

"Efektivitas keberlakuan klausula arbitrase dalam suatu gugatan perbuatan melawan hukum (Studi kasus putusan nomor 394/Pdt.G/2010/PN.Jkt.Sel. antara PT. Hamparan Nusantara dan PT. Mitra Adiperkasa, Tbk melawan Harvey Nichols and Company Limited)".

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INTISARI

Secara objektif, penulisan ini bertujuan untuk mengetahui sejauhmanakah efektifitas keberlakuan klausula arbitrase dalam suatu gugatan perbuatan melawan hukum. Jenis penulisan yang digunakan adalah Yuridis Normatif yang sifatnya Deskriptif, dengan Teknik Pengumpulan Data melalui 2 (dua) cara yaitu Penelitian Kepustakaan dan Penelitian Lapangan. Sampling yang diambil menggunakan teknik Random Sampling Non dengan jenis yang digunakan Purposive Sampling. Lokasi Penelitian dilakukan di Jakarta dan dilaksanakan melalui 3 (tiga) tahapan yaitu tahap pendahuluan, tahap pelaksanaan dan tahap penyelesaian. Metode analisis data yang dipergunakan adalah analisis Deskriptif Kualitatif.

Penulis mengambil kesimpulan bahwa ketentuan tentang arbitrase di Indonesia belum dapat mengakomodir tercapainya tujuan atas prinsip-prinsip arbitrase yaitu cepat, sederhana, murah, dan rahasia. Hal ini disebabkan masih terdapatnya beberapa ketentuan dalam undang-undang tersebut yang tetap melibatkan forum pengadilan. Bahwa dengan diterima dan diperiksanya gugatan perbuatan melawan hukum oleh pengadilan (hakim) maka dengan demikian keberadaan klausula arbitrase dalam perjanjian menjadi tidak efektif dan tidak berlaku. Bahwa oleh karena tidak adanya peraturan perundangan yang mengatur pelarangan untuk mengajukan gugatan oleh pihak dalam suatu perjanjian yang mencantumkan klausula arbitrase, maka pengadilan (hakim) pun tidak dapat menolak pihak tersebut untuk mengajukan gugatan perdata khususnya gugatan perbuatan melawan hukum ke pengadilan.

Bahwa secara normatif, upaya hukum yang dapat dilakukan oleh pihak lain yang digugat, berkaitan dengan adanya gugatan perbuatan melawan hukum tersebut adalah dengan mengajukan eksepsi kompetensi absolut. Bahwa disamping upaya normatif, maka upaya lainnya secara non yuridis formal adalah dengan cara mengajukan surat keberatan dan mohon pengawasan kepada Mahkamah Agung RI dan Komisi Yudisial.

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The effectiveness of the enforceability of the arbitration clause in a tort lawsuit (Case of study of judgement of court case number 394/Pdt.G/2010/PN.Jkt.Sel. between PT. Hamparan Nusantara and PT. Mitra Adiperkasa, Tbk against Harvey Nichols and Company Limited)

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ABSTRACT

Objectively, this paper aims to determine to what extent the effectiveness of the enforceability of the arbitration clause in a tort lawsuit. Kind of writing being used is the Yuridis Normatif which descriptive's nature, with the Engineering Data Collection through two (2) ways: Research Bibliography and Research Field. The Both of way to obtain primary data and secondary data. The sampling taken used the Non Random Sampling technique with the type that is used purposive sampling. The study was conducted in Jakarta and this research was carried out through three (3) stages, namely the preliminary stage, the stage of implementation and completion stages. The data analysis method used is qualitative descriptive analysis.

The authors conclude that at this time, the provisions in the arbitration law in Indonesia have not been able to accommodate the achievement of the objectives of the principles of arbitration that is fast, simple, inexpensive, and secrets. This is due to the presence of several provisions in the legislation which still involves a court. In this case, a lawsuit filed for their actions (deeds) done by one of the parties which deemed to have been unlawful so it is classified as a tort. In this case, a lawsuit filed for their actions (deeds) done by one of the parties which deemed to have been unlawful so it is classified as a tort. Whereas received and examined tort lawsuit by the court (judge) it is thus the existence of the arbitration clause in the agreement be ineffective and void. In fact, in the arbitration clause is clearly stated that the forum of dispute resolution between the parties was through arbitration forum and not a forum court. The agreement should be binding on the parties and the law for the parties to be obeyed and respected. Whereas in the absence of legislation governing the prohibition to file a lawsuit by the parties in a deal which included an arbitration clause, then the court (judge) can not reject that party to filed a lawsuit especially tort lawsuit to court.

That is normative, legal remedies that can be done by other parties sued, relating to tort lawsuits are with filed exceptions of absolute. That despite efforts normative, then more efforts in non-formal juridical is by filing a letter of objection and request supervision of the Supreme Court and the Judicial.

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