

Implikasi Klausul Pilihan Forum Non Eksklusif Dalam Menentukan Forum Penyelesaian Sengketa di Indonesia = Implications of the Choice of Non-Exclusive Forum Clauses in Determining the Competent Dispute Resolution Forum in Indonesia

Alvansa Vickya, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20523977&lokasi=lokal>

Abstrak

Penelitian ini ditujukan untuk menganalisis implikasi adanya klausul pilihan forum non eksklusif perihal penentuan forum penyelesaian sengketa di Indonesia berdasarkan teori-teori terkait Hukum Perdata Internasional, Hukum Kontrak Internasional dan Hukum Acara Perdata Internasional. Penulis dalam penelitian ini menggunakan metode penelitian yuridis normatif. Berdasarkan hasil penelitian ini terhadap beberapa kasus di Indonesia, implikasi dari klausul pilihan forum non eksklusif dalam menentukan forum penyelesaian sengketa di Indonesia belum diatur secara utuh oleh peraturan perundang-undangan di Indonesia. Hal tersebut dapat dilihat dengan masih digunakannya doktrin forum non conveniens, lis pendens, serta res judicata yang ketiganya masih belum terdapat dalam peraturan perundang-undangan di Indonesia, meskipun telah terdapat doktrin yang tersirat dalam Pasal 118 HIR, yakni the basis of presence dan principle of effectiveness. Hal ini menunjukkan bahwa belum terdapat kepastian hukum terhadap suatu sengketa yang di dalamnya terdapat pilihan forum non eksklusif di antara para pihaknya. Oleh karena itu, alangkah lebih baiknya apabila Indonesia memiliki Undang-Undang Hukum Perdata Internasional dan aksesinya Hague Choice of Court Convention 2005 demi memberikan kepastian, keadilan, serta kemanfaatan hukum bagi setiap pihak yang akan bertindak dalam ranah hukum perdata dan dagang, khususnya dalam sengketa yang timbul dari kontrak internasional yang di dalamnya terdapat pilihan forum non eksklusif.

.....This research aims to analyse the implications of a non-exclusive choice of forum clause in determining the competent dispute resolution forum in Indonesia based on theories related to Private International Law, International Contract Law and International Civil Procedure Law. The author in this research uses a normative juridical research method. Based on the results of this research of several cases in Indonesia, the implications of the non-exclusive choice of forum clause in determining the competent dispute resolution forum in Indonesia have not been fully regulated by Indonesian laws and regulations. This can be seen from the use of the doctrines of forum non conveniens, lis pendens and res judicata, the three of which are still not contained in the laws and regulations in Indonesia, even though there are already doctrines implied in Article 118 of HIR, namely the basis of presence and the principle of effectiveness. This shows that there is no legal certainty regarding a dispute in which there is a non-exclusive choice of forum between the parties. Therefore, it would be better if Indonesia had a written law about Private International Law and ratify the Hague Choice of Court Convention 2005 to provide certainty, justice, and legal benefits for every party who will act in the civil and commercial law field, especially in disputes arising from international contracts in which there is a choice of non-exclusive forum.