

PENERAPAN *SEPARABILITY PRINCIPLE* OLEH HAKIM PADA PERJANJIAN DENGAN KLAUSUL ARBITRASE

INTISARI

Arbitrase merupakan salah satu alternatif penyelesaian sengketa yang populer digunakan dalam perjanjian, khususnya di bidang kerjasama bisnis. Prinsip separatis dalam arbitrase memberikan keamanan bagi para pihak yang mengikatkan diri karena eksistensinya tidak bergantung pada perjanjian pokok.

Dalam praktiknya di Indonesia, banyak ditemukan bahwa Hakim Pengadilan Negeri menolak eksistensi dari prinsip separatis dan menyatakan berhak dalam mengadili kasus tersebut. Batalnya suatu perjanjian pokok seringkali dijadikan alasan utama para Hakim dalam mengadili kasus tersebut. Penelitian ini akan menggunakan metode penelitian *deskriptif analisis* untuk menganalisa beberapa putusan Hakim dalam mengadili kasus arbitrase dimana salah satu pihak mengklaim perjanjian pokok batal demi hukum.

Dari penelusuran 4 kasus yang terjadi di Indonesia mengenai sengketa perjanjian dengan klausul arbitrase didalamnya, ditemukan 2 diantaranya Hakim menyatakan berwenang dan bahkan mencabut hasil putusan arbitrase yang sudah *final* dengan berlandaskan bahwa perjanjian pokok batal demi hukum. Berdasarkan analisa, hakim pengadilan negeri di Indonesia perlu memberikan perhatian lebih dalam hal sengketa arbitrase dan prinsip separatis agar memberikan kepastian hukum bagi para pihak yang mengikatkan diri dengan perjanjian arbitrase.

Kata kunci: Arbitrase, Prinsip separatis, Perjanjian batal demi hukum

APPLICATION OF SEPARABILITY PRINCIPLE BY JUDGE IN AGREEMENT WITH CLAUSUL ARBITRASE

ABSTRACT

Arbitration is one of the popular alternative dispute resolution methods used in agreements, especially business cooperation agreement. The separability principle in arbitration provides certainty for the parties who bind themselves in the agreements because their existence does not depend on the principal agreement.

In practice in Indonesia, it is found that many District Court Judges reject the existence of the separability principle and declare the right to judge the case. The declaration of one party claims the principle agreement is null and void is often used as the main reason for the Judges to judge the case. This research will use descriptive analysis method to analyze a number of judges' decisions in adjudicating case with an arbitration clause in which one party claims the principal agreement is null and void.

From the analysis of 4 cases that occurred in Indonesia regarding the dispute of the agreement with the arbitration clause, found 2 of them the judges declared authorized and even nulify the results from arbitration court on the basis that the principal agreement was null and void. Based on the analysis, district court judges in Indonesia need to pay more attention in the case of arbitration disputes and separability principle in Arbitration clause in order to provide legal certainty for parties who are bound by an arbitration agreement

Keywords: Arbitration, Separability Principle, Null and void agreement