

ABSTRAK

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Kepastian Hukum Atas Pelaksanaan Eksekusi Terhadap Kekuatan Eksekutorial Putusan Arbitrase Asing di Indonesia (Studi Perkara Nomor : 26 PK/Pdt.Sus-Arbt/2016)

(xi + 166 halaman)

Putusan Arbitrase bersifat *final and binding* artinya putusan tersebut tidak dapat dimintakan upaya hukum seperti banding dan kasasi dan putusan tersebut mengikat bagi para pihak untuk dipatuhi secara suka rela dengan itikad baik karena sebelum putusan dibuat mereka juga telah sepakat untuk menyelesaikannya melalui jalur arbitrase dengan segala konsekuensinya. Akan tetapi dalam perkembangan selanjutnya sifat putusan yang awalnya dilakukan secara sukarela sering juga tidak dipatuhi secara suka rela oleh pihak yang kalah. Hal ini tentu saja menjadi kendala dalam pelaksanaan arbitrase, sehingga dicarilah jalan keluarnya yaitu dengan melibatkan negara melalui pengadilan dalam proses eksekusi. Namun terdapat ketidakpastian hukum ketika putusan suatu Badan Arbitrase itu dimintakan eksekusi ke Mahkamah Agung. Lembaga Mahkamah Agung merupakan representasi dalam Peradilan Nasional Indonesia. Badan pengadilan tertinggi kekuasaan kehakiman Indonesia di samping Mahkamah Konstitusi, sesuai dengan Konstitusi Negara Republik Indonesia. Seharusnya itu jadi jaminan kepastian hukum pelaksanaan putusan Arbitrase. Kalau kita meminta eksekusi maka menjadi persoalan siapa eksekutornya. Ketika melibatkan pihak pengadilan, maka eksekutornya adalah juru sita pengadilan yang menimbulkan persoalan kepastian hukum dalam pelaksanaan putusan Arbitrase, yang pertama, permohonan arbitrase untuk eksekusi diterima dan kedua, permohonan pelaksanaan putusan arbitrase ditolak. Terutama terjadi pada pelaksanaan putusan Arbitrase asing, misal, terjadi permohonan pembatalan putusan Arbitrase asing maka pembatalan tersebut menimbulkan dua masalah secara normatif, yang pertama, masalah substansi dari putusan Arbitrase asing tersebut. Kedua, masalah eksekusi dari pelaksanaan putusan Arbitrase asing tersebut. Jika pelaksanaan putusan Arbitrase asing ditolak karena adanya permohonan pembatalan dari pihak yang dikalahkan dalam putusan Arbitrase asing tersebut, maka sifat putusan yang *final and binding* sudah tidak dapat digunakan lagi.

Kata Kunci: Kepastian Hukum, Eksekusi, Putusan Arbitrase.

Referensi: 53 (1962-2020).

ABSTRACT

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Legal Certainty Over the Execution of the Executorial Power of Foreign Arbitration Awards in Indonesia (Case Study Number: 05/PDT/ARB-INT/2009/PN JKT.PST, Number: 808 B/Pdt.Sus /2011, Number: 12/PDT/ARB-INT/2011/ PN JKT.PST, Number: 877 K/Pdt.Sus/2012, Number: 26 PK/Pdt.Sus-Arbt/2016)

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The Arbitration Award is final and binding, meaning that the decision cannot be requested for legal remedies such as appeals and cassation and the decision is binding for the parties to comply voluntarily in good faith because before the decision is made they have also agreed to settle it through arbitration with all the consequences. However, in subsequent developments, the nature of the decision, which was initially made voluntarily, was often not complied with voluntarily by the losing party. This is of course an obstacle in the implementation of arbitration, so a way out is sought, namely by involving the state through the courts in the execution process. However, there is legal uncertainty when the decision of an Arbitration Board is requested for execution to the Supreme Court. The Supreme Court institution is a representative in the Indonesian National Court. The highest court body of Indonesian judicial power in addition to the Constitutional Court, in accordance with the Constitution of the Republic of Indonesia. That should be a guarantee of legal certainty in the implementation of the arbitral award. If we ask for execution then it becomes a matter of who is the executor. When involving the court, the executor is the court bailiff which raises the issue of legal certainty in the implementation of the arbitral award, first, the request for arbitration for execution is accepted and second, the request for enforcement of the arbitral award is rejected. Mainly occurs in the implementation of foreign arbitral awards, for example, there is a request for annulment of a foreign arbitral award, the cancellation raises two problems normatively, first, the problem of the substance of the foreign arbitral award. Second, the issue of execution of the implementation of the foreign arbitral award. If the implementation of the foreign arbitral award is rejected due to an application for annulment from the party defeated in the foreign arbitral award, then the nature of the award which is final and binding can no longer be used.

Keywords: Legal Certainty, Execution, Arbitration Award.

References: 53 (1962-2020).