

ABSTRAK

KEBERLAKUAN ASAS SEPARABILITAS ARBITRASE DALAM PENYELESAIAN SENGKETA DI PENGADILAN NEGERI

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Asas separabilitas yang diatur dalam Pasal 10 UU Arbitrase menegaskan bahwa klausula arbitrase bersifat mandiri dan terpisah dari perjanjian pokok. Namun dalam praktiknya, Pengadilan Negeri dan Pengadilan Tinggi selaku *Judex Facti* secara konsisten mengabaikan asas tersebut, sedangkan Mahkamah Agung selaku *Judex Juris* secara konsisten melakukan koreksi terhadap keberlakuannya. Penelitian ini mengkaji batasan keberlakuan asas separabilitas arbitrase, keberlakuannya dalam penyelesaian sengketa di Pengadilan Negeri, dan akibat hukum putusan Pengadilan Negeri yang mengabaikan klausula arbitrase.

Jenis penelitian ini adalah penelitian hukum normatif dengan tipe deskriptif. Pendekatan masalah menggunakan pendekatan analitis disesuaikan dengan keberlakuan asas separabilitas klausula arbitrase dalam perjanjian, pendekatan perundang-undangan, dan pendekatan studi kasus yang telah berkekuatan hukum tetap. Data dikumpulkan melalui studi kepustakaan dan studi dokumen, kemudian diolah melalui pemeriksaan, klasifikasi, rekonstruksi, sistematika dan dianalisis secara kualitatif.

Hasil penelitian menunjukkan bahwa asas separabilitas memiliki tiga batasan keberlakuan: sengketa yang timbul di luar substansi kontrak, cacat hukum yang melekat langsung pada klausula arbitrase itu sendiri sebagaimana dikenal dalam doktrin *separability exception*, dan ketentuan Pasal 11 Ayat (2) UU Arbitrase. Mahkamah Agung dalam ketiga putusan secara konsisten memberlakukan asas separabilitas dan menyatakan Pengadilan Negeri tidak berwenang, sedangkan inkonsistensi *Judex Facti* bersumber dari kelemahan normatif Pasal 10 UU Arbitrase dan terbatasnya pemahaman hakim mengenai doktrin hukum arbitrase internasional. Tidak diberlakukannya asas separabilitas menimbulkan akibat hukum berupa: pergeseran kompetensi yang tidak sah dari forum arbitrase ke Pengadilan Negeri, pelanggaran terhadap Pasal 3, Pasal 10, dan Pasal 11 UU Arbitrase, kerusakan integritas sistem arbitrase, serta dampak negatif terhadap kepastian hukum dan iklim investasi di Indonesia.

Kata Kunci: Asas Separabilitas, Arbitrase, Pengadilan Negeri, Penyelesaian Sengketa.

ABSTRACT

THE APPLICABILITY OF THE ARBITRATION SEPARABILITY PRINCIPLE IN DISPUTE RESOLUTION BEFORE THE DISTRICT COURT

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*The principle of separability, as stipulated in Article 10 of the Arbitration Law, affirms that the arbitration clause is independent and separate from the principal agreement. However, in practice, the District Court and the High Court, acting as *Judex Facti*, consistently ignore this principle, while the Supreme Court, acting as *Judex Juris*, consistently corrects its applicability. This study examines the limitations of the applicability of the arbitration separability principle, its applicability in dispute resolution in District Courts, and the legal consequences of District Court decisions that ignore arbitration clauses.*

This research is a normative legal study with a descriptive approach. The problem is approached analytically, adapting to the applicability of the arbitration clause in agreements, the statutory approach, and the case study approach of legally binding cases. Data was collected through literature and document studies, then processed through examination, classification, reconstruction, systematization, and qualitative analysis.

*The results of the study indicate that the principle of separability has three limitations on its applicability: disputes arising outside the substance of the contract, legal defects inherent in the arbitration clause itself, as known as the doctrine of separability exception, and the provisions of Article 11 Paragraph (2) of the Arbitration Law. The Supreme Court, in all three decisions, consistently applied the principle of separability and declared the District Court to be without jurisdiction. The inconsistency of the *Judex Facti* stems from the normative weaknesses of Article 10 of the Arbitration Law and the judges' limited understanding of international arbitration legal doctrine. The failure to apply the principle of separability has legal consequences, including: an unlawful shift of jurisdiction from the arbitration forum to the District Court, violations of Articles 3, 10, and 11 of the Arbitration Law, damage to the integrity of the arbitration system, and a negative impact on legal certainty and the investment climate in Indonesia.*

Keywords: Separability Principle, Arbitration, District Court, Dispute Resolution.