

The Choice of Forum in Business Dispute Settlement Among Chinese Business Community in Pontianak

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Abstract. The business among the Chinese community who are willing to choose a non-litigation forum in dispute resolution between them is a reflection of interpreting the rules of behavior as guidelines for the business community. This phenomenon must be perceived as an integrated structure to achieve unified social relations of the community. Among Chinese communities, especially in Pontianak, they tend to use the non-litigation forum in resolving their business disputes. The current study uses a qualitative method with a sociological juridical approach. The study found that most Chinese communities perceive justice as a sense of responsibility for mutual love (Cheng-lie). Every dispute must be resolved peacefully and mutually pleasant. The choice of an informal forum in realizing the resolution of business disputes among the Chinese business community indicates that the dominance of the legal tradition is more focused on the conception of harmony. For them, a good law in resolving disputes is not a state law (formal); however, it is the rule that has been integrated into the socio-cultural, which is a relationship among their community members based on the values and norms that are equally understood and lived in their traditions.

Keywords: *Chinese business community, alternative dispute resolution*

INTRODUCTION

In the business community, two approaches are often used to resolve disputes, namely litigation [1] and non-litigation[2] or also known as Alternative Dispute Resolution (ADR). The approaches to achieving justice in non-litigation dispute resolution prioritize "consensus" and seek to bring the interests of the parties together to the dispute and aim to get the results of dispute resolution towards a "win-win solution."

The use of non-litigation forums in dispute resolution in the Chinese business community is colored by a passion for maintaining harmony based on Confucianism, so it will be more adequate

if explored more deeply through understanding the underlying meaning. In connection to this, the business among Chinese communities who are willing to choose a non-litigation forum in dispute resolution between them is a reflection of interpreting the rules of behavior as guidelines produced by the business community, and this phenomenon must be perceived as an integrated structure to achieve unified social relations of the community, especially if we remember the practice of using a non-litigation forum to bring about the institutionalization of the values of trust between them in the community.

The level of social relations and the presence of trust values in resolving disputes that are manifested through non-litigation forums will become clearer if traced through a socio-cultural legal review framework. With socio-cultural review, the operation of positive law in the midst of society is more determined by factors of attitudes, views, and values lived by the members of the community concerned. Therefore, the use of non-litigation forums in dispute resolution is a consequence of its essence as a socio-cultural product of the Chinese business community that is loaded with values and norms as normative references that have crystallized in its community. This socio-cultural reality is considered a natural thing, considering that not all social and business relations can be reduced in formal legal schemes. Moreover, formal attributes (judicial) are not always integrated with the needs of the community. In the Chinese business community, the existence of the use of non-litigation forums in business dispute resolution is considered an autonomous socio-cultural product and has implications for its business arrangements. Therefore, through legal studies from a socio-cultural perspective, it is expected to better expose the logic of the validity of using non-litigation forums in the resolution of business disputes. Based on the background above, the urgent issues to study in this research is: Why do the ethnic Chinese communities in Pontianak tend to use the non-litigation forum in resolving their business disputes?

METHOD

The study uses a qualitative method with a sociological juridical approach. The qualitative method, according to Lexy L. Moleong, is a research procedure that produces written or spoken words from people and observable behavior [3]. In connection with the juridical-sociological approach, Ronny Hanitijo Soemitro [4] said that basically law is not only seen as an independent or esoteric normative entity but rather must be seen as a real part of the social, cultural system and so forth. The approach from the social aspect is far more able to provide a picture that is close to reality. Apart from that, in the juridical-sociological method, the study is empirical, identifying and conceptualizing the law as a real and functional social institution in the social system of life that occurs from the behavior of patterned community members. The description above shows that the use of qualitative methods and sociological-juridical approaches are intended to find the meaning that lies behind the phenomena and processes that are factual relating to the use of ADR by the ethnic Chinese business community to resolve disputes between them.

RESULT & DISCUSSION

The choice of a business person to use or not use a court if a dispute occurs basically depends on the legal culture behind it. If the legal culture is dominated by a litigation culture, the parties to the dispute are more likely to choose to use the court as a means of resolving business disputes with other parties. Conversely, if the legal culture is dominated by a non-litigation culture, as in the ethnic Chinese business community, then, of course, these parties tend to use the method of resolving disputes outside the court. This informal dispute resolution forum, by Satjipto Rahardjo [5], is referred to as the Other Road Dispute Settlement (PSJL), wherein further this informal forum for dispute resolution by Ronny Hanitidjo Soemitro, can be carried out in various forms, namely: adjudication, arbitration, mediation, negotiation, coercion, avoidance and neglect[6].

The choice of an informal forum in realizing the resolution of business disputes among the Chinese business community indicates that the dominance of the legal tradition is more focused on the conception of harmony. In resolving business disputes, which are dominated by informal (non-litigation) cultures, generally, dispute resolution is carried out internally with an intermediary (mediator) as a third party. Only in certain cases, the dispute resolution is resolved through formal channels (court), where one of the parties to the dispute is not a business community (involving

Chinese business people with other ethnic business actors other than China).

It shows that the choice to use the court in resolving disputes can be measured through the short social distance of business people. If the social distance of the business people in dispute is close, for example, fellow members of the Chinese business community, then a non-litigation settlement is considered the best choice. On the contrary, if a dispute arises, which turns out to involve people outside the business community, then a formal forum will be chosen, namely the court institution to resolve the business disputes. The choice of non-litigation forums through the mediation model is inseparable from the influence of their perceptions about the nature of law. For Chinese community, the state law (positive law) has always been perceived as a punishment (Hsing). If applied forcefully, it will lead to social disorder, thus it must be avoided.

Based on the description above, it indicates that the resolution of disputes in the community is very closely related to the environment of the community. In this connection, the paradigm used is the social facts paradigm. According to Durkheim, social facts must be stated as something that is outside the individual and is coercive towards it. Social facts are divided into two types: a material entity that is something real that exists and a non-material entity that is something that is considered to exist. Most of these social facts consist of something that is stated as something that does not have to be real but is something in the human mind, which arises in and between human consciousness [7].

Based on its socio-cultural background, according to the Confucius lesson, it emphasizes harmonization in life and doing business to reject (reduce) the existence of open conflict or dispute. Therefore, each dispute must be resolved peacefully and mutually pleasant. For most people, perceiving justice is as a sense of responsibility for mutual love (Cheng-lie). primarily as fellow *kouchei* (his community/group), the use formal law in the resolution of business disputes and other types of disputes through the courts will result in disharmony among business people themselves. For those business disputes, it is a taboo internal contradiction to be published.

Another factor that underlies this reality is the dissatisfaction of the business community in formal-official institutions (courts), which are legally determined by the state as an absolute dispute resolution agency. This is related to the non-growth of the capacity of the judiciary in fulfilling aspirations of business practices, and this is evident from the findings of the field, such as the reasons that are caused:

1. to cause shame, not only himself but also friends, family because of his public dishonor;

2. Is considered to have an unfriendly temperament in doing business and is also considered to be less solid with fellow members of the business community;
3. can be temporarily ostracized from the community and its business network;
4. can bring up individual attitudes that should be avoided in the business community;
5. there are practical/general reasons, because dealing and litigating in court is considered to be long-winded, costly and time-consuming; this is considered to be a business behavior by an inefficient and economic economy.

In its development after business practices have become increasingly complex and the network is wide, the resolution of disputes through the aforementioned methods is deemed unable to accommodate more effectively. For alternative choices, they tend to choose the Death Foundation as a mediation forum in resolving business disputes or other internal conflicts between them. The reason they cannot choose to settle their dispute in court is because of the influence of their association with their legal traditions. Mediation forums are the best way for them because this method will still choose a harmonious atmosphere (good relations), save money, not be too bureaucratic. The board of death foundation that has been chosen is appointed as a mediator, whose main task is to act as a facilitator so that the exchange of information can be done. In addition, he is expected to be able to seek and form common ground from the arguments of the parties to the dispute and try to reduce different opinions that arise (perceptions) in order to lead to a decision that is mutually acceptable between the parties until reconciliation is reached and can be accepted by all parties.

For the Chinese community in West Kalimantan, especially in Pontianak, they have central roles as a mechanism to the community. On the other hand, the chosen of death foundation in resolving disputes, so that the parties who have been reconciled in their dispute to continue to comply with decisions/agreements consistently and consequently in implementing a peaceful decision, because the decision is not binding for themselves and their families but also witnessed by their ancestors. According to La Ode, Death Foundation is not only to take care of the problem of death but serves to guarantee and choose unity, brotherhood, and solidarity between them and conflict control the socio-economic field of fellow *shiang* (his community).

The business community, especially those who have the same *shiang*, generally meet at the Death Foundation to discuss problems and prospects for the business. The choice to use this forum proves the existence of socio-cultural energy as a permanent instrument to resolve and resolve business disputes internally and independently. By

Uphoff, this socio-cultural energy consists of three interrelated elements, as follows[8] :

1. ideas, are progressive thoughts that appear and are accepted together that come from within the social unit of society;
2. ideal, is a hope or shared interest to realize shared prosperity;
3. brotherhood, is joint solidarity in order to realize shared interests.

The choice of resolving such business disputes does not mean that they are on the illegal pathway or have entered a non-legal abyss. However, the mechanism has been regulated by other normative references in which the principles and sanctions are integrated into their life. For them, a good law in resolving disputes is not a state law (formal), but the rules that have been integrated in the socio-cultural, which is a relationship between them in the community based on values and norms that are equally understood and lived in their traditions. It can be understood, as Weber said, that human life and all its actions are marked by an ongoing search for meaning, and it is the culture that gives meaning and legitimacy to action.

CONCLUSION

The choice of the non-litigation forum through mediation models, in resolving business disputes in ethnic Chinese communities is inseparable from the influence of their perceptions about the nature of state law. For them, state law (formal law) is often perceived as a punishment (Hsing); if applied forcefully, it will lead to social disobey, for that it must be avoided. Every dispute must be resolved peacefully and mutually pleasant. For most of their people perceive justice as a sense of responsibility for mutual love (Cheng-lie), especially as fellow *kouchei* (their community/group) are used formal law in the resolution of business disputes and other types of disputes through the courts, it will result in disharmony among the business people themselves. For them, business disputes are only internal contradictions, which are taboo to be published.

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