

**DETERMINING JURISDICTION OF THE INDONESIAN COURTS AND
THE BANI ARBITRAL TRIBUNAL, AND THE LAWFULNESS OF A
BANI ARBITRAL AWARD BASED ON THE *EX AEQUO ET BONO*
PRINCIPLE: A STUDY OF AN ANNULMENT PROCEEDING UNDER
CASE NO. 456/PDT.G/2021/JKT.PST**

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ABSTRACT

This Legal Research is based on *Case No. 456/Pdt.G/2021/Jkt.Pst*, wherein it covers discussion of jurisdiction of the Administrative Courts and the BANI tribunal, and annulment of the BANI Award based on *ex aequo et bono*. Its aims are two-fold: determine the ideal application of Law 30/1999 on (1) jurisdiction of the Administrative Courts to adjudicate a matter principally bound by an arbitration agreement and (2) justification for annulment petition under Article 70 of Law 30/1999 of the BANI Award based on *ex aequo et bono*.

Here, the author employs a normative approach of secondary data collected by means of comprehensive literature research. The analysis thereof is qualitatively conducted by relying on those collected data.

In its conclusions, (1) distinction of the dispute matters must be strictly determined to enable jurisdiction of the Administrative Courts and the BANI tribunal, where an arbitration agreement is present. Further, (2) annulment of the BANI Award based on *ex aequo et bono* may be justified insofar the petition is limited to the exhaustive grounds of Article 70 of Law 30/1999.

Keywords: Arbitration, Jurisdiction, Administrative Court, District Court, Arbitral Tribunal, *Ex Aequo Et Bono*, Annulment, Law No. 30/1999.

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**MENENTUKAN KEWENANGAN PENGADILAN INDONESIA DAN
MAJELIS ARBITRASE BANI, SERTA KEABSAHAN SUATU PUTUSAN
ARBITRASE BANI BERLANDASKAN PRINSIP *EX AEQUO ET BONO*:
ANALISIS TERHADAP SUATU PROSES PEMBATALAN DALAM
KASUS NO. 456/PDT.G/2021/JKT.PST**

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INTISARI

Penelitian Hukum ini didasarkan pada *Perkara No. 456/Pdt.G/2021/Jkt.Pst*. Pembahasannya berkisar tentang kewenangan Pengadilan TUN dan majelis BANI, serta pembatalan Putusan BANI berdasarkan *ex aequo et bono*. Tujuannya adalah: menentukan penerapan ideal dari UU 30/1999 mengenai (1) kewenangan Pengadilan TUN untuk mengadili suatu objek sengketa yang sejatinya terikat pada perjanjian arbitrase dan (2) justifikasi permohonan pembatalan sesuai Pasal 70 UU 30/1999 terhadap Putusan BANI yang berdasarkan *ex aequo et bono*.

Penulis menggunakan metode penelitian hukum normatif terhadap data sekunder yang telah dikumpulkan melalui penelitian kepustakaan. Terhadap data tersebut, Penulis menganalisis dengan pendekatan kualitatif.

Pada kesimpulannya, (1) objek sengketa harus dibedakan secara tegas untuk memungkinkan kewenangan Pengadilan TUN dan majelis arbitrase BANI, di mana terdapat perjanjian arbitrase. Selanjutnya, (2) Putusan BANI berdasarkan *ex aequo et bono* mungkin saja dibatalkan sepanjang permohonan pembatalan tersebut didasarkan pada ketentuan Pasal 70 UU 30/1999, yang bersifat limitatif dan tidak dapat disimpangi.

Kata Kunci: Arbitrase, Kewenangan, Pengadilan Tata Usaha Negara, Pengadilan Negeri, Majelis Arbitrase, *Ex Aequo Et Bono*, Pembatalan, UU 30/1999.

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