



## Pactum De Compromittendo In Shares Purchase Agreement; Review of Decision Number: 197/Pdt.G/2021/PN.Jkt.Pst.

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### Abstract

*The parties, namely the Seller and the Buyer have agreed to determine the arbitration clause in the form of a pactum de compromittendo made in writing and incorporated into the deed of the principal agreement for the sale and purchase of shares of PT. Indonesian Rice Granary. This means that since the beginning before the occurrence of a dispute, the choice of settlement has been determined through the Indonesian National Arbitration Board. In 2021, the Seller files a lawsuit against the Buyer as the Defendant through the general court to request that the said share sale and purchase agreement be declared null and void and has no binding force. In their decision, the Panel of Judges stated that in essence the Central Jakarta District Court had no authority to try this case. Regarding the legal considerations, the assembly based the rules in Article 118 HIR and Article 3 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This study uses a normative juridical approach with the results of the research showing that the enforceability of an arbitration clause in the form of a pactum de compromittendo is binding on the parties according to the pacta sunt servanda principle contained in Article 1338 Paragraph (1) of the Civil Code and the judge's decision as in its considerations is correct and has been according to law.*

**Keywords:** *Pactum De Compromittendo, Share Purchase Agreement, Decision*

## Abstrak

Para pihak, yaitu Penjual dan Pembeli telah bersepakat menentukan klausula arbitrase dalam bentuk *pactum de compromittendo* dibuat dan disatukan dalam akta perjanjian pokok jual beli saham PT. Lumbung Padi Indonesia. Para pihak sejak awal sebelum terjadinya perselisian atau sengketa, telah bersepakat untuk menentukan pilihan dalam penyelesaian perselisian atau sengketa melalui Badan Arbitrase Nasional Indonesia. Pada tahun 2021, Penjual mengajukan gugatan perbuatan melawan hukum kepada Pembeli sebagai Tergugat melalui peradilan umum untuk memohon agar perjanjian jual beli saham dimaksud dinyatakan batal dan tidak punya kekuatan mengikat. Dalam putusannya, Majelis Hakim memutuskan menyatakan bahwa pada pokoknya Pengadilan Negeri Jakarta Pusat, tidak berwenang mengadili perkara ini. Tentang pertimbangan hukumnya, majelis mendasarkan pada beberapa aturan, yaitu Pasal 118 HIR dan terutama pengaturan dalam Pasal 3 UU No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa terkait mengenai kewenangan pengadilan. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan hasil penelitian menunjukkan bahwa keberlakuan klausula arbitrase dalam bentuk *pactum de compromittendo* adalah mengikat para pihak sebagaimana asas *pacta sunt servanda* yang terkandung dalam Pasal 1338 Ayat (1) KUHPerdata dan putusan hakim tersebut sebagaimana dalam pertimbangannya sudah tepat dan telah sesuai berdasarkan hukum.

**Kata Kunci:** *Pactum De Compromittendo*, Perjanjian Jual Beli Saham, Putusan.

## Introduction

In today's business world, one of the strategies that can be implemented for development and expansion is through share acquisitions or acquisitions. The term acquisition is used to describe a company's buying and selling transactions, these transactions result in the transfer of company ownership from the seller to the buyer (Budi Untung, 2020). The definition of acquisition in Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares that Can Result in Monopolistic Practices and Unfair Business Competition, is as a legal action carried out by business actors, both legal entities or individuals to take over, either all or most of the company's shares which may result in a transfer of control over the company (Ansari1 et al., 2023).

In practice, acquisitions are generally carried out using legal instruments in the form of sale and purchase agreements. This is done so that the parties, both sellers and buyers, obtain legal certainty and protection from the conditions and requirements of the sale and purchase transaction, especially regarding the rights and obligations that arise. In this sale and purchase agreement, there is an obligation for the seller to deliver the goods sold to the buyer and there is an

obligation for the buyer to pay the price of the goods purchased to the seller (Yahya Harahap, 2009), as also regulated in Article 1457 of the Civil Code.

The formulation of Article 1458 states that buying and selling is deemed to have taken place between the two parties as soon as they reach an agreement on the goods and price, even though these goods have not been delivered nor the price has been paid. In this case the essential elements are 'goods' and 'price'. A sales contract is a mutual agreement in which one party (the seller) promises to relinquish ownership of the goods and the other party (the buyer) to pay the price in the form of a monetary amount in exchange for acquiring the title (Subekti, 1995b, 1995)

In the implementation of an agreement, disputes and/or problems often arise in the form of differences of opinion, or disputes between the parties, as well as in the share sale and purchase agreement. The choice of this form of dispute resolution largely depends on the formation of the agreement and the needs of the parties. Disputes can be resolved not only in court (judicial) but also out of court (non-judicial), which is called alternative dispute resolution (Amarini, 2016; SARI, 2017; Usman, 2012) ADR is now widely used by companies due to the advantages of arbitration, such as quick and easy process, low cost, confidentiality of disputes, comprehensive and beneficial decisions for the parties, and preservation of the parties' business relationship (Ainun Fadillah & Amalia Putri, 2021; Rudy & Mayasari, 2022; Winarta, 2013). This ADR is a dispute resolution conducted by the parties themselves or with the participation of other parties for the purpose of resolving disputes between the parties, and includes agenda setting and technical implementation. Out-of-court dispute resolution takes the form of negotiation, mediation, mediation, and arbitration.

Dispute resolution through an arbitration institution is a way of settling a civil dispute outside the general court based on agreement clauses determined and approved by the parties, both made before the dispute arose and made after the dispute arose. That arbitration is a settlement or termination of a dispute by a referee or referees based on an agreement that they will submit to or comply with the decision to be given by the referee or referees they choose or appoint (Subekti, 1995b). In Indonesia, there is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Based on the formulation of Article 1 Paragraph (1), arbitration is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.

The parties can determine and make arrangements for arbitration clauses for the resolution of disputes or disputes in their agreements. This is very important, if a dispute or dispute arises in the future, the parties have made what anticipation and how to resolve it. The agreement to determine the arbitration clause for the settlement of disputes before the occurrence of this dispute is known as the "pactum de compromittendo". This dispute settlement clause agreement can be made in a separate agreement or separately from the main agreement or it can also be made together in the main agreement deed. Meanwhile, arbitration clauses that are made after a dispute or dispute occurs are known in the form of "acta compromise" (Adolf, 2016; Ainun Fadillah & Amalia Putri, 2021; Emirzon, 2000).

Likewise in the share purchase agreement of PT. Lumbung Padi Indonesia (PT. LPI), the Seller and the Buyer have agreed to determine and make a dispute

resolution clause through the Indonesian National Arbitration Board (BANI) integrated into the main deed of agreement, namely the Deed of the Master Share Sale and Purchase Agreement. This deed of agreement was made before a Notary in 2017. Thus the parties have agreed from the beginning, before the occurrence of a dispute or dispute has determined the choice of resolution by including an arbitration clause in the form of a *pactum de compromittendo*.

Even though a dispute resolution institution has been determined, in reality, the Seller filed a civil lawsuit against the Buyer as the Defendant through the General Court, namely the Central Jakarta District Court, with the essence of the lawsuit being the request for cancellation of the share sale and purchase agreement deed. The Panel of Judges who have examined and tried this case, has decided that in essence the Central Jakarta District Court has no authority to try this case. Based on this fact, research was carried out with a focus on the formulation of the problem: how is the enforceability, position and binding force of the arbitration clause in the form of a *pactum de compromittendo* which is made integrated into the deed of the master sale and purchase agreement of shares and how is the decision of the panel of judges, is it appropriate and appropriate based on the rule of law?

## **Literature Review**

*Pactum de compromittendo* an arbitration agreement made by the parties before dispute occurs. The parties have agreed to surrender dispute resolution or maybe which will happen later to the arbitral institution. Whereas *acta compromise* is a arbitration agreement made by para parties after the dispute arose(Erisa, 2022; Sulistianingsih & Pujiono, 2020). Acquisition is carried out by taking over shares that have been issued and/or will be issued by a Limited Liability Company through the Company's Directors or directly from shareholders which can be carried out by a legal entity or an individual. The Board of Directors is one of the company organs that is responsible for the management and governance of the company and can act on behalf of the company, both outside and in court. An acquisition is a merger of two companies in which the acquiring company acquires part of the business of the acquired company so that both companies continue to operate as separate legal entities while control of the acquired company is transferred to the acquiring company. Acquisitions can be grouped as follows: horizontal acquisitions, vertical acquisitions, conglomerate acquisitions (Wayan Sudiartha & Purwanto, 2014).

According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement between the seller and the buyer in which the seller binds himself to surrender his right to an item to the buyer, and the buyer binds himself to pay the price of the item. A sale and purchase agreement is a reciprocal bond in which one party (the seller) undertakes to handing over ownership rights to an item, while the other party (buyer) promise to pay a price consisting of an amount in return of acquisition of the property (Ketaren, 2016; Shobirin, 2015; Wayan Sudiartha & Purwanto, 2014).

Decision is the final act of the Judge in the trial, determines whether or not the perpetrator is punished, so the Judge's decision is a statement from a judge in deciding a case in court trial and has permanent legal force. Based on a theoretical

vision and judicial practice, the judge's decision is: The judge pronounced the decision because of his position in the trial criminal cases that are open to the public after going through the process and Criminal procedural law generally contains sentencing orders or free or release from all lawsuits made in the form written with the aim of settling the case (Heikhal A.S Pane, 2009).

### **Research Method**

The approach method in this research is normative juridical. The juridical approach is an approach that refers to laws and regulations, while the normative approach is an approach that is carried out using a case study technique to find out a direct description of the inclusion of an arbitration clause in the share purchase agreement, lawsuit materials, answers and decisions. The data used are primary data obtained from visits to court proceedings and secondary data obtained from literature studies, in the form of laws and regulations, legal theories, copies of agreements, copies of decisions, books and various related literature and journals and articles. Data analysis was carried out descriptively. The research sample is the share purchase agreement and civil lawsuit against the law in the sale and purchase of shares of PT. Lumbung Padi Indonesia at the Central Jakarta District Court in 2021.

### **Pactum De Compromittendo In Shares Purchase Agreement**

Limited Liability Company is a legal entity that has an authorized capital which is entirely divided into shares. In Article 58 Paragraph (1) of the Limited Liability Company Law, if a shareholder wants to sell his shares, he is required to offer it in advance to a certain class of shareholder or other shareholder if previously stipulated in the articles of association. If an offer is made and other shareholders do not purchase, the shares may be sold to third parties after also obtaining the approval of the company body by the general meeting in accordance with Article 57(1) of the Limited Liability Company Law.

The legal act of transfer or transfer of rights to shares in a company can be carried out through the sale and purchase of shares with a deed of transfer of rights, either in the form of a notary deed or private deed, as stipulated in Article 56 Paragraph (1) of Law Number: 40 of 2007 regarding Limited Liability Company (UU PT). A deed is a letter that is signed, made to be used as evidence, and to be used by the person for whose purpose the letter was made. A deed is a letter as evidence that is signed which contains events that form the basis of a right or agreement, which was made from the beginning intentionally for proof (Mertokusumo, 1998). Article 128 paragraph 2 UUPT stipulates that the deed of acquisition of shares made directly from the shareholder must be stated in a notarial deed in the Indonesian language.

Using a Notary Deed will bind the parties, because it has the power as an authentic deed and perfect evidence. The notary deed is binding evidence which means the truth of the things written in the deed must be recognized by the judge, the deed is considered true as long as the truth is there is no other party that can prove otherwise (Feby Wulandari, 2021). The notary deed has perfect evidentiary power, so the party who denies the notary deed is burdened with proving his words or accusations(Fadli, 2020). Article 1868 of the Civil Code defines that an

authentic deed is a deed drawn up in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made.

According to Article 1313 of the Civil Code, the agreement. "*the act of one or more persons associating themselves with one or more other persons*". An agreement is a legal relationship involving two or more people in an agreement, which will give rise to the rights and obligations of the parties entering into the agreement. An agreement can be declared valid, so it must meet the conditions, both subjective and objective, as stipulated in Article 1320 of the Civil Code. This requirement is important so that the validity of the agreement made and agreed upon by the parties becomes valid and has binding force to be implemented.

As explained earlier, that in the implementation of an agreement, disputes or disputes may arise between the parties. For this reason, it is necessary to make an agreement between the parties to determine the settlement of disputes or disputes as outlined in a clause in the agreement. This is done in anticipation that the settlement can be carried out simply, quickly, cheaply and the decision is final and binding, so that it can be accepted and carried out by the parties. Especially regarding the arbitration clause, if it is determined by the parties in the agreement to resolve disputes or disputes that may arise in the future. That is, the business law dispute actually occurs because of an agreement or contract between the parties, which if a dispute arises between them has been agreed to be resolved out of court (Hutajulu, 2019).

The arbitration agreement must be clear and firm (unequivocal) and made in writing (Hasan, 2005). The arbitration clause has four important functions. Prevent courts from intervening (at least before a decision is made) in resolving disputes between the parties, as this will lead to unavoidable consequences for the parties. To authorize arbitrators to resolve disputes in order to establish procedures for resolving disputes.

In the arrangement of the share sale and purchase agreement of PT. Lumbung Padi Indonesia (LPI) between Seller and Buyer, has complied with the provisions stipulated in the Limited Liability Company Law and also the general provisions in Book III of the Civil Code, regarding sale and purchase agreements. Arbitration clauses are also determined and made for the settlement of disputes which are made together with the principal agreement of sale and purchase of shares. LPI is a company engaged in the modern rice milling business located in Mojokerto, East Java. The milling technology used is from Japan.

Before carrying out a share purchase transaction, the Buyer has collaborated with the Owner, hereinafter referred to as the Seller, to strengthen the company's performance and contribute to strengthening the national food sector. Along the way, in 2017, there was an agreement to buy and sell shares in PT. LPI between Seller and Buyer. Where this sale and purchase agreement is stated in the Deed of Master Agreement for the Sale and Purchase of Shares Number: Leg.979/2017 made before a Notary in Jakarta. This master agreement is an agreement that is the basis of a legal relationship or is a legal umbrella agreement governing the sale and purchase of shares between the parties. The arbitration agreement or clause in accordance with Article 1 point 3 of the APS Law, defines an agreement in the form of an arbitration clause contained in a written agreement made by the parties

before a dispute arises, or a separate arbitration agreement made after a dispute arises.

The agreement stated the terms, conditions, rights and obligations of the parties, including the agreed inclusion of a dispute settlement clause through an arbitration institution, namely the Indonesian National Arbitration Board (BANI). The parties may choose an arbitration institution to resolve their dispute, namely through ad hoc arbitration or institutional arbitration. Arbitration is an alternative dispute resolution institution that is most in demand by business people compared to other alternative dispute resolution institutions. This is due to the existence of principles and advantages of arbitration, including simple, easy, protection, credible, uncomplicated and low cost as well as final and binding decisions (Fuady, 2003; Salam, 2007).

Based on a review of the contents of the deed of the master sale and purchase agreement made by the parties, the inclusion of an arbitration clause was made together with the Deed of the Master Agreement, which is stated in point 21.2, where it is stated "*Failure to resolve disputes amicably, then the dispute arises as a result of the implementation of this Agreement resolved based on the regulations of the Indonesian National Arbitration Board (BANI)*".

The contents of the arbitration clause should designate a specific arbitration body, the location where the arbitration will take place, the laws and rules to be used, the qualifications of the arbitrators, and the language to be used in the arbitration process (Sumartono, 2006). This is also in accordance with the formulation of Article 1 Paragraph (3) of Law no. 30 of 1999, it is stated that the agreement to include an arbitration clause was made in a written agreement made before the dispute occurred, or made after the dispute arose. This means that the arbitration clause arises because of an agreement or there has been an agreement from the parties.

In the share sale and purchase agreement, the parties have included an arbitration clause together with the master agreement made in writing. So this agreement was made by the parties before the dispute occurred which is known as the '*pactum de compromittendo*'. This shows that the parties have also complied with the formulation of Article 1 Paragraph (3) above, as well as in anticipation that if there is a dispute or dispute that arises in the future, it will be resolved through an arbitration institution. The agreement made by the parties is an agreement that is deliberately made in writing which must be carried out, both from the time the agreement was entered into, as well as at the implementation stage in good faith, not just in the form of mere promises or commitments from the parties, because there are consequences for carrying it out. This is in line with the formulation in Article 1338 Paragraph (3) of the Civil Code, which reads "*The agreement must be implemented in good faith.*"

From the perspective of an agreement, especially the application of the *pacta sunt servanda* principle contained in Article 1338 paragraph (1) of the Civil Code, the arbitration clause that has been made by the parties has binding power as per a law in order to achieve legal certainty for the parties. Therefore that he required the parties to fulfill what was their bond with each other in the agreement they made (Syaifuddin, 2016). The Arbitration Clause that has been determined by the parties cannot be withdrawn and canceled, except with the agreement of the

parties. In the context of a civil lawsuit filed by the Seller, that until the submission of this lawsuit to the Central Jakarta District Court, the dispute resolution clause through the BANI arbitration institution, has never been cancelled.

Thus the enforceability of the arbitration clause is binding on the parties, thus negating the rights of the parties to submit disputes to court and the court is not authorized to adjudicate disputes that have been bound in the arbitration agreement. The court is obliged to reject a case in which the agreement has determined arbitration as a dispute settlement forum, this is an embodiment of the formulation in Article 3 and Article 11 of Law no. 30 of 2009. In addition, there is a general principle in arbitration clauses, namely the principle of separability, that the arbitration clause stands alone and is completely separate from the main agreement, therefore for whatever reason the main agreement is considered legally invalid or invalid, the contract or arbitration clause is still considered valid and binding (Salam, 2007).

#### **Study of the Decision of the Central Jakarta District Court Number: 197/Pdt.G/2021/PN.Jkt.Pst.**

As stated earlier, that dispute resolution can be done through court (litigation), can also be resolved outside of court (non-litigation). The court is an organ of the organization of the administration of justice, known as the Judiciary Institution which administers judicial power, namely the power of an independent state to administer justice in order to uphold law and justice based on Pancasila for the sake of the implementation of the Law of the Republic of Indonesia (Mertokusumo, 1998). This is also in accordance with the formulation of Article 1 Number 1 Law Number 48 of 2009 concerning Judicial Powers. Settlement of disputes, whether carried out through the court or outside

The essence of the court is to achieve legal certainty, benefit and justice, especially for disputing parties. Judges as executors of judicial (judicial) powers in examining, adjudicating and deciding cases, must be independent and free from intervention by any party as mandated by the constitution Article 24 Paragraph (1) of the 1945 Constitution and Article 3 Paragraph (1) and (2) of Law No. 48 of 2009. Besides that, the judge's decision must be based on law, both what has been regulated in legislation, as well as exploring the laws that develop and grow in society (Latifiani, 2015).

In civil cases, the role of the judge is passive and limited to seeking and upholding formal truths and this truth is realized in accordance with the fundamental reasons and facts put forward by the parties at trial. It is the parties that determine the main scope of the dispute and must be active in submitting evidence to support the arguments for their claim or their rebuttal. At trial, the panel of judges is obliged to treat the parties to the dispute equally (principle of impartiality), be impartial and listen to statements equally (principle of *audi et alteram partem*).

All court decisions must state the reasons for the decision which form the basis in accordance with Article 23 of Law no. 14 of 1970; Article 184 Paragraph (1) and Article 319 HIR; Articles 195 and 618 RBg. Reasons or arguments are intended as the responsibility of the judge for his decision to the community, the parties, the higher court and jurisprudence, and therefore have objective value. It

is for these reasons that the decision is valid and not because it was made by a certain judge.

As an example of a study, namely the decision of the Panel of Judges Number 197/Pdt.G/2021/PN/Jkt.Pst. dated August 23, 2020, in his decision in principle decided: "Declaring that the Central Jakarta District Court has no authority to try this case." Concerning Legal Considerations, the assembly stated, among others:

1. Considering that in essence it concerns the absolute authority of the court based on Article 118 HIR;
2. Considering whereas Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, states: "The District Court is not authorized to adjudicate disputes between parties who are bound by an arbitration agreement";
3. Under Section 1(3) of Law No. 30 of 1999, an arbitration agreement is established to mean an agreement in the form of an arbitration clause contained in a written agreement previously concluded by the parties. Considering that the dispute arises, or is entered into by the parties after the dispute arises, the arbitration agreement itself.
4. Considering that the evidence regarding the "Deed of Master Agreement for Sale and Purchase of Shares" in point 21.2 stated "Failure to resolve disputes amicably, then those disputes arising from the implementation of this Agreement shall be resolved based on the regulations of the Indonesian National Arbitration Board";
5. Considering that and therefore in the written agreement made by the Plaintiff and the Defendant there is an arbitration clause, then in accordance with the provisions of Article 3 and Article 1 Number 3 of Law No. 30 of 1999, the District Court is not authorized to adjudicate the case of the special parties to the agreement/agreement bound by the arbitration agreement;
6. Considering whereas based on the above considerations, the Panel of Judges is of the opinion that in the *a quo* case, the Central Jakarta District Court has no authority to examine and decide on the case;

The results of the review of the decision above, when viewed from the legal considerations, the panel has applied the law properly and is appropriate, namely basing the rules in Article 118 HIR and Article 3 of Law no. 30 of 1999, undeniable facts and evidence, that the parties have agreed in writing to include an arbitration clause that is integrated into the main share sale and purchase agreement, before the dispute occurred or in the form of a *pactum de compromittendo*. This can also be interpreted that the judge wants to reaffirm the basic principle of dispute resolution outside the court, namely through an arbitration institution that priority should be given to the settlement because this has become a universal legal principle and there is an agreement of the parties from the beginning which was made written in the agreement.

Article 118 of the HIR regulates the authority of the court. HIR was made in the Dutch colonial era. Previously it was: "Reglement op de uitoefening van de politie, de burgerlijke rechtspleging en de strafvordering onder de Inlanders en de Vreemde Oosterlingen op Java en Madura," which is known: "Inlandsch Reglement", abbreviated as I.R. With Staatsblad 1941 No.44 contents The I.R. was

renewed and got a new name: "Herzien Inlandsch Reglement", abbreviated as HIR, meaning "Renewed Bumiputera (Indonesian) Regulation", which is usually shortened to RIB. Based on Article 6 of the 1951 Emergency Law No. 1, RIB was declared applies as procedural law in Indonesia with several changes explained in the emergency law.

Section 118 (1) of the HIR provides that the district court (Actor Sequitur Forum Rei) in which the defendant resides is competent to hear the case. Subsection (4) provides that if a valid letter is elected and residence established, the plaintiff may file a claim with the Chief Circuit Court of the jurisdiction of his choice. If it is related to the deed of the master sale and purchase agreement for shares, where the parties have determined the settlement of the dispute based on the regulations of the Indonesian National Arbitration Board, the court is not authorized to examine and adjudicate the *quo* case and it is strengthened by the provisions of Article 3 of Law no. 30 of 1999 which states that; "The District Court is not authorized to adjudicate disputes between parties who have been bound in an arbitration agreement". It is also reaffirmed in Article 11 of the Law. The law basically stipulates that the existence of a written arbitration agreement precludes a party's right to submit a dispute resolution proposal to a district court, which the district court is obligated to refuse.

Regarding the decision in accordance with Article 50 Paragraph (1) of Law no. 48 of 2009, that "In addition to having to contain the reasons and basis for the decision, a court decision also contains certain articles of the relevant laws and regulations or unwritten sources of law which are used as the basis for adjudicating". It is therefore evident that the decision of the judge who heard this case and its application complied with the principles of fairness, expediency and legal certainty consistent with the purposes of the law on which the judge's decision was based, namely the HIR and Law No. 30 of 1999. This also shows the judge's consistency with the applicable legal rules and principles by stating that there is a consequence that if the arbitration clause agreed by the parties in the agreement is binding to be implemented.

## **Conclusion**

The enforceability of the arbitration clause in the form of a *pactum de compromittendo* made and agreed upon by the parties has complied with the provisions of Article 1 Paragraph (3) of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and binds the parties according to the *pacta sunt servanda* principle contained in Article 1338 Paragraph (1) of the Civil Code, because until the filing of a lawsuit to the Central Jakarta District Court, the dispute resolution clause through the BANI arbitration institution, never canceled by the parties.

From the results of the study, that the decision of the panel of judges in the case of civil lawsuits against the law is that the application is appropriate and in accordance with the law, namely based on the provisions of Article 118 HIR and Article 3 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely "District Courts are not authorized to adjudicate disputes between parties who have been bound in an arbitration agreement". Also reaffirmed in Article 11 of Law no. 30 of 1999 which basically states that with the

existence of a written arbitration agreement, the rights of the parties to submit a dispute resolution to the District Court and the District Court are obliged to refuse. Thus the decision of the judge examining this case has fulfilled the elements of justice, expediency and legal certainty in accordance with the purpose of the law which is used as the basis of the judge's decision. This also shows the judge's consistency with the applicable legal rules and principles by stating that there is a consequence that if the arbitration clause agreed by the parties in the agreement is binding to be implemented.

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