LEGAL CERTAINTY ON THE BINDING POWER OF ARBITRATION CLAUSES IN RESOLUTION OF TRADE DISPUTES

(Analysis of Supreme Court Decision Number 1558 K/Pdt /2009)

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Abstract *- Cases in trade contracts related to the choice of law are contained in the Supreme Court decision Number 1558 K/Pdt/2009. In this case, the plaintiff argued that the defendant had committed an unlawful act. In the contract the parties had included an arbitration clause as a means of resolving disputes so that the panel of judges in their decision rejected the plaintiff's application. This research analyzes the binding force of arbitration clauses in international trade contracts in relation to the competence of judicial institutions. This research is normative legal research using a statutory approach, conceptual approach and case approach. The research results show that the Supreme Court Decision Number 1558 K/Pdt/2009 is able to demonstrate legal certainty regarding the binding force of the arbitration clause because what is contained in the decision is coherent with Legislation, Jurisprudence and Doctrine. The consistent application of legal rules that has been demonstrated in the Supreme Court decision Number 1558K/Pdt/2009 is able to provide legal protection for parties who have chosen arbitration as a means of resolving disputes.*

Keywords: *arbitration, legal certainty, choice of forum*

INTRODUCTION

As technology develops, it becomes easier to interact with people from other countries, making it easier to carry out trade transactions. Increasing the quantity of trade will have an impact on increasing the economic development of a country, so there is a need for a legal framework that is able to provide a sense of security for the parties who will carry out trade transactions. Generally, the legal instrument used in trade is to create a business contract. Trade contracts are prepared based on an agreement between the parties and of course must be a reference for the parties in implementing their rights and obligations.

Contracts may be country wide contracts and global contracts. A country wide agreement is not anything aside from a settlement made by means of two felony topics inside the territory of a country with none foreign factors. in the meantime, an international agreement is a agreement that consists of overseas elements(Gautama 1976).Every other characteristic of a agreement whilst it entails the inclusion of foreign elements (transnational contracts) is the presence of some other key element this is equally essential, namely the freedom to select the relevant regulation of the parties(Hardjowahono 2013).Briefly, the meaning of the time period preference of regulation is the liberty given to the parties in the field of settlement to pick out which law to use, which is known as celebration autonomy(Siong 2005).The choice of relevant law is a determining factor in prison actuality, in particular for judicial officers, that they have got carried out the regulation efficiently(Adolf 2005).

Trade transactions generally have the potential to give rise to disputes(Isnaini and Wanda 2017). If a dispute occurs, the resolution can be done through litigation or non-litigation. Apart from general court forums, parties can also submit their disputes through arbitration institutions. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law No. 30 of 1999), arbitration is defined as a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.

One of the cases in trade contracts that occurred related to the choice of law was in the Supreme Court decision Number 1558 K/Pdt /2009 in a case between PT. Polyprima Karyareksa as Plaintiff/Appellant against Daelim Corporation as Defendant/Appellee. In this case, the plaintiff

argued that the defendant had committed an unlawful act for not implementing the paraxylene sale and purchase agreement as outlined in contract number DAECO-PX060829-01. In the plaintiff's opinion, the contract was not implemented because many of the clauses were considered unclear and tended to harm the plaintiff so that the plaintiff suffered losses. In the contract the parties had included an arbitration clause as a means of resolving disputes so that the panel of judges in their decision rejected the plaintiff's application. Based on the description above, we will study further regarding the binding force of arbitration clauses in international trade contracts in relation to the competence of judicial institutions.

METHOD

This research uses normative legal research methods which are carried out to find solutions to legal problems (Isnaini and Utomo 2019). The research approaches used are the legal approach, conceptual approach and case approach.

DISCUSSION

Settlement of disputes arising from an agreement can be resolved through court and outside the court(Kolopaking 2013).Dispute resolution through court or litigation is a 'classic' forum that is common and widely used every day. In this litigation pathway, the judiciary is a reflection of the judicial jurisdiction of a sovereign state(Adolf 2007).Apart from settlement through the litigation process, it is also known that there is a dispute resolution process outside of court. Dispute resolution outside of court is generally known as Alternative Dispute Resolution (ADR)(Usman 2003).Out-of-court dispute resolution in Indonesia is regulated in Law no. 30 Years. 1999, which in substance includes, among other things, consultation, negotiation, mediation, conciliation, expert assessment and arbitration.

One of the alternative means of dispute resolution as stated in Law no. 30 Years. 1999 was Arbitration. Arbitration comes from the Latin word arbitrare which means the power to resolve something according to one's discretion. Arbitration is the resolution of disputes through the process of examining and making decisions by a single arbitrator or panel of arbitrators from arbitration institutions, both by national and international arbitration institutions, as well as permanent and temporary (ad-hoc) arbitration institutions(Hatta Isnaini Wahyu Utomo 2019).

In connection with the meaning of "wisdom" in the definition of arbitration above, Subekti is of the opinion:

"Associating arbitration with policy can give the impression that an arbitrator or an arbitration panel in resolving a dispute no longer pays attention to legal norms and is aware that the resolution of the dispute is based on policy alone. This impression is wrong, because the arbitrator or panel also applies the law like a judge or court does."(Subekti 1981).

Settlement of trade disputes, especially international trade through litigation, is often inefficient both in terms of costs and time, so that this condition has the potential to hamper the business activities of the parties which should continue to run even though a dispute is occurring. These conditions make resolving disputes through non-litigation channels increasingly necessary for business people. One of the means of resolving disputes through non-litigation channels that many business people choose is through an Arbitration Institution. The reason why many people choose this arbitration institution is because the arbitration decision is final and has permanent legal force and is binding on the parties. What is meant by being final is that the arbitration decision cannot be appealed, cassated or reviewed(Margono 2004).

According to Erman Rajagukguk as quoted by M. Yahya Harahap:

"Arbitration is the preferred way of resolving disputes, especially for foreign parties entering into agreements for several reasons. First, in general foreign parties are less familiar with the legal systems of other countries. Second, there are doubts about the objectivity of local courts in examining and deciding cases in which foreign elements are involved. Third, foreign parties still have doubts about the quality and ability of courts in developing countries to examine and decide

cases on an international scale. Fourth, allegations and impressions arise, resolving disputes through formal judicial institutions takes a long time."(Harahap 2006).

Dispute resolution through an arbitration institution must be agreed upon in advance by the parties when the business contract is made. In this case, if the parties have agreed in an agreement to bring all civil disputes to be resolved through an arbitration forum, then the district court has no authority to adjudicate the parties' disputes. This is as regulated in Article 3 of Law no. 30 Years. 1999.

Article 11 Law no. 30 Years. 1999 states:

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.

In the Supreme Court Decision Number 1558 K/Pdt /2009, the Panel of Judges at the first level up to the cassation level rejected the plaintiff's application. The judge at the first instance court, the Panel of Judges, stated that he had no authority to examine and try the case submitted by the plaintiff and declared that the plaintiff's claim was unacceptable (*niet ontvankelijkverklaard*). The thing that was taken into consideration by the Panel of Judges was that the parties had included an arbitration clause for disputes arising from the making of the contract.

The decision of the Panel of Judges at the first instance was based on the provisions of Article 3 of Law no. 30 Years. 1999, Jurisprudence and Doctrine. In Article 3 of Law no. 30 Years. 1999 has stated explicitly that the District Court has no authority to adjudicate disputes between parties who are bound by an arbitration agreement. Furthermore, there is also several jurisprudence that is used as legal consideration, including:

a. Central Jakarta District Court Decision No.197/PdVG/1991, dated 14 June 1991 in the case between Christine Hartani Tjakra vs Syamsurizal Anis Cs. "...contradictions and disputes from or in connection with the Agreement or its implementation (including disputes/disputes regarding the validity of this Agreement) will be resolved through arbitration by an Arbitration Board consisting of 3 (three) members who will meet in Jakarta in English based on "The Rules of The United Nation Center For International Trade (UNCITRAL Rules)". "It is clear that the South Jakarta District Court does not have the authority to examine and try this case and therefore the Defendants' objections must be accepted and the Plaintiff's lawsuit is declared inadmissible...";

b. Supreme Court Decision No. 455 KlSip /1982 dated 27 January 1983 in a case between PT. Ramayana Insurance Company vs Sohandi Kawilarang. "In Personal Accident Policy No. 210/PN20.318 dated 10 August 1978 it is stated that "disputes relating to this Policy, are resolved at the highest level in Jakarta by 3 arbitration agents". Although this was not raised by the Defendant, it Based on Article 134 RIB, judges have the authority to add legal considerations and reasons in office; thus, the District Court has no authority to examine and try this case. Article 3 Law No. 14/1970 (specifically explanatory memory). Article 134 RIB in conjunction with Article 377 RIB jo Article 615 etc. RV.

c. Supreme Court Decision No. 794 K/Sip /1982, dated 27 January 1982 in a case between PT. Royal Indrapura Insurance vs Sohandi Kawilarang. "Regardless of the reasons for the cassation, the decision of the High Court/District Court must be annulled on the grounds of the Supreme Court itself because the High Court misapplied the law"; "In Policy No. 49/00137/08 dated 10 August 1978 under the section on Conditions it has been explained that "all differences drawing out of this Policy shall be referred to the decision of an arbitrator to be appointed in writing by the pafties in differences or "if they cannot agree upon a single arbitrator"; Thus the District Court has no authority to examine and try this case, in accordance with Article 3 of Law No. 14/1970, especially the explanation of that article."

d. Supreme Court Decision No. 3179 KlPdt1984 dated 4 May 1988 in a case between PT. Arpeni Pratama Ocean Line vs. PT. Shorea Mas. "The Court's authority to examine cases in terms of the arbitration clause; in the case of an arbitration clause, the court has no authority to examine and

adjudicate claims, either in conventions or in reconstitution"; "Removing the arbitration clause must be done expressly and with an agreement signed by both parties; Article 377 RIB in conjunction with Article 615 etc. RV';

e. Supreme Court Decision No. 2924 KlSip /1981 dated 8 February 1982 in a case between Ahyu Forestry Company Ltd. Vs Sutomo/President Director of PT. Jaya Racing. "The objection of the cassation applicant stating that the provisions regarding the arbitration board mentioned in the Basic Agreement for Joint Venture are binding on the parties as law (Article 1338 BW), and therefore the judex facti decision is in conflict with article 615 RV is justified." "The Supreme Court annulled the judex facti decision and stated that the District Court had no authority to try the case; Article 377 RIB and Article 615 etc. RV...".

f. Supreme Court Decision No. 117/1983 dated 1 October 1983 in the case between Lioe Lian Tang vs Union Des Transports Aeriens IUTA: "...from the perspective of absolute competence the Central Jakarta District Court has no authority to examine and try this case, because in article 5 of the Rental Agreement dated 15 June 1976 states that in the event that a compensation agreement is not reached, the matter will be submitted to an arbitrator."

g. Supreme Court Decision No. 3190 KlP/1995, dated 27 September 1996 in a case between PT. Studio Mustika Indah vs PT. Jaya Construction Manggala Pratama and Mowlem International Limited. "High Court Opinion" that in casu the District Court which has examined and adjudicated this case is an action that is contrary to the provisions of Article 615 R.V. And Article 134 H.I.R. because with the existence of "the arbitration clause, the District Court absolutely has no authority to examine and adjudicate the lawsuit".

Apart from basing its decision on Legislation and Jurisprudence, the Panel of Judges also uses doctrine in its legal considerations. The Panel of Judges quoted R. Setiawan's opinion which stated that the Court no longer has the authority (onbenvoegd) to examine and adjudicate cases if the parties have made an agreement/agreement to submit dispute resolution through arbitration(Setiawan 1992). Likewise, as stated by Sudargo Gautama who stated that the Court cannot examine the case in question if there is an arbitration clause in an agreement made by the parties. The court must declare that its agency has no authority to examine the case and then submit it to arbitration. This is carried out in accordance with the 1958 New York Convention which has been in effect in Indonesia since the enactment of Presidential Decree No. 34 Yr. 1981(Gautama 1976).

The decision of the Court of First Instance was further confirmed by the Jakarta High Court with decision No. 335/PDT/2008/PT.DKI, dated 14 October 2008 so that the plaintiff filed an appeal. The Panel of Judges at the cassation level then decided to reject the cassation petition from the PT Cassation Petitioner. Polyprima Karyareksa. In its legal considerations, the Panel of Judges stated that the judex facti/High Court which upheld the District Court's decision did not make a mistake in applying the law, its decision and considerations were appropriate and correct because the sale and purchase contract No. DAECO-PX060829-01 dated 29 August 2006 has chosen the Singapore International Arbitration Center as the dispute resolution forum.

Viewed from the aspect of legal certainty, the Supreme Court decision Number 1558 K/Pdt/2009 is able to show that there is legal certainty because it is coherent with Legislation, Jurisprudence and Doctrine. The consistent application of legal rules that has been demonstrated in the Supreme Court decision Number 1558K/Pdt/2009 is able to provide legal protection for parties involved in international trade contracts.

CONCLUSION

One of the institutions used to resolve disputes arising from trade contracts is arbitration. Dispute resolution through an arbitration institution must be agreed upon in advance by the parties when the business contract is made. In this case, if the parties have agreed in an agreement to bring all civil disputes to be resolved through an arbitration forum, then the district court has no authority to adjudicate the parties' disputes. Arbitration is the most effective suggestion in resolving disputes arising from international trade contracts because the process is fast and decisions are final and

have legal force and remain binding on the parties. Supreme Court Decision Number 1558 K/Pdt/2009 is able to show that there is legal certainty regarding the binding force of the arbitration clause because what is contained in the decision is coherent with Legislation, Jurisprudence and Doctrine. The consistent application of legal rules that has been demonstrated in the Supreme Court decision Number 1558K/Pdt/2009 is able to provide legal protection for parties who have chosen arbitration as a means of resolving disputes.

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