer disputes may be resolved through the courts or out of court based on the voluntary choice of the disputing parties.

3) Law No. 31 of 2000 on Industrial Design

Article 47: Beyond the adjudication of claims as delineated in Article 46, the parties retain the prerogative to reconcile disputes through arbitral proceedings or ancillary modalities of alternative dispute resolution.

4) Law No. 30 of 2000 on Trade Secrets

Article 12: Apart from the disposition of claims as contemplated in Article 11, the disputing parties may elect to resolve their contention by recourse to arbitration or by recourse to alternative dispute resolution mechanisms.

5) Law Number 2 of 2004 on Industrial Relations Dispute Resolution

In Article 4 Paragraphs (1), (2), (3):

- (1) Should bipartite parleys, as delineated in Article 3 paragraph (3), prove abortive, either or both parties are obliged to lodge their contention with the competent labour authority, accompanied by substantiation that earnest endeavours at bipartite resolution have been undertaken.
- (2) Where the corroborative materials contemplated in paragraph (1) are absent, the organ vested with labour affairs shall remit the dossier for completion within by no later than seven (7) business days after its return.
- (3) Upon receipt of the record from either or both disputants, the authority entrusted with local labour affairs shall tender to the parties the prerogative of resolving their discord through conciliation or arbitration.

6) Law No. 25 of 2007 on Investment

In Article 32 Paragraphs (2) to (4):

Paragraph 2: In the event that the dispute resolution referred to in paragraph (1) is not achieved, the dispute resolution may be carried out through arbitration or alternative dispute resolution or court in accordance with the provisions of laws and regulations.

Paragraph 3: In the event of a dispute in the field of investment between the Government and domestic investors, the parties may resolve the dispute through

arbitration based on mutual agreement, and if the resolution of the dispute through arbitration is not agreed upon, the dispute shall be resolved in court.

Paragraph 4: In the event of a dispute in the field of investment between the Government and foreign investors, the parties shall resolve the dispute through international arbitration that must be agreed upon by the parties.

7) Law No. 26 of 2007 on Spatial Planning

In Article 67 Paragraph 1 and Paragraph 2:

- (1) The settlement of spatial planning disputes in the first stage shall be based on the principle of deliberation to reach consensus.
- (2) In the event that the settlement of disputes as referred to in paragraph (1) does not result in an agreement, the parties may seek dispute resolution through the courts or out of court in accordance with the provisions of laws and regulations.

8) Law No. 14 of 2008 on Public Information Disclosure

Article 42:

“The settlement of public information disputes through non-litigious adjudication by the Information Commission can only be pursued if mediation efforts are declared unsuccessful in writing by one or both of the disputing parties, or if one or both of the disputing parties withdraw from the negotiations.”

9) Law No. 21 of 2008 on Islamic Banking

Article 55 Paragraph (1) and Paragraph (2)

(1) The settlement of Islamic banking disputes may be conducted through the Religious Court.

(2) In the event that the parties have agreed to a dispute resolution method other than that specified in paragraph (1), the dispute shall be settled in accordance with the terms of the agreement.

10) Law No. 11 of 2008 on Electronic Information and Transactions (ITE)

Article 18 Paragraph (3): If the parties do not choose the applicable law in international electronic transactions, the applicable law shall be based on the principles of international civil law.

11) Law Number 48 of 2009 in the matter of Judicial Authority

Article 58: Civil disputes may be settled outside of state courts through

arbitration or alternative dispute resolution.

12) Law Number 4 of 2009 in the matter of Mineral and Coal Mining

Article 154: Any dispute arising in the implementation of an IUP, IPR, or IUPK shall be resolved through domestic courts and arbitration in accordance with the provisions of laws and regulations.

13) Law Number 32 of 2009 in the matter of Environmental Protection and Management

84 Paragraphs 1 and 2:

- (1) Environmental controversies may be adjudicated within judicial forums or extrajudicially.
- (2) The modality of resolving such ecological discord shall rest upon the voluntary accord of the disputing parties.

14) Law Number 7 of 2014 in the matter of Trade

Article 65 Paragraph 5: In circumstances where contention arises from commercial dealings conducted via electronic systems, the individuals or juridical entities concerned may pursue settlement either through judicial proceedings or by recourse to alternative mechanisms of dispute resolution.

Explanation of Paragraph (5): Other dispute resolution mechanisms include consultation, negotiation, conciliation, mediation, or arbitration as provided for under law and regulation.

15) Law Number 28 of 2014 in the matter of Copyright

- a. Article 95 Paragraph 1: Copyright disputes may be resolved through alternative dispute resolution, arbitration, or court proceedings.
- b. Article 95 Paragraph 4: In addition to copyright and/or related rights infringements in the form of piracy, as long as the parties to the dispute are known to exist and/or are located within the territory of the Republic of Indonesia, they must first seek dispute resolution through mediation before filing criminal charges.

16) Law No. 40 of 2014 in the matter of Insurance

Article 54 Paragraphs 1 and 2:

- (1) Insurance Companies, Sharia Insurance Companies, reinsurance companies, and sharia reinsurance companies shall be members of a mediation institution that functions to resolve disputes between Insurance Companies, Sharia Insurance Companies, reinsurance companies, or sharia reinsurance companies and Policyholders, Insured Parties, Participants, or other parties

entitled to insurance benefits.

- (2) The mediation institution referred to in paragraph (1) shall be independent and impartial.

17) Law Number 13 of 2016 relating to Patents

Article 153:

- (1) In addition to the settlement of disputes as referred to in Article 143, the parties may settle disputes through arbitration or alternative dispute resolution.
- (2) The settlement of disputes through arbitration or alternative dispute resolution shall be carried out in accordance with the provisions of laws and regulations.

18) Law Number 20 of 2016 dealing with Trademarks and Geographical Indications

Article 93: Beyond the adjudication of lawsuits as contemplated in Article 83, the disputing parties retain the prerogative to resolve their differences by means of arbitration or other ADR methods.

19) Law Number 1 of 2016 relating to Guarantees

a. Article 54 Paragraph (1) to Paragraph (3)

Disputes arising from guarantee activities shall be resolved through deliberation to reach consensus.

- 1) In the event that dispute resolution through deliberation to reach consensus as referred to in paragraph (1) is not achieved, dispute resolution may be carried out through an alternative dispute resolution institution in the financial services sector or through the courts.
- 2) In the event that dispute resolution through deliberation to reach consensus as referred to in paragraph (1) and in the event of dispute resolution through an alternative institution fails, the dispute may be resolved through a court of law.

b. Article 55 paragraphs (1) to (3):

- 1) Guarantee institutions shall be members of alternative dispute resolution institutions for guarantees.
- 2) The alternative dispute resolution institution set forth in paragraph (1) must remain impartial and independent
- 3) The alternative dispute resolution institution defined in paragraph (1) shall secure written regulatory consent from OJK

20) Law Number 2 of 2017 relating to Construction Services

Article 88:

The resolution of disputes arising from construction work contracts may be undertaken through sequential stages, namely: (1) deliberation, (2) mediation, (3) conciliation, and (4) arbitration, or alternatively by means of a Dispute Board, provided such mechanism has been mutually consented to by the parties.

21) Law Number 11 of 2020 relating to Job Creation

Article 5 Paragraph 2 (c):

c. promoting the recourse to alternative dispute resolution in the settlement of Construction Services disputes beyond judicial proceedings.

22) Law Number 17 of 2023 relating to Health

Article 310: Where Medical or Health Personnel are alleged to have committed professional errors resulting in patient harm, any ensuing dispute shall, in the first instance, be addressed through extra-judicial alternative dispute resolution mechanisms.

23) Law Number 4 of 2023 relating to Development and Strengthening of the Financial Sector

General Explanation Number 43:

The Financial Sector Alternative Dispute Resolution Body, hereinafter referred to as LAPS-SK, constitutes an institution mandated to resolve disputes between consumers and Financial Service Providers (PUSK) through extra-judicial mechanisms.

24) Law Number 66 of 2024 relating to Shipping

Article 251 Letter (e):

e. conducting mediation in the settlement of maritime labour agreement disputes.

25) Law Number 1 of 2025 relating to the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises

Article 87 F Paragraphs 1 and 2:

- 1) Any dispute arising between SOEs, SOE subsidiaries, and/or affiliated companies shall be resolved by reaching a consensus.
- 2) In the event that the deliberations to reach consensus as referred to in paragraph (1) are unsuccessful, upon written agreement of the parties, the dispute, difference of opinion, or disagreement shall be resolved through a mediator.

At the presidential regulation level, there are two presidential regulations governing APS as a dispute resolution mechanism, namely:

- 1) Presidential Regulation No. 12 of 2021 concerning Government Procurement of Goods/Services
- 2) Presidential Regulation No. 179 of 2024 concerning the Ministry of State-Owned Enterprises

At the ministerial regulation level, there are four regulations governing APS, including:

- 1) Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions
- 2) Regulation of the Minister of Public Works and Public Housing Number 14 of 2020 concerning Standards and Guidelines for the Procurement of Construction Services through Providers
- 3) Regulation of the Minister of Law and Human Rights Number 9 of 2022 concerning the Implementation of Government Regulation Number 56 of 2021 concerning the Management of Royalties for Song and/or Music Copyright
- 4) Regulation of the Minister of State-Owned Enterprises No. PER 2/MBU/03/2023 of 2023 concerning Guidelines for Corporate Governance and Significant Corporate Activities of State-Owned Enterprises

At the institutional regulation level, there are three regulations governing APS, including:

- 1) Government Goods/Services Procurement Policy Agency Regulation No. 16 of 2018 concerning Government Goods/Services Procurement Contract Dispute Resolution Services
- 2) Regulation of the Financial Services Authority (OJK) of the Republic of Indonesia Number 61/PJOK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector
- 3) Bank Indonesia (BI) Regulation Number 3 of 2024 concerning Alternative Dispute Resolution Institutions in the Financial Sector (LAPS-SK)

From all of the above descriptions, it can be seen that APS has been accommodated as an option for dispute resolution in 36 (thirty-six) laws and regulations. However, there are no guidelines or legal basis governing the principles and procedural techniques of ADR itself or the rules of procedure for ADR. It can therefore be seen that there is a legal need for the regulation of ADR so that the regulation of ADR as a means of dispute resolution can be implemented in business dispute resolution practices as it should be.

Strengthening Alternative Dispute Resolution Laws for Business Disputes Involving State-Owned Enterprises and Private Companies for the Benefit of the Disputing Parties (Benefit-Benefit Solution)

The driving factors for the establishment of APS as an institution are enormous, complex and detailed, as discussed in the sub-chapters above. Among other things, they are influenced by historical factors, the quality and quantity of judicial institutions in dispute resolution, the needs of the business community, the interests of the parties involved, comparative factors and global influences.

As discussed above, APS is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlements through consultation, negotiation, conciliation, mediation, or expert assessment. In an effort to build a legal framework for APS as an attempt to strengthen the law of APS itself, it is necessary to compile the principles that are scattered throughout the history of the Indonesian nation. These APS principles include (Sembiring, 2011):

1. The principle of good faith, namely the desire of the parties to determine the resolution of their dispute.
2. The contractual principle, namely the existence of an agreement set out in writing regarding the method of dispute resolution.
3. The principle of binding, namely that the parties are obliged to comply with what has been agreed upon.
4. The principle of freedom of contract, namely that the parties are free to determine what they want to include in the agreement as long as it does not conflict with the law and morality. This also means an agreement on the place, time, and type of dispute resolution to be chosen.
5. The principle of confidentiality, namely that the dispute resolution cannot be witnessed by other people because only the parties to the dispute can attend the examination of a dispute.
6. Added to this is one very important principle, namely the principle of beneficial peace. APS is chosen not in a framework of hostility and hatred or seeking victory for one party, but is oriented towards the benefit of peace for all parties.

The above principles are, in principle and in theory, in line with the spirit of legal theory, which demands justice, certainty and benefit for all parties. The existence of institutionalised APS principles is also in line with Hualafa Adolf's theory of development law and peace law.

For Adolf, the theory of peace law was born as a combination of natural law philosophy and Pancasila philosophy. From the perspective of Pancasila legal philosophy, the theory of peace is reflected in all of its principles, namely (Adolf, 2015):

1. The first principle is belief in one God. This principle is reflected in the law of nature, namely the creation of peace.

2. Second Principle: Just and Civilised Humanity, reflecting respect for the disputing parties, including giving equal rights to the parties to have their respective positions heard.
3. Third Principle: Unity. This principle reflects that the duty of APS is to create unity among the parties. Arbitration does not cause the parties to continue disputing after an agreement or decision has been reached in arbitration.
4. The fourth principle, deliberation to reach consensus, is an important principle in APS and arbitration, which requires the parties to deliberate in the APS process. This principle also places an obligation on the arbitrator to conduct deliberations in carrying out the arbitration process.
5. The Fifth Principle, Justice. This principle requires arbitration or APS in deciding cases, namely, that the aspect of peace should take justice into account.

In principle, according to F.D. Holeman, the fundamental principle of ADR itself actually originates from customary law, namely the principle or basis of harmony, the elements of which include (Rustan, 2013): 1) Strive to reach an agreement; 2) Resolve peacefully; 3) Achieve consent; and 4) Find a solution.

In line with these principles/fundamentals of harmony, customary law communities apply a dispute resolution mechanism known as deliberation to reach consensus, which is carried out by promoting a spirit of kinship. This is in line with the opinion of Nader and Todd, who explain that local legal systems can also be adopted into international law. If today the field of modern legal practice is developing ADR, it is worth examining it as a field that touches on the study of disputes, which continues to be studied from a legal anthropology perspective. The principles of ADR can be found in the characteristics of disputes studied anthropologically. Dispute resolution aims to achieve a win-win solution (compromise) where all parties feel they have benefited and won (Irianto, 2009).

Therefore, it is necessary to have a specific law that separates APS from Arbitration as stipulated in Law Number 30 of 1999, which will then become a separate and specific law on APS. The scope regulated in this law includes:

- 1) General Provisions on APS
- 2) Principles/Fundamentals of APS
- 3) Forms of APS
- 4) Stages of APS
- 5) Parties to APS
- 6) Requirements for APS
- 7) Scope and Limitations of Dispute Resolution that can be resolved in APS
- 8) Third Parties (Negotiators, Mediators, Conciliators, Adjudicators) and their Requirements that can be involved in APS to resolve Business Disputes
- 9) Binding Force of Agreements/Decisions at Each Level of APS

- 10) Costs incurred in the implementation of APS
- 11) Technical Implementation of APS at Each Level of APS

The existence of legislation and regulations on APS governing the 11 (eleven) points above is considered to be the answer to providing guidelines and a basis for the implementation of APS, which has been established and regulated in various laws and regulations as described above.

At least three laws must be amended or adjusted to strengthen APS as a dispute resolution mechanism for state-owned enterprises (BUMN) and private enterprises (BUMS). First, the strengthening of APS in business disputes between SOEs and private companies in the SOE Law. Second, the strengthening of APS in business disputes between SOEs and private companies in the law governing companies, in this case Law No. 40 of 2007 on Limited Liability Companies. Third, the separation and formulation of a law on APS, which was previously regulated together with arbitration in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The three points above do not actually regulate APS, particularly APS in the settlement of disputes between BUMN and BUMS. Therefore, in an effort to harmonise APS as an instrument for settling disputes between BUMN and BUMS, it is necessary to provide a basis in various laws that are considered to be the legal basis for BUMN and BUMS, which are contained in the BUMN Law and the PT Law.

In the SOE Law, the new legal reform based on Law No. 1 of 2025 is in line with the spirit of the researcher's research, namely that disputes within SOEs must be resolved through instruments within the SOE institution itself and must provide legal certainty. In addition, apart from the regulation of dispute resolution in SOEs, the change in the concept of SOE losses, which are no longer considered state losses, is considered very important in this amendment to the SOE Law.

Based on the provisions of Article 87F of Law Number 1 of 2025, it is stipulated that:

Between Article 87E and Article 88, one article shall be inserted, namely Article 87F, which shall read as follows:

Article 87F

- (1) Any dispute arising between SOEs, SOE subsidiaries, and/or affiliated companies shall be resolved through deliberation to reach a consensus.
- (2) In the event that deliberation to reach consensus as referred to in paragraph (1) is not achieved, upon written agreement of the parties, disputes, differences of opinion, or disagreements shall be resolved through a mediator.

- (3) In the event that the parties fail to agree on the appointment of a mediator within 14 (fourteen) calendar days, the ministry that administers government affairs in the field of SOEs shall appoint a mediator.
- (4) The agreement to settle disputes, differences of opinion, or disagreements shall be final and binding on the parties to be implemented in good faith.

From Article 87F above, there has been a fundamental legal shift regarding disputes within SOEs that can be resolved through deliberation and consensus, and the settlement of such disputes provides legal certainty for the parties involved. Technically, even before the amendment to the SOE Law, regulations regarding the settlement of SOE disputes were actually contained in SOE Ministerial Regulation Number Per-2/MBU/03/2023 concerning Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises, hereinafter referred to as SOE Ministerial Regulation Number 3 of 2023, which was issued on 3 March 2023. Although it does not specifically address business disputes between SOEs, the existence of Minister of SOEs Regulation No. 3 of 2023 is considered a shift in the resolution of business disputes from litigation to non-litigation through APS.

Although ADR in the form of deliberative consensus already exists and is recognised by the SOE Law, the scope of ADR to cover disputes between SOEs and private companies has not yet been specifically regulated. Therefore, it is not an exaggeration to say that there is still a legal vacuum in the SOE Law, despite its amendment to include ADR in disputes between SOEs and private companies. Thus, it is necessary to add provisions regarding ADR in the form of deliberative consensus to be regulated in a new article or additional paragraph in Article 87F.

Then, related to the PT Law, the PT Law regulates several variations or forms of disputes and their resolutions. If a dispute arises between shareholders, several resolution mechanisms that can be pursued are to file a petition to the District Court. In the settlement of shareholder disputes as stipulated in Articles 138, 80 (1), 86, and 146 (1) of the UUPT as described above, the settlement of disputes will be carried out through a petition to the District Court. The parties to the dispute in accordance with Article 138 and Article 146 (1) of the UUPT are as follows, namely the Petitioner: (one) shareholder or more representing at least 1/10 (one tenth) of the total number of shares with voting rights, and the Respondent: the Company. All such petitions will be examined on a contentious basis (except for petitions for the convening of a GMS in accordance with Article 80(1) of the UUPT and the determination of the quorum for the third GMS in accordance with Article 86 of the UUPT, which are conducted on a voluntary basis without a respondent). Such petitions to the District Court will be resolved on the basis of an establishment.

There are many possibilities for disputes between shareholders and the company, other company organs, or the company itself. Second, lawsuits to the District Court. In the settlement of shareholder disputes as regulated in Article 61, Article 97 paragraph (6), and Article 114 paragraph (6), as well as those arising in connection with agreements between shareholders that do not regulate alternative dispute resolution, the dispute will be settled through a lawsuit to the district court.

The parties to the dispute in accordance with Article 61 of the PT Law are as follows, namely the applicant in this case being the shareholder, and the respondent being the Company. The parties to the dispute in accordance with Article 97 paragraph (6) of the PT Law are as follows: the applicant, namely one or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights in the name of the Company, and the respondent is the Board of Directors who caused losses due to their mistakes/negligence.

Then, the parties to the dispute in accordance with Article 114 (6) of the UUPT are as follows, namely the applicant is one or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights on behalf of the Company, and the respondent is a member of the Board of Commissioners who has caused losses due to his/her mistakes/negligence. Such a lawsuit filed with the District Court will be resolved based on a ruling. The examination of all such petitions will be conducted in a contentious manner.

Third, dispute resolution through other mechanisms. In disputes arising in connection with agreements between shareholders (in the form of Shareholders Agreements, Joint Venture Agreements, trademark licence agreements, etc.), dispute resolution may be carried out through alternative mechanisms outside of court if previously agreed upon by the parties.

Based on the above description, it can be seen that dispute resolution within the Company can only be resolved through litigation or court mechanisms. Even if there is room for internal problem solving or dispute resolution, the legal provisions in the Limited Liability Company Law only mention the Court as the place for dispute resolution.

Therefore, it is necessary to add a chapter, paragraph or article that specifically regulates Dispute Resolution through ADR in the PT Law, considering that there is not a single norm in the PT Law that provides a basis and space for the Company to choose ADR instruments in the event of a business dispute. This includes disputes with state-owned companies.

Finally, strengthening ADR through the formulation of an ADR Law and the separation of ADR in Law No. 30 of 1999 concerning Arbitration and ADR. At a

theoretical level, arbitration is actually different from ADR. This is because arbitration has characteristics that are almost similar to adjudicative dispute resolution. Disputes in arbitration are decided by an arbitrator or arbitration panel, and the arbitration award is final and binding. However, an arbitration award can only be enforced if it has been registered with the District Court. If the parties agree to settle the dispute through arbitration, the dispute cannot be settled through the courts.

In addition to the above differences, when referring to Law No. 30 of 1999 concerning Arbitration and APS, the word 'and' is clearly used between Arbitration and APS. Furthermore, when referring to Article 1 Number 1 and Article 1 Number 10, Arbitration and APS are clearly separated.

Arbitration according to Article 1 Number 1 is: Arbitration is a method of resolving civil disputes outside the general court system based on an arbitration agreement made in writing by the disputing parties. Meanwhile, based on Article 1 paragraph 10, APS is: Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely resolution outside of court through consultation, negotiation, mediation, conciliation, or expert assessment.

The provisions on ADR in this Law are very minimal when compared to the provisions on Arbitration. In fact, normatively, the provisions on ADR are only regulated in Article 6, which is regulated in Paragraphs 1 to 9, the rest of which regulate Arbitration. Which regulates:

- (1) Civil disputes or differences of opinion may be resolved by the parties through alternative dispute resolution based on good faith, setting aside resolution through litigation in the District Court.
- (2) The resolution of disputes or differences of opinion through alternative dispute resolution as referred to in paragraph (1) shall be resolved in a direct meeting between the parties within a maximum period of 14 (fourteen) days and the results shall be set out in a written agreement.
- (3) In the event that the dispute or disagreement as referred to in paragraph (2) cannot be resolved, then upon written agreement of the parties, the dispute or disagreement shall be resolved with the assistance of one or more expert advisers or through a mediator.
- (4) If the parties fail to reach an agreement within a maximum period of 14 (fourteen) days with the assistance of one or more expert advisers or through a mediator, or if the mediator fails to bring the two parties together, the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator.
- (5) After the appointment of a mediator by the arbitration institution or alternative dispute resolution institution, mediation efforts must commence

- within a maximum period of 7 (seven) days.
- (6) Efforts to resolve disputes or differences of opinion through a mediator as referred to in paragraph (5), while maintaining confidentiality, must result in a written agreement signed by all parties concerned within a maximum period of 30 (thirty) days.
 - (7) The written agreement to settle the dispute or disagreement shall be final and binding on the parties to be implemented in good faith and must be registered with the District Court within a maximum period of 30 (thirty) days from the date of signing.
 - (8) The settlement agreement for disputes or differences of opinion as referred to in paragraph (7) must be implemented within a maximum period of 30 (thirty) days from the date of registration.
 - (9) If the settlement efforts referred to in paragraphs (1) to (6) cannot be achieved, the parties may, based on a written agreement, submit the settlement to an arbitration institution or ad hoc arbitration.

The urgency of separating and forming a special law on ADR was also driven by the large number of laws and regulations, not only in the business sector but also across sectors outside criminal law, which referred to the resolution of disputes through ADR. Interestingly, dozens of these laws and regulations referred to something that was unclear in terms of its regulation, form and institution.

The separation and formation of the APS Law is also driven by global demands and national legal needs in legal development. In addition to these external factors, there is also pressure to form the APS Law as a solution to address the accumulation of cases in the courts and as a solution amid weak public trust in the quality of the courts in resolving disputes, as described in this study.

The push for the formation of the APS Law is a manifestation of the spirit of Pancasila and the 1945 Constitution, following the history of the Indonesian nation and customary law society, where dispute resolution in traditional and modern societies still maintains methods capable of resolving disputes or conflicts within society. This is in line with Achmad Ali's opinion, who stated that it is a mistake to assume that in modern society, the court system is the only means of dispute resolution. Outside the court, there are still other means of dispute resolution, such as mediation, arbitration, and conciliation (Ali & Haryani, 2014).

According to Satjipto Rahardjo, there are several options available to individuals for resolving their cases. Multiple venues for litigation are appropriate for Indonesia, which is so diverse, consisting of hundreds of indigenous or local communities. Satjipto stated that perhaps it is time for 'out of court settlements' to be implemented in Indonesia (Rustan, 2013).

David M. Trubek explains that the tendency to avoid court proceedings is not only due to cost and time factors, but also because not all disputes are suitable for resolution through the court system. Trubek mentions that there are several types of disputes that are less suitable for resolution through the courts, namely family disputes, neighbour disputes, claims involving small amounts of money, and problems arising in the management of long-term trade relations.

APS has been known and applied in Indonesian history since long before the global push for it. With the institutionalisation and regulation of APS in a special APS law, it can become a new space for using APS as a form of dispute resolution oriented towards peace that is mutually beneficial through deliberation and consensus among the parties.

4. Conclusion

The conclusions of this study are as follows:

- a. The current alternative dispute resolution legal framework only regulates business disputes between or among state-owned enterprises as stipulated in the State-Owned Enterprises Act. However, there are still no clear legal provisions governing business disputes between SOEs and private companies, resulting in a legal vacuum for the settlement of business disputes between SOEs and private companies using ADR as a settlement instrument. In practice, ADR can be used if the parties stipulate it in the dispute settlement clause of their business agreement or contract.
- b. Historical pressures from the nation and traditional communities, global practices in several countries that implement ADR, and the push for ADR to address dispute resolution through litigation or the courts are the reasons for strengthening the law on ADR in the resolution of business disputes between SOEs and private companies based on the principle of a benefit-benefit solution. The legal strengthening of business ADR for SOEs and private companies is through the revision of the State-Owned Enterprises Act, the Limited Liability Companies Act, and the formulation of a special law on ADR.

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