THE PREPARATION OF BUSINESS CONTRACTS IS BASED ON THE LAW AS WELL AS ALTERNATIVES TO BUSINESS DISPUTE RESOLUTION

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ABSTRACT

Over time business is increasingly exploding among millennials, in running a business the thing that is much avoided is the risk of loss in business. Therefore, a law is needed as a guideline for doing business. Business law is any order-legal order, whether recorded or unrecorded, which manages the privileges and obligations that exist due to agreements and engagements that occur in business realization. In a business contract there are times when there is a dispute. To be able to resolve the dispute, the parties will choose the authorized institution, in resolving the dispute can be resolved through the litigation agency and also outside the litigation. Alternative Dispute Resolution is one of the procedures for out-of-court settlement, consisting of mediation, negotiation, arbitration, conciliation and consultation.

Keywords: Business, Dispute, Law.

INTRODUCTION

Business when viewed from the background of public talks will not be separated from the activities of production, sales, purchases, or exchanges of goods and services which in this case involve people and companies in it (Purnay, 2016). In general, all activities in a business aim to make a profit to carry out life and collect funds to be enough for the business or businessman. In narrower conditions, people in general more often connect business with businesses, companies, and an organization that can produce and sell goods and services.

When you want to start a business, the first thing that business people think about is how to still be able to run the business well. This thinking has the goal to ensure that the business that is being undertaken does not have an impact on the risk of loss. That way, a law is needed in carrying out business activities that will be carried out. Law and business is one thing that cannot be stretched, because in every business agreement made there will be an aspect of the law that ensures that an agreement can be carried out. Law is a system created by humans to limit human behavior so that the behavior can be overcome; law is the most important aspect in ensuring the existence of legal certainty in society (Wijoyo, 2021). Therefore, business law is very necessary for the business to be run, so as not to violate the provisions of applicable laws and rules.

Law is a written and oral regulation created by humans or institutions that have the authority in regulating human behavior maintain order, justice, prevent commotion and preparing sanctions on people who violate the law (Djamali, 2013).

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The term "*Business law*" as the meaning of the word "*Business law*" today is quite widely used, both in the scope of practitioners and academic circles. Although there are many other meanings with different meanings from business law, but the scope of meanings-meanings are almost the same as business law. The meaning-the intended meaning is the law of commerce, as is the designation for the word "*Trade Law*", business law as a designation for the word "*Commercial Law*", and economic law the term "*Economic Law*" (Fuady, 2016).

The term "Trade law" or "*Business law*" is a meaning whose reach is fairly shallow and traditional. Because in the scope of the two meanings only include themes - themes in the Code of Trade Law (KUHD) only. While there are many themes that are not regulated and not included in the context of the law such as, regarding business contracts, limited liability companies, capital markets, acquisitions and mergers, intellectual property rights, credit, international business, taxation, and others (Fuady, 2016).

Then, when using the term "*Economic law*" the scope tends to expand, in connection with the existence of economic terms with macro and micro meanings, development business and social business, management business and accounting, all of which are covered in the meaning of economic law (Ibid) Trade law or business law if viewed in terms of scope is very narrow, so after using the meaning of economic law, the scope is very wide. Where economic law is ideal with business law. Meanwhile, if the meaning of "*Trade law*" or the meaning of "Business law" is used, then the two terms are already very classical and ancient. So then with the term business law more emphasis on things that are current developments. Therefore, the term business law is more widely used among the public.

RESEARCH METHODS

The way it works is based on the relationship with a scientific activity, in order to find an understanding that will be applied in the research material in the form of subjects and objects, by making an effort so that there is an answer what is desired and can provide scientific accountability for the answers-the answer including a validity in it, is the understanding of the existence of a method.

A process that is systematically carried out in the activity of collecting and analyzing data in the presence of several objectives that are sought to be achieved is the understanding of a study.

Normative legal research is a type of research method applied in this research paper, which is realized by conducting research activities on legal materials and sources such as legal concepts and foundations - legal foundations that are the embodiment of document studies, legal history, legal comparisons, articles, journals, books related to the problems to be conducted research, and do not forget to apply laws and regulations.

In this research used also descriptive analytical which is a type of analysis? By having a goal to provide a clear picture as a whole, conduct a review of the positive norms of the law and dig deeper into the facts of the law.

The form of data used in this study is in the form of secondary data and primary data where the basic norms of Pancasila, legal papers and laws and regulations are the benchmark of this type of data. Then also used qualitative techniques as a form of analytical techniques in this

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research that utilize theories and legal materials obtained from various sources such as articles, books, journals, and also laws and regulations such as the Civil Code and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

RESULT AND DISCUSSION

Business Preparation and Anticipation Techniques through Contracts

The law is the whole principle and rule in which there are regulations regarding community life association, and has the ambition to maintain order. Meanwhile, according to Utrecht, the law is a device of order (mandates-mandates and restrictions-restrictions) that handle the discipline of a society thus the community must obey it (Saliman et al., 2005).

Meanwhile, business law (in English) and bestuur rechts (in Dutch) according to Abdul R. Saliman et al. (2005) are all legal orders, both recorded and unrecorded, which are regulated regarding existing rights and obligations due to agreements-agreements and engagements - engagements that occur in business realization.

An agreement is an activity involving a person or more people who involves themselves towards a person or group of others. From the existence of these activities, it produces legal actions in the form of an engagement relationship, so that it can be concluded that the agreement is the source of an alliance. In addition to agreements, another form of the source of the engagement is law. Basically a contract is a term that is the same as an agreement, which is an agreement formed in writing, besides that the agreement can also be created orally (Sukandar, 2017).

Covenants are binding on those who have bound themselves through covenants, consisting of either one or more people. Based on these activities, so that a relationship between some of these people is called an engagement. Valid that the agreement gave birth to an alliance between the two interlocking parties. Thus, the relationship between the covenant and the alliance is the agreement that gives birth to an alliance. Thus, the agreement that has been done is derived from the alliance (Diputra & Rio, 2018).

Contracts when made in written form can be memos, certificates, or receipts. Because of contractual relationships created by both parties and more with potentially conflicting needs, to minimize it, the terms in the contract are usually controlled and supplemented by a law. The control of the limit aims so that the party undergoing the contract can be protected and to formulate a special relationship between them, such as there are vague provisions, mingling meanings, or less than perfect (Naja, 2006).

Contracts and agreements are nothing but the same, in this case of course in the form of binding agreements. It has been mentioned in Article 1233 of the Civil Code that each engagement is born from: Agreement and Law.

It is stated in Indonesian law, namely Burgerlijk Wetboek (BW) that the contract is referred to as an overeenkomst, which if interpreted in Indonesian, means agreement. Peter Mahmud Marzuki is of the view that the understanding of agreement is broader than contract. This is because the contract refers to a thought of the existence of commercial profits obtained by each party, while both parties do not necessarily benefit commercially from an agreement.

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The word "*agreement is made in writing*" in Article 1313 of the Civil Code is one of the causes of agreements and contracts are sometimes distinguished. The source of contracts in a business realization is divided into two main aspects, namely: The aspect of the contract (agreement) is the main legal root, where the parties in it are each subject to a contract that has obtained mutual agreement. Aspects of freedom of contracting, in which the parties are given freedom in childbirth and outline the content of the contract that has been agreed upon by them (Saliman et al., 2005).

An agreement or contract is not created only by agreement, but also obliged to fulfill the legal requirements of an agreement according to the provisions of the law, as expressed in Article 1320 of the Civil Code, thus it is said that the rule of law cannot be ignored by any agreement of any form and where the agreement is created by relying solely on an agreement based on the principle of freedom of contract (Safitri, 2020).

The principle of freedom of contracting, being the root of the development of a treaty law, it is not only realized in Indonesia, but also at the regional and international levels. For individuals freedom of contract is a fundamental basis, in the development of self-development on personal and social activities in society, so freedom of contract according to experts is a part of human rights that must be respected.

Everyone can make and not even make a covenant because this is based on the principle of freedom of contracting. The parties, who already have an agreement in giving birth to an agreement, are given the freedom to determine what will and will not be contained in the agreement. In this case, the agreement that has been reached by the parties is binding like the Law. With the application of this principle, the submission of an important position to the enactment of the consensual principle indicates the proportion to relevance, the proportion in the distribution of risk piculants, and the proportion in the bargaining position.

In its progress the realization of binding matters as a law is based on pseudo-agreements by the parties. In the end, this principle comes as a new archetype in a business contract law that tends to be of unlimited breadth, where the dominant individual can intimidate the will against the weak small party, thus the hope of contract freedom that initially provides proportion in some respects such as law, balance of interests and proportions in bargaining position, and become a pressure tool against the weak party (Safitri, 2020).

If viewed based on the conditions that are appropriate to be fulfilled in the principle of freedom of contract stated in Article 1338 (3) kuhper is the intention of all parties. Good faith really needs to be based on the adab that is subject to an agreement, and apply all the implementations that have been made by the parties. Good faith really needs to be prioritized by the parties, because good faith applies freedom to the limits in doing the will or can be said to be carried out as it pleases by the parties involved (Diputra & Rio, 2018).

In order for a business contract to run well without any problems, then during the process of making and preparing a business contract, it is expected that there is a mature initial process, which begins when starting to carry out negotiation preparations. In drafting a business contract there are several things in it that include various stages starting from the planning stage to the implementation which is finally stated in the contents of the contract.

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With regard to the enactment of the principle of good faith when making a contract, if in the future there are problems that will cause imbalance or violate the sense of justice, then there will be intervention from the judge, therefore in the level of making (signing) and the stage of realization and design of the contract required the application of good faith. There are alternative settlements without the need to go through the court institution in other words can be done without the intermediary of judges, if the settlement is carried out by deliberation steps or through the arbitral body, so that the settlement step will not drag on (Diputra & Rio, 2018).

In the process of making implementation of an important contract, then in this case the role is very important to be applied, so that the agreement made on a contract needs to be based on good faith led by article 1338 paragraph (2) kuhper cannot be ruled out, because good faith is the container in which the mandate and obedience to the existence of a contract that has been legally recognized for its creator.

In common law countries, the principle of good faith was originally implied contractual obligations, but as the agreement changed. This written agreement tends to be created by parties whose position is dominant in the economy, in the form of standard agreements (Safitri, 2020).

In this case the standard agreement is "*given*" meaning the determinant and the agreement maker is the stronger party. While the weak or lower parties do not get the opportunity to contribute to forming an agreement. Such agreements in the world of identical business practices "*take it or leave it contract*" to portray the helplessness of the weak party in establishing the content of the agreement. The weak in this case will not get justice if the agreement is still standard. It does not rule out the possibility that parties whose positions are strong will strive for all their interests to be accommodated even though it will harm the economy of the other parties in the agreement.

The standard that gives rise to good faith present in a contract is the existence of testing carried out in all stages of the contract from the stage of designing, creating and after the creation of the contract. Furthermore, an understanding is needed for objective testing in good faith that applies to careful and deep obedience, because the values of obedience embraced by society will always change in accordance with the times (Diputra & Rio, 2018).

Agreement from the parties is needed in the stage of making implementation and planning on a contract, then after completion at this stage, it will continue at the next stage, namely the negotiation stage, after the negotiation stage is successfully reached, and then it will be continued by the signatory of the contract. If all stages have been passed then the business contract can be carried out in accordance with the agreement made earlier.

There are several things that need to be included in making an agreement in a contract. According to Diputra & Rio (Diputra & Rio, 2018), if you want to make an agreement in a contract, it needs to be based on several things, as follows:

1. Legal standing of the contracting parties;
2. The thing that gives birth to the object in the contract;
3. The period of time the contract expires;
4. Provisions on default or violation for those who do not perform in accordance with the capacity in the contract;
5. Provisions on overmacht
6. The process of resolving if there is a dispute;

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7. As well as the last signing by the parties involved.

Business Disputes and Their Resolutions

In a day, transactions on a business activity can amount to hundreds of times. This holds the possibility of causing a dispute (dispute or difference) between the parties. The dispute that occurs between the parties requires a solution and settlement. Because the faster and more effective and efficient the dispute is resolved and resolved, the better the situation will be for both parties (Jamilah, 2018).

Business disputes that continue to be allowed and are not immediately resolved will have a negative impact on many things. The negative impacts that will arise include:

1. Inefficient development in a development.
2. Low productivity of the company.
3. The development of a business that does not move.
4. The amount of operational costs, and others.

Business disputes can be resolved through litigation (court) or non-litigation (out of court). In litigation institutions the resolution of disputes is realized by filing a civil lawsuit with the district court. In general, this procedure is often ignored by business practitioners, this is because the process is long, tends to cost extra, a long period of time, convoluted, and the results of decisions that are difficult to execute. This means that the final ruling issued in the District Court, can still be appealed to the High Court and Review to the Supreme Court (Hariyani et al., 2018).

To be able to resolve a dispute, then to the parties will be left entirely related to the choice of termination of the dispute, if the parties choose to resolve the dispute outside the court, it means that the settlement will be carried out in accordance with the wishes of each party. Vice versa, if one of the parties does not want to resolve the dispute peacefully so as to make coercion against the other party in resolving the dispute, then the settlement is not based on the will of both parties, but there is an element of coercion (Sembiring, 2011).

The resolution of disputes outside the court can be carried out by various procedures, including negotiation, mediation, conciliation, and arbitration between the parties. Among the various completion procedures, of course, it has advantages and disadvantages. So the parties must accept all the consequences for what has been their choice in resolving the dispute.

Article 6 of Law No. 30 of 1999 regulates alternatives in ending a dispute by means of deliberation of the parties to the dispute under the title "*Alternative Dispute Resolution*", which is a translation of alternative dispute resolution (ADR) (Herniati, 2019).

According to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is consultation, negotiation, mediation, conciliation or expert assessment.

The consultation action has an individual nature, namely between the client and the consultant, where the consultant submits his thoughts to the client in accordance with the portion desired by his client.

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Negotiation is a means of resolving disputes for the parties, without the interference of third parties as intermediaries, so that all procedures and mechanisms are fully controlled by the parties in taking agreement in the dispute.

Unlike the negotiations, in this conciliation, third parties or known as conciliators are more enthusiastic, so they take the initiative in compiling and formulating the stages of settlement and submitted to the disputed parties.

In terms of mediation is the resolution of disputes without the intervention of third parties or mediators, of which the mediator is independent and intermediate. Mediators only distribute assistance in the form of alternative settlements that are then applied personally by the parties.

Unlike other alternatives, the characteristics of arbitration are almost the same as adjudicative. In the case of arbitration, the dispute will be resolved by an arbitrator and the award is final and binding.

The resolution of disputes outside the court is based on the agreement of the parties known as Alternative Dispute Resolution or ADR. ADR as a result of consent for the parties, it is free and there is no element of coercion by one party to the other. However, the agreement that has been reached by them in this case, must be adhered to as a form of agreement (Herniati, 2019).

Using alternative dispute resolution will get a number of benefits, including: 1) A quick settlement procedure, in which case the parties may negotiate in relation to the terms of use because the alternative dispute resolution is informal. This is done to avoid delays and speed up the settlement procedure, and if the dispute causes problems in the future, then the party will take advantage of a cooperative form of problem-solving. 2) Decisions are non-judicial, the authority in making a decision is maintained by the parties involved in this matter, rather than represented by decision-makers from third parties. 3) Control by managers who are more understanding of the needs of the organization, in this case, decisions on people who have a good position are placed by the ADR to provide a prolonged interpretation of goals and in a short time, an organization follows with the positive and negative impact of each choice in solving certain problems (Herniati, 2019). 4) Process with a voluntary nature, meaning that the parties here choose the ADR procedure in resolving disputes because they believe that arbitration can provide a good settlement. 5) Confidential procedures, in which case the decisions are confidential, while the parties may review existing dispute resolution preferences and their rights to present cases to the court at the next opportunity will be protected without having to have fear that the data provided will be leaked or may strike back at them. 6) Save time, in this case the alternative dispute resolution provides an offer of opportunity to be able to resolve disputes better, without having to wait for a long litigation time even years. 7) Cost-effective, in this alternative it does not cost extra as in court, where the rate determined by the amount of time and the usefulness of third parties is lower to divert their time than legal advocates.

CONCLUSION

Today almost everyone has a business, either between one and more than one person. Most businesses are loved by more than one person based on the business agreement between them. In order to avoid the risk of business losses, a law is needed, because the law and business

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cannot be separated. The agreement is made based on the agreement between them, but not only the agreement of the parties is also obliged to fulfill the legal requirements of an agreement according to the provisions of the law, as stated in Pasal 1320 KUH Perdata.

In order for a business contract to run well without any problems, then during the process of making and preparing a business contract, it is expected that there is a mature prefix process, which starts from carrying out negotiation planning. The agreement of the parties is needed in the planning process until the signing of the contract.

But no matter how smooth the contract is made, of course in the future there will be disputes that arise. This dispute cannot be allowed too late, thus the parties will decide to resolve the dispute. Termination of disputes can be done in court and outside the court. Sometimes the parties prefer to end the dispute outside the court, because of the relatively cheap cost, short time, the win-win solution so that there is no hostility and friendship remains well established. Alternatives to out-of-court dispute resolution consist of consultation, negotiation, consultation, mediation, and arbitration.

REFERENCES

Diputra, I.G., & Rio, A. (2018). Implementation of contract design in making business contract structures. *Acta Comitas: Journal of Notary Law*, *3*(3), 495-560.

Djamali, R.A. (2013). *Introduction to Indonesian law*.

Fuady, M. (2016). *Introduction to business law: Organizing modern business in the global era*.

Hariyani, I., Serfiyani, C.Y., & Purnomo, R.S.D. (2018). *Business dispute resolution: litigation, negotiation, consultation, binding opinion, mediation, conciliation, adjudication, arbitration and online dispute resolution.* PT Gramedia Pustaka Utama.

Herniati, S.H. (2019). *Business disputes and their settlement process through non-litigation channels*. Media of scholarship friends.

Jamilah, F. (2018). *Business dispute resolution strategy*. MediaPressindo.

Naja, H.D. (2006). *Contract drafting skills series designing business contracts*. Image Aditya Bakti.

Purnaya, I.G.K. (2016). *Economy and business*. Penerbit Andi.

Safitri, W. (2020). Protection of business contract law in Indonesia in justice perspective. *Legal Standing: Journal of Legal Studies*, *4*(2), 78-86.

Saliman, A.R., Hermansyah. & Jalis, A. (2005). *Business law for companies: theory & case examples*. Kencana Prenada Media Group.

Sembiring, J.J. (2011). *How to resolve disputes outside the Court*. Visimedia.

Sukandar, D. (2017). *Guide to making business contracts*. Jakarta: Visimedia.

Wijoyo, H. (2021). *Business law*. Independent Scholar.

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