

ABSTRAK

Penyelesaian sengketa perdata dapat ditempuh melalui 2 (dua) cara, secara litigasi melalui pengadilan dan secara non litigasi yang salah satunya dapat ditempuh melalui arbitrase. Arbitrase harus diawali dengan pembuatan perjanjian arbitrase yang di dalamnya memuat klausula arbitrase. Berdasarkan UU No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, lembaga arbitrase diberi wewenang absolut untuk menyelesaikan sengketa para pihak yang telah terikat dalam perjanjian arbitrase. Namun pada perkembangannya muncul permasalahan mengenai lingkup kewenangan lembaga arbitrase dalam menyelesaikan sengketa perdata, yang salah satunya bersumber dari *Investment Agreement*, dimana salah satu pihak yang telah terikat dalam perjanjian arbitrase mengajukan gugatan ke pengadilan, sedangkan pihak yang lain tetap melaksanakan perjanjian arbitrase secara konsekuen. Keraguan mengenai lingkup kewenangan arbitrase menyebabkan pengadilan merasa berwenang menyelesaikan sengketa tersebut, dengan alasan sengketa yang terjadi diluar ranah arbitrase, sehingga akan muncul permasalahan dalam pelaksanaan eksekusi bilamana pengadilan dan lembaga arbitrase digunakan secara bersamaan, dan masing-masing memberikan putusan yang saling bertolak belakang. Oleh karena itu yang menjadi fokus dalam penelitian ini adalah:

- a. Apakah karakteristik *Investment Agreement* dan klausula arbitrase dalam kaitannya dengan lingkup kewenangan lembaga arbitrase?
- b. Bagaimana eksekusi terhadap 2 (dua) putusan yang saling bertolak belakang tersebut?

Penelitian ini dilakukan dengan menggunakan metode penelitian yuridis normatif, dan dilakukan dengan tujuan untuk menjawab permasalahan yang timbul sehingga lembaga penyelesaian sengketa tidak digunakan secara tumpang tindih oleh para pihak.

Hasil penelitian ini menunjukkan bahwa *Investment Agreement* dan klausula arbitrase yang menjadi dasar kewenangan lembaga arbitrase memiliki karakteristik sebagai perjanjian sehingga tunduk pada buku III KUH Perdata, sehingga semua sengketa perdata mengenai *Investment Agreement* dapat diselesaikan lembaga arbitrase sepanjang memuat klausula arbitrase dan memenuhi ketentuan yang ditetapkan UU No. 30 Tahun 1999. Kemudian untuk dapat dieksekusi, maka salah satu dari putusan tersebut harus dapat dibatalkan. Walaupun berdasarkan norma, asas, dan teori yang ada kewenangan absolut berada pada lembaga arbitrase, namun akan sulit dilakukan eksekusi terhadap putusan arbitrase karena lembaga arbitrase masih bergantung pada pengadilan, dan juga masih dimungkinkannya pembatalan terhadap putusan arbitrase.

Kata kunci : *Investment Agreement*, arbitrase, pengadilan

ABSTRACT

Settlement of civil disputes can be reached by two ways, there are litigation system that is involving the court and non litigation system, one of which can be reached by arbitration. Arbitration clauses must be written in an arbitration contract in order to conduct the arbitration itself. According to the Arbitration and Alternative Dispute Resolution Act of 1999, the Arbitration Body has been given an absolute authority to adjust any disputes among parties who have been bound in an arbitration contract. But actually in its development, there is one issue arises about the scope of arbitration body in its effort to resolve the civil dispute, which comes from the Investment Agreement, so one party who is bound to the arbitration contract still bring a lawsuit to the court, meanwhile, the other still enforce that contract consistently. The hesitation about the scope of arbitration authority could make the court perceives that it has enough authority to cope the dispute because it happened outside the arbitration scope, so that, there will be appear a problem in the execution if the court and arbitration body are used at the same time, they will give contradict judgements to each other. Therefore, the focus subject in this research are:

1. What are the characteristics of Investment Agreement and Arbitration Clause in corelation with the scope of arbitration authority body?
2. How about the execution towards two contradict judgements?

This research was using a legal normative approach and aimed to give answer for any issues that come up so as dispute settlement body is not overlappingly used by the participants.

The result of this study indicates that Investment Agreement and Arbitration Clause as a basic authority of arbitration body have features as an agreement, so that, it lies under Indonesian Civil Code Chapter III, shortly, all civil dispute about Investment Agreement could be solved by the arbitration body as long as it embodies arbitration clause and be able to fulfill the Arbitration and Alternative Dispute Resolution Act of 1999's provisions.

Then, in order to be executed, one of the judgements should be quashed. Even though based on any norms, principles, and theories, the absolute authority is in arbitration body, but it might be hard to do an execution towards arbitration judgement because arbitration body is still depend on the court, and also there will be a possibility of annulling towards arbitration verdict.

Keywords :Investment Agreement, arbitration, court.