JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i1

Analysis of The Judge's Ruling Regarding The Indonesian National Arbitration Board (BANI) (Decision Study Number: 305/Pdt.G/Bani/2014/Pn Jkt.Utr)

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Abstract: This research was conducted with the aim of finding out: 1) The basis for the judge's considerations in granting the applicant's request in decision number: 305/Pdt.G/BANI/2014/PN Jkt.Utr), 2) Analysis of the case resolution in decision number: 305/Pdt.G/BANI/2014/PN Jkt.Utr). The type of research used in this research is normative legal research using statutory, conceptual and case approaches. The results of this research show that: 1) The judge's basis for granting the Petitioner's petition in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr was that the judge assumed that BANI Decision Number 513/IV/ARB-BANI/2013 was taken as a result of deception on the part of the Arbitration Petitioner. Then the Arbitration Panel made a real mistake in deciding the case regarding the use of the legal basis for decision making. Apart from that, the judge considers that BANI Decision Number 513/IV/ARB-BANI/2013 has violated the principle of freedom of contract and agreement law as regulated in Article 1338 of the Civil Code and Respondent II as the Decision Panel has given a decision that exceeds the demands in the Application for Arbitration. 2) Analysis of the case resolution regarding Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr), the Petitioner believes that Arbitration Decision No. 513/IV/ARB-BANI/2013 was taken from a ruse. However, the Petitioner did not explain in detail what form of deception was carried out by the Arbitration Panel, so this is a tendentious and far-fetched accusation. There was not a single trick carried out against the litigants. And if it is a trick, then it must be based on a court decision that has permanent legal force. This is based on the Decision of the Supreme Court of the Republic of Indonesia dated March 30 2009 No. 729K/PDT.SUS/2009.

Keywords: Analysis, Judge's Decision, Indonesian National Arbitration Board

INTRODUCTION

As time goes by and trade and business progress, the level of complexity of disputes that arise also increases. Apart from that, the flow of globalization which has given rise to

rapid business development has also resulted in the need for law to develop in resolving disputes that arise in legal relationships. Often resolving disputes through court processes (judicial settlement of disputes) does not fulfill the principles of simple, fast and low-cost justice. Business actors, in the growing business world, demand dispute resolution that meets the principles of simple, fast and low-cost justice (Michael Jordi Kurniawan & Harjono, 2016).

Dispute problems in the world are increasing in number and diversity, especially in Indonesia, which is one of the countries that has quite rapid economic development. This rapid economic development has created various disputes that are quite complicated and varied. Disputes in Indonesia cannot be underestimated. There is a need to resolve disputes, especially in economic activities (Muhammad Fariel Zuleika, 2025). In practice, business and trade activities can be carried out in various ways. There are those who collaborate with local parties and there are also those who collaborate with foreign parties. Apart from that, there are also those who do it for personal interests and there are also those who do it for the company's interests. The implementation of this collaboration is marked by the agreement of a business agreement/contract between entrepreneurs (Yuhelson, 2018). This cannot be separated from the social phenomenon that a conflict or dispute will always be found in human life in society. So it is not surprising that every business activity always allows for the emergence of a dispute (dispute/difference) between the parties involved (Yuyut Siwi W, et al, 2021).

In relation to disputes that occur between the parties, they can be resolved through litigation (judicial institutions) or non-litigation (outside court). In resolving disputes through litigation, namely resolving disputes between the parties which is carried out through examination before a judge in a judicial institution. Litigation (court) is the oldest dispute resolution method and is commonly used in resolving disputes, both public and private disputes. Non-litigation dispute resolution is a dispute resolution mechanism outside of court and does not use a formal legal approach. Non-litigation dispute resolution is also known as ADR (Alternative Dispute Resolution) (Frans Hendra Winata, 2012).

Dispute resolution through arbitration is effective when the two parties to the dispute are based on mutual trust and good ethics from both parties to resolve the dispute that occurs. Alternative dispute resolution must be based on the principle of a win-win solution (win for both parties), not based on win-lose (Rina Shahriyani Shahrullah, 2015). While resolving disputes through litigation (court), in general there are several disadvantages, including long time periods and large cost factors, which can be an obstacle in resolving disputes. The court must also handle cases that must be resolved, even to the point of piling up cases (Jimmy Joses Sembiring, 2011). Because usually to resolve a civil case in court it can take a long time to resolve the dispute to the judge's decision.

Indonesia has enacted Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law is intended to regulate dispute resolution outside of court by providing the possibility and right for the parties in dispute to resolve disputes or disputes or differences of opinion between the parties in a forum that is more appropriate to the parties' intentions (Gunawan Widjaja, 2005). A forum that is expected to accommodate the interests of the disputing parties. Basically, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates more about arbitration provisions, starting from procedures, procedures, institutions, types, as well as decisions and implementation of the arbitration award itself.

Arbitration is a form of dispute resolution outside of court which is often the choice of business actors to resolve disputes. In this case, theoretically arbitration has many advantages compared to dispute resolution through litigation or through court with greater efficiency. Also, final and binding decisions are the main advantage of dispute resolution through

arbitration (Agustini Andriani, 2022). As stipulated in Law Number 30 of 1999, arbitration awards are final and have permanent legal force and are binding on the parties. This means that the arbitration award is a final decision and therefore cannot be submitted for appeal, cassation or judicial review (Law No. 30 of 1999).

One example of a case that occurred regarding the Indonesian National Arbitration Board (BANI) is Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr. In this decision, the Petitioner is PT. Sea World Indonesia (formerly PT. Laras Tropika Nusantara) represented by Efrijanto Salim as President Director and H. Sonny Wibisono Widjanarko as Director against PT. Pembangunan Jaya Ancol (Persero), Tbk, represented by Gatot Setyowaluyo as Main Director, is hereinafter referred to as Respondent I and the Indonesian National Arbitration Board (BANI) represented by M. Husseyn Umar, S.H., FCBArb. as Deputy Chair, hereinafter referred to as Respondent II. The verdict of this decision is to grant the Petitioner's petition and cancel the Decision of Respondent II/Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014.

Seeing the rapid development of business and the increasing complexity of disputes that arise within it, the need arises for a resolution mechanism that is not only time and cost efficient, but is also able to provide legal certainty for the parties. Arbitration, as a form of dispute resolution outside of court, is often chosen because it is considered more flexible and responsive to the needs of the business world. However, the choice of arbitration route is certainly not done without clear reasons. There are fundamental considerations that form the basis for the parties in determining the settlement route. Therefore, the next discussion will be directed at analyzing the basis of the judge's considerations in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr and to see to what extent these considerations are able to reflect the rationality, effectiveness and interests of the parties to the dispute in the context of world business relations.

RESEARCH METHODS

The research method used in this research is normative legal research. Normative legal research is research that examines legal norms, legal theories, doctrine (expert opinions), court decisions, and legal principles. This research focuses on how the judge's considerations granted the applicant's request in decision number: 305/Pdt.G/BANI/2014/PN Jkt.Utr). The approaches used in this research are statutory, conceptual and case approaches. Types and sources of legal materials, namely primary legal materials (Civil Code, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr, etc.), secondary legal materials (books, journals and other scientific works on Civil Law, Agreement Law, Arbitration and Alternative Dispute Resolution, etc.), tertiary legal materials (law dictionaries, language dictionaries English, KBBI, etc.). In this research, techniques and tools for collecting legal materials were carried out using library studies, namely techniques for collecting legal materials by carrying out library studies on legal materials, both primary, secondary and tertiary legal materials. The analysis technique in this research is interpretive analysis of the legal materials used as the basis. In carrying out the interpretation, normative juridical analysis is used which comes directly from library materials as a source of research data.

RESULTS AND DISCUSSION

The Judge's Basis for Granting the Petitioner's Application in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr)

The basis for the judge's consideration in granting the Petitioner's petition in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr) above is as follows:

Considering, that the Petitioner filed an objection to the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 because of the large indications that the examination of Case No. 513/IV/ARB-BANI/2013 from the start has been carried out in an independent, impartial and deceptive manner which aims to harm the legal interests and rights of the Petitioner for reasons which are essentially as follows:

1. The applicant found a document that is decisive in nature, where this document shows the existence of an affiliation between the expert witness submitted by the arbitration applicant and one of the arbitrators who influenced BANI Decision No. 513 as intended in the provisions of Article 70 Letter b of the Arbitration Law;
2. It is reasonable to suspect that Bani Decision No. 513 Taken as a result of deception on the part of the Arbitration Requester as intended in the provisions of Article 70 Letter c Arbitration;
3. The Arbitration Panel Has Made a Real Mistake in Deciding the Case Regarding the Use of the Legal Basis for Decision Making;
4. BANI Decision No. 513 Has Violated the Principle of Freedom of Contract and Agreement Law as Regulated in Article 1338 of the Civil Code;
5. Respondent II as the Decision Panel has given a decision that exceeds the demands in the arbitration request.

Considering, that the Panel of Judges will then give the following considerations: that Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that parties can submit an application for annulment of an arbitration award if the award is alleged to contain the following elements:

1. Letters or documents submitted in the examination, after the verdict is handed down, are recognized as fake or stated to be fake;
2. After the decision is taken, documents of a decisive nature are discovered which have been hidden by the opposing party; or
3. The decision is taken as a result of deception carried out by one of the parties in the dispute investigation.

Considering, that after carefully studying the 5 (five) points of reasons for the request for annulment of the BANI decision submitted by the Petitioner in advance, in connection with the provisions of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Panel of Judges concludes that there are only 2 (two) main legal issues that can be considered by the Panel of Judges in connection with the a quo case petition, namely:

1. Have any documents of a decisive nature been found which were hidden by Respondent I following the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014?
2. Was the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 taken as a result of deception carried out by Respondent I in the dispute investigation?

Considering that the remaining reasons put forward by the Petitioner are:

1. The Arbitration Panel Has Made a Real Mistake in Deciding the Case Regarding the Use of the Legal Basis for Decision Making;
2. BANI Decision No. 513 Has Violated the Principle of Freedom of Contract and Agreement Law as Regulated in Article 1338 of the Civil Code;
3. Respondent II as the Decision Panel has given a decision that exceeds the demands in the arbitration request.

According to the Panel of Judges, these are not the reasons as stipulated in the provisions of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative

Dispute Resolution, in fact they have entered into the subject matter of the case which is not within the authority of the Panel of Judges to assess, therefore regarding the Petitioner's three reasons as stated above, the Panel of Judges will not consider them further and should be set aside.

Considering, that to strengthen the arguments of his petition, the Petitioner has submitted evidence in the form of letters marked P-1 to P-11 and 1 (one) expert named Prof. Dr. RIDWAN KHAIRANDY, S.H., M.H., meanwhile, to strengthen the arguments in his answer, Respondent I submitted evidence in the form of letters marked T.I-1 to T.I-7, while Respondent II submitted evidence in the form of letters marked T.II-1 to T.II-10.

Considering, that before the Panel of Judges considers it further, it will first consider the documentary evidence submitted by the Parties. Whereas after the Panel of Judges carefully studied the evidence submitted by the Parties, some of it was not in the original and was only a photocopy of a photocopy, however, the Panel of Judges was of the opinion that this evidence was very relevant to the a quo case, besides that the evidence of the letter was not disputed by the Parties, therefore the evidence of the letter was worthy of consideration;

Considering, that in addition to being more effective in the legal consideration of the a quo case, regarding the documentary evidence submitted by the Parties, the Panel of Judges will prioritize considering documentary evidence that is relevant to the subject matter of the a quo petition;

Considering, that next the Panel of Judges will consider the first legal issue, namely whether any documents of a decisive nature were found which were hidden by Respondent I after the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014?

Considering, that the Petitioner in the first main argument stated that there is news on the Hukumonline.com site which shows that Expert ELIJANA TANSAH is affiliated with one of the Panel of Arbitrators, namely HUMPREY R. DJEMAT, who in fact is the arbitrator appointed by PT. DEVELOPMENT JAYA ANCOL (Persero), Tbk. / Respondent I, therefore, Expert ELIJANA TANSAH, when asked for information at the trial on 6 February 2014, should have refused to provide information on the grounds that there was a conflict of interest with HUMPREY R. DJEMAT, likewise, HUMPREY R. DJEMAT should have been obliged to refuse to examine and/or ask for information from Expert ELIJANA TANSAH on the grounds that there was a conflict of interest which could affect the independence of Expert ELIJANA TANSAH's testimony in the examination, including HUMPREY's objectivity. R. DJEMAT as one of the members of the Arbitrator Panel appointed by Respondent I;

Considering, that in relation to the Petitioner's argument, Respondent I in his reply stated that it was impossible for Respondent I to hide a document of a decisive nature whereas the document was news from the Hukumonline.com site dated March 6 2009 where the Hukumonline.com site is a site that is open to the public and it is very unlikely that it could have been hidden by Respondent II, even in this trial it was clear that Respondent I could easily find this information via the internet.

Considering that Respondent II in his reply stated that the Petitioner's argument was made up because there was not a single piece of evidence that Respondent I had deliberately hidden documents, let alone documents in the form of news from the Hukumonline.com site dated March 6 2009, because the Hukumonline.com site could be accessed by everyone. Furthermore, Respondent II stated that there was not a single court decision that had permanent legal force which proved that the opposing party had hidden documents, in case Respondent I during the case examination process. Number 513/IV/ARBBANI/2013;

Considering, then, regarding the first legal issue beforehand, the Panel of Judges gave the following considerations: that after carefully studying the evidence submitted by the

parties, in relation to the Petitioner's argument regarding documents of a decisive nature, which was hidden by Respondent I, referring to Exhibit P-10 in the form of a photocopy of a news item taken from the Hukumonline website (www.hukumonline.com) on March 6 2009, in which there was a news item with the sentence "Meanwhile, Elijana Tansah from the Gani Advocate Office Djemat & Partners has a different opinion.

Considering, that for this reason the Panel of Judges will consider whether evidence P-10 is included in the category of documents of a decisive nature which were hidden by Respondent I. Whereas evidence P-10 was taken from the site with the address www. Hukumonline.com which is a public site, where everyone can easily access it, especially when looking at the news on March 6 2009 which contains the sentence "Meanwhile, Elijana Tansah from the Gani Djemat & Partners Advocate Office has a different opinion", where readers can directly access it without first must register to become a member of the HukumOnline site;

Considering, that for this reason the Panel of Judges agrees with the arguments of Respondent I and Respondent II which basically state that the Hukumonline.com site is a site that is open to the public and can be accessed by everyone so that it is impossible for Respondent I to hide it, so that Exhibit P-10 is in the form of a photocopy of a news item taken from the Hukumonline.com site on March 6 2009, in which there is a news item with the sentence "Meanwhile, Elijana Tansah from the Gani Advocate Office Djemat & Partners has a different opinion," the Panel of Judges is of the opinion that it is not included as a hidden document as regulated in the provisions of Article 70 letter b of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and the Panel of Judges is of the opinion that the P-10 evidence referred to is not decisive in nature, because it is only news as in general;

Considering, that based on the description of the considerations above, the Panel of Judges is of the opinion that the reason for canceling the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 submitted by the Petitioner on the grounds that a decisive document was found which was hidden by Respondent I after the decision was made must be rejected;

Considering, that next the Panel of Judges will consider the second legal issue, namely whether the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 was taken as a result of deception carried out by Respondent I in the examination of the dispute?

Considering, that the Petitioner in the second main argument stated that there was bad faith and a conspiracy from the start to defeat the Petitioner in the arbitration case, because of the legal facts of the relationship between the Panel of Arbitrators of Respondent II (HUMPREY R. DJEMAT) and Expert ELIJANA TANSAH proposed by Respondent I as one of the parties in Arbitration Case No. 513/IV/ARB-BANI/2013, so it is reasonable to suspect that there has been a conspiracy since the initial registration of the Application for Arbitration which aims to eliminate the Petitioner's legal rights and interests;

Considering, that regarding the Petitioner's argument, Respondent I in his reply stated that regarding the argument of deception in which Respondent I appointed Respondent II to resolve the main dispute/problem, this was indeed in accordance with the mandate in Deed No. 81/1992, namely Article 23 paragraph (2) which states that in the event of a dispute it must be resolved through Respondent II and not through other agencies or judicial institutions. This is an agreement between the Petitioner and Respondent I and therefore applies as law to those who make it;

Considering, that Respondent II in his reply stated that the Petitioner's argument was a tendentious and far-fetched accusation because the examination of case Number 513/IV/ARB-BANI/2013 had proceeded according to the provisions and considered all the

arguments, evidence and facts presented by both parties in a balanced manner in accordance with the principle of audi alteram partem and no deception had been carried out. Meanwhile, if the fraud argued by the Petitioner is related to the accusation that ELIJANA TANSAH has an affiliation with HUMPREY R. DJEMAT, then Respondent II firmly rejects it because in fact ELIJANA TANSAH does not work and has never worked at the GANI DJEMAT & PARTNERS law office, where HUMPREY R. DJEMAT is affiliated. Furthermore, if there is indeed deception, then it must be based on a court decision which has permanent legal force, while in this case there is not a single court decision in question which indicates that there was deception in the examination process of case Number 513/IV/ARB-BANI/2013;

Considering, that further on the second legal issue mentioned above, the Panel of Judges gave the following considerations: that the Panel of Judges agrees with Respondent II's argument which basically states that in the event of deception, it must be based on a court decision which has permanent legal force, this is in line with the content of the explanation of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states that requests for annulment can only be submitted against arbitration decisions that have been registered in court. The reasons for the cancellation request mentioned in this article must be proven by a court decision. If the court states that these reasons are proven or not proven, then this court decision can be used as a basis for considerations for the judge to grant or reject the application;

Considering, however, that in the light of scientific developments and the examination of cases at trial, an annulment of an arbitration award based on deception can be submitted without being accompanied by a court decision stating that there was deception, where the Panel of Judges concerned is sufficient to assess from the evidence presented by the Petitioner that there was an act of deception committed by the opposing party as stipulated in Article 70 letter c of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which is as stated in Supreme Court Decision Number 700 PK/Pdt/2008 in conjunction with Supreme Court Decision Number 02/Appeal/Wasit/2004 in conjunction with Surabaya District Court Decision Number 468/Pdt.G/2003/PN.Sby, where the Supreme Court PK Panel of Judges was of the opinion that the Petitioner had deliberately presented evidence that he knew was no longer valid and evidence that was invalid, in such a way that the Arbitration Panel handed down a decision based on this evidence. The Petitioner's actions in the arbitration trial process were "deceptive", so that the arbitrator was unable to place the legal facts in the actual situation, so that the Petitioner's actions could be categorized as a ruse that annulled the arbitration award;

Considering, that in the main case a quo, the Petitioner is questioning the existence of a legal relationship between the Panel of Arbitrators for Respondent II (HUMPREY R. DJEMAT) and Expert ELIJANA TANSAH, so it is reasonable to suspect that there has been a conspiracy since the beginning of the registration of the Application for Arbitration which aims to eliminate the legal rights and interests of the Petitioner, which if connected with the evidence submitted by the parties, then the relevant evidence to be considered in connection with this second main issue is Exhibit P-10 in the form of a photocopy of news taken from the website Hukumonline (www. Hukumonline.com) dated 6 March 2009 and evidence T.II-8 in the form of a photocopy of email correspondence from the BANI Secretariat (represented by Mr. Ismu) with Mr. Humprey R. Djemat;

Considering, that the Petitioner based on evidence P-10 essentially wants to show that there is a relationship between the Panel of Arbitrators of Respondent II (HUMPREY R. DJEMAT) and Expert ELIJANA TANSAH, as the content of the report states that ELIJANA TANSAH is from the Gani Djemat Advocate Office, whereas Respondent II based on evidence T.II-8 wants to show that there is no relationship between Arbitrator HUMPREY R.

DJEMAT and Expert ELIJANA TANSAH, because the Expert ELIJANA TANSAH has never worked at the GANI DJEMAT & Partners Office;

Considering, that regarding the differences referred to, the Panel of Judges gave the following considerations: that based on evidence T.II-8, it shows that the correspondence between ISMUDAKIR from the Indonesian National Arbitration Board (BANI) and HUMPHREY R. DJEMAT occurred on 1 and 2 September 2014, where on 1 September 2014, ISMUDAKIR sent an email to HUMPHREY R. DJEMAT which basically asked questions about expert witnesses, then on 2 September 2014, HUMPHREY R. DJEMAT replied to ISMUDAKIR's email which was basically as follows:

1. That it is not true that Mrs. ELIJANA TANSAH works, or has ever worked at GANI DJEMAT & PARTNERS;
2. That there has never been any working relationship between Mrs. ELIJANA TANSAH and GANI DJEMAT & PARTNERS, except for inviting her for consultations, to be a speaker at seminars or to be an expert witness in trials, as is done by many other law firms;
3. Because there is no employment relationship between Mrs. ELIJANA TANSAH and GANI DJEMAT & PARTNERS, we do not have any documents related to this matter;

Considering, that from the email evidence of the correspondence mentioned above, the Panel of Judges concluded that between HUMPHREY R. DJEMAT and ELIJANA TANSAH, although there was no employment relationship, -in the sense that ELIJANA TANSAH worked for HUMPHREY R. DJEMAT and received a salary from him-, there was a fairly close and continuous communication and cooperation relationship as shown in the sentence "...inviting him for consultations, to be a speaker at seminars or to be an expert witness at trials".

Considering that the Panel of Judges is of the opinion that handling arbitration cases is a very sensitive matter because there are two conflicting interests, so it is hoped that the arbitrator will be filled with people who are qualified and can be trusted by both parties to the case, one of these beliefs is that the arbitrator will be neutral and impartial or biased towards one of the parties, even when examining witnesses and experts proposed by the parties, it is an obligation for the arbitrator to be able to sort out the witnesses and/or experts who will be examined;

Considering that Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution does not explicitly regulate affiliation, however, it is a matter of propriety and ethics for arbitrators that there is no relationship between the witness or expert being examined and the arbitrator, whether working or merely communication and cooperation, because this will give rise to a sense of distrust and suspicion from one of the parties, as is the case in the a quo case;

Considering, that HUMPHREY R. DJEMAT as Arbitrator in handling case Number 513/IV/ARB-BANI/2013 has finished his duties since the decision was pronounced on June 5 2014, so it would be unethical if HUMPHREY R. DJEMAT commented on the case he had handled as stated in evidence T.II-8, which according to the Panel of Judges from evidence T.II-8 further emphasizes that between HUMPHREY R. DJEMAT and ELIJANA TANSAH before the examination of case Number 513/IV/ARB-BANI/2013 were already acquainted with each other and had a close communication relationship;

Considering, that Respondent I in the examination of case Number 513/IV/ARB-BANI/2013 has appointed HUMPHREY R. DJEMAT as arbitrator and proposed ELIJANA TANSAH as an expert for his testimony to be heard. That Respondent I in his reply argument did not convey a denial regarding the relationship between HUMPHREY R. DJEMAT and ELIJANA TANSAH before the examination of case Number 513/IV/ARBBANI/2013, so that the Panel of Judges concluded that Respondent I had deliberately proposed expert ELIJANA TANSAH who he knew had a close working and communication relationship with

HUMPHREY R. DJEMAT, in such a way that resulted in 2 (two) Members of the Arbitration Panel handing down a decision. which is based on expert ELIJANA TANSAH's statement regarding agreement Number 81 dated 21 September 1992 concerning the Agreement for the Development, Management and Transfer of Rights for Undersea World Indonesia in Taman Impian Jaya Ancol, especially in interpreting the provisions of Article 8 paragraph (6) concerning option rights, so that the actions of Respondent I in the Arbitration trial process were in the nature of "deceiving" or "deceiving" the Petitioner, so that the Arbitrator could not place the legal facts in the circumstances. In fact, Respondent I's actions could be categorized as a ruse, if this was known to the Petitioner during the investigation of case No. 513/IV/ARB-BANI/2013 it is certain that the Petitioner will reject ELIJANA TANSAH's application as Expert;

Considering, that based on the considerations above, the Panel of Judges is of the opinion that the reason for the annulment of the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 submitted by the Petitioner on the grounds that the arbitration award was taken as a result of deception carried out by Respondent I in the examination of the dispute should be granted;

Considering that, based on everything that the Panel of Judges has explained and considered previously, the Decision of the Indonesian National Arbitration Board (BANI) Number 513/IV/ARB-BANI/2013 dated 5 June 2014 can no longer be maintained and must be annulled in its entirety;

Considering that the remaining evidence submitted by the Parties, even though it is still related to the a quo case, the Panel of Judges is of the opinion that because the main issues in the a quo case have been answered with the evidence that has been considered as previously, the remaining evidence will not be considered further by the Panel of Judges.

Based on the judge's considerations in Decision Number: 305/Pdt.G/ BANI/2014/PN Jkt.Utr) above, the panel of judges granted the request for annulment of BANI Arbitration Decision Number 513/IV/ARB-BANI/2013, because it was proven that the decision was taken based on deception carried out by Respondent I. Although the argument regarding hidden documents cannot be proven, there is a close and undisclosed relationship between the expert proposed by Respondent I and one of arbitrators are proven to influence the independence and objectivity of examinations. This is considered to have violated the principle of neutrality in arbitration and complies with the provisions of Article 70 letter c of Law Number 30 of 1999. So the panel of judges is of the opinion that the arbitration award is juridically untenable and deserves to be completely annulled.

Analysis of Case Settlement Against Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr)

Based on several things that were taken into consideration by the judge in deciding the case regarding Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr) above, the author will then analyze Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr) as to whether it is in accordance with the applicable legal corridors based on existing regulations or whether there are still deviations from law enforcement, so as to achieve the objectives of the law, namely justice, certainty. and legal benefits are felt to have been carried out.

After the author looked at several considerations which were the exceptions of Respondent I and Respondent II, it was true that the Petitioner, in this case PT. Sea World Indonesia (formerly PT. Laras Tropika Nusantara) represented by Efrijanto Salim as President Director and H. Sonny Wibisono Widjanarko as Director submitted a request for annulment related to the Application for Decision of the Indonesian National Arbitration Board (BANI). However, regarding the cancellation of arbitration awards, it is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution contained in CHAPTER VII, Article 70 which states:

"Regarding an arbitration award, parties can submit a request for annulment if the award is alleged to contain the following elements:

1. Letters or documents submitted in the examination, after the decision has been handed down, are recognized as fake or stated to be fake;
2. After the decision is taken, a decisive document is discovered, which was hidden by the opposing party; or
3. The decision was taken as a result of deception carried out by one of the parties during the dispute investigation.

Based on the provisions of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution above, to submit a request for cancellation, it must contain the elements. However, in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr) above, the Petitioner considers that they have found decisive documents that were hidden by Respondent I and considers that there has been deception carried out by Respondent I in the decision-making process at BANI. What Respondent I considers is evidence of news from the Hukumonline.com site which states that Expert Witness M. E. Elijana Tansah, S.H. from the office of Advocate Gani Djemat & Partners regarding the deception of Respondent I appointed Respondent II as arbitrator for Respondent I while Expert Witness M. E. Elijana Tansah, S.H. has a relationship/affiliation with Respondent II.

If we look at Article 70 letter b of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely the element "concealed by the opposing party", where the Petitioner's argument is not legally and convincingly proven. Because the Hukumonline.com site is a site that is open to the public and it is very unlikely that it could be hidden by Respondent II. In addition, the Petitioner believes that arbitration award No. 513/IV/ARB-BANI/2013 was taken from a ruse carried out by one of the parties during the dispute investigation. The Petitioner did not explain in detail what form of deception was carried out by the Arbitration Panel in examining and adjudicating case No. 513/IV/ARB-BANI/2013 so this is a tendentious and far-fetched accusation. Case examination no. 513/IV/ARBBANI/2013 at BANI has been carried out by the Arbitration Panel in accordance with existing provisions and considering all the arguments, evidence and facts presented by both parties in a balanced manner in accordance with the principle of audi alteram partem and no deception has been carried out against the parties involved in the lawsuit.

If the Petitioner should have assumed that there was deception in case No. 513/IV/ARBBANI/2013, in accordance with the Elucidation of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it must be based on a court decision that has permanent legal force. This is based on the Decision of the Supreme Court of the Republic of Indonesia dated March 30 2009 No. 729K/ PDT.SUS/2009, where the decision states that: The reasons for the cancellation request mentioned in Article 70 must be proven by a court decision (in criminal cases) and apart from these reasons, the cancellation request must be declared inadmissible (RI Supreme Court Decision Number: 729K/ PDT.SUS/2009).

Then, related to the applicant's accusations, BANI Decision No. 513 has violated the principle of freedom of contract and the law of agreements regulated in Article 1338 of the Civil Code. According to the author's perspective, it is impossible for an Arbitration Panel that examined and tried case No: 513/IV/ARB-BANI/2013 to have acted incorrectly in giving consideration to the BANI arbitration award No: 513/IV/ARB-BANI/2013, because before the Arbitration Panel examined and tried case No: 513/IV/ARB-BANI/2013, of course the Arbitration Panel has first looked at the agreement made by the parties.

If seen from the legal theory approach, in this case the author uses the theory of legal certainty according to Gustav Radbruch who puts forward 4 (four) basic things related to the meaning of legal certainty (Satjipto Rahardjo, 2012), namely:

1. Law is a positive thing, which means that positive law is legislation.
2. The law is based on a fact, meaning that the law is made based on reality.
3. Facts contained or contained in the law must be formulated in a clear manner, so that errors in meaning or interpretation will be avoided and can be easily implemented.
4. Positive laws must not be easily changed.

According to the author's perspective, if we refer to Gustav Radbruch's opinion regarding legal certainty, it is based on his view regarding legal certainty, which means legal certainty itself. Legal certainty is a product of law or more specifically a product of legislation (Satjipto Rahardjo, 2012). If it is related to the issue of Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr) above, essentially the law must be certain and fair. That is, definite law is a guideline for behavior and fairness is a guideline for behavior that must support an order and be considered reasonable. Only by being certain and fair can the law be implemented in accordance with its function.

Apart from that, in terms of resolving arbitration disputes, it is necessary to understand several principles in dispute resolution. Principles in dispute resolution (Huala Adolf, 2016), including:

1. Principle of Agreement of the Parties: A fundamental principle in resolving international trade disputes. This principle is the basis for whether or not a dispute resolution process is implemented. This principle can also be the basis for ending an ongoing dispute resolution process. So this principle is very essential. Judicial bodies (including arbitration) must respect what the parties agree.
2. Principle of Freedom to Choose Dispute Resolution Methods: The parties have complete freedom to determine and choose the method or mechanism by which their dispute is resolved (principle of free choice of means).
3. Principle of Freedom to Choose Law: The principle of the parties' freedom to determine for themselves what law will be applied (when the dispute is resolved) by a judicial body (arbitration) to the subject of the dispute. The freedom of the parties to determine this law includes the freedom to choose appropriateness and appropriateness (ex aequo et bono).
4. Principle of Good Faith: This principle requires and requires good faith from the parties in resolving the dispute. In dispute resolution, this principle is reflected in two stages. First, the principle of good faith is required to prevent the emergence of disputes that could affect good relations between countries. Second, this principle is required to exist when the parties resolve their disputes through dispute resolution methods known in international (trade) law, namely negotiation, mediation, conciliation, arbitration, court or other methods of the parties' choice.
5. Principle of Exhaustion of Local Remedies: According to this principle, customary international law stipulates that before the parties submit their dispute to an international court, the dispute resolution steps available or provided by the national law of a country must first be exhausted (exhausted).

Apart from several principles in dispute resolution that the author has outlined above, it is necessary for the disputing parties to pay attention to several forums in an effort to resolve their disputes. According to Huala Adolf, the dispute resolution forums include: negotiation, investigation of facts (inquiry), mediation, conciliation, arbitration, resolution through law or through court, or other methods of dispute resolution chosen and agreed upon by the parties (Huala Adolf, 2016). Thus, according to the author's perspective, the parties in a dispute need to first pay attention to the principles of dispute resolution and pay attention to several forums in an effort to resolve the dispute.

CONCLUSION

The judge's basis for granting the Petitioner's petition in Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr was that the judge assumed that BANI Decision Number 513/IV/ARB-BANI/2013 was taken as a result of deception on the part of the Arbitration Petitioner. Then the Arbitration Panel made a real mistake in deciding the case regarding the use of the legal basis for decision making. Apart from that, the judge considers that BANI Decision Number 513/IV/ARB-BANI/2013 has violated the principle of freedom of contract and agreement law as regulated in Article 1338 of the Civil Code and Respondent II as the Decision Panel has given a decision that exceeds the demands in the Application for Arbitration.

Case settlement analysis of Decision Number: 305/Pdt.G/BANI/2014/PN Jkt.Utr), the Petitioner believes that Arbitration Decision No. 513/IV/ARB-BANI/2013 was taken from a ruse. However, the Petitioner did not explain in detail what form of deception was carried out by the Arbitration Panel, so this is a tendentious and far-fetched accusation. There was not a single trick carried out against the litigants. And if it is a trick, then it must be based on a court decision that has permanent legal force. This is based on the Decision of the Supreme Court of the Republic of Indonesia dated March 30 2009 No. 729K/PDT.SUS/2009.

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