

ABSTRACT

Arbitration existence in Indonesia has actually been applied since the Second World-War as regulated in Article 377 HIR jo. Article 705 RBg jo. Articles 615-651 Rv, which are still applicable based on Article II of the Transitional Regulation of the State Constitution 1945 jo. Article 1338 of the Civil Code, the Descriptive Memory of Law No. 14, 1970, Article 3 Section (1) jo. Fixed jurisprudence MARI No.455 K/Sip/1982, dated May 27, 1983 jo. No.225/K/Sip/1976, dated September 30, 1983 jo. No.3179K/Sip/1984, dated May 4, 1988. However, since Law No.30, 1999 on Arbitration and Alternative Solution of the Dispute was announced and put into effect on August 12, 1999, the regulation on Arbitration as specified in Article 377 HIR, Article 705 RBg and Articles 615-651 Rv. Have been revoked (vide Article 82).

Regarding the absolute arbitration competence as an *extra judicial*, has been clearly regulated in Article 3 denoting, "State Court does not have any authority to try the case of any parties having been bound into an Arbitration Agreement". Likewise Article 11 Section (2) denotes, "State Court shall refuse and is not allowed to interfere in any case having been undertaken and stipulated by Arbitration, or otherwise any certain cases as stipulated by the Law herein".

Despite the Law have been stipulated an announced, in practice and application, the Panel Members of Judges of the courts are still arguing one among others especially in trying bankruptcy cases; of which the reasons are regarding to Perpu No.1, 1998 which has come into force since April 22, 1998 and been stipulated to be Law No.4, 1998 on Amendment of Law on Bankruptcy. In which Article 280 denotes, "Bankruptcy Statement Application and the Delay of Liability Payment Obligation as specified in the First and Second Chapters, are examined and decreed by the Commercial Court being the subdivision of the General Court.

Regarding the absolute arbitration competence as an *extra judicial*, we may observe through the verdict of the Central Jakarta Commercial Court No. 14/Pailit/1999/PN.Niaga/Jkt.Pst., dated March 25, 1999 and verdict No. 32/Pailit/1999/PN/Jkt.Pst, dated June 16, 1999. Meanwhile regarding the absolute competence of the Commercial Court as an *extra Ordinary Court*, Which ignores the absolute arbitration authority as an *extra judicial* is as shown in the verdict of MARI No.12K/N/1999, dated May 25, 1999 jo. No.13 PK/N/1999, dated August 2, 1999, and the verdict No.19 K/N/1999, dated August 9, 1999 jo. No.20 PK/N/1999, dated October 18, 1999 and verdict of the Central Jakarta Commercial Court No.81/Pailit/2000/PN.Niaga/Jkt.Pst., dated December 22, 2000 jo. Verdict of MARI No.06 K/N/2000, dated January 31, 2001.

The cases above have caused contradiction and uncertainty of Laws. Actually, this could have been avoided if only the Panel Members of Judges had been consistent in applying Laws, as liability cases have actually been regulated in the Civil Code, Articles 1131-1138. Thus, bankruptcy case in the court is not the only solution to solve the dispute of liability (vide Consideration of Law No.4, 1998, point c). Arbitration Agreement is only a *choice of forum* to solve the dispute and not at all to put down the dispute.