

INTERNATIONAL DISPUTE SETTLEMENT

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INTERNATIONAL TRADE DISPUTE SETTLEMENT THROUGH DISPUTE SETTLEMENT BODY (DSB) AND INTERNATIONAL ARBITRATION BODY

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Abstract: The current trend in international trade is growing rapidly, along with these developments, the problems occurring in trade transactions are also increasing on the other hand the disputes arising in international trade are also increasing, under such conditions it is necessary to have greater legal role to overcome international trade issues. Several international trade dispute settlement institutions have been established but have not been well known and maximized in resolving international trade disputes whereas dispute settlement institutions play a huge role in the effort to create economic stability and world trade. Dispute resolution agencies that need special attention are Dispute Settlement Body and International Arbitration. In this article author using the goodfaith theory as the important principle in the dispute of international business. The author would like to disclose some international trade dispute settlement which becomes the choice for disputing countries so that the writer can formulate the following problem of Settlement of international trade disputes through the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) and international trade disputes through international arbitration bodies.

Keywords: international trade dispute, dispute settlement, Arbitration

Introduction

Today's international trade is becoming an issue that is very interesting in the world, especially for developing countries including Indonesia, global trade that globalizes the world increasingly is not spaced in trade and services. Trade goods and services between countries aims to meet each country's needs to improve the welfare for both countries, but in such trade relations there are many problems that occur.

The Government and the People's Legislative Assembly have enacted Law No. 7 of 2014 on Trade, in this law, the meaning of trade is the arrangement of activities related to transactions of goods and / or services within the country and over the territory of the State with the purpose of transferring the right to the goods and / or services to obtain remuneration or compensation, whereas foreign trade is a trade that includes export activities and / or imports of goods and / or trade in services that extend beyond state territory. Furthermore, international trade cooperation is regulated in Articles 82 to 87 of this law. The important point in Article 82 is that the objective to implement international trade is to improve market access, protect, secure national interests (Article 82 Paragraph 1), such international cooperation can be made through international trade agreements (Article 82 Paragraph 2).

Long before the promulgation of Law No. 7 of 2014 on Trade, the interstate trade agreement was undertaken by Indonesia; in particular the cooperation was formalized and institutionalized in 1947 marked by the

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43 signing of general agreement on tariff and trade (General Agreement Tariff and Trade) as the forerunner to the establishment of the international trade organization (World Trade Organization).

On 23 October 1947, 23 countries which have prepared materials on the charter of international trade organizations signed a general agreement on tariff and trade (GATT). In further development on 15 April 1994 the trade ministers in Marrakesh Morocco approved the formation of world trade organization (WTO). The purpose of the establishment as in the preamble of its foundation that trade relations and economic activities of Member States should be implemented with a view to improve living standards, ensure full employment, increase real income, expand production and trade in goods and services, with optimal use of world resources in accordance with sustainable objective development. It also seeks to protect the environment and improve its ways of execution in ways appropriate to the needs of individual States at different levels of economic development. In pursuit of these objectives there is recognition of a need for positive measures to ensure that developing countries, especially the most backward, get a share of the growth of international trade in accordance with their economic development needs (Hatta:2006:88).

The purpose of establishing the WTO is to improve living standards, create jobs, increase incomes, expand production and trade in goods and services, and seek environmental protection. One important goal is to expand the production and trade in goods and services. Nowadays, these needs cannot be fulfilled by a single country only because those needs concern the needs of many people such as food, oil, transportation and so forth. It is, therefore, important that international relations not as an option but it is a need for all countries to establish international cooperation.

This will certainly bring positive impacts for developing countries to improve the economic status of their communities by increasing the volume of exports of agricultural materials, home industries and so on as a reciprocity to meet the needs of life that are not from natural resources. Likewise with developed countries this becomes an important moment to create an atmosphere of mutual need between developing countries and developed countries thus creating a conducive and mutually beneficial business climate.

Trade is an important factor to improve the economic progress, as well as to improve the economy of a country then trade between countries is one effort to achieve that goal. Inter-country trade becomes a positive alternative to achieve prosperity of a country because before the outbreak of the second world war, to achieve prosperity a country expands to other countries that would not only harm the expanded country but also the expanding country because they suffered from casualties and experienced material loss. With the agreement contained in the General Agreement of Tariff and Trade (GATT) and the formation of World Trade Organization (WTO), the trade between countries is not only limited between two countries but the trade is global and covers many countries, for the countries which have signed the agreement and ratified the GATT agreement including Indonesia through Law Number 7 of 1994.

Establishing trade relations between countries can be done by making an international agreement as one of the natural rights that is the principle of freedom to enter into an international agreement but with the exception

that the right is subject to the limits of the absolute jurisdiction of a State. Transaction activities in international economic relations are divided into 5 (five) main categories of international transactions, namely:

1. The movement of goods across national borders (international movement of goods) or commonly called international trade in the field of goods.
2. The movement of services across borders, or so-called trade services (invisible trade).
3. Movement of people who cross national borders (international movement of persons), such as freedom of work for persons or legal entities in other countries.
4. International payments in such economic transactions usually involve the exchange of foreign currency (foreign exchange transactions) (Huala Adolf: 2005).

The first category is the existence of trade in goods which passes the boundaries of the territory of a country manifested in the form of export and import activities of goods, the second is the trade of services which passes the boundaries of a country's territory manifested in forms such as aviation services and employment services, the third is the movement of people who cross the boundaries of a country such as freedom of working in another country, the freedom to continue education in other countries and the fourth is the exchange of currency in international transactions.

International trade transactions are transactions involving the interests of more than one legal system of different countries, there must be problems between the state in international trade transactions, corporation or personal in carrying out the trade business, it is important to have an effort recognized by countries in the world so that a problem can be resolved properly. There are some fundamental problems that occur in international trade, according to Soedjono Dirdjosisworo the problem arises because the law is not uniform (Dirdjosisworo, 2006)

1. The power of the law of negotiation

The legal power of negotiations may vary from country to country, some suggest that contract negotiations have not been tied up before the contract is signed and that negotiations have been deemed to be binding on the basis of a so-called preliminary contract, in general a country that adopts the Common Law System binding. If an agreement exists between the two countries with the difference will certainly cause problems.

2. Acceptance that is not same as the offer:

It is often the case that the acceptance of a bid by one party in international sale is not exactly the same as the offer made by both parties

3. Cancellation of an offer;

Often, a juridical issue in the case of a bid cancellation is whether an offer, such as a seller's offer of sale of goods, may be paid by the offeror, a country which assumes that an offer can always be canceled before it becomes a contract (before any agreement), because the offer is not a one-sided action which can also be unilaterally canceled as well. There is also a state which has a legal provision stating that an offer, even if it is a unilateral act, but if until a reasonable time, the offer cannot be revoked unless canceled by the two parties. This means that if there is a bid that is not received must be immediately notified to the concerned

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4. Consideration in buying and selling;

4 Consideration in a contract is an action performed or not performed by a party in return for the performance performed by another party under a contract. According to the Common Law System, consideration is a valid requirement of a contract, with some exceptions, while continental

4 European Countries does not apply the doctrine of consideration.

5. The requirement of a written contract;

With the advancement of communication technology, traders are accelerating and increasingly more varied in business communications with each other. Faximiles are becoming more commonly used. There are even orders made only by long distance calls. The problem is whether a contract should be written and signed by both parties in order to be valid or not to be written in writing, in this case also including on-line order. Some countries do not imply a contract to be written and signed, only some types of contracts that must be made in writing. Law systems of Common Law recognize the existence of a doctrine called the Statute of Fraud. In this case an important contract, which is generally seen as the value of the transaction, must be made in writing.

6. Time as an agreement;

Time which is deemed by law, the occurrence of an agreement also differs from the law in one country with another. Some States suppose that if acceptance has taken place hence the agreement has taken place (when the recipient of the offer reasonably sends its acceptance to the party making the offer). But there is also a State which considers acceptance occurs upon receipt accredited by the party conducting the offer. Then there is another country that embraces the subjective principle, where acceptance is assumed to exist when the party who did offer know the actual knowledge of the acceptance.

The existence of sophisticated technological developments make businessmen want to have a fast, simple, and effective business trade that can be executed properly. Therefore, there is a need for uniformity in international business contracts. Munir Fuadi in his book "Introduction to Business Law" states:

To avoid conflicts in international trade the following efforts may be made:

- a. by making international conventions
- b. by using international civil law
- c. by using the arrangements of the parties in the contract (Fuadi, 2002)

International conventions are essential for all countries to serve as a foundation for inter-state business relationships because States that ratify international conventions shall be subject to existing agreements in the Convention include those pertaining to international business dispute resolution eg the New York Convention of 1958 on Recognition and the Implementation of the International Arbitration Award. The settlement of disputes through international civil law is principally peaceful in various ways such as negotiation, fact-finding, good services, mediation, conciliation, arbitration and international courts. Dispute settlement arrangements may also be determined by the parties set forth in the contracts in which the parties have agreed in case of dispute to be settled through the agreed agency.

Settlement through the arrangements of the parties mentioned in the contract is important because in the contract there will be agreement to handle legal issues related to which country will be selected or what way of settlement should be taken, the agreement becomes law for both parties. If the contract is agreed to be settled using the legal system of a country then the settlement will be made under the law of that country, there is also agreement stipulating that the settlement will go through the international arbitration body.

Based on the above explanation, the author would like to disclose some international trade dispute settlement which becomes the choice for disputing countries so that the writer can formulate the following problem:

1. Settlement of international trade disputes through the Dispute Settlement Body (DSB) of the World Trade Organization (WTO)
2. Settlement of international trade disputes through international arbitration bodies

According UNIDROIT (The International Institute for Unification of Private Law): "Each party must act in accordance with goodfaith and fair dealing in international trade". To settlement on trade conflict must build on goodfaith theory as the very important principle in civil law specially in trade conflict case, without goodfaith the trade conflict case can't finish very well. Good faith mean honesty in fact and the observance of reasonable commercial standards of fair dealing (R.A RetnoMurni: 2018:575)

Result and Discussion

Settlement of International Trade Disputes Through the Dispute Settlement Body (DSB) of the World Trade Organization (WTO)

The dispute resolution system through the LPS-WTO is governed by the DSU's Understanding on Rule and Procedures governing the settlement of dispute. DSU is the implementation and interpretation of the GATT 1947 provisions and the implementing agency is the Dispute Settlement Body (DSB). The Institute is a part of The General Council or the WTO General Council.

At article 3 DSU, the main duties of Dispute Settlement Body (DSB) are as follows:

1. Clarify the provisions contained in the WTO agreement by interpreting according to customary international public law
2. The outcome of dispute resolution shall not increase or decrease the rights and obligations set out in the WTO provisions
3. Ensure a positive and accepted solution by the parties and consistent with the substance of the agreement in the WTO
4. Ensure withdrawal of acts of an offender State that is inconsistent with the terms of the agreement already covered in the agreement.

The procedural law in dispute settlement in Dispute Settlement Body (DSB) is through a number of stages of Consultation, Panel Formation, Appeals Process and Implementation Supervision.

1. Consultation

The first step of the WTO trade dispute settlement procedure is Consultation, the consultation is a request from a member country alleged to violate the WTO provisions that impede the profits of his country, the

violating country ¹³ must respond to the request within 10 days and should already be implemented within 30 days of the request for consultation filed (Article 4.3 DSU and 4.7 DSU).

The purposes of the consultation are firstly provide an initial understanding of the parties to the factual conditions and legal grounds that will be submitted in deeper and more accurate. Secondly, in order not to continue the dispute at a later stage. Consultation determines whether the dispute will be completed at the consultation stage or not. If not, the dispute will be proceed by using panel formation. ³

The manner of dispute settlement between countries is set out in the WTO (World Trade Organization) in articles 22 and 23. Article 22 requires the parties in dispute to resolve the ³⁸ dispute through bilateral consultations on all matters of the agreement (with respect to any matter affecting the operation of this agreement). If the bilateral consultation cannot be resolved ²³ on multilateral consultation may be made at the request of one of the parties (in respect of any matter for which it has not been found). Article 23 regulates the Nullification and Impairment (disappearance or destruction). ⁶ de Maman:2014:59):

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this agreement is being nullified or impaired or that the attainment of any objective of the agreement is being impeded as the result of
 - a. the failure of another contracting party to carry out its obligations under this agreement; or
 - b. the application by another contracting party of any measure, whether or not conflicts with the provisions of this agreement; or
 - c. the existence of any situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned.
- ² 2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (c) or this article, the matter may be referred to the Contracting Party. the contracting party shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The Contracting Party may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate intergovernmental organization in case where they consider such consultation necessary. If the Contracting Party consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary [Director-General] to the Contracting

Parties of its intention to withdraw from this agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

Based on the above provisions there are two types of violations of law in three circumstances: first the disappearance or destruction of any profit derived under the GATT agreement, second the disturbance of the acquisition of the purpose of holding GATT. Whereas such circumstances are the first non-performance of a party's obligations under the GATT agreement, the second is the action of the other party whether it is a violation or that is not against the GATT agreement, and the third is the existence of other circumstances or circumstances. Good office, mediation, and conciliation are voluntary dispute resolution procedure with the agreement of the parties to the dispute, it can be started, executed and terminated at any time by the principle of win-win solution. If within 60 days of the consultation agreement cannot be reached, Applicant State shall permit the application for the establishment of a panel (Article 5.4):

When good office, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultation, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute

2. Panel formation¹³

Based on the General Agreement on Trade and Traffic (GATT) dispute resolution to demonstrate a procedure for adjudicating inter-state law disputes where the dispute is submitted to a judiciary called "Panel". The panel listens to the legal arguments of both parties, issuing its decision in writing. However, this method is very dependent on the will of the disputing countries, the final decision of the Panel will be endorsed by consensus of its member states, and the consensus is made through the Contracting parties hearing. The decision of this supreme body shall determine whether a decision of the Panel shall be binding on both parties or not.

Under article 6, points 1 and 2 it is stipulated that if the requesting State proposes the formation of panels then a panel shall be established, a panel shall be formed approximately 90 days after the request for consultation has been submitted, the panel shall be filled by qualified experts from government or non-government as governed in Article 8 point 1. Panel shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a member.

The contents of the panel's recommendations generally indicate that acts contrary to WTO rules should be adjusted; the panel may advise how to implement the recommendations. The final report should be submitted to the

parties within six months after the draft²¹ of the panel and must be circulated to all WTO members at the latest, no later than nine months after the formation of the panel, although in practice it takes up to 1 year. If any party objecting to the report panel may provide a written reason to explain his objection no later than 10 days before the DSB meeting is held for appeal.

3. The WTO Appellate Body

Disputes that cannot be resolved through the panel will²² then be resolved through the WTO appeals body, WTO member appeals are experts in the field of international trade law having no affiliation with any particular government, the appeal member is 7 persons formed DSB who must check the appeal of panel, each case is handled by the three members of the appeals body, before finalizing the verdict, the three appeals members must exchange⁹ ideas with the other four members of the appeal (Article 7 number 1). A standing appellate Body shall be established by the DSB. The appellate body shall hear appeals from panel cases. It shall be composed of seven person, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

The authority of the Appellate body (AB) is to enforce, alter¹⁶ reverse the invention of the law and the conclusions made by the panel, the AB report shall be adopted by the DSB and accepted unconditionally by the parties to the dispute, unless the DSB with consensus refuses to adopt the AB report within 30 days to be circulated to members and members will provide insight into AB reports.

a. Recommendation of Panels and Appellate Body

Neither the panel nor⁶⁰ Appellate Body conclude that a provision is contrary to WTO or Covered Agreement, the panel and AB must recommend the disputing States to place the rule in line with the agreement, and suggest³⁴ ways to the disputing country to implement its recommendations. The findings and recommendations of both the panel and the AB shall not increase or decrease the rights and obligations set out in the Covered Agreement.

b. Surveillance³ of implementation

The final step in the dispute settlement through DSB is the supervision of the implementation of the recommendations made by the panel or AB, aiming to supervise the implementation of panel or AB recommendations performed or not by the parties.

Settlement of International Trade Disputes through International Arbitration Bodies⁵⁸

Arbitration is a form of non-court dispute resolution as an alternative dispute resolution that offers ease in the process of completion³⁵ as an answer to the conventional disillusionment through the public court. Article 4 paragraph (2) of Law Number 48 Year 2009 Concerning the authority of the Judiciary states that: The courts are assisting justice seekers and working to overcome obstacles and obstacles to the achievement of simple, speedy and networked courts. But the mandate of Law Number 48 The year 2009 cannot be executed simply, fast and low cost even otherwise the process is not as simple as desired, cannot be implemented quickly and costly.

Criticism of the dispute resolution process through the public court according to Sujud Margono can be summarized from his book ADR and Arbitration, the institutionalization process and legal aspects as listed below:

1. Dispute settlement is slow
 - a. The settlement of cases through litigation process is generally slow or waste of time
 - b. The above (a) result in the examination process is very formal and technical
 - c. The flow of the case gets so heavier that the judiciary is overloaded
2. The cost of the case is expensive
3. The judiciary is unresponsive
 - 1) Courts are not responsive to defend and protect the public interest and often ignore public protection and community needs
 - 2) Courts are often considered to be unfair
4. Court ruling does not solve the problem
 - a. One party must win and one party must lose (win-lose)
 - b. the state of winning in litigation never brings peace, but cultivates seeds of revenge and hostility and hatred
 - c. the court verdict is confusing
 - d. court decisions are often uncertain and unpredictable,
5. The ability of judges to be generalist (Sujud Margono:2004:65).

The world of commerce is a world that has a very fast moving along with the level of increasingly complex needs of Indonesia. Indonesia as one part of the world cannot avoid the presence of free markets with various forms of competition so that the taps of cooperation (bilateral and multilaterals) must be done. Therefore, to smooth healthy and free competition trade then some countries have agreed on the birth of multilateral and international agreement.

Multicomplex and multination trade traffic is certainly not always run as smooth as expected because there can be a conflict between business actors, sometimes the dispute cannot be avoided because of the party harmed by other parties, if the dispute is not immediately resolved quickly it will bring negative impact for both parties. Disputes in trade relations will also result in conflicts of interest and the unstabilization of economic life of the community. This is very worrying for business actors, the slow process of justice will affect the stability of the way trade relations, and if the decision to win one party and considered unfair will lead to prolonged conflict. That is why there is a need to resolve a dispute that can be resolved by using procedure which is faster, cheaper and simple and can maintain the interests of both parties. Sujud Margono stated the business world demands a simple, quick, and cost-effective way of dispute resolution and can be put in quick motion. In the sense that the settlement of disputes remains in the path of a formal system and is officially justified by a law commonly called the formal and official law enforcement system(Sujud Margono:2014:16).

One way of settlement that meets these criteria is arbitration, because the process offered by the arbitration is informal both with regard to the election of the arbitration body, the choice of law and procedure is faster and remains in the corridor of the law as arbitration has become one of the international treaties and ratified by the participating countries of the

Convention, while the procedures of implementation shall be in accordance with applicable procedures in the country chosen by the parties. According to Mariam Darus, the advantages of arbitration institutions are:

- a. Guarantee the confidentiality of parties' disputes;
- b. Can avoid delays caused by procedural and administrative matters
- c. The parties may choose arbitrators who believe in having sufficient knowledge, experience and background on issues of disputes, fairness and fairness;
- d. The parties may choose what law shall apply to the settlement of the matter and the process and place of arbitration (Mariam Darus:2003).

The most prominent thing in the way of dispute resolution through the arbitration body is the confidentiality of the dispute that occurs between the two parties because the dispute settlement process is conducted in a closed manner, thus the credibility of both the owner and the company will be maintained so that the case will no longer spread to the company's operations and public confidence in either party will remain intact. In addition, the interests of each party will be maintained well compared with the way of dispute resolution conducted through public courts that often make the working focus of employers disrupted because too busy with the judicial process encountered.

Arbitration is a process whereby two or more parties submit their dispute to one or more persons who are impartial in order to obtain a final and binding decision (GatotSumartono:2006:24), meaning that if there is a dispute between several parties bound to a business agreement the parties submit the matter to a professional person or an arbitration body to resolve the matter to obtain a final decision and a binding. To discuss further about the arbitration, it is necessary to know in advance about the legal basis of arbitration in the rule of law in Indonesia, namely:

1. Article 377 The HIR stipulates that if Indonesians and foreign easterners wish their dispute be decided by the interpreter, the mark shall comply with the court order of the case applicable to the European nation
2. Article 615-651 RV (Regulation of the BergelijkeRechtsvordering) regulating arbitration approval and appointment of arbitrator, advance inspection of arbitration, arbitral award, attempts to arbitration award, piracy of arbitration proceedings.
3. Law Number 30 Year 1999 Concerning Arbitration and Alternative Dispute Resolution (APS)

According to Article 1 Sub-Article 1 of Law Number 30 Year 1999 "the arbitration is a means of settling a civil case outside a public court based on an arbitration agreement made in writing by the parties to the dispute. Arbitration has its own jurisdiction based on the arbitration clause either contained in the written agreement prior to a dispute (Pactum decompromittendo) or a treaty made by the parties after the dispute (Acte compromise) which has a very significant difference by way of dispute resolution through the general court.

Resolving disputes using the arbitration route as one of the alternative of dispute resolution areas of trade has advantages which other the dispute resolution do not have. The advantages are:

- a. Rapid process, because it has no other legal effort as applicable in the existing general judicial system, with such a rapid process the parties are not drained²³ of energy, mind and financial in a case which would result in harm to the parties to the dispute
- b. The parties are given the freedom to choose an agreed arbitrator to²⁵ ensure their independence
- c. The parties may decide the choice of law to resolve the matter, the process and place of arbitration
- d. The examination by the experts, who become arbitrators, is a person who really expert and master the issue disputed so that the quality of the verdict implied can be accounted for
- e. Confidentiality of parties' disputes is guaranteed because the settlement process is conducted in private so that the interests of the parties can be protected²⁷
- f. The award of arbitration shall be final and binding⁵ as set forth in article 35 paragraph (1) of the United Nations International Trade Law: an arbitral award, irrespective of the country in which it was made, shall be recognized⁷ as binding and shall be enforce, as also affirmed in Article 53 of Law Number 30 Year 1999 concerning Arbitration and Alternative Settlement of Disputes (APS) stated that against arbitral award cannot¹⁴ done any resistance or any law effort, and in article 60 stated that: arbitration is final and has a permanent legal force and binds the parties.

According to Witanto in his Law of mediation proceedings: Arbitration is part of "absolute competence" because of its coercive nature. If in the deed of agreement the parties have determined that the settlement of²⁴ the dispute is made through the arbitration proceedings, then the district court is not authorized to examine, if a case which has been declared subject to arbitration proceedings is heard by the court, the proceedings shall be²⁴ null and void. (Witanto:2011:14). Thus a case agreed upon by the parties in the event of a dispute to be resolved through the arbitration means the general judiciary shall not be entitled to examine it and if it remains⁷ on trial the decision is null and void, it has also been affirmed in Law Number 30 Year 1999 stating that: the district court is not authorized to adjudicate the disputes of the parties that have been bound by the arbitration agreement.

¹⁴ The increasing number of cases of business disputes resolved through the arbitration body shows that the role of the arbitration body is crucial in driving business flows and resolving business disputes that benefit the business actor, further the important role of the arbitration body is as follows:

1. The arbitration body is one of the alternative solutions to the dispute so that the businessperson has a choice in the settlement of business disputes and not only depends on how the dispute settlement through the courts
2. The arbitration body may improve the healthy business climate across the State because if a dispute is not resolved by a court which the court has tendency to defend the local businessman

To establish a trade / business relationship between two or more States is not possible without the basis of the fundamental principles prevailing in international business, in order for the business to proceed properly and benefit both parties, the parties must respect these principles,

in making international business transactions the basic principles that are commonly made in international business transactions should be understood.

The basic principles are:

1. Freedom of contract
2. Bid and acceptance
3. Good faith
4. Terms used
5. Transition risk
6. Compensation (penalty)
7. Emergency (force major)
8. Change of contract
9. Reason for Termination
10. Choice of law
11. Dispute resolution (Syahmin AK:2006:94)

The freedom principle of contract means that both parties are free to enter into any contract, in the transaction there are elements of supply and demand made in good faith from both sides, because this relationship is a cross-country relationship there must be agreement in the use of terms in the contract, also must be arranged how if there is a risk of who should be responsible. Then what if an emergency occurs like an earthquake, there must be an agreement in changing the contract, the reason for termination of the relationship, which country's law will be chosen to resolve the dispute and how to resolve the dispute.

Problems arising in international trade are very appropriate to be handled through agencies outside the court. Peaceful settlement method of international disputes in the broad outline can be divided into two namely the diplomatic (negotiation, mediation, conciliation), and the law (arbitration and judicial settlement). One agency that can solve business disputes is arbitration. According to HikamahntoJuwana, Arbitration is understood as a process by which parties to dispute agree to submit their difficulties to one or more impartially for a final and binding decision (Hikmahanto Juwana:2003:44) Arbitration is a process for settling disputes submitted to a person or entity that is final and binding. The person or entity is an independent party authorized to decide on final and binding, the resolvable dispute can be categorized into 2 (two) types of disputes within the sphere of one country (national) and more than one country (international). Arbitration is called an international arbitration if it has fulfilled several things, these are as follow²⁹ Firstly, if the parties making arbitration clauses or arbitration agreements at the time of making the treaty have their place of business in different States, the seco⁴⁰ if the place of arbitration specified in the arbitration agreement lies outside the State in which the parties has a place of business, third if a place where the most important part of the obligations or trade relations of the parties shall be exercised or the place most closely connected object is located outside the State of the business of the parties (Dirdjosisworo, 2006).

The first example is firm A has business in Country X, company B has business in Country Y, the second example is there are two companies that have business in Indonesia in the agreement in case of dispute will be settled by arbitration in Japan, the third example is two companies having office in

Country A to build business in Country B. Thus the transactions that can be completed by the international arbitration body are:

1. The parties that make arbitration uses or arbitration agreements when making such agreements have business in different States.
2. The arbitration place specified in the arbitration agreement lies outside the State in which the parties have a place of business.
3. The trade relations of the parties shall be exercised or their place outside the Contracting State.

Along with the increasingly swift current of globalization that emphasizes on the establishment of trade relations between two countries, inter-region and global relations, then the possibility of a trade dispute will be very certain. Therefore, it is very necessary for the party to have a dispute resolution body outside the court in this case international arbitration bodies so that any problems in such trade relations may be resolved promptly, thoroughly and safeguarded by the interests of each party.

Today businesspeople are more likely to choose arbitration in resolving international business disputes because:

1. Settlement by arbitration gives freedom and autonomy to the parties to determine the arbitration body, so there is no compulsion to the parties in determining the dispute resolution body as is usually done in the way of litigation.
2. The manner of arbitration gives a sense of security to both parties due to differences in the legal system adopted by each country.
3. Settling disputes through arbitration is more quickly than courts dispute settlement.
4. Settlement fees through arbitration are relatively cheaper than through the courts.
5. The person chosen as the arbitrator shall be the person trusted by the parties as the expert in the disputed field.
6. Settling disputes through arbitration is closed and not open. This closed nature is something that is very important because the interests of the parties can be maintained, the privacy of each party is maintained, business reputation maintained, and business operational still run without happening significant obstacle
7. The arbitral award is not a precedent, for similar cases the arbitration decision may be different because the review is case law.
8. The arbitrator shall in addition apply the rule of law also paying great attention to the wishes, realities and trade practices exercised by both parties.
9. The arbitral award is final and cannot be appealed.

The arbitral award is considered important and strong because of its final and binding nature. Final is the main reason why businessmen choose arbitration to resolve the dispute because there is no legal effort taken in the form of appeal, cassation and reconsideration so that the final result of the decision known quickly by the parties. An arbitral award binding on the parties is a juridical consequence to be accepted by the parties, goodwill is to be a major factor in the settlement of business disputes including in good faith to execute agreed agreements and awareness of the parties in respect of the arbitral award.

On the other hand, there is a fundamental problem in dispute settlement through the international arbitration body: the problem is based on Article V (2) of the New York Convention, which allows the court to refuse enforcement of foreign arbitration award policy of the country. Besides, it is stated that the arbitration decision is final and binding as set forth in article 35 paragraph (1) of the United Nation International Trade Law: an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and shall be enforce, as also affirmed in Article 53 of Law Number 30 Year 1999 on Arbitration and Alternative Settlement of Disputes (APS) stated that against arbitration rulings cannot be any resistance or remedy, and in article 60 it states that: The arbitral award is final, has permanent legal force, and binds the parties.

The using that dispute settlement body and international arbitration body possible to act if each party respect to goodfaith theory, there are three component of goodfaith and fair of contract; first goodfaith and fair of contract as basic principle in contract; second goodfaith principle and fair contract in UPICCS (Unidroid principles of international commercial contracts) stressing on international trade act; third goodfaith principle and fair contract is forceful. The goal for encourage always using goodfaith principle and fair dealing of contract in commercial international transaction (Cindawati, 2014).

Conclusion

From the discussion presented about the Dispute Settlement Body (DSB) and Arbitration Board as an alternative solution to international trade disputes, it can be concluded as follows:

1. Dispute Settlement Body (DSB) is one of the international trade dispute settlement institutions under the auspices of the World Trade Organization (WTO) with stages: consultations, panels, and WTO appellate bodies specifically used by WTO Member States
2. Arbitration is an international trade dispute resolution body that has advantages over settlement through the judiciary because of its rapid process, the freedom of the parties to elect the arbitrator, the parties have a choice of law, and the decision is final and binding on the parties.
3. Encourage using goodfaith principle and fair dealing in dispute settlement commercial international transaction including Dispute Settlement Body (DSB) and International Arbitration Body as alternative solution to international trade dispute.

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