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Research Article

The Implication of The Supreme Courts Affirmation Towards Judex Facti Decision In a Final and Binding Judicial Award Which Still Providing a Chance to Perform Legal Action Through Arbitration After The Nullification of The Arbitration Award

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Abstract

The Arbitration Award is a binding adjudication precedent, but based on the provision of Article 70, Statute Number 30 of 1999 of Arbitration and Alternative Dispute Resolution (Statute of Arbitration), such award are admissible for nullification by the District Court and it is also a subject for an appeal to the Supreme Court of Indonesia. The verdict within the Supreme Court award Number 62 B/ Pdt. Sus-Arbt/ 2017 regarding the case of the nullification of Badan Arbitrase Nasional Indonesia's award, has refused to discharge the authority of Badan Arbitrase Nasional Indonesia (BANI). The legal issues analyzed within this research are: Does the nullification of Arbitration Award resulting on nullification of Arbitration Clause? What are the implications of the affirming verdict of the Supreme Court's award Number 62 B/Pdt. Sus-Arbt/2017 on Judex Facti's award number 332/Pdt.G/Arb/2016/PN Jkt. Pst towards the dispute resolution process between the parties? The writing method applied to this thesis is a normative method with descriptive research, with the application of primary, secondary, and tertiary legal resources, analyzed in a qualitative manner. The nullification of Arbitration Award by the Supreme Court does not revoking the authorization of Arbitration and the implication of such awards is that the Pactum de Compromitendo is still enforceable and BANI is still the authorized choice of forum. The conclusions taken from the research conducted are: 1) The nullification of Arbitration Award resulting on nullification of the Arbitration Clause; 2) The implication of the Supreme Court's award Number 62 B/Pdt.Sus-Arbt/2017 is that there is no certainty of law for the parties as a result of the binding and un-nullified enforceability of the arbitration clause based on the provision of the first paragraph of Article 1338, The Book of Indonesia Private Law. Recommendation: 1) PT. Republik Energi & Metal is advised to file for Judicial Review towards the case to the Supreme Court in order to annul the previous award of the Supreme Court; 2) The conflicting parties to establish Acte Compromis to nullify Arbitration Clause.

Keywords

Dispute, arbitration, pactum de compromitendo, acte compromis, nullification.

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Preface

Dispute resolution recognizes two types of processes. Litigation process which to be taken place at the court and dispute resolution which to be taken place out of the court known as non-litigation. The result of a litigation process is an adversarial consent which unable to provide the common interest of conflicting parties and mostly trigging a new conflict, considerably a slow-paced process, expensive, unresponsive and raising hostility between the conflicting parties. (Susanti Adi Nugroho, 2015). The process which held out of the court (non-litigation) resulting in a consensual agreement with a "*win-win*" characteristic in nature, guarantying the secrecy of conflicted matters of disputing parties, avoiding administerial and procedural delay, comprehensively resolving the disputed matters, while maintaining the amity of the parties. (Susanti Adi Nugroho, 2015) Litigation process is a logical option for entrepreneurs whom relying on the "*time is money*" principle. (Abdulkadir Muhammad, 2010, Saudi, 2018) Arbitration is one of the "out of the court" dispute resolution preferred by entrepreneurs, for it is recognized as the most compatible method with the needs within business sector. As the matter of fact, arbitration recognized as an independent entrepreneur court to resolute disputes in accordance with their wishes and needs. (Muhammad Andriansyah, 2014). The favoritism arising towards arbitration as an alternative dispute resolution in commercial sector (private) is based on several superiorities possessed by arbitration institution such as the principle of expeditious and economical, the freedom in the arrangement of trial procedure, and justice-verity-decency based ruling (Mosgan Situmorang, 2017)

Article 58 of Statute Number 48 Year 2009 on Judicial Authority (hereinafter reffered to as the Statute of Judicial Authority) has given the enforceable legal basis to the implementation of private dispute resolution out of the court through arbitration or alternative dispute resolution.

The principle of freedom of contract which is regulated within the provision in the first paragraph of Article 58 of The Codified Book of Indonesia Private Law has become the legal basis for the parties in selecting desired dispute resolution forum, including Arbitration. Article 7 of the Statute of Arbitration declares that the conflicting parties are allowed to agree in the use of arbitration to resolute their ongoing dispute or any future disputes between them. Article 59 of Judicial Authority explains that Arbitration is a means of dispute resolution conducted out of the court based on arbitration agreement made in writings by conflicting parties. Article 1 number 1 of the Statute of Arbitration explains that arbitration is a means of private dispute resolution out of the common court based on arbitration agreement made in writings by conflicting parties. Both of the legislation products are emphasizing that arbitration agreement is required to be formed in writings. Arbitration agreement is a consent between conflicting parties to present any disputes raising from their business agreement in a matter of certain transactional activity to arbitration, both institutional arbitration or an *ad hoc* arbitration. (Munir Fuady, 2000)

Arbitration agreement contains a commonly recognized principle known as the Principle of Separability. The Principle of Separability explains that the agreement or arbitration clause is independent and completely detached from the primary agreement. (Munir Fuady, 2000)

The enforceability of such principle is resulting in a consequence that if the primary agreement is considered as legally defected or invalid, the agreement or arbitration clause will not be affected to such deviation and it will maintain its binding power of ruling. (Munir Fuady, 2000) Any or each of the disputes arising from the agreement, will be automatically embodying legal consequences which establishing an absolute jurisdiction for arbitration to resolute. (Budi Satria et al, 2003).

The existence of arbitration agreement will provide an absolute authority for arbitration resolve the dispute between the conflicting parties. Such authorization is confirmed within the provision of Article 11 subsection (2) which explains that the District Court is obligated to decline and will not intervene in a dispute appointed and agreed to be resolve by arbitration, unless in a certain matters which already appointed by the Statute of Arbitration itself. (Dewi H. Wulandari, 2012). Such explanation is in accordance to the Principle of Certainty of Law where the provision is giving an understanding to the society of the kinds of conducts to be and not to be perform and it is ment to protect the society from abuse of power without any attempt to negate to rights of the society. (Joseph Sutanto, 2019). The prohibition of the court to intervene stands only to assert that arbitration is an independent institution, and it is an obligation of the court to honor such institution aforementioned. (Zulfikar Judge, 2018) Article 60 Statute Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution explains that the arbitration ruling is final and binding and comprising enforceable law and binding the parties ruled by it. The final and binding nature of

arbitration ruling menas that any legal attempt to resolve the ruled dispute will not be possible. The final and binding nature of the ruling, regulated by the provision of Article 60 has a weakness, which is, as explained within Article 70 of the Statute of Arbitration specify that towards the ruling of arbitration, the parties are permitted to submit a nullification of ruling if such ruling is allegedly conceiving factors of: 1) the letter or document which submitted for court examination, after the ruling, to be admitted as a false or declared as a false; 2) After the ruling, a discovery of decisive document occur, which previously hidden by the opposition; 3) The ruling was a result of a deceit conducted by one of the parties in the examination of the case. (Hambali, 2015) For such reason, arbitration ruling is not immune to the control (supervision) or examination of the court to protect the quality so in the end, it is possible for arbitration to thrive, Arbitration requires the court's control. (Rahman Musa, 2016).The nullification of arbitration ruling is also occurred in the case which presented as an object of research in this journal which is the ruling of the Supreme Court number 62 B/Pdt.Sus-Arbt/2017. The dispute was arising between PT. Republik Energi & Metal and Zainal Abidin Siregar regarding cooperation between the parties in an acquisition and management of PT. Apexindo Energi Investama (Apexindo) which was taken to BANI whom establishing a ruling number 606/VIII/ARB- BANI/2014 (BANI's award 606). BANI's award 606 was nullified by the ruling of the District Court of Central Jakarta Number 332/ Pdt.G/ Arb/ 2016/ PN. Jkt. Pst, dated September 8, 2016 taking into account that BANI's award was conceiving a false statement regarding the statement of expert witness, Prof. Nindyo Pramono, S.H., M.S., which is stated by the ruling that such statement was given in front of the court even though that the witness was not in attendance of the court, but only extending his affidavit to be read in front of court. The matter is considered as a nullifying factor regulated by the provision of Article 70 of the Statute of Arbitration. BANI's award 606 was nullified by the ruling of the District Court of Central Jakarta Number 332/Pdt.G/Arb/2016/PN.Jkt.Pst dated Sempember 8, 2016 but the ruling did not agreed on the plaintiff's 3rd and 4th petitum, which the 3rd petitium is demanding for revocation of the authorization of BANI to resolute the case, and the 4th petitum is requesting that the Supreme Court to establish an order for the District Court of South Jakarta to re-examine the dispute between conflicting parties. The District Court concludes that the 3rd and 4th petitum demanded was not supported by adequate reasons, irrelevant and therefor duly rejected.

The ruling of the Supreme Court Number 62 B/Pdt.Sus-Arbt/2017 (hereinafter referred to as MA ruling 62) was confirming the District Court ruling 332. In the matter of the 3rd and 4th petitum, the Board explains that within the explanation chapter, the Article 72 subsection (2) of the Statute of Arbitration and Alternative Dispute Resolution, the word "could" indicates that the Board of Judges is not obligated to declare that BANI has no longer possessed the authorization to resolve and rule the case. Submission of an appeal to the Supreme Court was meant to resolve the disputes with a final and binding ruling and the conflict between the parties can be as expeditiously finalized through the State's Court. The rejection of the 3rd and 4th petitum by the Supreme Court confirming that the arbitration agreement between the conflicting parties are still enforceable and PT. Republik Energi & Metal as the prevailing party is still under the obligation to comply to the contractual consent. By refusing to revoke the authority of BANI in a final and binding ruling, the Board of Judges of the Supreme Court consenting to the notion that BANI is still the authorized forum to resolute the dispute between the conflicting parties. The ruling shows that there are inconsistencies and contradictions within the court's ruling which clearly states and admits that the arbitration award is containing falsified information, and such falsification was committed by the arbitrator/ arbitration institution, but the court still refusing to revoke the authority of arbitration. This is clearly a form of injustice for those who are harmed by BANI's award. A judge is not only as the enforcer of the law in cases brought by the conflicting parties to the court or as an 'agent of conflict'. But the duty is also include the discovery and legal reform. The ideal judge, besides having high intelligence, also in need to have high sensitivity to the value of justice, be able to integrate positive law into religious values, decency, manners and customs that live within the society through every ruling he establish in the name of law. The essence of his existence, the judge's crown is not on his hammer, but on the weight or quality of the resulting ruling. (Henry Arianto, 2012)

Theoretical Review

In this study, the authors use the framework of the engagement theory and the Arbitration theory related to the nullification of the arbitration award and its effect on the arbitration agreement, as

well as the theory of principles within the ruling of the judges and judiciary institution in relation to the implications of such ruling on the disputes between the conflicting parties.Subekti provides an understanding of an agreement as a legal relationship between two people or two parties, based on which that one party possessing the right to demand something from the other, and the other party is obliged to fulfill such demand. (Henry Arianto, 2010) The provision within the 3rd Book of the Codified Book of Indonesia Private Law, regulating the law of agreements, is adopting an open system, which means that the parties making the agreement have the opportunity to apply the provisions regulating in the 3rd Book (in particularly regarding agreements), or to deviate from the provisions of the 3rd Book by constructing the agreement with contents determined by themselves. (Reynold FA Paat, 2016) Abdulkadir Muhammad defines arbitration as a private judicial body out of the common court of the State, which is wellknown by the corporate sector and is chosen and determined voluntarily by the conflicting parties. (Abdulkadir Muhammad, 2010) Arbitration agreement arises based on a contractual consent given by the parties in writing, willingly to submit the settlement of a dispute or civil dispute to an ad hoc arbitration institution. This means that if business entities have agreed to an arbitration clause, then such clause will be the choice of forum for the parties, there will be no other option available to resolve all occurring disputes except through arbitration, and the court is obligated to declare its non-authorization to examine the dispute, without the need of exception from the parties to such declaration. The described condition is a form of implementation of the principle of binding force constraining the parties to compel to what had been consensually agreed in the agreement. There are two type of arbitration, namely: *Ad hoc* arbitration; and institutional arbitration. (Susanti Adi Nugroho, 2015) *Ad hoc* or voluntary arbitration is an arbitration which meant for a particular case in a singular appointment only. Institutional arbitration is a permanent institution or body of arbitration. (Article 1 paragraph (2) of the New York Convention, 1958).The arbitration agreement must clearly indicate the type of arbitration chosen and agreed by the parties and the procedures that will apply. In principle, *ad hoc* arbitration is not bound and related to the institutional arbitration. Both forms of arbitration, namely *ad hoc* arbitration (voluntary) and institutional (permanent) arbitration possess the authority to examine and rule disputes that occur between conflicting parties whom bound to a commercial agreement. The differences between the two arbitrations are:

a. *Ad hoc* arbitration and institutional arbitration are both coordinated by an institution;
b. *Ad hoc* arbitration is specifically or incidentally formed to examine and rule certain disputes within a certain period of time. After resolving the dispute, the existence of such *ad hoc* arbitration is finalized.

Institutional Arbitration is an arbitration established and attached to a particular body or institution. Institutional Arbitration is a permanent and deliberately formed to resolve disputes that occur as a result of the implementation of the agreement. The existence of institutional arbitration does not finalized by the ruling of a case. The Indonesian National Arbitration Board (BANI) is an example of an institutional arbitration.

There are two forms of arbitration clause (Ni Nyoman Adi Astiti et al, 2018), namely:

Pactum de Compromittendo

Pactum de Compromittendo is an arbitration clause that is inseparable from the main contract of the parties. This arbitration agreement was made before the dispute.

Acte Compromis

Acte Compromis is also called as appointment arbitration agreement (submission agreement). This arbitration agreement is made after the dispute occurs.In relation to the nullification of the arbitration award, according to Article 70 of the Statute of Arbitration, it is possible for a nullification to be performed if it meets the nullifying elements required within the article. Whereas arbitration as an agreement can be withdrawn (canceled) based on the agreement of the parties or based on the reasons stated by the law as sufficient for that, as it is stipulated in the second paragraph of Article 1338 of the Codified Book of Indonesia Private Law. The Supreme Court ruling is one of the reasons that stand as a legal basis for nullification of the arbitration agreement.

Satjipto Rahardjo said that justice is the essence or the nature of the law. Justice can not only be formulated mathematically as it is called fair if an equal share is given to each party. Because true justice are lay behind these numbers (metaphysical), formulated philosophically by the law

enforcers, namely the judges. (Margono, 2019)
Judges must adhere to the legal objectives of justice, expediency and legal certainty. Syafruddin Kalo said that certainty in law meant that each legal norm must be formulated with sentences and it is not allowed to contain different interpretations of it. (Syafruddin Kalo, 2007)
Jeremy Bentham said that law can only be recognized as law, if it gives maximum benefit to as many people as possible. (Sudikno Mertokusumo, 2005) The Supreme Court of the Republic of Indonesia is a state institution in the Indonesian constitutional system which is the holder of the highest Judicial Power as well as the Constitutional Court and it is free from the disruption of other branches of power. (Nikita Syam Ananda, 2017) The freedom of judges given by the State are includes freedom to judge, freedom from outsiders interference, freedom of expression in the context of developing practical law, freedom to explore legal values according to the sense of justice of the community, including freedom to deviate from the written law if it is no longer compatible to the sense of justice within the society. The freedom of judges are constructed with certain limited context, because any legal basis applied must not stand in conflict with the ideology of the State, they are also are not allowed to conflicting with equal, futuristic legislations, reflecting the protection for human rights (HAM), and mandate justice. (Syarif Mappiase, 2015)
Bagir Manan underlined that in the name of freedom; judges are capable of abusing their power and act unlawfully. For such reason, certain limitations must be formed without compromising the principle of freedom as the essence of judicial power, namely: First, judges are obligated to rule according to the law. On every ruling, the judge must be able to show explicitly the legal provisions applied in the existing case. Second, the judge decides solely to provide justice. It is possible for a judge to interpret, performing a legal construction, and not even apply or override any applicable legal provisions. Third, in performing an interpretation, construction, or a law finding, the judge must continue to uphold the general principles of law (general principle of law) and the general principle of justice (the general principle of natural justice). Fourth, a mechanism must be created which allows punishments to be imposed to judges whom abusing such freedom. (A Salman Maggalatung, 2014)
The Judge's duty in the adjudication of a case can be divided into 3 stages, namely the first stage, confirming or proving the truth or facts of the events/ facts submitted by the parties through valid evidence presented according to the law of evidence. The second stage, qualifying or assessing events that have been deemed to have actually taken place including the legal relations between them or which ones is valid. The third step is to construct or determine and/ or to apply the law (authenticating, assessing and determining the law). (Margono, 2019)
The judge's duty is closely related to fulfillment of the objectives of the law, namely justice, expediency, and legal certainty. Radbruch said that a good law is when the law contains legal certainty, expediency, and justice. (Widodo Dwi Putro, 2011)
Judge's ruling is a legal discovery in a certain sense of understanding the process and work carried out by a judge, which determines whether it is true or not according to the law in a factual situation, which is tested on conscience. In order to elevate the role of the Judge as an agent of change in the realization of righteous and fair rulings, it is obligated by the law that the Judges, in this case the Supreme Court Judges, to apply the method of legal discovery approach that are able provide the sense of justice of the society. (Henry Arianto, 2012).

Research methods

Approach Method

The research method used in this study is a normative method, namely legal research which includes research on legal principles and legal systematics which in this case is specifically is a study on the implications and legal strengths of arbitral rulings that were nullified; the research is carried out by examining library materials for obtain secondary data.

Nature of Research

The nature of research to be used is analytical descriptive by explaining comprehensively based on the existing legislations related to the issues studied.

Data Collection Tools

This study uses a data collection tool to obtain secondary data sourced from legal materials:

Primary legal material

The primary legal materials used are including the Codified Book of Indonesia Private Law, Statue Number 30 of 1999 of Arbitration and Alternative Dispute Resolution, Statute Number 48 of 2009 of Judicial Authority.

Secondary legal material

The Secondary legal materials used are including legal opinions, doctrines, theories obtained from legal literature, research results, research articles, scientific journals, theses and websites related to research.

Tertiary legal material

Tertiary legal materials used are including legal dictionaries (Black Law Dictionary), Indonesian dictionaries, etc.

Data Analysis Method

The research method used in this study is a qualitative research method in accordance with the scientific nature of law which is part of social science, where the research results are presented in the form of a series of sentences.

Research Location

The research was carried out in Special Capital Region of Jakarta specifically in state-owned libraries and at several universities, namely the National Library, Esa Unggul University library, the University of Indonesia library, and at the Central Jakarta District Court.

Results and Discussion

The Implication of the Nullification of Arbitration Award Based on the Supreme Court's Ruling Number 62 B / Pdt. Sus-Arbt / 2017 Towards the Arbitration Agreement

The conflicting parties in the case of the nullification of the arbitration award which were submitted to the Supreme Court are PT. Republic of Energy & Metal and Zainal Abidin Siregar whom created an agreement of cooperation for investment, control and management of PT Apexindo Pratama Duta, Tbk., with Zainal Abidinsyah Siregar, which was agreed by both parties to form a joint venture company and each party would own and control 50% of ownership of the targeted company. And the joint venture is entitled to control ownership in Apexindo of not less than 87.29% which previously owned by PT. Assera Capital as the holding company, owning 87.28% (eighty seven point twenty eight percent) of Apexindo's shares.
After being successfully taking over the shares of Apexindo Pratama Duta Tbk. as planned, PT. Republic of Energy & Metal urges Zainal Abidin Siregar to perform its obligation to hand over 87.29% (eighty-seven point twenty nine percent) of Apexindo's shares to a joint venture, in this case AKES, to be controlled and jointly managed by the Petitioners and Respondents as referred to mandated by the Shareholders Agreement. Zainal Abidin Siregar suddenly rejected the existence of AKES with the argument that PT. Republic of Energy & Metal has submitted a false statement in the Deed of Establishment of AKES and refused to provide the agreed portion of shares based on the joint venture agreement to PT. Republic of Energy & Metal with the argument that PT. Republik Energi & Metal's bailout funds is in facts are Zainal Abidin Siregar's bailout funds which comes from a loan provided by PT. Republic of Energy & Metal to Zainal Abidin Siregar thus explained that the legal relation between PT. Republic of Energy & Metal and Zainal Abidin Siregar is based on a creditor-debtor relationship.

It was agreeable that the settlement of any disputes between the parties will be resolved through BANI, where BANI then issued an Arbitration Award No. 606 / VIII / ARB-BANI / 2014 dated April 28, 2016 (BANI Award 606).

PT. Republic of Energy & Metal considers that the BANI's award 606 contains falsified information which within the award contained a statement that expert witness, Prof. Nindyo Pramono, S.H., M.S., was came and presenting his statements during the examination of the case even though that in fact, he was only provide the arbitral court an affidavit which were read. Based on such fact aforementioned, PT. Republic of Energy & Metal submitted a nullification request of the arbitration award to the District Court of Central Jakarta.

BANI's award 606 was nullified by the ruling of the District Court of Central Jakarta Number 332/Pdt.G/Arb/2016/PN.Jkt.Pst dated Sempember 8, 2016 but the ruling did not agreed on the plaintiff's 3rd and 4th petitum, which the 3rd petitium is demanding for revocation of the authorization of BANI to resolute the case, and the 4th petitum is requesting that the Supreme Court to establish an order for the District Court of South Jakarta to re-examine the dispute between conflicting parties. The District Court concludes that the 3rd and 4th petitum demanded was not supported by adequate reasons, irrelevant and therefor duly rejected.PT. Republic of Energy & Metal, as the plaintiff, was declared as a 'winning' party by the District Court of Central Jakarta in its ruling number 332 / PDT.G / ARB / 2016 / PN.JKT.PST considers that the District Court has wrongfully applying the law and then submitted an appeal to the Supreme Court.

The Supreme Court examined the appeal presented by PT. Republic of Energy & Metal and establishing their ruling number 62 B / Pdt.Sus-Arbt / 2017 (MA Ruling 62) which affirming the District Court's ruling (PN 332 Ruling). Statute No. 30 of 1999 explains that arbitration is a way to settle a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute. The arbitration agreement provides the authority and legal basis for BANI to handle dispute resolution between the parties.

The Board of Judges rejected the 3rd petitium to the Supreme Court so that BANI no longer handled the settlement of disputes between the parties, using the legal basis in the form of an explanation of Article 72 paragraph (2) of the Arbitration Law, which in essence gave full power to the Supreme Court to regulate the consequences of nullification in whole or in part from the arbitration award and decide that after the nullification is declared, the same arbitrator or other arbitrators will re-examine the dispute concerned or determine that a dispute may not be resolved again through arbitration. The Board of Judges did not consider that the manipulation they have stated and acknowledged in their consideration was a form of an act against the law and it is a legally valid and sufficient reason in accordance to the law to nullify the arbitration agreement (2nd paragraph of Article 1338 of The Codified Book of Indonesia Private Law).

This shows that the nullification of the arbitration award should also nullify the arbitration agreement as a legal source for the enforceability of arbitration in resolving the disputes.

Implications of the Affirmation of District Court's Ruling Number 332 / Pdt.G / Arb / 2016 / PN Jkt.Pst Based on Ruling of the Supreme Court Number 62 B / Pdt.Sus-Arbt / 2017 Towards the Process of Disputes Resolution Between the Parties

By disagreement of the Supreme Court to the 3rd petitum, which demanding for the revocation of BANI's authority in resolving the cases, the arbitration agreement between the conflicting parties remains enforceable and the harmed party has been legally restrained in a final and binding ruling from their rights in order to revoke BANI's authority, to appoint other arbitrators, or to appoint the South Jakarta District Court as the judicial institution to resolve the disputes between them without the consent given by the opposing party because they are still bound by the clause or arbitration agreement based on the provisions of 2nd paragraph of Article 1338 of The Codified Book of Indonesia Private Law Book juncto Article 3 juncto Article 11 of Statute Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. Such conditions are based on the principle of the binding force of the rule. This principle is also explained in the 1st paragraph of Article 1338 of The Codified Book of Indonesia Private Law which explains that all agreement which formed in a legally manner will apply as the law itself to those who construct them.

1st paragraph of Article 11 of Statute Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution states that the existence of a written arbitration agreement negates the right of the parties to submit a dispute resolution or any dissenting opinion towards any matter regulated by the agreement to the District Court. BANI as an arbitration institution chosen by the parties based on the arbitration agreement remains an enforceable institution which possess the authority in

resolving disputes, eventhough that the District Court's ruling number 332 / Pdt.G / Arb / 2016 / PN Jkt.Pst has clearly stated that BANI's award contains an element of manipulation. The manipulative Arbitration Award has been nullified and yet the resolution process will be returned to the same forum that was declared manipulating the award.

The judge's ruling is expected to resolve a case submitted to the court. Base on the Instruction of the Chairman of the Indonesian Supreme Court Number KMA / 015 / INSTR / VI / 1998, dated June 1, 1998, was instructing the judges to strengthen their professionalism in establishing an excellence quality of judiciary ruling with an executable judge's ruling that containing ethos (integrity), pathos (first and foremost judicial consideration), philosophical (first and foremost underliying the sense of justice and righteousness), sociological (in accordance to the cultural values within the society), logos (able to be accepted with common sense), for the construction of an independent judicial authorities. The independency and professionalism of the judges is need to be performed in order to restore the public trust and to form an authoritative court of law.

The ruling which stated the falsified information in BANI's ruling but did not revoke the authority of BANI showed that the quality of judicial criteria was not fulfilled in the absence of philosophical aspects with core sense of justice and truth, sociological, and logos or common sense. The ruling did not resolve disputes between the parties and did not provide legal certainty in the judicial process.

Conclusions and recommendations

Conclusions

a. The nullification of an Arbitration award which contains a manipulative matters will resulting in the nullification of the Arbitration agreement between the parties and thereby nullifies the Arbitration authority. The refusal of nullification of the arbitration agreement is a form of wrongfully application of law by the Judges because the act itself is contradictive to the principles of justice, legal certainty, and expediency.

b. Implications for the ruling of the Supreme Court Number 62 B / Pdt. Sus- Arbt / 2017 dated January 25, 2017 which nullified the Arbitration award No. 606 / VIII / ARB-BANI / 2014 dated April 28, 2016 is resulting in the absence of legal certainty in the process of resoluting of disputes between conflicting parties. Therefore, the implication of the ruling is that the dispute between the parties has not been resolved.

Suggestions

a. PT. Republic of Energy & Metal as a party which disadvantaged by the occurrence of such uncertainty of law, may submit a Judicial review to the Supreme Court.

b. PT. The Republic of Energy & Metal may also forming another agreeent with the opposing party to appoint arbitrators / other arbitration institution by creating an *Acte Compromis* (an Arbitration agreement made after the occurance of dispute) which will invalidates the previous *Pactum de Compromitendo* (Arbitration Agreement made before the occurance of dispute) based on the 1st paragraph of Article 9 of Statute Number 30 of 1999.

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