International Journal of Law and Politics Studies
ISSN: 2709-0914
DOI: 10.32996/ijlps
Journal Homepage: www.al-kindipublisher.com/index.php/ijlps

IJLPS
AL-KINDI CENTER FOR RESEARCH AND DEVELOPMENT

| RESEARCH ARTICLE

Application of the Pacts Sunt Servanda Principles in the settlement of business Disputes through Arbitration

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| ABSTRACT
Arbitration is a means of resolving business disputes that is most similar to a court body and is considered to have many advantages over other alternative dispute resolutions. Pacta Sunt Servanda is one of the main principles of Arbitration, which states that the settlement produced in a settlement is binding on the parties, like a law must be faithfully executed. Arbitration must be respected and followed by the parties in addition to their obligation to resolve conflicts through mediation. Pursuant under Article 3 of the Arbitration and Alternative Dispute Resolution Act No. 30 of 1999, if parties to a commercial dispute have engaged in an arbitration settlement, The District Court isn't entitled to make your mind up among the parties. A normative approach to legal principles is used in this work. This research is descriptive-analytical, and it collects secondary data from legal materials such as laws and regulations, literature, and legal documents relevant to arbitration law utilizing a document study data gathering tool, contract law and legal certainty theory, where the research results will be analyzed qualitatively.

| KEYWORDS

Pacta Sunt Servanda, Settlement, Arbitration

| ARTICLE INFORMATION

ACCEPTED: 25 January 2023 **PUBLISHED:** 02 February 2023 **DOI:** 10.32996/ijlps.2023.5.1.9

1. Introduction

The Covid-19 pandemic hit the arena at several stages when you consider that the start of 2020 has resulted in a global health and economic crisis which has resulted in many countries in the world being threatened with an economic and social recession. The Indonesian government, together with governments from various parts of the world, have taken various mitigation and collaboration measures to suppress the spread of Covid-19 and accelerate economic recovery. This cooperative relationship can be a collaboration between the Government and the Government or between the Government and Business Actors (G to B or Government to Business), or between private and private parties (B to B or Business to Business).

The current non-natural disaster situation caused by the Covid-19 pandemic has caused so many business actors from various countries, including Indonesia, to experience business disputes between business actors due to defaults committed by one party or even both parties. This business dispute is a conflict that occurs in people's lives related to economic and business activities. The reasons for the occurrence of defaults or broken promises made by these business actors are very diverse, both because of the reason for the occurrence of a pandemic or because of various hindering economic policies and various other reasons. Long debates and differences of opinion that occur in a dispute often cause problems to be difficult to solve.

In this business relationship, it is necessary to reach a settlement among the events for the cause of looking forward to the bobbing up of dispute among the events with inside future. In an effort to remedy the dispute, there are numerous methods that may be selected with the aid of using the parties. One of the means of resolving disputes that are often considered the most effective and efficient by business actors is through arbitration forums.

Moving on from the mindset of entrepreneurs that maintaining relationships with fellow business actors for business continuity in the future is an important thing that must always be maintained, many parties who are forced to experience disputes with their partners choose to settle their disputes outside the court and do it in private so as not to embarrass each other. The choice to resolve disputes by arbitration or out of court is based on the consideration that courts are no longer attractive and do not guarantee legal certainty in resolving business disputes. Whereas if the dispute is resolved through arbitration, the parties feel more comfortable because they can choose their own arbitrator who will examine the case, which is expected to lead to a settlement and/or resolution that represents a "win-win solution" and dispute secrecy is guaranteed by the parties. Thus business people who have disputes can have good relations between them.

This article analyzes to what extent principles are applied or principles of Pacta Sunt Servanda can be implemented properly to meet the expectations of business actors in resolving their business disputes through arbitration as the preferred means of dispute resolution.

2. Literature Review

In Indonesian criminal investigation units, the phrases "whistleblower" and "justice collaborator" are synonymous and cannot be distinguished[1]. What's more, their appearance was integrated with the case of Susno Duadji, the former head of the National Police's Criminal Investigation Agency, who dared to reveal irregularities in work institutions. The concept of a whistleblower is defined as the Disclosure of illegal, immoral or unlawful practices of a former or current employer to any person or organization [2]. This definition is limited to reporters who reveal illegal practices by company leaders. Open or secret disclosure of leaking confidential information about harmful acts committed by co-workers is a whistleblowing action.[3] This definition's purview of reporting is restricted to someone who divulges sensitive information on wrongdoing by a business partner or disclosure of private information made by a person in retaliation for their partner's activities, which is thought to be illegal. This typically goes against the organization's policies and the code of ethics, as it may involve corruption, power abuse, or specific behaviors that risk the public interest or the health and safety of employees[4].

According to Article 1(2) of the joint decision of the Minister of Justice and Human Rights, the police, the Prosecutor General's Office and the KPK, Witnesses and Victims are protected.[5] According to the study, whistleblowers are people who see, hear, experience and report criminal acts to be examined according to the relevant laws and regulations.[6] According to the definition given above, Whistleblowers are those who bravely and willingly report crimes. The fact that they are not criminals is a crucial sign.[7]

Justice partners, also referred to as witnesses, assist law enforcement by offering details, testimonies, and documents that typically expose illicit behavior.[8] Anyone who is charged with a crime or has been found guilty of taking part in an illegal association or an organized crime activity is eligible for witness protection.[9] However, law enforcement officials frequently work with witnesses to gather information regarding any affiliation with an organization or activity that is connected to organized crime.[10] Justice collaborators are both witnesses and criminals, according to Joint Regulation Number 4 of 2011 about the Protection of Reporters of the Attorney General's Office, National Police, KPK and witnesses and Victim Protection Agency who is willing to work with law enforcement to combat crime.[11]

According to the definition provided above, there are two types of justice collaborators. According to Articles 55 and 56 of the Criminal Code, the first relates to a witness of the crime's offender. This can occur in a variety of ways, such as when the offender encourages others to engage in illegal action. Second, while testifying at trial, the witness, who was the crime's offender, joyfully revealed and reported the incident to law enforcement officers. The offenses committed by justice partners and the information reported to law enforcement personnel are unrelated. The following table shows the distinctions between justice partners and

whistleblowers :[12]

Table 1
Whistleblower vs. Justice Collaborator

Whistleblower	Justice Collaborator
a source of information and reporting on predetermined criminal activities	someone who is willing to assist police in their investigation of a crime
They are not a part of the stated crime	Reported offenders.

3. Methodology

This study uses a statutory approach and is normative in nature and related to the application of The principle of pacta sunt servanda in settlement of commercial disputes through arbitration. The data used is secondary data or ready-to-use data obtained from library research. This study uses primary law documents in legal form and legislation, secondary documents and non-legal documents.

4. Results and Discussion

1. **Arbitrase**

Term "arbitration" is derived from the Latin words "arbitre" (meaning "to decide"), "arbitrage" (meaning "to complete in keeping with wisdom or peace via way of means of arbiter or umpire "), "arbitration" (meaning "to decide"), and "siedsprugh" (meaning" to decide"), among others. The association of arbitration with that approach could create the false impression that an arbitrator or arbitral tribunal, while resolving a dispute, no longer adheres to the law and instead relies only on its judgment. This notion is incorrect since, like a judge or court, arbitrators or tribunals also apply the law.

The settlement entered into in writing between disputing parties and the use of arbitration to resolve civil disputes outside of the normal judicial system. In an effort to resolve disputes, the events might also additionally designate an arbitrator as the person that will decide the issue at hand. The arbitral award is final and binding on all parties pursuant to Article 60 of Law No. 30 of 1999 on regarding dispute resolution and arbitration, ensuring that conflicts are resolved quickly and without further delay.[13] Ways to carry out dispute resolution is arbitration. A dispute that needs to be settled stems from a dissettlement over a contract that looks like this:

1) Differing interpretations (disputes) on how the settlement should be implemented, manifested as:
   a) Controversy of opinions;
   b) misunderstanding;
   c) Dissettlement
2) Breach of contract, including:
   a) Whether or not the contract is valid;
   b) Whether the contract is valid or not.
3) Termination of Contract
4) Claims regarding compensation for default or action against a judge.

In Black's Law Dictionary's definitions of arbitration is as follows:

"Arbitration is a procedure for resolving disputes wherein an impartial third party (arbitrator) issues a ruling following a hearing where both parties have the opportunity to be heard. When arbitration is voluntary, the parties involved select the arbitrator who will conduct it and make a binding decision".

(Dispute resolution process where an arbitrator, a neutral third party, makes a decision making after listening to both parties is called arbitration. and considering all relevant evidence. Due to the voluntary nature of arbitration, the parties to the dispute select the arbitrator who will render a binding verdict).

In the settlement of disputes in the field of trade, both nationally and internationally, the role of arbitration is increasingly relied upon and preferred with the aid of using commercial enterprise human beings withinside the occasion of a dispute among the parties. Arbitrators in arbitration courts function like an umpire (referee), as befits an umpire in a sports match. Therefore

arbitration is a private court or arbitration court.

Today, corporate practices are increasingly complex and difficult to understand. Not just a simple buying and selling of goods and services, the company's activities now include various strategies and intrigues that are interesting to examine, especially from a legal perspective. In each of its activities, the enterprise needs to be aware of the relevant criminal provisions, and each of its actions has a legal basis and impact.[14]

According to Article 1, Clause 1 of the Law on Arbitration and Alternative Dispute Resolution No. 30 of 1999, arbitration is "a way of resolving civil disputes outdoor the overall courtroom docket that's primarily based totally on an arbitration settlement accomplished in writing via way of means of the events to the dispute."[15] Arbitration Law does not explain how to settle civil disputes outside the general court, as well as the procedures for selecting arbitrators to resolve disputes.

Furthermore, The method for resolving civil disputes is regulated in article three of Law Number 30 of 1999 and is principally based on arbitration settlement which is carried out in writing using the events in the dispute. As a result, a district court cannot decide a case if the parties are bound by an arbitration settlement.

The elements contained in the arbitration, namely:[16]

1) Arbitration is a means or affiliation for settling disputes out of court (non-litigation).
2) Arbitration is primarily based totally on the settlement of the disputing events, primarily based totally on the arbitration clause in a settlement earlier than the dispute occurred, or a separate settlement changed into made after the dispute arose.
3) Arbitration is carried out by referees or arbitrators, both individuals and assemblies, both those formed ad hoc and institutionally.
4) The arbitrator is appointed via way of means of the events to the dispute; the arbitrator is impartial because he is recruited from a neutral third party.
5) The arbitrator examines and adjudicates the case by listening to both parties to the dispute and administering it equally and fairly.
6) Arbitration provides a decision that is final and binding on both parties.
7) According to Law No. 30 of 1999's Article 7, parties may agree in a written settlement that any dispute that has already arisen or will arise between them will be settled by arbitration. The existence of a written settlement hinders parties' ability to use state court to resolve dissettlements or disputes contained in the settlement.

Since the arbitration settlement recognized by Law No. 30 of 1999 is formed in writing, it is evident that a verbal arbitration settlement cannot be enforced. The conditions of the arbitration settlement must be expressly and unequivocally defined in addition to needing to be put in writing.[17]

2. Application of Pacta sunt Servanda

According to the contract principle, a settlement made in a contract is enforceable against the parties like law and must be performed in good faith. This idea comes from the legislation governing contracts or settlements. This idea, according to common law legal professionals, is the sacredness of a settlement (sancity of contract). As to the nature of the arbitration settlement or provision, this idea is crucial in arbitration. The foundation for conducting arbitration is an arbitration clause.[18]

The Civil Code Article 1338, paragraph 1, provides that " Every settlement formed has the force of law for the people who sign them," which incorporates this notion. Similarly, the option to resolve disputes through arbitration is one that only applies to the parties that use it, and it is enforceable as law.[19]

In arbitration, the pacta sunt servanda principle's application binds not just the disputing parties but also any third parties, such as the judiciary. If there is an arbitration clause, the court must decline to hear the case. As a result, the court must proclaim itself to be unqualified to remember the problem on account that it's far limited via way of means of the arbitration settlement.

Therefore, the court, acting as a third party, is also subject to the binding effect and enforceability of the arbitration clause, used as a support to parties.[20]

In addition, third parties bound by an arbitration clause or an arbitration contract are the arbitrators who will examine the dispute. The arbitrator or arbitral tribunal is bound by the settlement stated in the arbitration clause in the contract made by the parties. For example, provisions regarding choice of law, choice of language, choice of place for examining cases, provisions regarding the period for examining cases, all of which are binding on the arbitrator or arbitral tribunal in carrying out their duties to examine cases. [21]

The parties are not only bound by a settlement to submit their case to arbitration but must also respect and implement the arbitration award, even if they are the losing party in the award. Principle pacta sun servanda existed before, during and after the arbitration process took place. Furthermore, the settlement of the parties in the arbitration clause also has broad implications, binding third parties, especially the court.[22] In addition, the heirs who are bound by the settlement are also bound by pacta sunt servanda principle.

Law No. 30 of 1999, Concerning Arbitration and Alternative Dispute Resolution, also accommodates the principles of pacta sunt servanda, including:

1) Article three states approximately the courtroom docket's dedication to the arbitration settlement and states that the courtroom docket isn't always legal to have a look at instances that include an arbitration settlement in it. Likewise, Article eleven paragraph (2) states that the courtroom docket is obliged to reject the case and might not intrude if there's an arbitration clause withinside the case.
2) Article four regulates the binding of the arbitrator and arbitral tribunal to the arbitration settlement made through the events. The arbitration settlement made needs to be observed through the arbitrator in resolving the submitted dispute.
3) Article ten regulates the heir's attachment to the arbitration settlement made through the heir.
4) Article eleven, paragraph (1) regulates the absence of the proper of the events making the arbitration settlement to post a dispute to the courtroom docket. The arbitration clause or deed of compromise withinside the arbitration settlement is binding at the events making the settlement.[23]

a) Arbitration Settlement

An arbitration settlement is a settlement made in writing aimed at choosing the arbitration facility to be chosen for the settlement of business disputes that may/will/have occurred between business people. The arbitration settlement is the most important thing that ideally must exist before steps are taken to resolve disputes through arbitration.

Traders (traders) or stakeholders, in conducting trade transactions, put it in a written settlement. Because of this, settlements play a role as a necessary source of law, and they first make them a reference in exercising their rights and obligations.[24] An arbitration clause which is one of the clauses in a trade settlement or contract, contains settlements and settlements from the parties to submit their trade disputes that may occur in the future by using arbitration as a means to resolve their business disputes.

The arbitration settlement must be primarily based totally on the settlement (consensus) of the events and executed in top faith. If a settlement has been agreed upon and written, arbitration applies as an option for a dispute resolution forum. The courtroom docket isn't always accepted to clear up conflicts among the events that've signed the arbitration settlement in this instance. Articles three and eleven of the Arbitration Law and the APS both support this. This demonstrates that the arbitration settlement also creates total competence in arbitration, i.e., the court is not permitted to decide cases that the parties have submitted or chosen for the arbitration body to decide.[25]

An arbitration settlement can essentially be created in one of two ways: either it can be made as part of the main settlement, or it can be done separately. If the arbitration settlement is made simultaneously with the principle settlement as part of the principle

settlement, it is beyond the scope of the main settlement content or materials and has no bearing on the legality or execution of the main settlement's fulfillment. As a result, The arbitration settlement continues to be legitimate even though the modern principal settlement is null and void. Pacta sunt servanda, The arbitration provision is based on the legal tenet that all valid settlements are enforceable and constitute the parties' law. As a result, no settlement may be revoked without the approval of all parties.

b) Principles or Principles Supporting Pacta Sunt Servanda

The term principle (Dutch: beginzel, beginzelen) is identified with principle (English: principle). According to Mahadi, [26] the word principle or principle is synonymous with the principle in English, which is closely related to the term principium (Latin word). Principium means beginning, beginning; source start; origin, base; principal; base; because principles or principles are something we can make a foundation, as the basis, as a foundation, as a place to lean on, a return of something, which we want to explain.

There are several basic and important principles or principles in the field of arbitration that are closely related to and support the Pacta Sunt Servanda principle in efforts to resolve business disputes through arbitration. The principles or principles in question are:

1) ***Good Faith***

The cornerstone for putting settlements into practice is the idea of good faith (contracts). There won't be a dissettlement over how the contract will be implemented if the parties adhere to its terms, which were agreed upon in good faith. Contractual disputes arise when one or more parties fail to fulfill their responsibilities in a fair and honest manner. A settlement must be implemented in good faith, in accordance with article 1338, paragraph 3, which reads: "Settlement must be implemented in good faith.".[27] The settlement's phrases and situations ought to be primarily based totally on true faith. Therefore, the sincere intentions of the parties who create and implement the settlement must coincide with its terms. The existence of a written arbitration settlement has denied the rights of all parties to submit disputes or differences of opinion as stated in the settlement to the District Court, in line with Article 11 paragraph (1) of Law no. 30 of 1999.[28] It indicates a lack of good faith if parties attempt to take their matter to the District Court. The principle of good faith is implied to require that it must exist before, during, or after the arbitration takes place, including in good faith in carrying out the Arbitral award no matter its content material or whether or not it's far gained or lost. This is similar to the pacta sunt servanda principle.[29]

2) ***Parties Autonomy***

According to this idea, it is crucial for the parties to have the flexibility to select and decide how their dissettlements will be resolved, including if they will arbitrate their differences in business. The processes for arbitrating disputes and the regulations of the game may also be decided by the parties. As a result, the parties have the autonomy and freedom to pick the method of settling their commercial disputes as well as the arbitration institution to use and the authority to do so. Article 31, paragraph 1 of the Arbitration and Alternative Dispute Resolution Act No. 30 of 1999, provides that "The events in a company and written settlement are unfastened to decide the arbitration system utilized in analyzing disputes as lengthy because it does now no longer struggle with the provisions of this Law," also accommodates the principle of autonomy of the parties".[30] In this case, if the place and time period are not determined, then the arbitrator or the arbitral tribunal can determine it.

3) **Principles/principles of consensualism**.

The principle of consensualism states that the occurrence of a contract depends on the consensus of the parties making the settlement so that in a settlement or contract, there must be a settlement. When entering into a contract, the parties may agree that arbitration will be used to settle any disputes or claims related to the contract. The settlement may be expressed in a pactum de compromittendo, which is a contract or settlement that has an arbitration clause. When a dispute arises despite the absence of An arbitration clause withinside the contract, the events would possibly, though, conform to arbitrate it by entering into a special arrangement known as a compromise settlement.[31] Article seven of Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution, which states: "The events may agree that any dispute has happened or will arise among them to be addressed via way of means of arbitration," comprises the consensual precept in arbitration. Furthermore, Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution states in Article nine (1) that "Settlement concerning this rely on should be in writing signed via way of means of the events withinside the occasion that the events pick out dispute decision via arbitration after the dispute

has happened."[32]

5. Conclusion

Based on the description and analysis in the discussion section above, the following conclusions can be obtained:
Settlement reached by parties is enforceable against them as legal and is required to be followed out sincerely and in good faith when the Pacta sunt Servanda Principle is applied to the arbitration of commercial disputes. In arbitrations involving the nature of arbitration settlements or clauses as a way of resolving commercial disputes in the manner anticipated by the parties, this idea is crucial. The Pacta sunt Servanda Principles must be followed, as well as the principle of good faith, which must exist before, during, or after the arbitration. This is true of settlements formed and having options for commercial conflicts through arbitration. This is as stipulated in The provisions of Article 1338, Clause (3) of the Civil Code stipulate: " Transactions have to be applied in correct faith."

The application of the Pacta sunt Servanda Principle in the resolution of commercial disputes through arbitration is based on three principles: the Principle of Good Faith, the Principle of the Autonomy of the Parties (Parties Autonomy), and the Principle of Consensualism. A benefit of arbitration over court-based conflict resolution processes is the premise of the parties' autonomy. Consensualism, on the other hand, holds that the existence of a contract depends on the settlement of the parties to it, and as a result, a settlement or contract must exist.

5.1 Suggestion

Whereas to give the business community a greater sense of legal certainty and commercial certainty, the application of the pacta sunt servanda principles, which are used to settle business conflicts in arbitration venues, needs to be more widely publicized.

Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.

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