ALSA INDONESIA
LEGAL ENGLISH 101
Vol.3

The Role of Legal English in Shaping the Alternative Dispute Resolution

Content Writer:
Ratu Tasya Adawiyah

in collaboration with:

ABNR
COUNSELLORS AT LAW

Find out more
alsa-indonesia.org

Foreword

When it comes to disputes, language may be a friend or foe, as different interpretations can lead to different outcomes. In view of its vital role, parties are always encouraged to determine the language that governs their contracts and disputes at the outset.

The use of English is unavoidable, given the sheer number of foreign investors and transactions that involve foreign parties in Indonesia. For example, it is common for contracts to be drafted and out-of-court dispute resolutions to proceed bilingually in Indonesian and English. This practice, however, is not without hurdles as it can be challenging to find exactly equivalent terminology in the two languages. As a result, parties (and their supporting professionals, such as lawyers) need to understand not only the language but also the differences between the legal terms they encounter when attempting to effectively close off a transaction or settle a dispute.

We find it fascinating that ALSA Indonesia highlights that English, in particular, can bridge the communication gap between multinational parties in settling disputes. Without it, to conclude a transaction or settle a dispute would be a tough challenge.

Through Legal English 101, you are invited to learn about various types of out-of-court dispute resolution and see the influence of English in the proceedings involved. The adoption of this approach to dispute resolution in (mostly commercial) disputes has forced disputing parties (and their lawyers) to familiarize themselves with use of English in legal proceedings.

There is no doubt that a good ability to use and understand legal English is an essential skill for aspiring law students with an eye to a successful future in the legal profession.

We enjoyed reviewing ALSA Indonesia Legal English 101. We hope it helps you broaden your knowledge of this particular topic.

Warm Regards,

Sahat A.M. Siahaan & Eva Fauziah

Faculty of Law Universitas Gadjah Mada
Jl. Sosio Yustisia No. 1, Bulaksumur,
Sleman, D.I. Yogyakarta 55281, Republic of Indonesia

Tel +62-811-1396-565
Mail contact@alsaindonesia.org
Web www.alsaindonesia.org

ALSA INDONESIA LEGAL ENGLISH 101

Volume. 3

"The Role of Legal English in Shaping the Alternative Dispute Resolution"

Content Writer:

Ratu Tasya Adawiyah

Chief Officer of Academic Research & Publication

Academic Activities and Training Department

National Board ALSA Indonesia 2020-2021

Peer Reviewer:

Sahat A.M. Siahaan

Partner at ABNR Counsellors at Law

Eva Fauziah

Senior Associate at ABNR Counsellors at Law

A. The Link Between English as a *Lingua Franca* for International Legal Matters and the Commencement of Alternative Dispute Resolution.

1. Key Roles and Essentiality of Legal English in Commencing an Alternative Dispute Resolution

In recent years, with the increase of business transactions and legal affiliations across the world, Indonesia faces a surge of foreign clients that would close a transaction with local parties. This phenomenon is also caused by the increase of Indonesia's foreign trade partners (such as, China (15.1%), Japan (10.8%), United States (10.25%), India (7.62), Singapore, (7.21)),[1] It is stated in Article 31 (2) of Law No. 24 of 2009 concerning National Flag, Language, Emblem, and Anthem that a contract involving a foreign client would be executed in both Indonesian and an English counterpart. With the significant number of contracts and business transactions that involve foreign parties, most of the foreign contracts involve a choice of forum clause,[2] that would lead to the settlement of the said contract through arbitration or other ADR methods, by then it is inevitable that the dispute settlements against different parties (namely foreign parties) would occur in English.

To resolve these disputes, Alternative Dispute Resolution ("**ADR**") has become common in non-litigation dispute resolution[3] for affiliated foreign parties, considering that this form of dispute settlement emphasizes the development of conflict resolution methods that are cooperative outside the court with efficiency and confidentiality as well as lasting relationships or cooperation that are not formalistic

[1] World Integrated Trade Solution, Trade Summary for Indonesia in 2018: Indonesia top 5 Export and Import partners, https://wits.worldbank.org/countrysnapshot/en/idn accessed on 15 February 2021.
[2] Ya Wei-Li. 2006. Dispute Resolution Clauses in International Contracts: An Empirical Study, (Cornell International Law Journal, Volume 39, Issue 3), Article 15.
[3] Tala Esmaili (Legal Information Institute). 2017. Alternative Dispute Resolution https://www.law.cornell.edu/wex/alternative_dispute_resolution accessed on 15 February 2021.

with a "win-win" solutions approach.[4] The increase of ADR usage is also due to the fact that most foreign parties are doubtful of the effectiveness, confidentiality of the local courts. With the hesitation of foreign parties to settle disputes through local courts, the usage of ADR increased exponentially. Furthermore, in terms of a business dispute, ADR is seen as an integral part of the business itself as a suitable approach for the business world considering its confidentiality and the expertise of the said facilitator as an essential advantage in commencing an ADR.

In these predicaments, local lawyers are required out of necessity to communicate with proper legal English, taking into consideration that English has been the international language basis for communications or the "*lingua franca*"[5] in every aspect. Consequently, to settle the disputes regarding legal matters, lawyers must adapt their English for specific legal matters particular to their region. In this sense, the usage of legal English is essential in carrying out an Alternative Dispute Settlement.

Alternative Dispute Resolution is an all-encompassing term that refers to multiple non-judicial methods of handling conflict between parties.[6] As defined by Nolo's Plain English Law Dictionary, ADR is defined as:

> "*A catchall term that describes a variety of methods that parties can use to resolve disputes outside of court, including negotiation, conciliation, mediation, collaborative practice, and the many types of arbitration. The common denominator of all ADR methods is that they are faster, less formalistic, less expensive, and often less adversarial than a court trial.*"[7]

---

[4] Mahkamah Agung RI. 2000. Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) dan Court Connected Dispute Resolution (Penyelesaian Sengketa yang terkait dengan Pengadilan, (Perpustakaan Mahkamah Agung RI), Page 6.

[5] A language used for communication between groups of people who speak different languages, most notable in business relations and international affairs. See: https://dictionary.cambridge.org/dictionary/english/lingua-franca accessed on 15 Februari 2021.

[6] Tala Esmaili (Legal Information Institute). *Op.Cit.*

[7] Nolo, Gerald N. Hill and Kathleen Thompson Hill. 2009. Nolo's Plain-English Law Dictionary, 1st ed. Page 21.

In Indonesia, the dispute resolution process through ADR is not entirely a new concept considering that in some cases in Indonesian law, such as Article 130 *Herzien Inlandsch Reglement* requires judges to make the parties settle the dispute before proceeding into a court and further examine the case. In addition, there are many Indonesian customary law settlements to resolve legal problems or traditional disputes by negotiation or mediation between the disputing parties.[8] However, over the years, the Alternative Dispute Resolution in Indonesia has been regulated as Indonesia has enacted Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution ("**Arbitration & ADR Law**") as the basis for ADR. In this case, there have been several institutions providing the ADR methods of dispute settlements, including the Indonesian National Arbitration Body (BANI), which focuses on the world of trade and ADR in resolving construction service disputes,[9] Indonesian Chamber of Commerce & Industry (KADIN), The Indonesian Capital Market Arbitration Body (BAPMI) that deals with other ADR disputes, such as those involving copyright and intellectual works, business competition, consumers, public interest case settlement, etc.[10]

In terms of facing these challenges of resolving trade disputes in the era of free trade in the future, it is compulsory for the local parties to find an ADR model of dispute resolution system as an alternative to settling disputes outside the court and develop methods of settlement, that would be suitable for both local parties and also foreign parties as most foreign parties are doubtful of the local litigation procedures. With these rationalizations, it is only natural for a lawyer to comprehend legal English

[8] Wayan Resmini and Abdul Sakban. 2018. Mediasi dalam Penyelesaian Sengketa dalam Masyarakat Hukum Adat, (Civicus, Vol. 6 No. 1) https://media.neliti.com/media/publications/277864-mediasi-dalam-penyelesaian-sengketa-pada-cdcc5e38.pdf accessed on 19 Juni 2021

[9] Dimas Hutomo, S.H. (Hukumonline). 2019. Dapatkah Menyelesaikan Sengketa Melalui Arbitrase jika Tidak Diperjanjikan Sebelumnya?, https://www.hukumonline.com/klinik/detail/ulasan/lt5ca46f65350e0/dapatkah-menyelesaikan-sengketa-melalui-arbitrase-jika-tidak-diperjanjikan-sebelumnya/ accessed on 19 February 2021

[10] Mas Achmad Santosa, Development of Alternative Dispute Resolution (ADR) in Indonesia, https://oja.coj.go.th/th/file/get/file/2018092507ea635132c430f0eaf7bf0c856cd935202618.pdf accessed on 19 February 2021.

or English for Law to apprehend the procedures and the carry out of ADR with foreign parties as to the other disputing counterpart. Therefore, legal English is a compulsory or essential skill to have for a lawyer in conducting an ADR, although the dispute settlement is done in a non-English speaking country.

2. What are the Types of Alternative Dispute Resolution?

In accordance with the Arbitration and ADR Law, the forms of ADR are consultation, negotiation, mediation, conciliation, or expert's judgment.[11] The definition of each form of ADR is not further elaborated in Arbitration Law and ADR law. Meanwhile, arbitration is excluded from the scope of ADR and given a different definition in Arbitration Law and ADR law, as:

> "*The method of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.*"[12]

a. Negotiation

Negotiation is a less formal method whereby parties meet in good faith to discuss and address the dispute to reach a mutually agreeable resolution.[13] In commencing a negotiation, it does not require the participation of a neutral third-party with decisional authority such as other ADR methods. Instead, the disputing parties themselves should decide the terms of any resolution. Negotiation is voluntary, in the sense that disputing parties are not ordinarily forced to negotiate with each other. However, in certain predicaments, the negotiation could be a mandatory approach before exhausting other dispute resolution methods (for example, in the case of a labour & employment dispute,

[11] Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Art. 1 Number 10
[12] *Ibid*, Art. 1 Number 1
[13] Marc Jonas Block. 2017. The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes, (Rutgers Law Record, Vol 44), https://www.wipo.int/export/sites/www/amc/en/docs/2016_rutgers.pdf accessed on 19 February 2021

such as the termination of employment contract by bipartite and tripartite methods under the regulation of Indonesian Labour Law). The negotiation process is informal and without defined procedures or rules governing the presentation of evidence or arguments.[14] Negotiation itself is a creative process in which the parties involved in an issue Discuss review their position[15] based on the occurring issues handled by both parties.

In this case, Parties involved in the disputes can discuss regarding the predicament at hand where both parties can give and receive some basis or arguments, exchange terms or conditions of the said parties and make policies that lead to an outcome that recognizes the differences of those involved and settle on the middle ground for a "win-win" resolution[16].

In Indonesia, the negotiation itself is regulated under the Arbitration and ADR law. Although it is not expressly stated, Article 6 of Arbitration and ADR law defines negotiation as a direct meeting of the disputing parties for the objective of reaching a mutual agreement. In the event of success, negotiation shall result in a written agreement between the disputing parties that will be final and binding for both parties as enshrined in the principle of *pacta sunt servanda*.[17]

Common types of disputes that are settled through a method of negotiation are mostly commercial disputes. However, in Indonesia, negotiations are often used as the first means to resolve a dispute between two disputing parties before continuing the dispute process to the next stage, which

[14] Robert Mnookin. 1998. Alternative Dispute Resolution, (Harvard Law School John M. Olin Center for Law, Economics and BusinessDiscussion Paper Series. Paper 232)
[15] Spiller P. 2009. Dispute Resolution In New Zealand. London: Oxford University Press.
[16] Ignio Grandi Gloria, Alternative Dispute Settlement Business Path Through The Court And Channel Beyond The Court, http://research-report.umm.ac.id/index.php/research-report/article/viewFile/925/1133 Accessed on 24 February 2021
[17] Gaffar & Co. 2020, Types of Dispute Resolution in Indonesia, https://gaffarcolaw.com/news-insights/types-of-dispute-resolution-in-indonesia/, accessed on 19 February 2021

requires a third party as a neutral party, whether through the litigation process in court or other ADR methods, such as Mediation or Arbitration.

b. Mediation

According to John W. Head,[18] Mediation is an ADR procedure in which a person acts as a "tool" to communicate between the disputing parties, with the intent that their different views on the dispute can be understood and possibly reconciled. However, the primary responsibility for achieving peace remains in the hands of the parties themselves. In reference to Ruth Carlton's[19] views on the five basic principles of mediation. The five principles or the five basic philosophies of mediation are; **principles of confidentiality, volunteer principles, empowerment principles, neutrality principles, and a unique solution principle.** On the other side, the main objectives for the mediation itself are to separate the people from the problem; focusing on interests, not positions; imagining inventive solutions that can benefit both sides with a "win-win" solution approach; and insisting on objective criteria.[20]

In Arbitration Law and ADR law Article 6 paragraph (3), mediation is a set of processes as a continuation of the unsuccessful negotiations carried out by the parties according to the provisions of Article 6 paragraph (2) of Arbitration Law and ADR law. Furthermore, in Indonesia, Mediation is not solely used to resolve disputes outside the court (non-litigation alternatives), but mediation is also used to resolve disputes in court. During civil cases, the use of alternative methods of dispute resolution, especially through mediation, is a must that the parties in a case should not distract, in the sense that mediation is an obligation that must be taken by the disputing parties, before continuing the process of

[18] John W. Head. 1997. "*Pengantar Umum Hukum Ekonomi*" ,)ELIPS:Jakarta), Page 42.
[19] Ruth Carlton. 2004. The mediator's handbook: skills and strategies for practitioners (2nd ed, Lawbook Co, Sydney)
[20] Michael Alberstein. 2000. The Jurisprudence of Mediation: Between Formalism, Feminism, and Identity Conversations, Page. 5

resolving the case through a court session. In settling a dispute through mediation, disputing parties can resolve a dispute informally with the help of a neutral third person, called the mediator, and avoid expensive litigation.[21]

Mediators are often considered objective, professional, and external to the parties, and have the neutrality that enables them to balance the parties' inter-subjective worlds.[22] In Indonesia, mediators are commonly Judges or other parties who have a Mediator Certificate as a neutral party who assist the Parties in the negotiation process in seeking various possible dispute resolutions without using a way to decide or force a settlement.

i. Responsibility of the Mediator

The mediator has duties and responsibilities that include procedural and facilitative matters. These tasks are reflected in the provisions of the Supreme Court Regulation Number 1 of 2016,[23] such as:

1. Preparing a proposed meeting schedule for the parties.
2. Prompting the parties to play a role in the mediation process directly.
3. Conducting a caucus (clarify that the Mediator can a hold meeting with one party without the presence of the other party).
4. Prompting the parties to explore or explore the interests of the parties; Looking for various options for the best solution according to their judgment; and cooperate to reach an agreement.
5. Assisting the parties in arranging and formulating a consensual agreement.

---

[21] Cara O'Neill, Mediation: The Six Stages, https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html accessed on 20 February 2021.
[22] *Ruth Carlton, Op.Cit.*
[23] Supreme Court Regulation Number 1 of 2016 concerning Court Mediation Procedures, *Vide* Art. 14

6. Declares that either or one of the parties have no good faith in settling the dispute and convey it to the case examining judge.

ii. Common Types of Dispute Settled by Mediation:[24]

1. Banking Dispute (Under the Article 2 of Bank Indonesia Regulation Number 8/5/PBI/2006 Concerning Banking Mediation)
2. Insurance Dispute (Under the Article 54 of Law No. 40 of 2014 Concerning Insurance)
3. Consumer Protection Dispute (Under the Article 45 of Law No. 8 of 1999 Concerning Consumer Protection)
4. Labour dispute (Under the Article 136 of Law No. 13 of 2003 Concerning Man Power)

iii. Stages of Mediation:[25]

1. Introduction
2. Problem Identification
3. Generation of Options and Alternatives
4. Clarification and Agreement Writing

c. Conciliation

Conciliation is another dispute resolution process that involves building a positive relationship between the parties of the dispute. However, it is fundamentally different from mediation (although there are some similarities) and arbitration in several respects.[26] In conciliation, both parties are required to

[24] Cara O'Neill, *Op.Cit.*
[25] Findlaw Attorney Writers. 2016. What Is Mediation And How Does It Work? https://corporate.findlaw.com/litigation-disputes/what-is-mediation-and-how-does-it-work.html accessed on 21 Februari 2021
[26] Alessandra Sgubini, *Et.Al*, Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective, https://www.mediate.com/articles/sgubiniA2.cfm accessed in 2021.

appoint a neutral and unbiased person to help parties involved in a dispute to reach an amicable settlement.

In Indonesia, although conciliation is regulated under the Arbitration and ADR law, there is no specific provision on conciliation. The most notable regulation that provides conciliation is under the Law No. 2 of 2004 Concerning Industrial Relation Dispute Settlement.[27] Similar to negotiation and mediation, successful conciliation results in a written agreement which is deemed final and binding to the disputing parties. However, in the event of a failure of conciliation, the conciliator must issue a written recommendation which is subject to approval or rejection by the disputing parties.[28]

d. Arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. [29] The arbitration is heard and decided by an arbitral panel. The main principles of arbitration are (1) Consent, (2) Both Parties chose the Arbitrators, (3) Set on a Neutral Ground (4) Confidential in Nature, (5) The decision of the arbitral tribunal is final and easy to enforce.[30] Furthermore, Court procedural falls into comparison with arbitration as arbitral awards are more enforceable in most parts of the world which applies the recognition of the foreign arbitral awards and the referral by a court to arbitration.[31]

---

[27] Law No. 2 of 2004 Concerning Industrial Relation Dispute Settlement.
[28] Gaffar & Co, *Op.Cit.*
[29] WIPO, What Is Arbitration?, https://www.wipo.int/amc/en/arbitration/what-is-arb.html accessed on 22 February 2021
[30] *Ibid.*
[31] New York Convention: 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 3, [1975] ATS 25, 4 ILM 532 (1965), UKTS 26 (1976)

Arbitration in Indonesia is governed by the Arbitration and ADR law. Although there are more similarities than differences, the Indonesian Arbitration Law is not based upon the UNCITRAL Model Law.[32] The Arbitration and ADR law also differentiates between domestic and international arbitration, based on where the arbitration award is rendered. Under Article 1 of Arbitration and ADR law, an international arbitration award is an arbitration award rendered by an arbitration institution or arbitral tribunal outside the jurisdiction of Indonesia, or an award rendered by an arbitration institution or arbitral tribunal that is deemed an international arbitration award based on Indonesian law.

In accordance with Article 1 (1) of Arbitration and ADR Law, arbitration can only apply to civil disputes, i.e., disputes of commercial nature, or those concerning rights which are fully controlled by the disputing parties.[33] Arbitration settlement procedures in Indonesia, includes:[34]

1. **Registration Procedures**

   Under the Article 8 (2) Arbitration and ADR Law, the request for arbitration is made in writing and contains complete information such as the names and addresses of the Petitioners and Respondents; designation of the arbitration clause applies to the agreement; the agreement that is in dispute; the basis of the claim; the amount demanded (if any); the desired dispute resolution method; and submission of the desired number of arbitrators.

2. **The arbitrator appointment stage**

   Under the Article 8 (1) and 8 (2) If a dispute arises, the claimant must inform the respondent by registered letter, telegram, telex, fax, e-mail,

[32] Dr. Andreas Respondek. 2017. Asia Arbitration Guide, (5th (Extended and Revised) Edition, Singapore)
[33] Gaffar & Co, *Op.Cit.*
[34] *Smartlegalid*, Prosedur Penyelesaian Sengketa Melalui Arbitrase, https://smartlegal.id/smarticle/2019/01/25/arbitrase-dan-prosedur-penyelesaian-arbitrase/ accessed on 22 February 2021

or by courier that the terms for arbitration between the claimant and respondent apply.

3. **Respondent's Response**

   After the application file is registered, the management of the Indonesian National Arbitration Board (BANI) will examine and decide whether BANI is indeed authorized to carry out dispute examinations. Then the BANI secretariat will prepare a copy of the Petitioner's arbitration request and other attached documents to be submitted to the Respondent. Respondent has 30 days to respond, and this can be extended to 14 days.

4. **Counterclaim.**

   The Respondent can file a counterclaim (reconvention) on sending a response letter or not later than when the first trial begins. The Petitioner and the Respondent will be charged an additional fee if a counterclaim is filed.

i. Common Types of Dispute Settled by Arbitration:[35]

1. Insurance disputes.
2. Construction disputes.
3. Trade disputes.
4. Disputes regarding the termination of agency agreements or commercial leases.
5. Disputes between or among oil, gas or mining contractors.
6. Other general contractual claims.

[35] Timur Sukirno and Bernard Sihombing, Arbitration procedures and practice in Indonesia: overview, https://uk.practicallaw.thomsonreuters.com/9-520-8397?transitionType=Default&contextData=(sc.Default)&firstPage=true Accessed on 20 February 2021

B. Common Terms and Usage of Legal English in Alternative Dispute Resolution

1. Terminologies Relevant in the Commencement of Alternative Dispute Resolution

No.	Terminologies	Definition
1.	**Amicable Settlements**	Settlement of a dispute by the parties amicably, ending the dispute. An attempt to amicably settle a dispute is frequently required before a dispute may be submitted to arbitration or court.
2	**Institutional Arbitration**	a specialised institution intervenes and takes on the role of administering the arbitration process. Each institution has its own set of rules which provide a framework for the arbitration, and its own form of administration to assist in the process. Notable arbitration institute:International Chamber of Commerce, Singapore International Arbitration Centre.
3	**Ad Hoc Arbitration**	A form of arbitration where the parties and the arbitrators independently determine the procedure, without the involvement of an arbitral institution.

4	**Statement of Claim**	a court document that sets out how much or what the other party claims you owe them and why they are making the claim. Which contains at least: the full names and residences/domiciles of the parties; a short description of the dispute, accompanied by evidence in the form of exhibits; and clear contents of the claim.
5	**Prayer of Relief**	A statement where the plaintiff describes the remedies that they seek from the court
6	**Seat of Arbitration**	a location selected by the parties as the legal place of arbitration, which consequently determines the procedural framework of the arbitration.
7	**Amiable Compositeur** (***ex aquo et bono***)	A term for an arbitral tribunal expressly authorized by the parties to base its decision on equitable principles such as fairness, and not solely based on the law.
8	**Annulment of an Award**	It is also known as setting-aside; a decision by a national court where the arbitration is seated to vacate an award, which is only possible in exceptional circumstances.

9	**Damages**	Amount of money owed by one party to compensate for the harm it has caused the other party.
10	**Mini-Trial**	A highly structured, formalized, and evaluative mediation process in which the parties cede a great deal of procedural control to reframe the dispute from the context of litigation to the context of a business problem. It requires the participation of non-legal party representatives with settlement authority who sit as a panel with the neutral.
11	**Neutral**	An individual who facilitates the ADR process, including mediators, arbitrators, private judges, facilitators, and special masters (or referees). Also known as "panelist."
12	**Panelist**	An individual who facilitates the ADR process, including mediators, arbitrators, private judges, facilitators, and special masters (or referees). Also known as "neutral."

13	**Med-Arb**	The parties agree to mediate their dispute and, if unable to settle, they participate in binding arbitration using the same neutral.
14	**Evaluative Mediation**	Using this process, parties may "test" the potential outcomes of a case. The mediator allows the parties to present their factual and legal arguments. He or she may then offer his or her own assessment or predictions as to a trial outcome. It is often used for more complicated cases, in which the gap between the parties is large, the issues are somewhat complicated, and the stakes are high.
1.	**Facilitative Mediation**	In this process, outcome control remains almost entirely in the hands of the parties and their counsel. A mediator enhances communication and helps to create options for resolution by ensuring that all relevant information is exchanged and heard by the parties. The mediator also helps to distinguish the parties' issues from their interests.
11.	**Final Offer Arbitration**	In this form of arbitration, the plaintiff and

	("Baseball")	the defendant each separately submit a "final offer" to the arbitrator. The arbitrator chooses between the offer or the demand presented based upon the arguments heard. It is called baseball arbitration because it was long used to resolve disputes between baseball players and teams.

2. Tips in Commencing and Learning ADR

a. In the case of a contractual dispute, lawyers would often **review the contractual obligations and choice of forum** in the contract **to determine how the dispute must be resolved.**

b. **Educate Clients** for ADR Options.[36]

c. Determine the **Best Timing** for ADR.[37]

d. Apprehend the concept of **"win-win" solutions** to bring an **equal settlement** for both parties that lead to mutual gains.

e. In commencing an ADR, lawyers have to establish the possibility of **the best alternative** to negotiate a settlement and **the worst alternative** to negotiate a settlement in order to make a suitable and best decision for the disputing parties.

f. **Know the client and the client's interests in the outcome**. Prioritize money, benefits, recognition, apology, references, revenge, vendetta, principle, reduction of tension, aversion of loss and uncertainty, elimination of conflict,

[36] Resolution System Institute, ADR Topics for Lawyer, https://www.aboutrsi.org/special-topics/for-lawyers accessed on 22 February 2021.
[37] *Ibid*

keeping business. Know how motivated your client is to settle given all of these factors.[38]

g. Sheer away from language that sounds positional; **speak in terms of the parties' interests**, in order to avoid cornering the opposing party.
h. When presenting a point on your client's behalf, **acknowledge something on behalf of the opposing party**.
i. **Choose a diplomatic phrase** when commencing an ADR and speak in terms of your client's needs.

[38] Myer J. Sankary, ADR Practice Tips and Insights for Lawyers and Clients, https://www.mediationla.org/adr-practice-tips-and-insights-for-lawyers-and-clients/ accessed on 22 February 2021

BIBLIOGRAPHY

Regulation

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement.

Supreme Court Regulation Number 1 of 2016 concerning Court Mediation Procedures

New York Convention: 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 3, [1975] ATS 25, 4 ILM 532 (1965), UKTS 26 (1976)

Book

Nolo, Gerald N. Hill and Kathleen Thompson Hill. 2009. Nolo's Plain-English Law Dictionary, 1st ed.

John W. Head. 1997. "*Pengantar Umum Hukum Ekonomi*", (ELIPS: Jakarta)

Ruth Carlton. 2004. The mediator's handbook: skills and strategies for practitioners (2nd ed, Lawbook Co, Sydney)

Journal

Ya Wei-Li. 2006. Dispute Resolution Clauses in International Contracts: an Empirical Study, (Cornell International Law Journal, Volume 39, Issue 3), Article 15.

Mahkamah Agung RI. 2000. Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) dan Court Connected Dispute Resolution (Penyelesaian Sengketa yang terkait dengan Pengadilan, (Perpustakaan Mahkamah Agung RI), Page 6.

Robert Mnookin. 1998. Alternative Dispute Resolution, (Harvard Law School John M. Olin Center for Law, Economics and BusinessDiscussion Paper Series. Paper 232)

Spiller P. 2009. Dispute Resolution in New Zealand. London: Oxford University Press.

Michael Alberstein. 2000. The Jurisprudence of Mediation: Between Formalism, Feminism, and Identity Conversations.

Dr. Andreas Respondek. 2017. Asia Arbitration Guide, (5th (Extended and Revised) Edition, Singapore)

Online Journal

Wayan Resmini and Abdul Sakban. 2018. Mediasi dalam Penyelesaian Sengketa dalam Masyarakat Hukum Adat, (Civicus, Vol. 6 No. 1) https://media.neliti.com/media/publications/277864-mediasi-dalam-penyelesaian-sengketa-pada-cdcc5e38.pdf

Dimas Hutomo, S.H. (Hukumonline). 2019. Dapatkah Menyelesaikan Sengketa Melalui Arbitrase jika Tidak Diperjanjikan Sebelumnya?, https://www.hukumonline.com/klinik/detail/ulasan/lt5ca46f65350e0/dapatkah-menyelesaikan-sengketa-melalui-arbitrase-jika-tidak-diperjanjikan-sebelumnya/

Mas Achmad Santosa, Development of Alternative Dispute Resolution (ADR) in Indonesia, https://oja.coj.go.th/th/file/get/file/20180925 07ea635132c430f0eaf7bf0c856cd935202618.pdf

Marc Jonas Block. 2017. The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes, (Rutgers Law Record, Vol 44), https://www.wipo.int/export/sites/www/amc/en/docs/2016_rutgers.pdf

Ignio Grandi Gloria, Alternative Dispute Settlement Business Path Through The Court And Channel Beyond The Court, http://research-report.umm.ac.id/index.php/research-report/article/viewFile/925/1133

Alessandra Sgubini, *Et.Al*, Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective, https://www.mediate.com/articles/sgubiniA2.cfm

Timur Sukirno and Bernard Sihombing, Arbitration procedures and practice in Indonesia: overview, https://uk.practicallaw.thomsonreuters.com/9-520-8397?transitionType=Default&contextData=(sc.Default)&firstPage=true

Website

World Integrated Trade Solution, Trade Summary for Indonesia in 2018: Indonesia top 5 Export and Import partners, https://wits.worldbank.org/countrysnapshot/en/idn

Tala Esmaili (Legal Information Institute). 2017. Alternative Dispute Resolution https://www.law.cornell.edu/wex/alternative_dispute_resolution

Findlaw Attorney Writers. 2016. What Is Mediation And How Does It Work? https://corporate.findlaw.com/litigation-disputes/what-is-mediation-and-how-does-it-work.html

Cara O'Neill, Mediation: The Six Stages, https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html

Gaffar & Co. 2020, Types of Dispute Resolution in Indonesia, https://gaffarcolaw.com/news-insights/types-of-dispute-resolution-in-indonesia/

WIPO, What Is Arbitration?, https://www.wipo.int/amc/en/arbitration/what-is-arb.html

Smartlegalid, Prosedur Penyelesaian Sengketa Melalui Arbitrase, https://smartlegal.id/smarticle/2019/01/25/arbitrase-dan-prosedur-penyelesaian-arbitrase/

Resolution System Institute, ADR Topics for Lawyer, https://www.aboutrsi.org/special-topics/for-lawyers

Myer J. Sankary, ADR Practice Tips and Insights For Lawyers and Clients, https://www.mediationla.org/adr-practice-tips-and-insights-for-lawyers-and-clients/

Faculty of Law Universitas Gadjah Mada
Jl. Sosio Yustisia No. 1, Bulaksumur,
Sleman, D.I. Yogyakarta 55281, Republic of Indonesia

Tel +62-811-1396-565
Mail contact@alsaindonesia.org
Web www.alsaindonesia.org

ALSA,

Always be One!