

General Introduction

The purpose of this study is to describe the dispute resolution process in Indonesia. For such purpose, the study will be divided into two parts. The first part will deal broadly on dispute resolution mechanism available in Indonesia. This part will be further divided into two chapters. The first chapter will focus on the court mechanism, meanwhile the second chapter will discuss on the alternative dispute resolution (hereinafter abbreviated as “ADR”) mechanism. The second part of the study will look closely on dispute resolution mechanism in specific areas, which are consumer, labor and environmental dispute mechanism. These three specific areas will be dealt with in three different chapters. The last chapter of this study will form the summary of the study.

Prior to embarking on the discussion of dispute resolution mechanism in Indonesia there are two important issues that have to be made clear from the beginning. The first issue concerns with the type of dispute dealt with in this study as this will affect the scope of the study and avoid unnecessary misunderstanding. The second issue has to do with how this study is conducted.

Scope of the Study

There are many types of dispute, depending on the kind of legal personality involved in the dispute. Legal personality, depending on the area of law being considered can be various. Under private law, natural person and legal entity are the two legal personalities recognized by doctrine and national legislation. In the criminal law, the legal personality consists of the State representing the people and the culprit who is charge with criminal offence. In the administrative or constitutional law, the legal personality is government institutions and the people. In the international law, the legal personality can range from States, International Organizations, etc.

A good understanding of these different legal personalities is important since it has to do with how and where legal personalities seek remedy if dispute arise. If dispute occurs between legal personalities under private law, the dispute resolution and

institution where parties seek for settlement will be different from the dispute between legal personalities under international law.

There are five types of dispute based on the above framework. The first type of dispute is dispute between legal personalities under private law, namely, natural person and legal entity. This type of dispute is commonly referred to as private dispute. The dispute is characterized by the absence of public authorities. The second type of dispute is dispute among legal personalities under criminal law. This type of dispute can be referred to as public initiated dispute or popularly known as criminal case. The dispute concerns with an individual brought to trial at the initiative of the State. The individual is prosecuted and, if proven guilty, will be punished.

The third type of dispute is dispute among legal personalities under constitutional law. This kind of dispute involves dispute among institutions of State. The fourth type of dispute is dispute between State as defendant and individual as plaintiff. Some scholars refer to this type of dispute as public defendant dispute. The last type of dispute is dispute among legal personalities under international law. This is referred to as international dispute to which the resolution, mechanism and institutions are completely different from other types of dispute.

Based on the above four types of dispute, the present study will focus on private dispute. Hence, the study will consider only private dispute resolution process.

Conduct of the Study

This study is conducted based on library and empirical research. The library research is employed mainly to depict the mechanism and institutions of dispute resolution as prescribed by the law.

The empirical research is used to portray the complete picture of dispute resolution mechanism and institutions in Indonesia. Any study on Indonesian legal system that deals exclusively on the written law will doom to fail in providing good understanding. It has to be made aware that in Indonesia, like most countries adopting western legal system, what is written under the law does not necessarily reflect the real world. Many in Indonesia consider the written law as the 'theory' not the 'practice' or the law in books rather than the law in actions.

Considering the above fact, the study will attempt to cover both aspects. However, it should be noted that the empirical research conducted in this study does not based on method common in social science research. The empirical research is based on what the author has experienced and observed while practicing law and also what is heard from the legal practitioners (judges, lawyers and the like) and those laymen who encounter with mechanism of dispute resolution.