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Case Analysis of Pt. Lekom Maras Pangabuan Against the Indonesian National Arbitration Board and Pt. Pertamina Based on Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution

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Abstract. *This legal writing discusses the resolution of disputes between PT. Lekom Maras Pangabuan Against the Indonesian National Arbitration Agency and PT. Pertamina Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In writing this law, it uses a type of normative legal research, with a statutory approach and a case approach. The legal materials used are primary legal materials, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Results of this research. Unlawful Acts committed by PT Pertamina EP as the Defendant after being analyzed through Supreme Court decision No. 681 K/PDT/2014 is not proven and if we look at Law Number 30 of 1999, the action of the South Jakarta District Court in overriding the arbitration clause cannot be justified, because clearly in the Arbitration Law in Article 3 it states "if the parties have bound by an arbitration agreement, the District Court has no authority to adjudicate." Then, if you look at Law Number 30 of 1999, the case that occurred between the two parties is a dispute that falls within the authority of arbitration, namely in the trade sector, the parties also agreed to resolve the dispute through arbitration before the dispute occurred. Because since the parties entered into an arbitration agreement, the parties are absolutely bound.*

Keywords: *Agreement; Arbritration; Dispute.*

1. Introduction

A collaboration carried out between the Parties, usually and often uses an Agreement to regulate the relationship that exists between them. According to Subekti, an agreement is an event where someone makes a promise to another person, or where two people promise each other to carry out something.[1] According to R. Setiawan, an agreement is a legal act in which one or more people bind themselves or mutually bind themselves to one or more people.[2] Sri Soedewi Masjchoen Sofwan, believes that an agreement is a legal act in which one or more people bind themselves to another person or more.[3]

From these opinions, it can be concluded that basically an agreement is a process of interaction or legal relationship and two legal acts, namely an offer by one party and an acceptance by the other party so that an agreement is reached to determine the contents of the agreement which will bind both parties.

The existence of an agreement creates a legal relationship between two or more people, which is called an Agreement, in which there are rights and obligations of each party. The good implementation of what is mutually agreed upon is the hope of all parties bound by the agreement. However, in reality, it is not uncommon for disputes to occur in the implementation of agreements, either originating from differences in perception/interpretation of the provisions of the agreement or originating from actions that can be categorized as acts of default and unlawful acts (onrechtmatigedaad)[4]

Civil disputes that arise can be resolved through two channels that are offered to the disputing parties, namely litigation and non-litigation. Litigation is a form of handling cases through judicial processes, both civil and criminal cases, while non-litigation is the resolution of legal problems outside the judicial process. This non-litigation is generally only carried out in civil cases because they are more private. Non-litigation has several forms for resolving disputes, namely: Negotiation, Mediation and Arbitration.

Arbitration is a method of dispute resolution that is similar to litigation, only this litigation can be said to be private litigation, where the person examining the case is not a judge but an

[1] Subekti, *Pokok-Pokok Hukum Perdata*, PT. Intermasa, Jakarta, 2001, p. 36
[2] R. Setiawan, *Hukum Perikatan-Perikatan Pada Umumnya*, Bina Cipta, Bandung, 1987
[3] Sri Sofwan Masjchoen, *Hukum Jaminan di Indonesia*, Liberty, Yogyakarta, 1980, p. 1.
[4] Djoko Imbawani Atmadja, *Hukum Dagang Indonesia*, Setara Press, Malang, 2011, p. 123.

arbitrator. To be able to take part in the arbitration process, the main thing that must be in place is an arbitration clause in the agreement made before a dispute arises as a result of the agreement, or an arbitration agreement in the event that the dispute has already arisen but there is no arbitration clause in the previous agreement.[5]

Supreme Court Decision Number 681 K/PDT/2014 in the dispute between PT Lekom Maras Pangabuan and the Indonesian National Arbitration Board (BANI) and PT Pertamina EP because the Plaintiff argued that an unlawful act had occurred so it had to be brought to court, even though in the agreement it had been agreed that If a dispute occurs, the resolution will use arbitration.[6]

The case began on May 2 2011, PT. Pertamina EP which is located at Menara Standard Chartered Lt.21-29 Jl. Prof. Dr. Satrio 164 Jakarta 12950, has filed a lawsuit for default against PT Lekom Maras Pangabuan through BANI which has been registered in case registration No.397/ARB-BANI/2011. Then the PT lawsuit. Pertamina EP, is based on the Enhanced Oil Recovery Contract Agreement (hereinafter referred to as the EOR Contract) which was jointly signed between Pertamina (Substitute: PT. Pertamina EP/DEFENDANT) and PT. Citra Petenindo Nusa Pratama (Replacement: PT. Lekom Maras Pengabuan/PLAINTAIN) dated 5 June 1993 which is only valid for 15 (fifteen) years, namely starting on 5 June 1993 and ending on 5 June 2007. Meanwhile, what is disputed by PT . Pertamina EP is a problem that occurred in 2008 and 2009.

Furthermore, it is true that in the EOR Contract in Part XII concerning Consultation and Arbitration it explains "If a dispute occurs between PT. Pertamina EP with PT. Lekom Maras Pangabuan which cannot be resolved amicably will be submitted to the decision of the Indonesian Arbitration Council "BANI" (Indonesian National Arbitration Board), however since the end of the EOR Contract on June 5 2007 as has been described, the EOR Contract has never been extended. agreement signed jointly between PT. Pertamina EP with PT. Lekom Maras Pangabuan, so that there is no extension of the term of the separate agreement after the end of the EOR Contract between PT. Pertamina EP with PT. Lekom Maras Pangabuan, then the

[5] Ikdan, *Pembatalan Putusan Badan Arbitrase Nasional Indonesia Nomor 397/Arb-Bani/2011 yang Diputus Secara In Absentia (Studi Kasus Putusan Mahkamah Agung Nomor 370 K/Pdt.Sus/2012),* Fakultas Hukum Universitas Bhayangkara Jakarta Raya, 2015, hal 1-2.

[6] Abdurrasyid, Priyatna, *Arbitrase dan Alternatif Penyelesaian Sengketa Suatu Pengantar,* PT Fikahati Aneska dan Badan Arbitrase Nasional Indonesia,Jakarta, 2002, p. 88.

validity of the acceptance of the lawsuit submitted by PT. Lekom Maras Pangabuan by BANI and the decision issued by BANI is questionable.

Based on the description of this background, the author is interested in studying more deeply the "CASE ANALYSIS OF PT. LEKOM MARAS PANGABUAN AGAINST THE INDONESIAN NATIONAL ARBITRATION BOARD AND PT. PERTAMINA BASED ON LAW NUMBER 30 OF 1999 CONCERNING ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION".

An issue that can be taken up based on the description above is, whether the Court has the authority to examine cases that have included an Arbitration clause in the agreement between PT. LEKOM MARAS PANGABUAN with PT. PERTAMINA EP proposed by PT. LEKOM MARAS PANGABUAN? and What is the validity of the decision of the BANI Council which is deemed to have committed an unlawful act by PT. LEKOM MARAS PANGABUAN in the case of PT. PERTAMINA EP against PT. LEKOM MARAS PANGABUAN?

2. Research Methods

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a case approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

3. Results and Discussion

3.1. The Court's Authority to Examin Cases that Have Included an Arbitration Clause in the Agreement between PT. LEKOM MARAS PANGABUAN with PT. PERTAMINA EP proposed by PT. LEKOM MARAS PANGABUAN

The arbitration agreement is not a conditional agreement (voorwaardelijke verbintenis) as stated in Articles 1253-1267 of the Civil Code. Therefore, the arbitration agreement is not dependent on any particular event in the future. An arbitration agreement does not question

the implementation of the agreement, but rather questions the methods and institutions authorized to resolve disputes that occur between the parties.[7]
This arbitration agreement is not attached to the subject matter of the agreement. An arbitration agreement which is commonly called an "arbitration clause" is an addition to the main agreement. Even though its existence is only an addition to the main agreement, the arbitration clause or arbitration agreement is not an accessory because of its implementation and does not in any way affect or be influenced by the validity or implementation of the fulfillment of the main agreement.

The dispute that occurred between PT. Lekom Maras Pangabuan and the Indonesian National Arbitration Board (BANI) is a dispute that was brought to the arbitration forum from the start. This is in accordance with the contents of Article 3 of the Arbitration Law which reads: District Courts have no authority to adjudicate disputes between parties who are bound by an arbitration agreement and Article 11 which reads:
1) The existence of a written arbitration agreement eliminates the rights of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court.
2) The District Court is obliged to refuse and will not intervene in a dispute resolution that has been determined through arbitration, except in certain cases stipulated in this Law
Based on the contents of Article 3 and Article 11, the arbitration clause or arbitration agreement in the EOR Contract in cases which state that the parties will resolve the dispute through arbitration, invalidates the court's obligation to examine the case. If the case is still submitted to the court, the court is obliged to reject it because the case is beyond the competence of the court due to the arbitration clause or arbitration agreement.

If you look at Law Number 30 of 1999, actually the case that occurred between the two parties was a dispute that fell within the authority of arbitration, namely in the field of trade, moreover, the parties had agreed to resolve the dispute through arbitration before the dispute occurred. Because since the parties entered into an arbitration agreement, the parties are absolutely bound.[8]

Absolute attachment in an arbitration agreement automatically embodies the absolute authority of the arbitration body to resolve and decide disputes arising from the agreement.

[7] M. Yahya Harahap, *Arbitrase,* PT Sinar Grafika, Jakarta, 2004, p. 61.
[8] Yahya Harahap. *Hukum Acara Perdata tentang Gugatan, Persidangan, penyitaan, Pembuktian dan Putusan Pengadilan.*(Jakarta, Sinar Grafika. 2005). Hlm 179

Exceptions to this can only be justified if the parties agree and agree to expressly withdraw the arbitration agreement that has been made.

3.2. Validity of the Decision of the BANI Council which is deemed to have committed unlawful acts by PT. LEKOM MARAS PANGABUAN in the case of PT. PERTAMINA EP Against PT. LEKOM MARAS PANGABUAN

PT lawsuit. Pertamina EP, is based on the Enhanced Oil Recovery Contract Agreement (hereinafter referred to as the EOR Contract) which was signed jointly between (PT. Pertamina EP/DEFENDANT) and (PT.) year, namely starting on June 5 1993 and ending on June 5 2007. Meanwhile, what is disputed by PT. Pertamina EP is a problem that occurred in 2008 and 2009. Furthermore, it is true that in the EOR Contract in Part XII concerning Consultation and Arbitration it explains "If a dispute occurs between PT. Pertamina EP with PT. Lekom Maras Pangabuan which cannot be resolved amicably will be submitted to the decision of the Indonesian Arbitration Council "BANI" (Indonesian National Arbitration Board), however since the end of the EOR Contract on June 5 2007 as has been described, the EOR Contract has never been extended. agreement signed jointly between PT. Pertamina EP with PT. Lekom Maras Pangabuan.

The results of the lawsuit filed by PT. Pertamina to BANI resulted in victory for PT. Pertamina. The decision issued by BANI was deemed invalid and constituted an unlawful act by PT. Lekom Maras Pangabuan because from the start of filing a lawsuit by PT. Pertamina, the EOR Contract has ended and there is no extension of the term of the new agreement between the two parties.

Based on Article 10 letter h of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which reads: An arbitration agreement does not become invalid due to circumstances, namely the expiration or cancellation of the main agreement. This shows that with the end of the EOR Contract on June 5 2007 as has been described, without an extension of the term of the agreement signed jointly between PT. Pertamina EP with PT. Lekom Maras Pangabuan does not make the arbitration agreement void.

Priyatna stated that, the arbitration clause in the contract is now considered an arbitration agreement and because of its status as a contract, this agreement cannot be canceled unless it is agreed expressly, officially and in writing by the parties, so even if the entire contract is rejected or void or annulled, the arbitration clause remains applies, because the arbitration clause/agreement is something that stands alone or is independent. So in this case, if the

arbitration clause is treated only as a separate clause which is an obligation or other obligation apart from other obligations that have been specified in a particular agreement, then the existence of an arbitration clause in an agreement will become a Severable Clause. Meanwhile, if the arbitration clause is considered an independent agreement, even though its contents are contained or contained in another agreement, the arbitration clause can be considered and treated as an agreement, either as a severable clause or a severable contract, the arbitration clause is independent of the fulfillment of obligations or other obligations in the agreement. and therefore the principle of separability applies to it. The arbitration clause is absolute which itself gives absolute authority to the arbitration body to resolve and decide disputes arising from an agreement. The absolute authority of arbitration is regulated in Law Number 30 of 1999 concerning arbitration and alternative dispute resolution.[9]

Based on this explanation, the status of the decision issued by BANI is valid and correct and does not constitute an unlawful act because Article 10 letter h of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that an arbitration agreement does not become invalid due to circumstances, namely the end or cancellation of the main agreement, then this shows that with the end of the EOR Contract on June 5 2007 as described, without an extension of the term of the agreement signed jointly between PT. Pertamina EP with PT. Lekom Maras Pangabuan does not make the arbitration agreement void.

4. Conclusion

a. Unlawful Acts committed by PT Pertamina EP as the Defendant after being analyzed through Supreme Court decision No. 681 K/PDT/2014 is not proven and if we look at Law Number 30 of 1999, the action of the South Jakarta District Court in overriding the arbitration clause cannot be justified, because clearly in the Arbitration Law in Article 3 it states "if the parties have bound by an arbitration agreement, the District Court has no authority to adjudicate." Then, if you look at Law Number 30 of 1999, the case that occurred between the two parties is a dispute that falls within the authority of arbitration, namely in the trade sector, the parties also agreed to resolve the dispute through arbitration before the dispute occurred. Because since the parties entered into an arbitration agreement, the parties are absolutely bound.
b. The status of the decision issued by BANI is valid and correct and is not an unlawful act because Article 10 letter h of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that an arbitration agreement does not become invalid due to

[9] Erman Rajagukguk, *Arbitrase dalam putusan pengadilan*, Chandra Pratama, Jakarta, 2000, hal 9

circumstances, namely its termination. or the cancellation of the main agreement, then this shows that with the end of the EOR Contract on June 5 2007 as has been described, without an extension of the term of the agreement signed jointly between PT. Pertamina EP with PT. Lekom Maras Pangabuan does not make the arbitration agreement void.

c. There needs to be increased accuracy and insight for district courts in accepting cases, if there is an arbitration clause they must be firm in rejecting the case because it is not within the district court's authority to adjudicate

d. There needs to be additional knowledge and extensive insight by the parties entering into the agreement by adding an arbitration clause so that there is no mistake in filing a lawsuit if a dispute occurs.

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