

THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN CONSUMER DISPUTE SETTLEMENT

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ABSTRACT

This objectives of this study are: (1) to identify the factors that cause a consumer to use ADR in settling consumer dispute; (2) to affirm that the use of ADR is a legal culture in the society; and (3) to know if there are changes in attitude and behavior from the company. This study is an empirical research with qualitative descriptive method. The data used are primary data and secondary data. The data were collected from field research and library research. After that, the data were analyzed qualitatively with interactive model. The results of the study show: First, there are many factors that lead the consumer to use ADR, which are: (a) consumer dispute settlement through a mediator is cheaper than litigation; (b) Both consumer and company hope to settle the dispute amicably; (c) settling the problems through the help of mediator is easier because the mediator is considered as a party that can bridge the two sides; (d) NGOs are more willing to fight for the fate of the consumer. Second, since the number of consumer using non-litigation facility to settle the dispute is large, it can be concluded that their action is a legal culture in the society. Third, in the midst of a mediation process, the company will usually show better attitude, and promise not to make the same mistakes that can dissatisfy the consumers. However in reality, the company often break the promises and rules they make after a few times later. This study is expected to help the consumers to get an understanding of ways in consumer dispute settlement using non-litigation facility. Moreover, the writer wants to remind the company to have better attitude and behavior.

Keywords: ADR, legal culture, change of attitude and behavior

A. Background

The development of technology is progressively driving the increase of production volume. The products and services that are used to meet the human needs are getting more sophisticated in each day. So, it could create the gap in the accuracy of information and consumer responsiveness which ultimately puts the consumer in a weak position.¹ Indonesian people are the most disadvantaged consumers.²

In a business activity, there is a relationship that requires each other. This relationship occurs because a producer and a consumer want each other, and have a high level of dependence.³ The emergence of the right to get compensation is one of the additional rights for consumer that has been universally recognized, and the affirmation of this right is as a consumer right.⁴

A low bargaining position indicates that the consumer has a lack of law communication in settling weak dispute. The analysis of consumer does not have enough information. The imbalance of position will lead to dispute, which can be settled either through court (litigation), or outside the court (non-litigation), or Alternative Dispute Resolution (ADR). The business dispute need to be avoided, even though they arise due to misunderstandings, legislative violations, broken promises, opposing interests, and / or losses to one party.⁵

ADR is an umbrella that includes negotiation, mediation and arbitration. According to the Consumer Protection Law (UUPK), the use of ADR is applied by the Consumer Dispute Settlement Board (BPSK), or the Non-Government Organizations on Consumer Protection (LPKSM).

The Consumer Development and Protection Institution (LP2K) in Semarang is very concerned about consumer dispute settlements. Lot of consumers are coming for this institution to look for help. For example, a consumer of Telephone Service Company, and Tap Water Company is suing PT Telkom or the Regional Tap Water Company (PDAM).

¹Jufrina Frizal (in Yusuf Shofie (ed)), *Percakapan tentang Perlindungan Konsumen dan Kurikulum Fakultas Hukum*, YLKI – USAID, Jakarta, 1998, pg. 2.

²A. Sonny Keraf, *Etika Bisnis Tuntutan dan Relevansinya*, Kanisius, Yogyakarta, 1998, pg. 181.

³Sri Redjeki Hartono, *Kapita Selekta Hukum Ekonomi*, CV Mandar Maju, Bandung, 2000, pg. 80.

⁴Munir Fuady, *Hukum Bisnis dalam Teori dan Praktek (3rd Edition)*, PT Citra Aditya Bakti, Bandung, 1996, pg. 389.

⁵Sanusi Bintang and Dahlan, *Pokok-pokok Hukum Ekonomi dan Bisnis*, PT Citra Aditya Bakti, Bandung, 2000, pg.

The data taken from field research shows that there are 17 categories of commodity types of consumer complaints to company. Those categories can be accepted by LP2K Semarang. The complaint section of LP2K, records that in 2010 there were 74 cases of consumer complaints. This study will focus on consumer complaints against two government companies (BUMN) which are, telephone service company (PT Telkom) and water tap company (PDAM). There were 11 cases of consumer complaints to PT Telkom (16%) and 12 cases to PDAM (18%) of all cases submitted to LP2K.

The choice of ADR can be said as a legal culture of consumer because ADR is often used and chosen by many consumers.

B. Literature Review

Lawrence Friedman examines legal culture in various perspectives. He distinguished internal legal culture from the external, besides traditional and modern legal culture. The existence of various legal systems or cultures in a community is called legal pluralism. There are always three components in every legal system, which are structural, substantial, and cultural components.⁶

A consumer is a person who uses products.⁷ The relationship between consumer and company will lead to rights and obligations. The interests of consumers will be voiced as one of the main stakeholders to the company regarding consumer rights. Conversely, a consumer must be critical, and need to equip himself with the knowledge of products, and build solidarity between other consumers.⁸ A businessman is a person or a business entity established, domiciled, or has a lot activities within the jurisdiction of the Republic of Indonesia. Either alone or jointly through an agreement to conduct business activities in various economic fields.

There are several advantages of ADR: a) The nature of volunteerism in the process; b) Quick procedure; c) Non-judicial decision; d) There is a control by the manager about the needs of the organization; e) Confidential procedure; f) Greater flexibility in designing problem solving requirements; g) Save time and costs; h) Keep the protection and maintenance of business relationship; i) Very high possibility of implementing an agreement; j) Higher level of control; k) A better deal than just a compromise; l) The decision lasts all the time.⁹

An alternative dispute settlement must meet the following principles: a) Time efficient and cost effective; b) Can be accessed by the parties; c) Protecting the rights of the parties; d) Decisions are fair and honest; e) The institute or the person who settle the dispute must be trusted; f) Decisions are final and binding; g) The decisions are easy to execute; h) Decisions must be in accordance with the sense of justice.¹⁰

The essences of ADR are credible, effective and efficient. Those things are very important to gain public trust. The use of ADR as an alternative to resolve disputes has spread in various countries, such as America, Australia, Britain, Hong Kong, Singapore, Japan, Korea, Sri Lanka, the Philippines, Arab countries to China.¹¹

The public trust in the use of ADR to resolve disputes will bring several benefits, which are: a) Reducing the delay of settlement due to the high accumulation of cases in court; b) Increasing the society's involvement in the dispute settlement process; c) Speeding up the process of justice; d) Providing a great opportunity to gain a final decision that is acceptable to all parties; e) The processes of settlement are faster and cheaper; f) Confidential / More private; g) Higher level of possibility to implement the decision; and h) Reducing the possibility of cheating in the judiciary.¹²

C. Research Methodology

This study is descriptive analytical, conducted in Semarang, and using primary and secondary data types. Furthermore, the source of primary data comes from the first source (informants), while the secondary data source comes from primary legal materials, secondary legal materials, and tertiary legal materials. The informants in this study are consumers, company, as well as LPKSM activities engaged in consumer protection efforts (LP2K).

⁶Soerjono Soekanto & Otje Salman, *Disiplin Hukum dan Disiplin Nasional*, Radja Grafindo Persada, Jakarta, 1996, pg. 166; also Ronny Hanitjo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1988, pg. 10-11; or Abdurrahman, *Tebaran Pikiran tentang Studi Hukum dan Masyarakat*, PT Media Sarana Press, Jakarta, 1985, pg. 86.

⁷Az Nasution, *Hukum Perlindungan Konsumen (Suatu Pengantar)*, Daya Widya, Jakarta, 1999, pg. 3.

⁸Zumrotin, *Problematika Perlindungan Konsumen di Indonesia, Sekarang dan Yang Akan Datang*, FH UNS, Surakarta, 1997, pg. 3.

⁹Christopher W Moore, *Kebaikan-kebaikan Mekanisme Alternatif Penyelesaian Sengketa (ADR/MAPS)*, CDR Associates, 1995, pg. 33-36.

¹⁰Leo Kanowitz, *Alternative Dispute Resolution*, West Publishing Co St. Paul – Minnesota, USA, 1985. Also, Munir Fuady, *Arbitrase Nasional, Alternatif Penyelesaian Sengketa Bisnis*, PT Citra Aditya Bakti, Bandung, 2000, pg. 33-34.

¹¹Adi Sulistiyono, *Dissertation : Mengembangkan Paradigma Penyelesaian Sengketa Non-Litigasi dalam Rangka Pendayagunaan Alternatif Penyelesaian Sengketa Bisnis/Hak Kekayaan Intelektual*, PDIH Undip, Semarang, 2002, pg. xiii-xiv.

¹²*Ibid*

The stages of data collection are: First, collect the initial data during pre-survey. Second, collect the data through interview.¹³ Third, observation or direct observation in the field. Fourth, literature study. Last, data processing and analysis use a qualitative approach with interactive models.¹⁴

D. Results and Discussion

The data obtained from the field illustrates that the number of consumers' complaints to the companies are varied. Most of the complaints are addressed to the state companies, which are PT Telkom (telephone complaints), and Tap Water Company (PDAM). These two companies have the highest number of complaints. From the 17 types of complaints, the consumers have used 13 types.

If the number of cases is presented in percentage, it will appear as follows: PT Telkom 11 cases (16%), banking 4 cases (6%), electricity 8 cases (11%), water filter 1 case (1%), government project 3 cases (4%), drink 3 cases (4%), shopping coupon 3 cases (4%), gas stations 5 cases (7%), property 4 cases (6%), cosmetic 1 case (1%), insurance 7 cases (10%), tap water 12 cases (18%), and leasing 9 cases (13%).

The following are the answers from the research problems:

1. Reasons for using Alternative Dispute Resolution by consumers

- a. Low cost. The consumers assume that litigation through court is quite expensive. Meanwhile, the mediators could provide the cheaper one.¹⁵ The philosophical aspect of using ADR is the ability to settle the dispute by looking at future prospects. The balance and harmonization of relationship is the main objective of mediation. Since the origin of mediation is from eastern culture, which tends to avoid conflict.
- b. The nature of settlement: win-win solution. The company also want to settle the problems in amicable settlement. The consumers and the company need to sit together, and examine the problems which are the basic of the dispute.¹⁶ The analysis is that by solving the problems together, speak amicably without judging to each other, both parties want to achieve the result of win-win solution. Through a good mediation, one party will look another party as an opponent yet a friend at the same time. So, it will create the legal culture in society in solving the other problems.

The writer views that the approach of this research is a socio legal approach with naturalistic paradigm. This paradigm stems from the phenomenological view of Max Weber. He understands the human behavior in terms of the way of thinking and acting of the people. The naturalistic paradigm and sociological approach show that human factor determines how the law works.

- c. More practical. From the consumer's point of view, dispute settlement through ADR does not require long process. So, the settlement through mediator is more practical, or easier, because LP2K is considered capable to help both parties. In other words, the consumers will give all the dispute problems to LP2K, and let LP2K settle the problems with the company.¹⁷ The analysis is related to the various aspects, which are time, economic, moral, and law. From the aspect of time, a decision is expected to be quickly obtained. From the economic aspect, mediation will not spend much cost. From the moral and law aspects, ADR has the possibility of mutual trust between the parties, so that revenge and hostility can be avoided.
- d. The consumers have more support from ADR. The consumers think that settling the dispute using ADR (through LP2K) is reliable, because this institution is tougher to fight for the fate of the consumers.¹⁸ The main analysis is that the most important right from a human is justice, because all consumers have a low bargaining position when compared to company. Particularly in a standard agreement, the position of the company is so strong because it can control everything. For example in determining the contents of the agreement, it is always determined unilaterally.

In the theory of justice, it is recognized that justice concerns a person's perception of the treatment he receives from others. A person will say that he is treated fairly if the treatment brings benefit for him. On the contrary, a person will say that he is treated unfairly if the treatment he receives is perceived as detrimental to him.¹⁹

2. Legal Culture in the perspective of using ADR

The result of research²⁰ conducted by the Faculty of Law in the University of Indonesia showed that most respondents and interviewees had suffered from health problems and material losses due to consuming a product. The problems and losses came due to defective product, bad quality of product, quantity of product that is not match with the size, scale or dose. Furthermore, the problems also came from the deceptive advertisements, the absence of after-sales warranty, credit card facility, and became a victim of agreements that are determined

¹³ Lexy J Moleong, *Metodologi Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung, 2000, pg. 135.

¹⁴ HB Sutopo, *Metodologi Penelitian Kualitatif Bagian II*, UNS Press, Surakarta, 1990, pg. 11. Also, Mathew B Miles & Michael A. Huberman, *Analisis Data Kualitatif*, UI Press, Jakarta, 1992, pg. 20.

¹⁵ Interview with Mr. Ngatmono, LP2K, 15th August 2013, 10.20 a.m.

¹⁶ Interview with Mr. Ngatmono, LP2K, 15th Auguts 2013, 10.20 a.m.

¹⁷ Interview with Mr. Ngatmono and Complaint Section of LP2K, 15th August 2013, 10.20 a.m.

¹⁸ Interview with Mr. Ngatmono and Complaint Section of LP2K, 15th August 2013, 10.20 a.m.

¹⁹ Sondang P. Siagian, *Teori Motivasi dan Aplikasinya*, Bina Aksara, Jakarta, 1989, pg. 129, 175.

²⁰ In Yusuf Shofie, *Percakapan...*, *op. cit.*, pg. 44-45.

unilaterally by product sellers. However, none of the respondent or interviewee who suffered from health problems or material losses resolved the problem through court. This finding shows that the people seemed still reluctant to bring the dispute through litigation, and it becomes the legal culture in our society.

The conscious use of law is to change and improve the situation from worse to better state. It is a modern conception in seeing the law and its functions. Therefore, the way the law works to achieve its goal will be related to the social basis in which the law works. Now, we see the importance of social attitudes, views and values in determining the work of the law. Those things are usually referred to legal culture.²¹ In relation with this study, there is a strong connection with the third legal culture component of Friedmann, which is cultural component. This component is closely related and describes consumers' choice about the use of ADR as an effort to settle the disputes with company.

3. The change of attitude and behavior of company after consumer dispute settlement

The company hope that the dispute can be settled in an amicable way, not publicly exposed, and reluctant to change their mind if the consumer is not responsive. After the dispute is settled, the company promise not to repeat the same mistake for the second time. The change in attitude and behavior of company is strongly influenced by the attitude and behavior of sympathetic consumer in settling the dispute.

Related to the behavior of company, the paradigm of social behavior will appear because the realistic objects are the visible human behavior and the possibility of repetition. In settling the consumer dispute, it is possible for the company to cause the consumer's loss for the second time. Furthermore, behavioral sociology theory focuses on the consequence that comes up, which explains the attitude of company will change through the consequences that follow. Therefore, the concern of this theory is that there are differences in attitude or behavior of company before and after a lawsuit from consumers.

It can be known that whether the company will repeat their actions or not. The result shows in the case of tap water company in Semarang. From that case the company repeatedly break their promises. After a lawsuit from the consumer, the company promises not to repeat their mistakes again. However, the promise turns to be broken later because the problems in tap water are still there. The company often violate consumers' right repeatedly. As a result, the change in attitude of the company seems to be less satisfying, but if we compare to the entire population in Semarang, it can be understood. However, from the observation during data collection in the field, the company stated that they were willing not to commit another consumers' right violation. This is actually the true meaning of the desired consumer protection.

Robert K. Merton's structural functionalism theory tries to answer the research results above. This theory emphasizes the orderliness, and ignores the conflicts and changes in society. Society is a social system that consists of elements that are interrelated and united in balance. The basic assumption is that each structure in the social system is functioned towards the other. The followers of this theory tend to look only at the contribution of one system to another. If there is a conflict, the followers of structural functionalism theory focus their attention on the problem solving, so that the society will remain in balance.²²

According to this theory, if there is a conflict between company and consumers, it will be resolved through various efforts to avoid continuous conflicts. The steps begin with deliberation to reach the same goal / peace (as an amicable settlement). If it does not reach the same goal, the conflict will turn into a legal dispute.²³

E. Conclusions

1. The settlement of dispute using ADR is very beneficial for the consumers, because the cheaper cost, shorter time of the process, and more practical than through the court.
2. The higher usage of ADR by the consumers in settling the dispute with the company shows that it has become a legal culture in dispute settlement.
3. The company promises not to repeat their mistakes, and will not cause any loss to the consumer in the future. However, in fact, the company often violate their promises. So, the change of positive attitude from the company is not working optimally

F. Suggestions

1. The consumers need to equip themselves with various kinds of knowledge about consumer protection so that they have the same rights and obligations with the company.
2. The company is expected to put more attention on consumer protection, in order to meet consumers' interests.
3. The consumers should be polite and kind so that the company will not show its arrogance. Therefore, the settlement process bridged by the mediator can run normally.

²¹Esmi Warassih P, *Metodologi Penelitian Ilmu Sosial (dengan Orientasi Penelitian Bidang Hukum) – Pelatihan Metodologi Ilmu Sosial*, Law Faculty of Universitas Diponegoro, Semarang, 1999, pg. 5.

²²George Ritzer, *Sosiologi Ilmu Pengetahuan Berparadigma Ganda*, Rajawali Pers, Jakarta, 2004, pg. 21-22.

²³M. Ali Mansyur, *Penegakan Hukum tentang Tanggung Gugat Produsen dalam Perwujudan Perlindungan Konsumen*, Genta Press, Yogyakarta, 2007, pg. 24-25.

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