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Trade Secret Dispute Resolution Through Arbitration

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Abstrak

Tujuan dalam penelitian ini untuk mengetahui bagaimana cara penyelesaian sengketa rahasia dagang melalui arbitrase dan bagaimana efektifitas penyelesaian sengketa dagang melalui arbitrase. Pendekatan masalah dalam penelitian ini menggunakan pendekatan yuridis normatif dan pendekatan empiris. Pengumpulan data dilakukan dengan studi pustaka dan studi lapangan. Analisis data dilakukan secara kualitatif. Proses penyelesaian sengketa melalui arbitrase mempunyai banyak keuntungan yaitu prosesnya yang cepat, sederhana, berbiaya ringan, kerahasiaan sengketa yang terjaga, putusan yang merangkul dan menguntungkan kedua belah pihak (win-win solution), dan menjaga hubungan bisnis para pihak. Selain itu arbitrase menawarkan kecepatan, kerahasiaan, fleksibilitas, dan kontrol yang lebih besar kepada para pihak yang terlibat. Oleh karena itu menggunakan penyelesaian sengketa rahasia dagang melalui jalur arbitrase merupakan salah satu pilihan yang tepat.
Kata Kunci: Pengembangan, sumberdaya Manusia

Abstract

The purpose of this research is to find out how to resolve trade secret disputes through arbitration and how the effectiveness of trade dispute resolution through arbitration. The problem approach in this research uses a normative juridical approach and an empirical approach. Data collection is done by literature study and field study. Data analysis is done qualitatively. The dispute resolution process through arbitration has many advantages, namely the process is fast, simple, low cost, the confidentiality of the dispute is maintained, the decision embraces and benefits both parties (win-win solution), and maintains the business relationship of the parties. In addition, arbitration offers greater speed, confidentiality, flexibility and control to the parties involved. The process also allows for decision-making by specialized knowledgeable arbitrators, thereby minimizing uncertainty and additional costs. Moreover, in the context of international arbitration, it allows for dispute resolution between parties from different jurisdictions. Therefore, using trade secret dispute resolution through arbitration is one of the right choices.
Keywords: Development, Human Resources

Introduction

The business world in carrying out its profession hopes that all business processes can run in accordance with what is desired and planned, however, in its implementation there are times when what has been agreed by each party cannot be

carried out, because one party has a different understanding of what has been made and agreed in the contract, which ultimately causes problems or disputes (Putra & Putra, 2020). The process of resolving trade secret disputes can use two events, namely through litigation or court channels and through non-litigation channels, one of which is arbitration (Gerungan, 2016). As referred to in article 1 paragraph 1 of Law number 30 of 1999 emphasizes that arbitration is a way of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing.

Settlement of trade secret disputes through arbitration is much more effective than using court or litigation channels, because it always results in a win-win solution that benefits both parties and always prioritizes deliberation to reach consensus or agreement from both parties (Kurniawaty, 2017). In contrast to the litigation route, most business actors do not want their business disputes to be resolved through litigation or court channels, because the settlement time takes a relatively long and protracted time and must follow the entire administrative process and existing trials. In addition, the parties do not want their identities to be known by the public, because the judicial institution applies the principle of trial, which is open to the public (Afriana, 2015).

The process of resolving trade secret disputes through arbitration prioritizes the agreement of two parties mediated by a third party or an arbitrator (Nurahmasari et al., 2021). The settlement of trade secret disputes using arbitration is based on the Law of the Republic of Indonesia Number 30 of 1999 concerning arbitration and alternative dispute resolution. The law has explained the mechanisms and processes that must be carried out by business actors who want their disputes to be resolved through arbitration or non-litigation channels. Because of the fast resolution process, many business actors choose to resolve their business disputes through arbitration.

In Indonesia, trade secrets are part of the Intellectual Property Rights system and must be given protection as other Intellectual Property Rights objects (Setiawan et al., 2019). Trade secret protection is regulated in Law No. 30 of 2000 concerning Trade Secrets. Trade secrets develop in line with industrialization and a culture that is competitive and individualistic. Trade secrets in western society are considered "private rights" because trade secrets are generated from human intellect that has sacrificed with high thoughts, energy, and costs. Eastern culture, on the other hand,

considers trade secrets as "public rights" that belong to the collective. These differences do not support the protection of trade secrets in general (Firdaus & Wahyudi, 2022).

The development of trade secrets in Indonesia continues to progress, in line with technological developments, especially in the business world, despite these developments, it cannot be denied that the problems that arise in the business world related to trade secrets are also increasingly diverse and continue to grow, this problem is certainly a concern for entrepreneurs who have rights to trade secrets, especially micro, small and medium entrepreneurs who are at risk or vulnerable to problems due to lack of legal understanding of trade secret protection (Timbuleng, 2019).

The government through the trade secret law no 30 of 2000 has provided solutions and answered the questions of entrepreneurs to protect their trade secret rights, related to registration and mechanisms that must be carried out by entrepreneurs to be able to register their trade secrets to the authorized institution in this case is the directorate of intellectual property under the ministry of law and human rights (Firdaus & Wahyudi, 2022).

Literature Review

Arbitration

Arbitration is an alternative dispute resolution mechanism outside conventional judicial channels (I. Sari, 2019). In arbitration, the parties involved in a dispute agree to submit their dispute resolution to a third party called an arbitrator or arbitrator. These arbitrators are usually people or institutions with expertise in law or related industries (Muskibah, 2018). Arbitration can be used in various types of disputes, including business disputes, construction disputes, property disputes, and others. Arbitration decisions are usually binding on the parties involved, unless there are valid reasons to reject or challenge the award.

In Article 1 Paragraph (1) of the Arbitration Law, namely: "Arbitration is a way of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute". Simply put, arbitration is the resolution of civil problems or disputes outside the legal courts. In resolving disputes, it requires the assistance of several people who are neutral (arbitrators) and

able to resolve disputes (Muskibah, 2018). Dispute resolution through arbitration is based on the agreement of all parties involved made in writing. In this case, the arbitrator is appointed directly by the parties involved or can also be appointed by the district court/arbitration body ((N. Sari, 2016).

According to (Entriani, 2017) there are two types of arbitration used in order to resolve disputes. They are ad hoc arbitration and international arbitration.

1. Ad Hoc (Volunteer) Arbitration

Ad hoc arbitration is a type of arbitration that is formed specifically to resolve a problem. This arbitration is incidental and of a certain duration, until the dispute is resolved. In this type of arbitration, the parties involved in the dispute are given the freedom to determine their own arbitrators, framework, procedures, and administrative apparatus of the arbitration. Its establishment requires the consent of the parties involved in the dispute.

2. Institutional Arbitration

This type of arbitration is coordinated by an institution or agency. Institutional arbitration is a permanent arbitral body whose task is to resolve disputes. This permanent and fixed nature is the main characteristic that distinguishes it from ad hoc arbitration. When one dispute is resolved, this arbitration body will take care of other disputes.

Trade Secrets in Indonesia

A trade secret is, among other things, undisclosed information, or information that is not known. When viewed from the point of view of property law (civil law subsystem), trade secrets cannot be categorized as intellectual property rights, because there is no element of property rights that can be given protection (Semaun, 2011). Law No. 30/2000 on trade secrets explains that trade secrets are information that is not known by the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the trade secret.

The material elements that will exist cannot be known to protect their rights in granting trade secret rights, all of which are kept confidential. Intangible property rights are indeed hidden in trade secret protection, but the public has never known what the form of the secret is (Yanuarsi, 2019). If you trace the form of the secret, it

could have been protected in the form of a patent, or in the form of copyright, but if the right is protected under copyright or patent protection, it is no longer a secret. As a consequence, these rights will apply.

Indonesia has a trade secret law number 30 of 2000, in the law there are at least 3 important elements in a trade secret, namely:

1. The trade secret must be an "information" either information in the field of technology or business information such as customer lists, recipes, food and beverages, drug composition and internal processes to produce products or services.

2. Trade secret is that the useful information must have economic value that is useful in business activities, because in general the information is not generally known so that re-engineering is difficult.

3. Third, a trade secret is information that must be kept confidential by the owner of the trade secret with due diligence. "Due diligence" means all steps that are reasonable, proper, and appropriate.

Methode

The problem approach in this research uses a normative juridical approach and an empirical approach. The normative juridical approach is an approach through library research by reading, quoting and analyzing legal theories and legislation related to the problems in the study. The empirical juridical approach is an effort to obtain clarity and understanding of research problems based on the results of interviews, existing realities or case studies. Data collection is done by literature study and field study. Data analysis is carried out qualitatively.

Result And Discussion

How to Settle Trade Secret Disputes Through Arbitration

Trade secrets according to Article 1 number 1 of Law Number 30 of 2000 concerning Trade Secrets explains that trade secrets are information that is not publicly known in the field of technology or business, has economic value and has a use in business activities, and is kept confidential by the owner of trade secrets. This trade secret protection is granted for an unlimited period of time and applies as long as the information has the following points:

1. is confidential, known only to certain parties or not generally known by the public.
2. has economic value, can be used to carry out commercial activities or businesses or can increase economic benefits.
3. is kept confidential, if the owner or party in control of it has taken reasonable and appropriate steps.

In this discussion of trade secret disputes, the settlement method used is alternative dispute resolution through arbitration. Arbitration is a way of resolving trade secret disputes that is considered far better than settlement through ordinary courts. Settlement of trade disputes through arbitration is a way of resolving disputes outside the court conducted by the parties to the dispute voluntarily and based on a written agreement called an arbitration agreement (Entriani, 2017). An arbitration agreement can be included in a written agreement made before a dispute arises (arbitration clause), or made after a dispute arises (separate arbitration agreement). There are steps to resolving trade disputes through arbitration:

1. Arbitration agreement

   The first step is to make an arbitration agreement. The arbitration agreement must be in writing and signed by the parties to the dispute.
2. Assignment of arbitrators

   If the arbitration agreement does not specify the name of the arbitrator or arbitral tribunal, the parties shall appoint the arbitrator or arbitral tribunal. The arbitrator or arbitral tribunal may be appointed by the parties themselves, or through an arbitration institution.
3. Retention of the statement of claim

   A party who feels aggrieved by another party may file a statement of claim with the arbitrator or arbitral tribunal. The letter of claim must contain the identity of the parties, the subject matter, and the arguments on which the claim is based. In the letter of claim, the aggrieved party must explain in detail how the other party has violated its right to trade secrets. The aggrieved party must also include evidence that supports its arguments.
4. Submission of answer

The party being sued may file an answer to the statement of claim. The answer must be submitted to the arbitrator or arbitral tribunal within the prescribed time period. In the answer, the party being sued may refute the arguments of the aggrieved party. The challenged party may also present its own arguments.

5. Examination of the dispute

   The dispute hearing is conducted by the arbitrator or arbitral tribunal. The dispute hearing may be conducted orally or in writing. In the dispute hearing, the arbitrator or arbitral tribunal may request information from the parties, witnesses, or experts. The arbitrator or arbitral tribunal may also conduct an inspection or physical examination of evidence.

6. Arbitration award

   Upon completion of examining the dispute, the arbitrator or arbitral tribunal shall render an arbitral award. The award must contain the identity of the parties, the subject matter, legal considerations, and the ruling.

7. Execution of arbitration award

   Arbitration awards that have permanent legal force can be executed by the court. Settlement of trade secret disputes through arbitration can be the right choice for business actors who want to resolve disputes quickly, efficiently and with quality.

Effectiveness of Trade Dispute Resolution through Arbitration

According to Article 1 Paragraph (1) of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, arbitration is a method of resolving civil disputes outside the public courts based on an arbitration agreement made in writing by the parties to the dispute. The arbitration provisions as stipulated in Articles 615 to 651 Rv, Article 377 HIR, and Article 705 Rbg shall no longer apply when Law No. 30/1999 comes into force. One of the objectives of Law No. 30/1999 is to cover all aspects of arbitration, both legally and substantively, at the national and international levels.

The dispute resolution process through arbitration has many advantages, namely the process is fast, simple, low cost, the confidentiality of the dispute is maintained, the decision embraces and benefits both parties (win-win solution), and maintains the business relationship of the parties (Muskibah, 2018). Out-of-court

dispute resolution offers a number of advantages compared to going through the courts, some of the advantages that can be mentioned are as follows:

1. Manageable engagement Arbitration is often less formal and less procedure-focused than courts. This can reduce the complexity and bureaucracy of dispute resolution.The process is quick with no more than six months.
2. Controllable Costs Although arbitration entails costs, the costs are often more controllable than litigation. Parties can choose the arbitrator and set up procedures to control costs.
3. The award is final and not subject to appeal or appeal.
4. Arbitrators are chosen by the parties, are experts in the disputed field, and have integrity or high morals.
5. No party is disadvantaged in the settlement, because the settlement uses a middle way where both parties feel no disadvantage (win-win solution).
6. Arbitration is confidential, allowing the parties involved to keep their dispute confidential. This can be an advantage in cases where confidential or business information is a major concern.
7. Parties to arbitration have more control over the procedures used in dispute resolution, including the evidence submitted, the schedule of hearings, and other procedures. This can reduce the bureaucracy that sometimes occurs in court.
8. Arbitral awards can be recognized and accepted in many jurisdictions, allowing for easier enforcement if a party does not comply with the arbitral award.
9. Arbitrators selected by the parties have expertise in their field so that they understand the issues under discussion. The Specialization component plays an important role in decision-making, and expertise is one sign of trust.
10. Confidentiality As mentioned earlier, arbitration is a private dispute resolution forum. All parties as a whole do not want the general public, especially their competitors, to know the secrets of their company's "kitchen" so as to jeopardize the good name of the company concerned.

This compares to dispute resolution through litigation, which in some cases has very significant differences, namely:

1. Courts often involve complex and lengthy procedures, which can cause dispute resolution to take years. This can be especially problematic in disputes that require quick resolution.
2. Litigation can be very expensive, including lawyers' fees, court fees, and other costs. This can make it inaccessible to many individuals and organizations.
3. The outcome in court is determined by a judge or jury, who may have a different understanding of the case. This can result in outcomes that are not always predictable.
4. In court, trade secret or business information may have to be disclosed to the opposing party and may become public information. This can be detrimental to businesses that want to keep their information confidential.
5. Court is an open process which may lead to details of the dispute becoming public, which can be detrimental to the good name of the business.
6. Engaging in litigation often creates stress and tension for the parties involved, as they have to face an often emotional and protracted trial process.
7. Judges' decisions in litigation can often be challenged by the losing party, triggering appeals and additional legal proceedings.
8. Litigation usually focuses on determining who is right and who is wrong, rather than on restoring the relationship between the disputing parties. This may result in deeper conflicts in the future.

From the above explanation, dispute resolution through arbitration is that this method can be very effective in various situations. Since Law No. 30/1999 was enacted in Indonesia, interest in resolving disputes through this route has increased, Arbitration offers greater speed, confidentiality, flexibility and control to the parties involved. The process also allows for decision-making by specialized knowledgeable arbitrators, thus minimizing uncertainty and additional costs. Moreover, in the context of international arbitration, it allows for the resolution of disputes between parties from different jurisdictions. While arbitration has its advantages, arbitral decisions are final, and costs can be a consideration. With careful consideration, arbitration can be a very effective tool for resolving disputes.

Conclusion

The effectiveness of trade secret dispute resolution through arbitration is no longer in doubt, through the mechanism of the settlement process is clearly stated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The dispute resolution process through arbitration has many advantages, namely the process is fast, simple, low cost, the confidentiality of the dispute is maintained, the decision embraces and benefits both parties (win-win solution), and maintains the business relationship of the parties. In addition, arbitration offers greater speed, confidentiality, flexibility and control to the parties involved. The process also allows for decision-making by specialized knowledgeable arbitrators, thereby minimizing uncertainty and additional costs. Moreover, in the context of international arbitration, it allows for dispute resolution between parties from different jurisdictions. Therefore, using trade secret dispute resolution through arbitration is one of the right choices.

Suggestion

We recommend that all business people in resolving trade secret disputes use non-litigation channels or in this case arbitration, considering that dispute resolution through this channel is far more effective because the resolution is simple, fast and low cost. However, before choosing which route to take to resolve the dispute, the businessman must pour the clause of the agreement agreed by both parties which route will be taken in the event of a dispute, litigation or non-litigation.

Bibliography

Afriana, A. (2015). Penerapan Acara Singkat dan Acara Cepat dalam Penyelesaian Sengketa Perdata di Pengadilan: Suatu Tinjauan Politik Hukum Acara Perdata. *ADHAPER: Jurnal Hukum Acara Perdata*, *1*(1), 31–43.

Entriani, A. (2017). Arbitrase Dalam Sistem Hukum Di Indonesia. *None*, *3*(2), 277–293.

Firdaus, M. I., & Wahyudi, F. S. (2022). TINDAK PIDANA RAHASIA DAGANG DITINJAU DARI UU NO. 30 TAHUN 2000 TENTANG RAHASIA DAGANG. *Jurnal Dialektika Hukum*, *4*(2), 124–134.

Gerungan, A. E. (2016). *PERLINDUNGAN HUKUM TERHADAP RAHASIA DAGANG DITINJAU DARI ASPEK HUKUM PERDATA DAN PIDANA DI INDONESIA* (Vol. 22, Issue 5).

Kurniawaty, Y. (2017). Efektivitas alternatif penyelesaian sengketa dalam sengketa kekayaan intelektual (alternative dispute resolution on intellectual property dispute). *Jurnal Legislasi Indonesia*, *14*(2), 163–169.

Muskibah, M. (2018). Arbitrase Sebagai Alternatif Penyelesaian Sengketa. *Jurnal Komunikasi Hukum*, *4*(2), 139–149.

Nurahmasari, R., Amirulloh, M., & Afriana, A. (2021). MEDIASI SEBAGAI KEWAJIBAN PENYELESAIAN SENGKETA PERDATA PELANGGARAN PATEN DI INDONESIA DEMI KEPASTIAN DAN KEMANFAATAN HUKUM. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, *5*(1), 123–138.

Putra, D. N. R. A., & Putra, I. P. R. A. (2020). Akibat Hukum Pendaftaran Penyelesaian Sengketa Alternatif. *ADHAPER: Jurnal Hukum Acara Perdata*, *6*(1), 73–86.

Sari, I. (2019). Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa di Luar Pengadilan. *Jurnal Ilmiah Hukum Dirgantara*, *9*(2).

Sari, N. (2016). *Penyelesaian sengketa perbankan syariah melalui lembaga arbitrase*. Yayasan PeNA Banda Aceh.

Semaun, S. (2011). Perlindungan Hukum terhadap Rahasia Dagang. *DIKTUM: Jurnal Syariah Dan Hukum*, *9*(1), 30–42.

Setiawan, A., Sulistianingsih, D., & Kusumaningtyas, R. F. (2019). Eksistensi Pendaftaran Rahasia Dagang dan Implementasi Perlindungannya (Studi di Kanwil Kemenkumham Jawa Tengah). *Law and Justice*, *3*(2), 73–81.

Timbuleng, R. (2019). Perlindungan Hukum Terhadap Hak Pelaku Usaha Di Bidang Rahasia Dagang Berdasarkan Undang-undang Nomor 30 Tahun 2000. *Lex Privatum*, *7*(6).

Yanuarsi, S. (2019). Perlindungan Hukum Terhadap Pemilik Rahasia Dagang Yang Bersifat Komersil. *Jurnal Fakultas Hukum Universitas Palembang*, *17*.

Statutory Regulations

Undang-undang nomor 30 tahun 1999 pasal 1 angka 1

Undang-Undang Nomor 30 Tahun 200 tentang Rahasia Dagang Pasal 1 angka 1

Undang-Undang Nomor 30 Tahun 200 tentang Rahasia Dagang Pasal 3

Undang-Undang No. 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa