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Absolute Jurisdiction of Arbitration Institutions According to Indonesian Positive Law: Analysis of The Decision of The South Jakarta State Court Number 420/Pdt.G/2020

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Abstract: Arbitration is an interesting manner to resolve trade issues because it is final and binding. Article 30 of law quantity 30 year 1999 on Arbitration and opportunity Dispute decision explains that the courtroom isn't always legal to just accept a case among events who've selected arbitration as a method of dispute decision, as said within the arbitration clause. but, within the discipline there may be a violation of the authority of the district court docket, specifically the courtroom nevertheless accepts and manages cases that ought to be resolved via arbitration. The reason of this examine is to investigate the regulations of absolute authority of arbitration institutions in the Indonesian felony device and assessment the suitability of. District court docket choice variety 420/Pdt.G/2020/PN.Jkt Sel. The method used is normative criminal research with statutory, case, and conceptual strategies. in the case, the panel of judges stated that the District court had the authority to pay attention the case. even though there was an settlement among the events worried to clear up the dispute via arbitration. The judge's reasoning changed into that the issue rely of the case became an act of tort and no longer a breach of settlement, and not all parties inside the case had been certain by means of the arbitration clause. The outcomes of the evaluation display that the selection violates the regulations of absolutely the authority of arbitration, and isn't always according with the ideas stipulated in Article three of regulation quantity 30 of 1999 which states that the courtroom isn't always legal to just accept cases which have been certain with the aid of an arbitration settlement.

Keywords: Absolute Jurisdiction, Arbitration Agreement, Indonesian Positive law

INTRODUCTION

Developments in the economic sector have made doing business an unavoidable activity in daily life. Relationships between countries cannot be limited because business actors work together. Therefore, the parties who carry out cooperative activities build interactions through work agreements. However, it does not rule out the possibility that the cooperation can cause problems or disputes between the parties. Problems that often occur in

business practice include disputes regarding default or breach of promise, where a party does not carry out the obligations agreed upon in the agreement or contract clause. Facing the problem of business disputes, business actors need an effective dispute handling mechanism, to resolve disputes between the parties. In general, alternative dispute handling is divided into two types, namely dispute resolution in court (litigation) and then non-litigation out-of-court dispute resolution (Margono, 2023). The out-of-court dispute resolution includes mediation, negotiation, conciliation, and arbitration. In the context of handling disputes in the commercial field, arbitration is the most favored option by entrepreneurs in the commercial field.

Arbitration is a manner of resolving disputes with out going to courtroom, according with regulation No. 30/1999 on arbitration and opportunity dispute decision. in this method, the events entrust the dispute to an arbitrator or committee of arbitrators to clear up it like a decide, after h a v i n g previously agreed collectively. With the effects obtained within the form of a final and binding choice. (Margono, 2023). The blessings of arbitration are as a way of resolving disputes peacefully, supportively, and flexibly, thus taking into account a final and binding prison agreement.

Arbitration is a technique of resolving disputes inside the civil region this is executed outside the court docket (non-litigation), primarily based on an arbitration clause made in writing via the events to the dispute.The main requirement for arbitration to be conducted is the mutual agreement of the parties to apply the arbitration clause. With this requirement, by law, arbitration has the authority to resolve disputes completely. This provides clarity on the forum that has absolute authority or absolute jurisdiction to handle the parties' dispute.

The basic principle of Indonesia's judicial system is that each type of court may only deal with matters within its jurisdiction under the law. This restriction is known as absolute authority. Absolute competence (*attributie van rechtsmacht*) or better known as absolute jurisdiction is the authority of a judicial institution to handle a specific type of dispute that absolutely cannot be examined by another court (Rahmadhany, 2024). This provision also applies to arbitration, where the parties to the agreement submit dispute resolution to the arbitration institution. Thus, juridically, the authority to adjudicate lies with the arbitration which is the forum for resolving the parties' dispute. The foundation for the existence of arbitration in Indonesia lies in the absolute jurisdiction contained in Law number 30 of 1999 concerning arbitration and alternative dispute resolution, contained in article 3 and article 11. The law expressly states that the district court is no longer authorized to hear disputes if the parties have agreed to settle through arbitration. Although Law No. 30/1999 (das sollen) regulates the absolute jurisdiction of arbitration, in practice (das sein) often parties who feel aggrieved file a subpoena to the district court even though the parties have agreed to settle through arbitration.

already bound by the arbitration clause. Instead of dismissing the lawsuit, the district court accepted, investigated and even adjudicated the dispute containing the arbitration agreement. This resulted in a violation of the absolute jurisdiction limit by the district court, which should have been the authority of arbitration to hear disputes that fall within the absolute jurisdiction of arbitration. Based on this problem, the author relates it to a case example in decision number 420/Pdt.G/2020/PN Jkt.Sel as described below:

PT Aserra Capital as the first plaintiff and PT Aserra Mineralindo Investama as the second plaintiff sued PT Asia Pacific Mining Resources as the first defendant, PT Citra Lampira Mandiri as the second defendant, Thomas Azali as the third defendant, Ruskin as the fourth defendant, Emmanuel Valentinus Domen as the fifth defendant, and Helmut Hermawan as the sixth defendant. In their lawsuit, the plaintiffs stated that they suffered losses due to a series of unlawful acts committed by the defendants. However, between the first plaintiff and the first defendant there was a Conditional Share Sale and Purchase Agreement that was

bound by the BANI arbitration agreement. On the other hand, between the second plaintiff and the first defendant, third defendant, and fourth defendant there was also a Shareholders Agreement that was bound by the BANI arbitration agreement. The parties involved in the GSPA and PPS sued each other in the BANI arbitration.

The decision should be analyzed, especially the reasons used by the judge in deciding the case, because the subject matter in this case was tort, not default. In addition, there is also an arbitration clause contained in the agreement between the parties. When referring to article 11 paragraph 1 of law number 30 of 1999, the existence of a written arbitration agreement will eliminate the parties' right to submit dispute resolution or differences of opinion contained in the agreement to the district court. In paragraph 2, it is explained that the district court is obliged to refuse and may not intervene in the settlement of disputes that have been determined through arbitration, except in certain cases regulated by law. The purpose of this study is to analyze the regulation of the absolute jurisdiction of arbitration institutions in the Indonesian positive legal system, as well as evaluate the suitability of the South Jakarta District Court decision number 420/Pdt.G/2020/PN Jkt.Sel.

METHOD

This studies makes use of the Normative law approach (normative juridical) which focuses on Indonesian positive law. by examining regulation range 30 of 1999 associated with the absolute authority of arbitration institutions in the Indonesian positive legal system and examining decision number 420/Pdt.G/2020/PN Jkt. There are three approaches used by the author to research, namely: *first* using a *statutory approach* (*statute* approach) *second case* approach (*case approach*) *third* by using a conceptual *approach* (*conceptual approach*) The resources of criminal substances used are number one prison substances consisting of regulation No. 30 of 1999 regarding Arbitration and opportunity Dispute decision, selection range: 420/Pdt.G/2020/PN Jkt.Sel. Related to the dispute to be studied and the rules or norms in positive law. Secondary Legal Materials: Law books such as *International Civil Law*, *Civil Law* (Subekti, 2012), legal journals and relevant scientific articles.

RESULTS AND DISCUSSION

Regulation of the Absolute Jurisdiction of the Arbitration Institution in the Indonesian Positive Legal System

Jurisdiction refers to the authority of an institution (Basuki, 2022), for example, a dispute is the jurisdiction of the courts in Indonesia. In other words, jurisdiction refers to the authority of an institution. Based on the Civil Procedure Law, two types of court competence are regulated, namely, *first,* absolute competence is the authority that exists in the judicial body to handle certain forms of disputes absolutely; *Second,* relative competence is the authority possessed based on its territory or jurisdiction (Asmana, p. 2021). This is very crucial to understand because it concerns the issue of authority to resolve the parties' dispute process (Judicial, 2020).

Inside the Indonesian effective legal machine, absolutely the jurisdiction of arbitration is regulated in regulation range 30 of 1999 regarding arbitration and opportunity dispute decision. This arbitration regulation limits numerous things, as said within the following articles, Article three states that "The district courtroom isn't always legal to listen disputes between events who've been certain by using an arbitration settlement". The reason of the thing is to limit the court docket's authority to handle disputes which have been certain through an arbitration settlement. for that reason this provision also makes it clear that arbitration has absolute competence to solve disputes between events which have been certain to an arbitration settlement. Article eleven then states that "The lifestyles of a written

arbitration settlement negates the proper of the events to submit the settlement of disputes or variations of opinion contained within the settlement to the district courtroom." furthermore, the second one paragraph also states that "The district courtroom shall refuse and shall no longer intrude in a dispute agreement that has been decided via arbitration, besides in positive instances stipulated on this regulation". The function of the district courtroom in the arbitration dispute decision procedure is limited (limited court involvement) only in terms of the appointment of arbitrators. So if one of the events applies for dispute resolution in the district courtroom, even as the position of the events is certain by the arbitration clause, then based on absolute competence, the decide is obliged to refuse to resolve the parties' dispute, because it's miles outside the jurisdiction of the district courtroom. Arbitration as a court to resolve a particular dispute has absolute jurisdiction (extra judicial) to carry out the dispute resolution process (Judicial, 2020). Article 1 of regulation variety 30 of 1999 regarding arbitration and alternative dispute decision defines that "Arbitration is a method of resolving a civil dispute outdoor the public courts based totally on an arbitration settlement made in writing by the events to the dispute". From this definition, it is able to be concluded that the premise for dispute decision via arbitration is the agreement of the parties
as outlined inside the arbitration clause.

An arbitration settlement is likewise known as an arbitration clause. Article 1 paragraph three states that "An arbitration agreement is an agreement inside the form of an arbitration clause contained in a written agreement made via the activities in advance than a dispute takes place, or a separate arbitration agreement made by means of the activities after a dispute takes place." It have to be emphasized that this settlement need to be in writing, with the intention that authority can be given to arbitration in the occasion of a dispute. The arbitration settlement is a further clause located inside the primary settlement. (Margono, 2023). Then the writer refers to the opinion of Huala Adolf which states that the arbitration settlement does now not have an effect on the implementation of the principle settlement. which means despite the fact that the principle settlement has been finished, the arbitration clause still applies. because the arbitration clause or settlement has its own authority and independence. consequently, what is treated through arbitration is a dispute that arises from the principle settlement including trade.

So, even though there may be fraud inside the contract that causes the invalidity of an agreement, then the arbitration clause or agreement stays valid. Settlement, the arbitration clause or settlement nevertheless applies. The arbitration clause does not query the implementation of the settlement however, instead, how an organization that has the authority to remedy troubles that arise among the events to the promise (Harahap, 1991).

In this case, law number 30 of 1999 offers flexibility to the parties to form their own rules in resolving disputes, through policies which might be tailored to the desires of the events. primarily based in this, the settlement turns into the idea for the events to go into into an arbitration agreement. With a written agreement made by means of the events, it eliminates the events' proper to put up dispute resolution to the district court docket. this is based on the provisions in article 7 of law quantity 30 of 1999 with the existence of an arbitration clause that binds the events, it routinely eliminates and gets rid of the authority of the district court to listen the events' dispute, according with the provisions in article 3 of law number 30 of 1999 and the district court docket is obliged to refuse, if there's already a dispute resolution mechanism through arbitration. This have to be reputable by way of the court organization due to the fact it's far outside the absolute authority of the court to pay attention disputes.

Analysis Compatibility Decision Court Distriet Court Jakarta South Number 420/Pdt.G/2020 With the Principle of Absolute Jurisdiction of the Arbitration Institution

In Decision Number 420/Pdt.G/2020/PN.Jkt.Sel, in a dispute between PT Aserra

Capital in this case as (Plaintiff I) and PT Aserra Mineralindo Investama as (Plaintiff II) against PT Asia Pacific Mining Resources as (Defendant I), PT Citra Lampira Mandiri as (Defendant II), Thomas Azali as (Defendant III), Ruskin as (Defendant IV), Emmanuel Valentinus Domen as (Defendant V), Helmut Hermawan as (Defendant VI). In this case, Plaintiff I and Defendant I were bound by a Conditional Share Purchase Agreement (GSPA) which contained an arbitration clause. Then between Plaintiff II and Defendant I, Defendant III, and Defendant IV were also bound by a Shareholders Agreement (PPS) which contained a BANI arbitration clause. That around the end of 2018, Defendant IV invited Plaintiff I to meet with the Defendants. During the meeting, Defendant IV offered Defendant I shares in Defendant II (PT CLM), a nickel mineral mining company. Defendant IV stated that Defendant I owned 85% of Defendant II. Before the Plaintiffs signed the GSPA and PPS, the Defendants informed the Plaintiffs that the object area and mining license on behalf of Defendant II had no legal issues or disputes. Then Defendant II conducted a *joint operation* (JO) with PT DAS, which was previously said to be a mining contractor by the defendants to Plaintiff I.

The basis for the lawsuit was the existence of unlawful acts (PMH) that caused material and immaterial losses to the Plaintiff. The unlawful act was in the form of persuasion by the Defendants which caused losses to the plaintiff. In the lawsuit, the Plaintiffs stated that unlawful acts (PMH) could only be prosecuted through the district court. The Plaintiffs linked their claim to Article 3 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution which states that "The district court is not authorized to hear disputes between parties who have been bound by an arbitration agreement". The provision is interpreted *argumentum a contrario* and the provision is obtained that the district court is authorized to hear disputes of parties who are not bound in an arbitration agreement. considering that in the provisions of Law Number 30 of 1999 that arbitration will only be able to examine and decide disputes of parties who have been bound in an arbitration clause. while in this dispute not all parties are bound in an arbitration clause

In the arbitration clause. However, in fact, all shares belonging to Defendant I that were sold to Plaintiff I are still in the process of being blocked by the Ministry of Law and Human Rights. In the JO, PT DAS financed the mining equipment while Defendant II only had an IUP OP with a land area of 2,660 Ha. If the agreement continues, then Defendant II will only get royalty rights from PT DAS in accordance with the JO.

Also, the Exploration IUP owned by Defendant II has expired since 2013 until the agreement with the plaintiffs. Furthermore, Defendant I cannot transfer the shares of Defendant II because it is bound by a third party, namely PT BCA. Defendant I must obtain written approval from BCA.

Due to the promises and persuasion of the Defendants to the Plaintiff, on January 17, 2020 Plaintiff I purchased an 85% stake in Defendant II which was marked by the signing of the PJBB on January 17, 2019, so that Plaintiff I gave USD 2,000,000 (two million United States Dollars) as a *deposit/down payment* (DP) to Defendant I on January 28, 2019. On January 17, 2019, Plaintiff I entered into a Conditional Sale and Purchase Agreement (GSPA) to purchase 58% of the shares of Defendant II (PT Citra Lampira Mandiri). This agreement was also accompanied by a Share Pledge Agreement (PGS) between Plaintiff I (as pledgee) and Defendants I, III, IV (as pledgor). Then on May 14, 2019, Plaintiff II, Defendant I, Defendant III, and Defendant IV entered into a Shareholders Agreement (PPS). In this clause, Plaintiff II provided capital assistance of Rp20,000,000,000.00 (twenty billion rupiah) to Defendant II.

As a result of the Defendants' persuasion, the Plaintiff incurred losses through the following events: signing the PJBB, signing the PPS, making a deposit payment for the sale and purchase of Defendant I's shares amounting to USD2,000,000 (two United States

Dollars), handing over money for working capital totaling 20,000,000,000 (twenty billion Rupiah). Based on the aforementioned lawsuit, in the exceptions filed by Defendants I, III, and VI regarding the authority to adjudicate, the Defendants stated that the district court was deemed not to have the authority to adjudicate disputes between parties that had been bound by the arbitration clause.

The exception stated that the lawsuit filed by the Plaintiffs stemmed from the signing of the Conditional Sale and Purchase Agreement (PJBB) and the Shareholders Agreement (PPS).The agreements stated that all disputes arising would be resolved through the Indonesian National Arbitration Board (BANI). The provisions of the arbitration clause that have bound the parties automatically provide absolute authority for the arbitration institution as the dispute resolution mechanism for the parties. However, the Defendants' exception was rejected in an interlocutory decision, and the South Jakarta District Court stated that it had the authority to hear the dispute.

In his reasoning, the judge stated that the district court was authorized to hear the dispute between the parties, pointing out that the basis of the district court's authority was because the subject matter of the dispute was about tort (PMH), not default. Then the judge also stated in consideration that the unlawful acts committed by the Defendants against the Plaintiffs were not related to "Implementation of the contents of the agreement" where the actions taken by the Defendants were outside the context of the contents of the agreement, but rather the Defendants provided false information from the beginning of the meeting, persuaded, and deceived to unilaterally benefit from the Plaintiffs. Unlawful acts (PMH) that The Defendants were charged by the Plaintiffs based on the provisions of Article 1365 of the Civil Code, which states that any act that violates the law and causes harm to another person is obliged to compensate for the loss. In addition, not all parties are bound by arbitration clause.

That is contrary to the provisions of Articles three and 11 of regulation number 30 year 1999, which state that the district court does no longer have the authority to resolve disputes among events who've agreed to bind themselves to an arbitration settlement. The existence of a written arbitration settlement makes the parties no longer entitled to submit the settlement of disputes or differences of opinion contained within the settlement to the district courtroom.

The district courtroom is also obliged to refuse and may not intrude inside the agreement of disputes which have been decided via arbitration.

From an analysis of the article, it appears that Law No. 30/1999 limits the role of the courts in the arbitration process. Legally, the arbitration clause in a dispute is an absolute authority for the arbitration mechanism to resolve the matter. Law No. 30/1999 does not only apply to default disputes. So, if there is a dispute due to unlawful acts by one of the parties to the agreement, then the dispute can also be resolved through arbitration. This is regulated in Article 2 of the Arbitration Law, which states that this Law regulates the method of resolving disputes or differences of opinion between parties involved in certain legal relationships, who have agreed to resolve disputes through arbitration or other alternatives. When viewed from Article 1365 which reads: "Every act that violates the law and causes harm to another person, is obliged to compensate for the loss due to the fault committed."

From the results of this analysis, it can be concluded that unlawful acts committed by parties bound by the arbitration clause can also be resolved through an arbitration mechanism. This means that settlement by way of arbitration is not always related to breach of promise. The arbitration agreement does not address how the agreement is executed, but rather the manner in which the authorized institution resolves disputes that arise between the two parties
(Harahap, 1991).

This statement clarifies that an arbitration agreement is an agreement on how to resolve

a dispute, not on the content of the main agreement. It also states that the issue is who has the right to adjudicate, not what is promised. Regarding the dispute between the parties bound by the arbitration clause, in the process of the lawsuit, the bound parties were also filing a counterclaim at BANI. Therefore, the lawsuit process in the district court should have been postponed until the arbitration process at BANI was completed, but the court did not respect the ongoing arbitration process at BANI.

CONCLUSION

Arrangements concerning the absolute jurisdiction of arbitration institutions have been expressly regulated in regulation range 30 of 1999 regarding arbitration and opportunity dispute decision. the main principle inside the law is if the events have agreed to clear up disputes via an arbitration mechanism in an settlement or arbitration clause, then the district courtroom has no absolute authority to hear the disputes of the parties that have been determined. this is based on the provisions of Article three of regulation number 30 of 1999 which states that the district courtroom isn't always legal to hear disputes among events who've been certain by an arbitration settlement. The arbitration agreement or clause is the premise for absolutely the authority (absolute jurisdiction) of arbitration to resolve disputes. In case range 420/Pdt.G/2020/PN.Jkt Sel, it is not in accordance, not in line with or contrary to the precept of absolute authority of arbitration.

This decision ignores the mandate the has been regulated in article there of regulation range 30 of 1999 regarding arbitration and opportunity dispute decision which states that the district courroom isn’t legal to hear disputes among events who’ve been certain through an arbitration settlement.

Where in his consideration, the judge stated that the district court was authorized to hear the dispute on the grounds that: (1) the subject matter of the dispute was tort, not default; (2) not all parties to the dispute are bound by the arbitration clause. as stipulated in Article 2 of Law Number 30 of 1999 which states that the arbitration law regulates the settlement of disputes or differences of opinion between parties in a particular relationship who have entered into an arbitration agreement which expressly states "that all disputes or differences of opinion arising or which may arise from the relationship will be resolved by arbitration or through alternative dispute resolution". This provision provides room for parties who feel aggrieved on the basis of unlawful acts to resolve their problems to arbitration. This means that arbitration as an out- of-court dispute resolution institution, not only regulates the settlement of default cases, but can also handle actions that are contrary to the law stemming from legal relationships arising between the parties to the dispute. Because basically, the arbitration agreement does not question the implementation of the agreement, but how to and the institution authorized to resolve disputes that occur between the parties who promise (Harahap, 1991).

Arbitration as a dispute resolution institution has absolute authority to adjudicate disputes that have been submitted through an agreement or arbitration clause, so it is not appropriate for the district court as the cornerstone of the judicial system which has a different sphere of authority from arbitration (as a non-litigation institution) in Indonesia to intervene in the settlement of disputes that have been determined by the settlement mechanism through arbitration. Therefore, reaffirmation is needed, through regulations or applicable provisions to ensure understanding and common opinion on the principle of absolute jurisdiction of arbitration. With these provisions, it is hoped that it can prevent court decisions that conflict with the principle of absolute authority of arbitration. So that the competence to adjudicate runs in accordance with their respective authorities in the judicial environment in Indonesian.

REFERENCE

Asmana, A. (2021). Kompetensi Atau Kewenangan Pengadilan: Pengertian dan Jenis Kompetensi atau kewenangan pengadilan .

M.Yahya Harahap. (2017) *Hukum Acara Perdata,* Sinar Grafika. Jakarta.

R.M.Gatot P. Soemartono, Suyud Margono (2023). *Arbitrase, Mediasi dan Negosiasi.* Universitas Terbuka. Tangerang Selatan.

Rosa Agustina, dkk (2021). *Hukum Perdata* Universitas Terbuka, Tangerang Selatan.

Rahmadhany, (2024). *Hukum Acara Administrasi.*

Soemartono & Margono. (2023). *Arbitrase Mediasi dan Negosiasi.*

Subekti, (2012), *Hukum Perdata Internasional*, *Hukum Perdata.*

Susanti Adi Nugroho, (2017) *Penyelesaian Sengketa Arbitrase dan Penerapan Hukum* Kencana. Jakarta.

Tim Hukumindo. (2020). *Kewenangan Absolut Extra Judicial*.

Zulfa Djoko Basuki, ddk. (2022). *Hukum Perdata Internasional,* Universitas Terbuka. Tangerang Selatan.

Undang-undang

Undang-undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

Putusan

Putusan Pengadilan Negeri nomor 420/Pdt.G/2020/PN.Jkt.Sel.