

KEWENANGAN MAHKAMAH AGUNG DALAM MEMERIKSA DAN MEMUTUS SENGKETA YANG TERDAPAT KLAUSUL ARBITRASE (STUDI PUTUSAN MAHKAMAH AGUNG NOMOR 862K/PDT/2013 DAN PUTUSAN BANI 547/XI/ARB-BANI/2013

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INTISARI

Penelitian ini bertujuan untuk mengkaji kewenangan Mahkamah Agung dalam memeriksa dan memutus sengketa perdata yang terdapat klausul arbitrase pada putusan Mahkamah Agung Nomor 862 K/Pdt/2013 serta perbedaan antara Putusan Mahkamah Agung Nomor 862 K/Pdt/2013 dengan Putusan BANI Nomor 547/XI/ARB-BANI/2013 berkaitan dengan kepemilikan saham PT.CTPI. Penelitian ini merupakan penelitian hukum normative, yakni penelitian yang difokuskan untuk mengkaji penerapan atau kaidah-kaidah atau norma-norma dalam hukum positif, dengan menggunakan data sekunder melalui metode penelitian kepustakaan. Hasil penelitian menunjukkan Mahkamah Agung sebagai pelaksana kekuasaan kehakiman memeriksa dan memutus sengketa perdata antara Ny.Siti Hardiyanti Rukmana dkk (Pemohon Kasasi) melawan PT. Berkah Karya Bersama dan PT. Sarana Rekatama Dinamika (Termohon Kasasi). Dalam amar putusan Nomor 862 K/Pdt/2013, Mahkamah Agung mengabulkan permohonan kasasi karena adanya perbuatan melawan hukum yang dilakukan oleh Termohon. Kemudian dalam putusan BANI nomor 547/XI/ARB-BANI/2013, BANI mengabulkan permohonan arbitrase dari PT. Berkah Karya Bersama (Pemohon Arbitrase) terhadap Ny. Siti Hardiyanti Rukmana dkk (Para Termohon) dengan menyatakan Para Termohon telah cidera janji terhadap Pemohon dengan mengingkari kewajiban dalam *Investment Agreement*. Berdasarkan hal tersebut maka disimpulkan bahwa: 1) Mahkamah Agung tidak memiliki kewenangan dalam memeriksa dan memutus sengketa perdata yang terdapat klausul arbitrase, berdasarkan Pasal 11 ayat (1) dan ayat (2) Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa. Namun Mahkamah Agung dalam Putusan Nomor Nomor 862k/Pdt/2013 memutus sengketa tersebut merupakan kewenangan peradilan umum karena terdapat perbuatan melawan hukum yang dilakukan oleh Termohon kasasi yang berada diluar *Investment Agreement* yang mengandung klausula arbitrase, 2) Putusan Mahkamah Agung dengan Putusan BANI berbeda karena para pihak dalam sengketa berbeda kedudukan dan pokok permasalahan yang disengketakan oleh Para Pihak berbeda. Oleh karena itu perlu disarankan: 1) Perlunya kepada para pihak dalam menyusun perjanjian lebih cermat dengan mencantumkan klausula arbitrase mencakup perbuatan melawan hukum, 2) Bagi jajaran hakim di Peradilan umum agar lebih teliti serta hati-hati dalam memeriksa dan memutus suatu sengketa perdata yang mengandung klausul arbitrase.

Kata Kunci : Putusan Mahkamah Agung, Putusan BANI, Klausul Arbitrase

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**AUTHORITY OF THE SUPREME COURT IN HEARING AND DECIDING A DISPUTE
THAT CONTAINS ARBITRATION CLAUSE (STUDY OF DECISION OF THE
SUPREME COURT NUMBER 862K/PDT/2013 AND DECISION OF THE BANI
NUMBER 547/XI/ARB-BANI/2013**

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ABSTRACT

This research aims at studying the authority of the Supreme Court in hearing and deciding civil dispute that contains arbitration clause of Decision of the Supreme Court Number 862 K/Pdt/2013 and difference between Decision of the Supreme Court Number 862 K/Pdt/2013 and Decision of the BANI Number 547/XI/ARB-BANI/2013 with respect to the shares ownership in PT. CTPI. This is a normative law research, focused on application of or principles or norms in the positive law using secondary data through literature research method. Result of the research shown that the Supreme Court, as the executor of judicial power, has heard and decided the civil dispute between Mrs. Siti Hardiyanti Rukmana and friends (Cassation Applicant) against PT. Berkah Karya Bersama and PT. Sarana Rekatama Dinamika (Cassation Respondent). By the decision holding Number 862 K/Pdt/2013, the Supreme Court accepted the cassation application since there was illegal act committed by the Respondent. Further, by decision of the BANI Number 547/XI/ARB-BANI/2013, the BANI accepted the arbitration application of PT. Berkah Karya Bersama (Arbitration Applicant) against Mrs. Siti Hardiyanti Rukmana and friends (Respondents) by stating that the Respondents had been in default over the Applicant by refusing the obligations set forth in the Investment Agreement. Therefore, it is concluded that: 1) the Supreme Court has no authority to hear and decide civil dispute that contains arbitration clause in accordance with article 11 paragraphs (1) and (2) of Law Number 30 / 1999 concerning Arbitration dan Alternative Dispute Settlement. However, the Supreme Court by its Decision Number. 862k/Pdt/2013 decides that such dispute is a domain of general courts as there is an illegal act committed by the Cassation Respondent beyond the Investment Agreement that contains arbitration clause, 2) Decision of the Supreme Court is different from that of the BANI since the parties to the dispute are in the different standing and subject of the dispute is different. Therefore, it is recommended that: 1) parties to an agreement are careful in drafting the agreement by including arbitration clause that includes illegal act, 2) judges at general courts to be more careful and thorough in hearing and deciding a civil dispute that contains arbitration clause.

Keywords: Supreme Court Decision, BANI Decision, Arbitration Clause

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