

ABSTRAK

Arbitrase adalah cara penyelesaian suatu sengketa perdata di luar peradilan umum yang didasarkan pada perjanjian arbitrase yang dibuat secara tertulis oleh para pihak yang bersengeta. Untuk dapat dilakukan eksekusi (exequatur), putusan arbitrase asing harus didaftarkan ke Pengadilan Negeri Jakarta Pusat. Bagi salah satu pihak yang merasa dirugikan atas putusan asing tersebut, dapat mengajukan permohonan pembatalan apabila mengandung unsur pemalsuan dokumen, ditemukan dokumen baru yang bersifat menentukan yang disembunyikan oleh pihak lawan, dan putusan arbitrase yang diambil dari hasil tipu muslihat yang dilakukan oleh salah satu pihak dalam pemeriksaan sengketa. Hakim juga dapat menolak/membatalkan permohonan pendaftaran exequatur jika putusan arbitrase tersebut bertentangan dengan ketertiban. Fenomena penolakan/pembatalan putusan arbitrase bertentangan dengan asas final dan mengikat yang menjadi ciri khas putusan arbitrase. Putusan arbitrase lahir dari kesepakatan para pihak (Perjanjian/Kontrak), sehingga menurut Asas Pacta Sunt Servanda menyatakan bahwa hakim harus menghormati substansi kontrak yang dibuat oleh para pihak sebagaimana layaknya sebuah undang-undang. Di dalam Pasal 1338 ayat (1) KUH Perdata juga menyatakan bahwa perjanjian yang dibuat secara sah berlaku sebagai undang-undang. Menyikapi ketidaksesuaian aturan dalam pelaksanaan exequatur putusan arbitrase di wilayah hukum Indonesia, penulis melakukan tinjauan hukum atas putusan arbitrase yang telah mengikat para pihak, kemudian di gugat di pengadilan. Penulisan ini menggunakan metode pendekatan yuridis normatif dengan pendekatan peraturan perundang-undangan. Dari hasil penelitian ditemukan adanya kekosongan norma hukum yang mengakibatkan ketidakpastian hukum terhadap pelaksanaan eksekusi putusan arbitrase asing di Indonesia.

Kata Kunci: arbitrase; kepastian hukum; ketertiban umum; perlindungan hukum; perjanjian;

ABSTRACT

Arbitration is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. In order for execution (exequatur), the foreign arbitration award must be registered with the Central Jakarta District Court. For one of the parties who feels aggrieved by the foreign decision, they can submit a request for annulment if it contains elements of falsification of documents, new documents of a decisive nature are discovered which are hidden by the opposing party, and arbitration decisions are taken as a result of deception carried out by one of the parties in the decision. dispute examination. The judge can also refuse/cancel the application for exequatur registration if the arbitration award is contrary to order. The phenomenon of rejection/cancellation of an arbitration award is contrary to the final and binding principle which is the characteristic of an arbitration award. The arbitration award arises from an agreement between the parties (Agreement/Contract), so that according to the Principle of Pacta Sunt Servanda states that the judge must respect the substance of the contract made by the parties as if it were a law. Article 1338 paragraph (1) of the Civil Code also states that agreements made legally are valid as law. Responding to the inconsistency of the rules in implementing the exequatur of arbitration awards in the Indonesian jurisdiction, the author conducted a legal review of the arbitration award which was binding on the parties, then challenged it in court. This writing uses a normative juridical approach with a statutory regulatory approach. From the research results, it was found that there was a vacuum in legal norms which resulted in legal uncertainty regarding the execution of foreign arbitration awards in Indonesia.

Keywords: arbitration; legal certainty; public policy; legal protection; agreement;