

PROCEEDING

IC 2018 MS

**The 4th International Conference on Management Sciences
Universitas Muhammadiyah Yogyakarta, Indonesia**

“Disruptive Innovation in Modern Business Era”

held in UMY, Indonesia, on March 28, 2018

Department of Management

FACULTY OF ECONOMICS AND BUSINESS
Universitas Muhammadiyah Yogyakarta

in collaboration with:
Universiti Sains Islam, Malaysia
Tamkang University, Taiwan
Khon Kaen University, Thailand



**The 4rd International Conference on Management Sciences 2018
(ICoMS 2018)**

March 28 2018

Universitas Muhammadiyah Yogyakarta, Indonesia

Chair Person

Dr. Indah Fatmawati, S.E., M.Si

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1. Prof. Shu Hsein Liao, Ph.D (Tamkang University, Taiwan)
2. Dr. Kawpong Polyorat (Khon Khaen University, Thailand)
3. Dr. Syadiyah Abdul Shukor (Universiti Sains Islam Malaysia)
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ROOM D : Prof. Dr. Heru Kurnianto Tjahjono, M.M.
ROOM E : Dr. Arni Surwanti, M.Si.

Preface ICoMS 2018
The 4rd International Conference on Management Sciences 2018
(ICoMS 2018)
March 28 2018
Universitas Muhammadiyah Yogyakarta, Indonesia

Dear Presenters and Delegates,

Department of Management, Economics Faculty, University of Muhammadiyah Yogyakarta, in collaboration with the Tamkang University Taiwan, Khon Kaen University Thailand, USIM Malaysia, organized an International Conference which will be held on March 28 2018.

We are proud to know that there is a thick manuscript submissions came to our table for this conference. In detail, there are 42 international academic manuscripts which we received from Indonesia, Malaysia, Thailand. And in this conference we choose **Disruptive Innovation in Modern Business Era** as the main theme.

Our international conference is a manifestation of the Government of Indonesia through the Directorate General of Higher Education, which has encouraged the internationalization of research and teaching in order to foster high-caliber academic institutions globally and increase competitiveness in International Higher Education.

We are very confident that our presenters and delegates will get a lot of ideas together and experience of this conference. In addition, our participants will enjoy additional insight from our plenary session keynote speakers, namely, Prof.Dr.Shu-Hsien Liao from Tamkang University Taiwan, Dr. Kawpong Polyorat from Khon Kaen University Thailand, Prof. Dr. Syadiyah Abdul Shukor from USIM Malaysia, and Punang Amaripuja, S.E., S.T., M.IT. from Universitas Muhammadiyah Yogyakarta.

Through this conference, we are committed to promote and improve our mission and academic culture synthesize global progress with local knowledge. Therefore, it is my great honour to welcome you to ICoMS 2018 in great cultural city of Yogyakarta, Indonesia. I look forward to seeing you soon in the conference.

Best wishes,

Dr. Indah Fatmawati

Chair of ICoMS 2018

<http://icoms.umy.ac.id/call-for-papers>

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Dispute Settlement on Violation of Business Ethics: A Legal Framework to Innovative Future

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ABSTRACT

In conducting business activity, somehow a person might deviate the norms which means violate the business ethics. It is not doubtful if disagreements among parties may occur at any time and these may create a dispute that need to be settled. In fact, every single dispute will arise consequences to the party involved that might be effecting them to produce an innovation in the future. In the business scale, a dispute sometimes comes from the speculation of businesses that fail to address and plan for key aspects at the outset. As a result, they run into serious difficulties later on which arises the dispute. It can be proven that a business dispute become something inherent in human's life and it is quite rough to avoid.

In addition, it is important to know on how to settle the issue regarding to the violation of business ethics because the purpose of business itself is not merely to gain a profit but also pay attention the human values. Maintaining the business ethics is a form of accountability which become a part of substantial human resources. Broadly speaking, there are two concepts to the business dispute settlement which will elaborate in this normative research combined with doctrinal and exploratory research. This paper aims at giving an explanation towards the best solution to deal with the issue of violation of business ethics.

Keywords: *Dispute, Dispute Settlement, Human Resource, and Business Ethics.*

1. Dispute Settlement

Broadly speaking, there are two concepts to the dispute settlement. First, there are methods such as (in no particular order) negotiation, mediation, conciliation, good offices, and inquiry. These are mostly known as peaceful or diplomatic settlement of disputes, none of these methods need judicial process. Besides, the other methods are consists of arbitration and judicial settlements.

In the business scale, a dispute sometimes comes from the speculate of businesses that fail to address and plan for key aspects at the outset. As a result, they run into serious difficulties later on which arises the dispute. In such cases, really there is a different interpretation concerning performance of subject matter. Consequently, this difference leads to a business dispute between the parties.

In terms of how to reach the best decision, every single dispute have to handled by neutral party. It is mainly because to create the best decision for justice seeker. That is why the mentioned methods above are the proper process to deal with dispute. The various processes for settling disputes have been recognized in United Nations Charter (abbreviated: UN Charter). Chapter VI of the UN Charter recognizes both the diplomatic and judicial processes for settling the case. According to Article 33(1) of UN Charter:

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

Basically, the dispute settlement can be divided into two which are through litigation nor outside of court as known as an Alternative Dispute Settlement (abbreviated: ADS). The background on the existence of ADS comes from the ideation of Warren Burger as the chief of American Supreme Court in 1976 at Saint Paul, Minnesota conference. Some things are the reasons to invent ADS are:

1. Reducing the congestion case in the Courts;
2. Increasing the public order to the process of dispute settlement;
3. Expediting and expanding access to the Courts; and
4. Giving a chance to reach acceptable and satisfying decision.

There are several legal entities that focus on ADS, namely:

1. **Negotiation**, it is a kind of peaceful settlement through discussion among the parties. The technic of negotiation does not involving third party, just focusing on the discussion that conducted by the related parties. This involves direct contact between the parties to a dispute in their settlement.
2. **Mediation**, it means a process to solve a problem, which impartial neutral party cooperates with dispute party to find consensus. Mediator does not have a responsibility to decide the case, but only helps the parties involved. This involves using a neutral third party as a negotiator.
3. **Conciliation**, it is a kind of process if dispute party could not formulate a consensus. This process refers to the consensus pattern, the conciliator is neutral party who might active or passive. The dispute party have to declare the consensus according to the proposal of third party and make it as a dispute settlement where an independent body is engaged to investigate the dispute and to provide a report containing recommendations targeted to settle the dispute.

Yet, such reports are not legally binding on the parties involved in the conciliation.

4. **Arbitration**, it is a process that a dispute parties are agree to settle the case to the neutral party. In Arbitration, the parties may choose by themselves who become the Arbitrator and applied law. Essentially, Arbitrator is a private judge that has a competence to make an award. The decision of Arbitration is final and binding and win-lose solution.

2. Dispute Settlement On Violation Of Business Ethics

2.1 Arbitration

Arbitration is a private civil dispute resolution procedure outside of a public court based on arbitration contracts made in written form by the parties to the dispute, in which the party resolving the dispute (arbitrator) is elected by the parties concerned, of which the unauthorized persons with the case concerned will examine and provide a decision on the dispute.

Various Kinds of Arbitration

Arbitration is alternative dispute resolution that is often used. However, in practice there are various kinds of arbitration, namely:

1. Arbitration is binding, relating to an already inkrecht court ruling.
2. Arbitration is not binding, with regard to its verdict may be followed and may not be followed.
3. Arbitration of interest is an arbitration that does not decide for a dispute, but the parties use their services to create provisions in the contract which by parties has been deadlocked.
4. Arbitration of rights, an arbitration that is not merely making provision in the contract.

5. Voluntary arbitration is an arbitration requested by the parties either in the contract concerned or in a separate contract.

6. Compulsory arbitration, arbitration which by law is obliged to take place.

7. Ad hoc arbitration, a non-existent arbitration but only the free appointment of persons by the parties pursuant to an agreement by the application of certain laws.

8. Arbitration Institution, an existing arbitration model of the institution / body, and there are also rules of the game, so that the parties just choose them or the body chooses arbitrators for them.

9. National arbitration, arbitration in which the party to the dispute is the parties in 1 (one) country.

10. International arbitration, arbitration in which the parties to the dispute are from different countries.

11. Arbitration of quality, relating to facts in the field.

12. Technical arbitration, relating to the preparation and interpretation of contracts.

13. General arbitration, relating to the facts and application of law.

14. Arbitration of special fields, in the field of muamalat, trade, employment, environment.

2.2 Negotiation

1. Negotiation is a form of a meeting between two parties: our side and the opponent in which both parties together seek for good results, for the sake of both sides.

2. A process that involves one's efforts to change (or not change) the attitudes and behaviors of others.

3. The process of reaching an agreement concerning mutual interests of certain parties

with different attitudes, points of view, and interests with each other.

Pattern of Conduct in Negotiation:

(1) Moving against (pushing): explain, judge, challenge, disagree, and show weakness of others.

(2) Moving with (pulling): pay attention, propose ideas, approve, generate motivation, and develop interaction.

(3) Moving away (with drawing): avoiding confrontation, retrieving content, silence, not responding to questions.

(4) Not moving (letting be): observing, watching, focusing on "here and now", following the flow, flexible, adaptable to the situation.

Negotiation Skills:

(1) Being able to empathize and pick up events like others watch them.

(2) Be able to demonstrate the benefits of the other party's suggestions so that the parties involved in the negotiations are willing to change their stance.

(3) Be able to cope with stress and adjust to uncertain situations and demands beyond calculations.

(4) Be able to express the idea in such a way that the other party will fully understand the proposed idea.

(5) Quickly understand the other's cultural background and try to adjust to the other's desire to reduce the constraints.

2.3 Mediation

Mediation is the process of dispute resolution through negotiation process or consensus of the parties assisted by mediator who has no authority to decide or impose a settlement. The main characteristic of the mediation process is that negotiations are

essentially the same as consensus proceedings. In accordance with the nature of negotiations or deliberations or consensus, there shall be no compulsion to accept or reject any ideas or remedies during the mediation process. Everything must get approval from the parties.

Procedure for Mediation:

- After the case has been numbered, and has been appointed by the panel of judges, then the panel of judges to make a determination for the mediator to be mediated.
- After the parties are present, the Assembly shall submit the mediation to the mediator and the parties to the litigation.
- The mediator then advises the litigants to end this case peacefully by trying to reduce the harm of each of the litigants.
- The mediator is on duty for 21 calendar days, successful peace or not on the 22nd day should be handed back to the assigning assembly.

If there is peace, the establishment of peace is still made by the assembly.

2.4 Conciliation

Conciliation is an attempt to bring together the wishes of the disputing parties to reach agreement and settlement. Conciliation is a combination of inquiry and mediation. In practice, the process of dispute resolution through conciliation is similar to mediation. However, conciliation has a more formal law than mediation. As such, conciliation is an alternative dispute resolution process and involves an engaged third party to resolve the dispute.

In settling disputes, a conciliator shall have the right and authority to convey the rights openly and impartially to the dispute. In addition, the conciliator shall not be entitled to make decisions in dispute to and on behalf of the parties so that the final decision shall be a decision made upon the agreement of the disputing parties.

2.5 Minitrial

Minitrial is an alternative dispute resolution procedure that used by corporate to resolve legal issues without inflicting the expense and delay associated with court litigation. Minitrial is a court system to solve, check, and decide corporate cases, done by a person called as “manager” that authorized to negotiate the settlement between the dispute parties. Usually the manager here is retired judge or attorney who is reliable. This system is similar to mediation, that there is a presentation by each party of their case to the panel of persons and also like mediation, the parties are generally not bound to the result of the resolution.

2.6 Ombudsman

Ombudsman is an institution that established to deal with abuse of power by government apparatus and help the apparatus to conduct government efficiently and fair. Ombudsman known as independent institution that receive and investigate public complaints from victims of maladministration. The function of Ombudsman is supervise service in governance through participation of society, as to develop conducive condition in order to enhance the protection of rights of society in order to obtain better public services.

2.7 Expert Assessment

Experts are everything that is, the rationale and the indicators and the settlement of business disputes, because in the dispute resolution have to look at legal, social and cultural aspects. This method is applied toward complicated cases and need expert to analyze. the disputing parties could appoint one or more experts that their knowledge is relevant with the disputing matter, also the competence of the expert limited to only giving their opinion

2.8 Small Claim Court

The existence of Consumer Dispute Settlement Agency (BPSK) is regulated in Law

no. 8 of 1999 on Consumer Protection chapter XI articles 49 to 58. In article 49 paragraph (1) it is stated that the Government established a consumer dispute resolution body in the Second Level Regions for the settlement of consumer disputes outside the court. This body is a small court (small claim court) who conduct trials by producing decisions quickly, simply and cheaply in accordance with the principle of justice. Called quickly for having to give a decision within a maximum of 21 working days (see article 55 of Act No. 8 of 1999 on Consumer Protection), and without any appeal offer that can prolong the decision making process (see Articles 56 and 58 of Act No. 8 in 1999 on Consumer Protection), simple because the settlement process can be done solely by the parties to the dispute, and cheap because the costs incurred to undergo the trial process is very light.

2.9 Adat Court

Adat court only deals with adat problems only. For example Kerapatan Adat Nagari in Minangkabau or Tuha Peut in Aceh.

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