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Access to Justice: A Taxonomy of Conflict and Dispute Phases



Abstract: - The existence of conflicts and disputes in consumer trade has great implications for many parties because its effects can affect the current situation of consumers and the country's trade sector. Dispute resolution bodies that are procedural, ethical and have their own positive values, need to play a role in dealing with disputes brought by the parties involved. Traditionally and in practice for centuries, the court has an important function to administer and uphold the law by hearing any dispute filed according to the established procedure. This privilege, however, did not last long because consumer trade disputes changed direction by choosing alternatives and other forms of resolution mechanisms that more suit their needs, such as various Alternative Dispute Resolutions (ADR) mechanisms. This paper employs a qualitative research method to achieve the objective in discussing several theories of conflict and disputes analyse by several prominent experts. Various types of conflict theories that lead to several forms of disputes and a variety of management techniques or responses to control them from continuing are also detailed. For consumer trade disputes, the history and background of access to justice for consumers was also studied to get the real scenario of disputes that consumers often face, especially in the current era.

Keywords: Access to Justice, conflict, dispute, Alternative Dispute Resolution, consumer

INTRODUCTION

Conflicts and disputes are customary in all social life individually or in small and large groups, as well as in certain bodies and organizations. The effect allows for some bad and good things about the values and processes of social life. Misunderstandings between two or more parties can occur due to the natural conditions of life exposed to various negative elements that lead to misunderstandings, oppression of each other's rights, or challenge of a person's authority. This situation leads to the outbreak of conflict and if it is not controlled as best as possible, it will be prolonged and there will be disputes that need to be resolved. Brief examples of people in conflict before leading to an actual dispute, such as the words 'I don't want to talk to you', may be the basis for non-serious conflict. Although relatively simple, it can lead to serious disputes. Since this conflict can exist anywhere, it can grow and become serious, then will certainly needs a solution. This situation requires a mutually acceptable process such as agreement, discussion, intervention by the court or a third party that is given certain authority according to the law. Whatever the process, the resolution reached allows conflicts and disputes to be resolved even for a short period of time. All these behaviors and conflict events lead to social disharmony in the community, group or family. For every community group, the conflict scenario that afflicts a group should not continue and should be resolved as soon as possible in a way that pleases both parties to the conflict.

METHODOLOGY

The article is based on the doctrinal legal research methodology. Both primary and secondary data are used, collected through the library-based approach. Specifically, the primary data are collected from Acts and Laws. At the same time, the secondary data are sourced from books, legal documents, and articles from journals and online resources. Then both primary and secondary data are critically examined and interpreted by using the content analysis approach. This paper seeks to explore a taxonomy of conflict and dispute, and then considers the cause and causation of conflict and dispute. To this end, the literature is reviewed and a taxonomy is presented for the study of conflict and dispute within the consumer trade. For the purposes of this research, the researcher only focuses on conflicts and disputes related to the field of consumer trade. Nevertheless, conflicts and disputes in general are also seen and analyzed to understand more clearly the relationship with user conflicts and disputes. In this context, it is worth noting that conflict can be managed, possibly to the point of preventing it from leading to dispute. Disputes require resolution and therefore are associated with distinct justifiable issues. The resolution

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process may lend itself to third-party intervention.

THEORIES OF CONFLICT AND DISPUTES

Conflict: Its definition

Conflict is taken from two (2) Latin words which are 'con' meaning 'together' and 'fligere' meaning 'to strike' (Fiadjoe, 2004). Conflict is inevitable, especially in social and community relations, trade relations, and even the political relations of a country. It can happen at every level of life, for example, between individuals or individuals (interpersonal), between groups (*interpersonal*) and at the international level (*international*). Basically this conflict is everywhere and in every group or group of social life. In most literature, the meaning of conflict is more focused on the distortion of issues or interests. Conflict is defined as a distortion of the interests and perceptions of conflicting parties (Deutsch et al.). While (Hocker & Wilmot, 2018) give the meaning of conflict as stating the struggle and intervention between conflicting parties towards the goals of their respective struggles. However there are some other views that suggest a different definition. This view sees conflict as a state or situation. This definition focuses on the conditions and situations that exist as the cause of the conflict that occurs. This stated situation involves several other related conditions such as the norms of life that are followed, the rules that are practiced and the members of the community. Such situations will usually influence certain bodies to hold an effective settlement scheme such as through Alternative Dispute Resolution or ADR.

(Christopher Roger Mitchell, 1981) defines conflict as any situation involving more than one social entity or party that assesses that they have different goals. (Roxane Salyer Lulofs & Cahn, 2000) believes that there are terms that lead to the understanding of different types of conflict. Various terms lead to meanings that can be associated with conflict and dispute. Among those terms are as follows:

Confrontation, verbal opposition, disagreement, difference of opinion, avoidance of confrontation, avoiding others, changing the topic of conversation, problem solving discussions, interpersonal violence, physical abuse, sexual abuse, verbal abuse, cold treatment, accusations, pointing fingers at each other, making indecent movements, expressions of anger, violent actions, not thinking about others, gloomy relationships, looking down, careless attitude, forced actions, mixed feelings, competition, negotiation, bargaining, mediation, agitation, fighting and arguing, threatening and humiliating someone.

While (Duvall, 1979) and (Rummel, 1987) divides into five (5) levels and stages of conflict, namely:

- i. Latent Conflict Phase - where the possibility of conflict is different from each other based on differences in meaning, values, norms, status and class position.
- ii. Initiation Phase - where something happens as a trigger for the actual conflict.
- iii. Balancing of Power Phase - where both parties examine each other's ability to reach a solution to the conflict they are facing.
- iv. Balance of Power Phase - where the conflicting parties accept the settlement reached and pursue goals based on that settlement.
- v. Disruption Phase - where the conflicted parties find that the solution made leads to a greater conflict or a new conflict, and ultimately triggers a dispute that needs to be resolved.

(Duvall, 1979) and (Rummel, 1987) focuses more on the actual cycle of an unpleasant situation between two (2) parties that leads to conflict between the two. The parties are actually more involved in finding a solution at an earlier stage without having to involve a third party. However, disputes can still occur if the last cycle occurs where both parties fail to control the conflict they face. The situation and attitude of both parties who fail to deal with the conflict they face can cause the conflict to become more serious, change form to a dispute and finally will have to be controlled and resolved. As the conflict has reached a serious stage, it can cause the parties to the conflict to not be able to deal with it effectively, and further lead to the perception that the conflict is something very bad and difficult to resolve. In this situation, the conflict will continue and a new cycle of conflict will occur and repeat which eventually leads to a bigger dispute than the conflict.

Negative aspects of conflict such as damage, destruction of relationships, depression and unhappiness are common perceptions associated with conflict events. But on the other hand, conflict can create positive things that many don't realize. It is considered positive because it can provide useful values to get to know someone and look at an issue that occurs more attentively and carefully. Indirectly, any problem will be dealt with more creatively and through a more positive approach for both disputing parties. This situation also provides a valuable experience for the parties involved to appreciate the existing relationship and take care of it in the future. Conflict provides some benefits and advantages to an organization and society that faces the conflict if it can be handled well. Some of the positive functions that can be played by every conflict that occurs include avoiding the occurrence of a '*stagnant*' situation or unchanging for the better, and it also stimulates interest and a state of curiosity and wanting to improve a position. Through this positive function, existing problems can be solved and the best solution can be achieved. Society should be able to use the positive functions that can be scooped up from conflicts and disputes as a unique and interesting experience to achieve a more positive situation than before the conflict and dispute occurred.

According to (Willem Frederik Wertheim, 1974) there are scholars such as Lewis Coser and Max Gluckman who consider social conflict important and necessary in building society, where it functions integrative in society. In this situation, the conflicting parties do not actually face any problems and disagree about the norms of life they should follow, but they just differ in opinion which leads to the conflict they face. When such a situation occurs, the actual conflict will not bring any change to life, it may only strengthen the social structure of the community involved to some extent. (Friedland, 1975) states that Anatol Rapoport has given three (3) main classifications for all existing conflicts. Usually, the conflict that occurs between individuals and groups is a collection and network of the following components:

- i. **Fight.** In any match and struggle, each conflicting party will try their best to eliminate the opponent from acting more agile and fast, either by physically weakening the opponent or subtly subduing him to retreat. Opponents are considered enemies if they do not give in or retreat. Examples of resistance in previous life civilizations such as resistance in primitive times to get the right to occupied places and areas, secret partnerships and so on. However, this situation has been improved by the existence of a civilized society that is aware of the value of law, and this provides a large gap in preventing the occurrence of conflicts.
- ii. **Game.** In this situation, the parties who are in conflict either by choice or out of necessity, are required to focus their aggressive actions only on specific and stated matters without going beyond the permitted limits. The objective of the game is not actually to eliminate any opponent, but to achieve the objectives and expectations stated in the game. For example, a game like 'chess' can create conflict in the game, which is its' real objective and not to eliminate the opponent. Likewise with the conflict created by competition in the field of trade, it can also be considered a game and not a match. It is a fact that most people are aware that one side hates another that trades the same stuff, it is a game that does not allow one to eliminate their opponent like in a match.
- iii. **Debate.** Basically the purpose of debate or discussion is not to eliminate the opponent as in a 'match' or to defeat the opponent as in a 'game'. Its main purpose is to convince the opponent or related party, which can cause them to see something argued from a different value and perspective. It is quite clear here that debate can be an instrument of conflict resolution if both disputing parties can agree on the procedure and purpose to be upheld, which is to get justice for each disputing party. The existence of this kind of conflict is an extension of differences of opinion and conflicting ideas from different parties. In this situation, the conflict can be resolved by getting answers and truth to the issues raised.

The acceptance of outside or other parties' opinions and views is very important to calm the existing conflict atmosphere, and this can be achieved through debate and discussion. In short, achieving a harmonious situation and atmosphere to resolve a conflict and dispute through debate is to bring out all the important issues that need to be argued, whether based on facts or questions that are the main consideration to find the answer to the problem. With this method, both parties will be satisfied with the solution without feeling that there is a loser and a winner. This situation is reflected through several dispute resolution mechanisms such as ADR through a method played by a third party who acts as a facilitator in the debate of issues that need to be resolved by both disputing parties.

Disputes: Transformation of Conflicts into Disputes

Disputes are often associated with the responsibilities that must be played by judicial institutions, bodies and agencies handling claims and complaints, judges, lawyers, legal bodies and certain acts. For example, a court is an institution that exists to resolve any dispute fairly. Lawyers are hired to represent each party in conflict and dispute. The role played by the court, judge and lawyer is to comply with certain laws, whether the law can meet the wishes of the disputing parties or not. Therefore, the meaning of the dispute and its types need to be researched and understood so that the available laws can be applied as much as possible. Disputes occur due to violations of the law, values and ethics involved. It is considered a disorder that needs to be cleared. The field of litigation has long seen that one way to clean it up is through the trial process in court. Through this hereditary procedure, for example, lawyers will use their own expertise and strategies to get a decision for each dispute they represent. (Felstiner et al., 1980) defined a dispute as a relationship situation that is categorized in stages which is the process of 'naming, blaming and claiming'. In such a situation, sometimes an individual involved feels that he has had a bad experience, blames others for the problems faced and then makes a claim on him. The process to overcome it needs to be channeled through a claim in court, with the help of a lawyer who helps find the truth on the claim filed, then resolve the dispute between the client involved. Dispute transformation shows that originally small but uncontrollable conflicts can cause both parties to mutually seek issues of inequity over unwanted or harmful experiences between them. The situation continues and leads to more critical actions where they will accuse each other on issues that are not agreed upon. This scenario will lead to an action to claim a sum of damages and compensation from one aggrieved party to the other party. Three (3) phenomena that go through form the transformation of the conflict into a real dispute between two (2) parties or more.

Therefore, a dispute can also be described as a conflict that has reached a level where both parties cannot find a solution to the issues raised. As a result of disagreements and misunderstandings in relationships and mutual communication, it requires the repair of the relationship to return to the original, which is through the resolution of the dispute. This scenario exists when a conflict turns into a dispute due to the existence of tension in communication that requires the intervention of neutral third parties such as mediators, negotiators, arbitrators and judges..

CONSUMER DISPUTES AND THE ACCESS TO JUSTICE

When there is user dissatisfaction and users who make a complaint based on the dissatisfaction to the relevant parties, it indicates that there is a transaction between the user as a buyer and the manufacturer as a seller that does not comply with certain laws and morals. The majority of consumer complaints stem from a mismatch between the goals of traders and consumers and their different perceptions of product attributes related to health, safety and consumer satisfaction. There are two (2) main ways that consumers use to voice their dissatisfaction when facing problems with poor quality products. They will either 'voice to the seller' about the dissatisfaction or 'exit', for example making a decision to choose another similar product that is of better quality and meets their needs. The consumer dissatisfaction is the starting point from unfair trade and consumer complaint mechanisms that are not user-friendly.

In conclusion, consumer disputes that arise in the context of trade with merchants, traders or suppliers need to be handled better by many parties. Consumers also need to be smarter because smart consumers are consumers who know and practice their rights in case of dissatisfaction caused by unfair traders in trade transactions with consumers. Therefore, users should dare to voice their dissatisfaction according to the right channels. The ideal actions are able to protect consumers in the event of disputes in trade transactions with traders and further provide the justice they dream of.

ACCESS TO JUSTICE

Justice is a superior objective intended for every legal system. When there is an error and there is an imperfection of a system, the decision received is often associated with injustice. When an innocent individual or party is linked to committing an offence, it is linked to a miscarriage of justice. The concept of justice has been the focus of creating a civilized society since time immemorial. However, it is only in the present century that the concept of universal justice has been given more serious and primary attention. In the current millennium, the problem of access to justice is often debated covering various issues that require resolution and consideration. It covers

consideration in choosing the best resolution mechanism, economical methods for dispute resolution, and using legal services without involving complicated bureaucracy through various alternative techniques.

What is meant by justice? Aristotle, a Greek philosopher was one of the earliest scholars responsible for introducing some thoughts and philosophies about justice. His thoughts are still used and very valuable to this day. He thinks that a fair law will make an individual feel that he belongs to a society. He also distinguishes between 'distributive justice' and 'corrective justice'. 'Distributive justice' is related to the distribution of assets, wealth and respect for people in a community. The purpose of this justice is to achieve balance even if it is not through equal distribution. Aristotle considered that individuals should benefit from such balance although not necessarily equally. While 'corrective justice' is related to situations that are fair but have been misused and disturbed by certain parties who are considered wrong in the eyes of the law. The judges are responsible for finding a solution and ordering compensation to be paid, or imposing any related fines and penalties if necessary and appropriate.

It cannot be denied that it is quite difficult to give a precise definition of the meaning and phrase 'access to justice'. Cappelletti and Garth (1987) give the meaning of access to justice which leads to two (2) main and most basic purposes in a country's legal system. Among other things they stated that:

...a system that enables people to ensure their rights and/or to resolve disputes faced under the general auspices of a state. Firstly, this system should be easily accessible to all, and secondly, this system should lead to a decision that is fair both individually and socially.

(Fox, 2012) also mentioned that 'access to justice includes access to courts and tribunals involved in providing justice. Justice to be administered and manifested should be made open and easily accessible to all, and in equal power and position.' In 1995 and 1996, Lord Woolf conducted a comprehensive survey to improve access to justice in the Courts in England. His final report has proposed a new civil justice landscape to be introduced, where the litigation process should be avoided as much as possible and the landscape will involve a resolution mechanism that is less 'adversarial' and less complex, and provide a fairly strict case management process by judges (Woolf, 1996). From Woolf's survey, a code of procedural rules that is combined comprehensively or known as Civil Procedure Rules or CPR that provides a proposal towards the objective and reform program is introduced. The rules came into force on 26 April, 1999 and apply in all High Court and District Court proceedings in England and Wales. As a result, it has become the responsibility of the court to actively manage the case by encouraging both disputing parties to cooperate and use the ADR mechanism as much as possible. The rules also specifically state that the opportunity for each disputing party at the beginning of the trial proceedings to apply, to use the channel of the ADR mechanism first before making a decision to proceed with a full trial or not'. This scenario and Woolf's proposal at the time hinted at the importance of ADR in dealing with disputes. The obligation of both disputing parties to refer the case to ADR first before going to a full court hearing implies that ADR is not just an option, but has been made mandatory in dispute resolution.

ACCESS TO JUSTICE: A HISTORY OF CONSUMER PERSPECTIVES

The concept of access to justice has gone through an important transformation in line with changes in civil procedure. The late 18th and 19th centuries saw liberal and 'bourgeois' countries defend individual rights as something common to gain access and legal protection. Those who make claims have the right to claim and get what they deserve. In theory, access to justice for consumers is a natural right that does not require any affirmation to implement it. However, the lack of law or 'legal poverty' that occurs in a country's system can destroy the protection of these rights. As the 'laissez-faire' society grew in size and complexity, the concept of human rights began to undergo a radical transformation. Since various actions and relationships have become something more collective than individual, modern society has certainly moved beyond the limits of the individual and the 'laissez-faire' view. These rights were featured in draft laws in the 18th and 19th centuries that moved towards recognizing social rights and the duties of governments, communities, associations and individuals.

For a country that thinks about the welfare of its people, changes for the better are always being worked on and improved to empower substantive rights that suit their capacity as consumers, workers and citizens. Finally, the right to effective access is increasingly recognized among new individual and social rights. Access to justice for

consumer groups is closely related to the preservation of their rights and their protection after being oppressed. There are various techniques used to preserve and protect the rights of consumers, especially so that access to justice will continue to be enjoyed by consumer groups. The consumers and users need to be wise in playing their respective roles in upholding their rights as smart users. Access to justice cannot be achieved without the involvement of consumers themselves in equipping themselves with consumer-related knowledge. Consumers should not be careless and ignore current developments that involve them. Over-reliance on consumer organizations to take action while abstaining from involvement suggests that there is no consensus. The community sees that justice can be achieved through laws provided by the government, should any conflict and dispute arise in their community and group. The purpose of the law is to provide justice to all citizens. The community is told that the law aims to protect and provide security to them, giving them the necessary freedom in line with their due rights. However, this noble purpose is sometimes not achieved and even leads to problems.

This legal process can threaten some parties, is difficult to access and complicated which is usually experienced by the less powerful. It is more about establishing dominance than trying to create equality. This situation is commonly faced by enacted laws and litigation procedures in court. For example, 'adversary' procedures and systems that are practiced lead more to aggressive competition without thinking about the value of empathy and equality between parties. As we know, there are various procedural alternatives to deal with and resolve disputes that occur. One of the things that is often mentioned is the litigation process, the effect of which sometimes cannot resolve the actual dispute faced. While another step that needs to be developed is ADR, which actually emphasizes good solutions and options for both disputing parties to overcome and resolve the dispute peacefully. The highlight is to leave a positive impression and relationship between the two parties.

(Kamenka & Alice Erh-Soon Tay, 1979) stated that the law functions with three (3) different responsibilities but related to society. The first responsibility is that the law serves to create the basis of the rules of common life. This can only be achieved by connecting it between the values of life and good laws. The second responsibility, the law provides principles and procedures to resolve any conflict and dispute in the community, and the community should understand that they need to comply and obey the law. The third responsibility, the law guarantees and provides security to the relationships that exist in society by emphasizing the importance of certain principles and policies. According to Anatol Rapoport (1975), the concept of law that should be applied is originally based on several implicit assumptions which are:

- i. The existence of an entity known as 'society' that takes place such as the interests of an organizational body that provides each individual with various opportunities and collaborations that have a purpose and side rewards. For this cooperation process that exists, if it moves well, then conflicts and disputes between groups, individuals or communities will be avoided, or reduced to the maximum level, or can be resolved and subsequently various behaviors or deviant behaviors can be avoided.
- ii. The assumptions adopted in the philosophy of social theory are closely related to the liberal tradition that emphasizes the existence of 'fundamental rights' for each individual. This means that there is a prerogative that allows individuals to live this life. In this situation, it is assumed that the 'society' or the government that exists through the choice of the 'society' is created to give that prerogative power to each individual to continue living.
- iii. The assumption of the implementation and existence of certain institutions that exist from the choice and consent of the 'voluntary contracting parties' depends on any exchange and change that may occur, at the choice of the parties involved. The existence and responsibility of the institution aims to improve continuous justice to the community, especially in dealing with disputes from continuing.

In conclusion, the role of law to avoid conflicts and disputes or the function of resolving disputes that occur is actually a great responsibility that must be fulfilled. The law acts not only as a solution to any problem and conflict of individual or group disputes, but also a solution to any internal conflict of any group and individual involved.

Based on the above and its connection with the 'adversary system' that exists in Malaysia, both disputing parties will appoint their respective lawyers if they can afford to pay to represent them in the dispute. While the court acts as an instrument to uphold justice in society and life. However, in practice, this situation has changed from the original value and purpose, where 'responsibility' has changed into a 'necessity' only to comply with the 'rules

of the game'. This 'game' is usually considered a 'zero-sum game' where any victory and success achieved by any party is the result of the combination of the failure of one party or another. The 'dispute system' is seen as not being able to fully provide a space for upholding justice in society and some specific disputed issues are also not able to be dealt with effectively through the traditional adjudication system which is the court, but is effective if the ADR mechanism is used as an alternative to it.

CONCLUSION

A world without conflict and dispute is like a world without people, lethargic and without vision. The world with conflicts and disputes is better, if the solution can leave positive effects. Indirectly, it leads to the construction of a better and civilized society and civilization. However, this can only be achieved if the conflicting community knows the best way to deal with it. The formulation of a continuous and inevitable conflict will lead to a dispute that needs to be addressed and a solution sought. This situation always exists in society, whether in ordinary life or the field of commerce. Experienced scenarios have their own advantages and disadvantages, as long as they know how best to deal with them. The need to deepen the nature of disputes and techniques to manage them is as important as understanding the initial cycle of conflict situations. When there are two (2) parties who agree to enter into a formal agreement with each other, there will be an understanding and agreement between the two parties to cooperate and fulfill their mutual responsibilities from the point of view of the contractual obligations entered into. In accordance with the mutual agreement at the beginning of the contract, there should not arise any conflicts and disputes throughout the contract. However, this is not always realized and can be avoided in most commercial transactions or contracts entered into together. Elements such as trust, confidence and honesty are important to emphasize in every business relationship between the two parties. However, these elements are still not sufficient to control the negative elements that may arise in the bound contract.

In today's increasingly global and challenging trade environment, contracting parties need to accept the fact that they are always exposed to negative elements that can damage contractual relationships and lead to disputes. In this situation, alternative settlement mechanisms are able to overcome it without disappointing the disputing parties. A perfect, good system that meets the characteristics and reasonable wishes of the disputing consumer needs to play a role in creating a more effective resolution procedure for consumer trade disputes.

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