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ADR-Now APPLICATION: BRIDGING THEORETICAL AND PRACTICAL APPROACH IN ALTERNATIVE DISPUTE RESOLUTION PROCESS AND PROCEDURES

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ABSTRACT

Construction Law Report, developed by the Construction Industry Development Board Malaysia (the CIDB), noted an increase in the total number of cases registered at the Specialist Construction High Court in Selangor and Wilayah Persekutuan in 2019, a rise of 14% from the previous year. This is from just one of the examples of industry in which legal disputes are piling up at the High Court, without looking at a total number of cases throughout the country and different levels of the court system. The rise of alternative dispute resolution (ADR) mechanisms is welcomed in addressing the need to resolve legal disputes between commercial and non-commercial parties. The introduction of this application is high time, noting the need for concise guidance and practical approaches to the process and procedures of ADR available in Malaysia. This application aims to provide an in-depth yet interactive platform for parties in a legal dispute to understand the nitty-gritty of ADR methods. This application will cover arbitration, adjudication, and mediation. Across industries, the tide has changed, increasing the incorporation of a dispute resolution method in commercial contracts. This is mainly evident in construction contracts, where there is almost always an agreement to arbitrate. Parties to construction contracts are also allowed to adjudicate their disputes regarding payment by resorting to the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012). The dispute resolution scene in Malaysia has become more robust with the continued acceptance of a simpler, considerably cheaper, and speedier ADR. Despite its advantages, ADR mechanisms could be arduous and complicated, depending on the complexities of each dispute. Accordingly, this ADR-Now application would greatly assist disputants who opted for any form of the ADR to be aware of each method's process and procedures. This user-friendly application employed an interactive interface that provides information with tips included to ensure a smooth process.

Keywords: ADR, Arbitration, Adjudication, Mediation, Legal Industry

INTRODUCTION

With the advancement of the global economy throughout various sectors, it is evident that the potentiality of disputes arising out of commercial transactions has also seen a steady increase for the past few years, and this is apparent, for example, in the construction industry (Dugane & Charhate, 2018). This is corroborated by the observation made by the CIDB, where there is a constant rise in the number of cases registered at the High Court throughout Malaysia (CIDB Malaysia, 2020). Across industries, parties to commercial and non-commercial agreements are increasingly becoming cautious of the potentiality of disputes and whereby the contractual parties are uncertain of what might happen in the due performance of the contract. The inclusion of a pre-dispute agreement as to the method of dispute resolution is, thus, especially pertinent to address this dilemma (Ware, 2006). The judicial tide in acknowledging pre-dispute agreement to choose a dispute resolution method, usually ADR, has seen a positive change in Malaysia whereby the courts have approved the agreements to arbitrate and redirect the parties to the arbitration proceedings (*Chut Nyak Hisyam Nyak Ariff v Malaysian Technology Development Corporation Sdn Bhd*, 2009) (*Renault Sa v Inokom Corporation Sdn Bhd & Anor And Other Applications*, 2010). This trend is not only evident in Malaysia. Across the European Union, it shows that the bulk of cases have been decided through ADR methods (Melenko, 2020). On the outset, choosing an ADR mechanism in advance is pertinent in ensuring contractual parties have a pre-set mechanism to resolve their prospective disputes. However, issues might arise as to what type of ADR would best resolve the parties' problems. There are several considerations that the parties need to give proper attention, to avoid unnecessary spending of resources in the performance of the contract. Ultimately, the parties would want to act in their best interest pursuant to the contract (Rajoo & Singh, 2012). These "considerations" that the parties need to give attention to may not be guided with proper process and procedures of the best mechanism to resolve their disputes. Hence, the coming of this application is high time in addressing the need to ensure parties to a dispute have the prior knowledge and essential information. It will thus enable them to make an informed decision to approach their disputes or prepare for any future dispute in the performance of their contractual duties.

METHODOLOGY

The methodology employed for this research is mainly qualitative research methodology. Therefore, a doctrinal approach is undertaken to provide a detailed technical understanding of ADR as applied in Malaysia. Legal analysis on the data collected through library and case law research is synthesized with secondary reference to sources of law provided in books, journal articles, and law reports. Qualitative research methodology also includes semi-structured interviews with respondents to provide an in-depth comprehension (Bryman, 2007) regarding the subject matter at hand, i.e., ADR and their point of view on their expertise would be of great assistance. Purposive sampling in choosing prospective respondents is vital to this research to gauge their knowledge and expertise. This technique is argued to be the best in ensuring the proper background of the respondents who have those qualities (Alston & Bowles, 2003).

FINDINGS

ADR mechanisms have increased importance in addressing the needs of contractual parties in

handling disputes or in anticipation of prospective disputes. Those who can afford legal advice might be able to ensure that whatever choice they make is based on the legal counsel presented to them. In contrast, those who cannot afford legal counsel might be disadvantaged in acquiring pre-requisite information on what mechanism best suits their position or prospective disputes. An ADR mechanism with a binding force might appear laborious to those untrained in the legal environment. The plethora of information on the process and procedures does little to assist a disputing party or those wishing to have an agreed dispute resolution process. Simplifying information on the matters is vital for the disputants to have an informed decision in choosing a proper dispute resolution process.

The introduction of a user-friendly application accessible through the smartphone is appropriate at this juncture to assist layman persons in having adequate information on the available avenues for them to have their disputes settled. This ADR-Now application seeks to ensure compliance with the statutory provisions governing each ADR mechanism available in Malaysia: arbitration, adjudication, and mediation. Prospective users of this ADR-Now application would be guided through a step-by-step process with hints for the disputants and the general public to gauge and assess their situations to decide on the best dispute resolution mechanism.

COMMERCIALIZATION POTENTIAL

This ADR-Now application serves as a coaching avenue for contractual parties or potential disputants of any commercial contracts in Malaysia to use. The user-friendly feature of this application would benefit not just commercial parties but also law students, the legal fraternity, and the general public. This application would be a vital tool in spreading legal awareness of the substance of each ADR and the procedural law attached to it. Thus, it would contribute to achieving compliance with the specific process and procedures of each mechanism.

CONCLUSIONS

Adequate information and proper understanding of the process and procedures to ADR would ultimately impact selecting the mechanism that would best serve the interest of the disputants or prospective contractual parties. Therefore, this application is an ideal tool for parties to decide on a pre-agreed dispute resolution process to address their future disputes. The coming of an application that would serve this particular purpose is much anticipated because the necessity to resort to ADR is increasing with the advancement of the global economy. The legal awareness provided by this application would benefit multiple levels of prospective users and ultimately assist them in making an informed decision as to the best ADR mechanism to cater to their individual needs.

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