

# Prinsip Separabilitas dan Kompetenz-Kompetenz dalam Ketentuan dan Praktik Arbitrase di Indonesia, Singapura, Malaysia, Filipina, dan Vietnam = The Principle of Separability and Kompetenz-Kompetenz Within the Regulation and Practice of Arbitration in Indonesia, Singapore, Malaysia, Philippines, and Vietnam

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## Abstrak

Arbitrase adalah salah satu alternatif penyelesaian sengketa yang banyak diminati oleh masyarakat. Pelaksanaan arbitrase didasarkan pada suatu perjanjian arbitrase yang memberikan kewenangan mengadili kepada arbiter/majelis arbitrase. Namun, ketika perjanjian pokok yang mengandung perjanjian arbitrase berakhir atau batal, timbul pertanyaan mengenai keabsahan perjanjian arbitrase di dalamnya dan kewenangan mengadili arbiter/majelis arbitrase. Hal tersebut berkaitan erat dengan prinsip separabilitas dan Kompetenz-Kompetenz. UU Arbitrase mengatur prinsip separabilitas, namun tidak terdapat ketentuan yang jelas mengenai Kompetenz-Kompetenz atau forum mana yang sebenarnya berwenang untuk mengadili sengketa mengenai keabsahan perjanjian arbitrase dan kewenangan arbiter/majelis arbitrase. Dalam praktiknya, putusan pengadilan Indonesia juga masih menunjukkan inkonsistensi dalam pelaksanaan prinsip separabilitas dan penentuan pihak yang berwenang untuk memeriksa keabsahan perjanjian arbitrase dan wewenang arbiter/majelis arbitrase. Penelitian ini akan menggali alasan negara Indonesia tidak mengatur prinsip Kompetenz-Kompetenz bersamaan dengan separabilitas secara tegas, akibat hukum batal atau berakhirnya perjanjian pokok terhadap perjanjian arbitrase di dalamnya ditinjau dari prinsip separabilitas dan Kompetenz-Kompetenz, dan kecukupan ketentuan kompetensi pengadilan dalam UU Arbitrase untuk mengakomodasi pelaksanaan arbitrase di Indonesia. Pengumpulan data dalam penelitian ini dilakukan melalui studi pustaka serta menggunakan metode deskriptif evaluatif dan pendekatan perbandingan hukum dengan negara Singapura, Malaysia, Filipina, dan Vietnam sebagai negara pembanding. Hasil penelitian menunjukkan bahwa UU Arbitrase tidak mengatur prinsip Kompetenz-Kompetenz bersamaan dengan separabilitas secara tegas karena politik demikian yang dipilih oleh pembuat undang-undang. Adapun berdasarkan prinsip separabilitas dan Kompetenz-Kompetenz, batal atau berakhirnya perjanjian pokok tidak membatalkan perjanjian arbitrase dan menghilangkan wewenang mengadili arbiter/majelis arbitrase. Dapat disimpulkan pula bahwa ketentuan kompetensi pengadilan dalam UU Arbitrase perlu diperjelas agar dapat mengakomodasi pelaksanaan arbitrase di Indonesia dengan lebih baik.

....Arbitration is an alternative dispute resolution that is much in demand by the public. The implementation of arbitration is based on an arbitration agreement which bestows the authority to adjudicate to an arbitrator/arbitral tribunal. However, when the main agreement containing the arbitration agreement is cancelled or expires, questions regarding the validity of the arbitration agreement contained therein and the arbitrator/arbitral tribunal's authority to adjudicate arise. This is closely related to the principle of separability and Kompetenz-Kompetenz. Indonesia Arbitration Law regulates the principle of separability, yet there are no clear provisions regarding Kompetenz-Kompetenz or which forum is authorized to adjudicate disputes regarding the validity of the arbitration agreement and the authority of the arbitrator/arbitral tribunal. In practice, a form of inconsistency can still be found within Indonesian court

decisions which dealt with the implementation of the separability principle and the determination of a competent forum to assess the validity of the arbitration agreement and the authority of the arbitrator/arbitral tribunal. This research will explore the reasons as to why Indonesia Arbitration Law does not clearly regulate the principle of Kompetenz-Kompetenz together with separability, the legal consequences of canceling or terminating the main agreement on the arbitration agreement contained within it in terms of the separability and Kompetenz-Kompetenz principle, and the adequacy of provisions regarding competence of courts in Indonesia Arbitration Law to accommodate the execution of arbitration in Indonesia. The data collection in this research was carried out through literature study by implementing a descriptive evaluative method and a comparative legal approach with Singapore, Malaysia, the Philippines and Vietnam as the countries used for comparison. The results of the study show that Indonesia Arbitration Law does not clearly regulate the principle of Kompetenz-Kompetenz together with separability because such politics was chosen by the legislators. Moreover, based on the principle of separability and Kompetenz-Kompetenz, canceling or terminating the main agreement neither cancels the arbitration agreement within it nor eliminates the authority of the arbitrator/arbitral tribunal. It can also be concluded that the provisions on the competence of courts within the Arbitration Law need to be clarified in order to better accommodate the implementation of arbitration in Indonesia.