

**LEGAL ANALYSIS ON THE ALLEGED DUE PROCESS OF LAW VIOLATION RELATED TO REMOTE EVIDENTIARY HEARING IN INTERNATIONAL COMMERCIAL ARBITRATION**

By:

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**ABSTRACT**

International commercial arbitration has been trusted as an adjudicative mechanism that incorporates the principles which safeguard fundamental fairness in its process. The COVID-19 pandemic measures forces everyone to held hearings remotely which, to a certain extent, could allegedly violate the due process of the arbitral proceeding. Particularly, the non-regulated conduct of an evidentiary hearing able to arises concerns on the due process of law infringement in the arbitral proceeding. Also, there had been no clear line on the due process of law assessment for arbitrators to refer to in dealing with claims of its infringement. The particular research is purposed to answer the consequences that arises due to the gaps which exist in the relevant legal framework as well as to give a guidance on the due process of law assessment based upon past practices.

To assist the author in answering the legal question posed, this legal research employs a normative approach in analyzing the existing laws, regulations, case law, and literature. The materials for this legal study was obtained from literary studies such as books, journals, arbitral awards, court decisions, legislation, and conventions and analyzed using qualitative research method.

The result of this research finds that there are several due process violations concerns that may arises during remote evidentiary hearing. A party can be deprived of its right to be heard and treated equally in an arbitral proceeding due to inadequacies borne from remote evidentiary hearing. It also finds that the assessment on the due process of law violation related to remote evidentiary hearing requires to satisfy a high bar where the party needs to exhaust all the relevant measures to prevent and mitigate the issue it faced as well as to show actual proof that there had been substantial injustice between the parties in the arbitral proceeding.

**Keywords:** International Arbitration, Remote Hearings, Due Process of Law

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## ANALISIS HUKUM TERHADAP DUGAAN PELANGGARAN PROSES HUKUM TERKAIT PENGAMBILAN BUKTI JARAK JAUH DALAM ARBITRASE KOMERSIAL INTERNASIONAL

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### INTISARI

*Arbitrase komersial internasional telah dipercaya sebagai mekanisme adjudikatif yang menggabungkan prinsip-prinsip yang menjaga keadilan fundamental dalam prosesnya. Pandemi COVID-19 memaksa setiap orang untuk mengadakan sidang dari jarak jauh yang diduga melanggar proses persidangan arbitrase. Khususnya, pembuktian jarak jauh yang tidak diatur dapat menimbulkan kekhawatiran terhadap proses pelanggaran hukum yang wajar dalam proses arbitrase. Selain itu, belum ada garis yang jelas tentang penilaian standar proses hukum yang menjadi acuan para arbiter dalam menangani tuntutan pelanggarannya. Penelitian ini bertujuan untuk menjawab akibat-akibat yang timbul akibat kesenjangan yang ada dalam kerangka hukum serta memberikan pedoman dalam proses penilaian hukum berdasarkan praktik-praktik masa lalu.*

*Untuk membantu penulis dalam menjawab pertanyaan hukum yang diajukan, penelitian hukum ini menggunakan pendekatan normatif dalam menganalisis undang-undang, peraturan, kasus hukum, dan literatur yang ada. Bahan kajian hukum ini diperoleh dari studi kepustakaan seperti buku, jurnal, putusan arbitrase, putusan pengadilan, peraturan perundang-undangan, dan konvensi dan dianalisis dengan menggunakan metode penelitian kualitatif.*

*Hasil penelitian ini menemukan adanya beberapa masalah pelanggaran proses hukum yang dapat timbul selama pembuktian jarak jauh. Suatu pihak dapat dirampas haknya untuk didengar and diperlakukan sama dalam proses arbitrase karena kelemahan aspek dari pembuktian jarak jauh. Ditemukan juga bahwa penilaian pada proses hukum pelanggaran terkait dengan pembuktian jarak jauh harus memenuhi standar yang tinggi di mana suatu pihak perlu melakukan semua tindakan untuk mencegah dan mengurangi masalah yang dihadapinya serta menunjukkan bukti nyata bahwa telah terjadi ketidakadilan yang substansial antara para pihak dalam proses arbitrase.*

**Kata Kunci:** Arbitrase Internasional, Pengambilan Bukti Jarak Jauh, Proses Hukum.

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