

ABSTRAK

PENOLAKAN PELAKSANAAN PUTUSAN ARBITRASE INTERNASIONAL DI INDONESIA BERDASARKAN ASAS KETERTIBAN UMUM

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Pelaksanaan putusan arbitrase internasional di Indonesia tidaklah semudah sebagaimana yang tertuang dalam undang-undang. Pada faktanya banyak dijumpai putusan arbitrase internasional yang mendapat penolakan eksekusi dari pengadilan karena dianggap bertentangan dengan Asas Ketertiban Umum, seperti halnya kasus E.D & F. MAN SUGAR Ltd melawan Yani Haryanto dalam Putusan No. 1 Pen.Ex'r/Arb.Int/Pdt/1991, dan kasus Astro Group melawan PT Ayunda Prima Mitra dalam Putusan No. 01/K/Pdt.Sus/2010 dan No. 877/K/Pdt.Sus/2010.

Penelitian ini adalah penelitian hukum normatif dengan tipe penelitian deskriptif. Pendekatan masalah yang digunakan adalah pendekatan normatif dengan tipe pendekatan studi kasus. Data yang digunakan adalah data sekunder yang terdiri dari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Pengumpulan data dilakukan dengan studi pustaka dan studi dokumen. Pengolahan data dilakukan dengan cara pemeriksaan data, rekonstruksi data dan sistematisasi data yang selanjutnya dilakukan analisis secara kualitatif.

Hasil Penelitian dan Pembahasan menjelaskan bahwa prosedur pelaksanaan putusan arbitrase internasional ada beberapa tahap yakni: Tahap penyerahan dan pendaftaran putusan, tahap permohonan pelaksanaan putusan, tahap perintah pelaksanaan, tahap pelaksanaan putusan. Selain itu, penggunaan asas ketertiban umum dalam penolakan pelaksanaan oleh Hakim ditafsirkan sebagaimana yang tertuang dalam Penetapan Mahkamah Agung No. 1 Pen.Ex'r/Arb.Int/Pdt/1991, yaitu bertentangan dengan peraturan perundang-undangan (keputusan presiden), dan Putusan Mahkamah Agung No. 01 K/Pdt.Sus/2010 jo Putusan Mahkamah Agung No. 877 K/Pdt.Sus/2012, yaitu bertentangan dengan undang-undang dan asas *sovereignty* (kedaulatan) terhadap tata tertib hukum beracara di Indonesia.

Kata Kunci: Pelaksanaan Eksekusi, Penolakan Eksekusi, Ketertiban Umum

ABSTRACT

REJECTION OF THE ENFORCEMENT INTERNATIONAL ARBITRATION AWARD IN INDONESIA BASED ON THE PRINCIPLE OF PUBLIC ORDER

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The enforcement of international arbitration awards in Indonesia is not as easy as stated in the law. In fact, oftentimes on international arbitration award have received rejection of execution from the court, because they were considered contrary to the Public Order Principle, like the case with E.D & F. MAN SUGAR Ltd against Yani Haryanto in Decision No. 1 Pen. Ex / Arb.Int / Pdt / 1991, and the Astro Group case against PT Ayunda Prima Mitra in decision No. 01 / K / Pdt.Sus / 2010 and No. 877 / K / Pdt.Sus / 2010.

The type of researched in this study is normative legal research with descriptive type. The type of problem approach is normative approach of case study. The data used secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection was done by literature study and document resarch. The data processing was done by data checking, data reconstructing and data systematizing. Furthermore, the data analyzed were using a qualitative data analysis.

The results of research and discussion that have been explained the procedures of the enforcement of international arbitration award. There were several stages, namely: The stage of submission and registration of the decision, the stage of the application for the decision, the order stage of enforcement, the stage of the decision. In addition, the use of the principle of public order in the refusal of implementation by the Judge was interpreted as stated in the Decision of the Supreme Court No. 1 Pen. Ex / Arb. Int / Pdt / 1991, which is contrary to the laws (presidential decree), and The Decision of the Supreme Court No. 01 K / Pdt.Sus / 2010 jo The Decision of the Supreme Court No. 877 K / Pdt.Sus / 2012, which is contrary to the law and the principle of sovereignty of legal procedures in Indonesia.

Keywords: Execution, Rejection of Execution, Public Order