

**KEDUDUKAN PERMOHONAN PENOLAKAN EKSEKUATUR PUTUSAN
ARBITRASE INTERNASIONAL OLEH TEREKSEKUSI DITINJAU
DARI INKORPORASI PARSIAL PASAL V (1)
NEW YORK CONVENTION 1958**

Rafi Akmal Raharjo¹ dan Herliana²

INTISARI

Penelitian ini bertujuan untuk menganalisis kedudukan permohonan penolakan eksekutur putusan arbitrase internasional oleh tereksekusi dalam kerangka hukum nasional. Selain itu, penelitian ini ditujukan pula untuk mengetahui dasar dan pertimbangan pengadilan dalam permohonan penolakan eksekutur putusan arbitrase internasional oleh tereksekusi. Analisis terhadap kedua aspek tersebut dilakukan karena tidak terafirmasinya Pasal V (1) New York Convention 1958 ke dalam UU 30/1999 menimbulkan ketidakjelasan prosedur penolakan eksekutur oleh tereksekusi.

Penelitian hukum ini merupakan penelitian yuridis normatif yang didukung wawancara narasumber. Penelitian ini menggunakan data primer dari hasil wawancara serta data sekunder yang meliputi bahan hukum primer, sekunder, dan tersier. Dari segi sifat, penelitian hukum ini memiliki sifat deskriptif karena dimaksudkan untuk memperoleh gambaran kondisi tidak terafirmasinya ketentuan Pasal V (1) New York Convention 1958 ke dalam UU 30/1999 dan kedudukan permohonan penolakan eksekutur oleh tereksekusi.

Hasil penelitian menunjukkan bahwa dalam kerangka hukum nasional, permohonan penolakan eksekutur yang dikabulkan memiliki kedudukan yang setara dengan putusan. Dasar kewenangan Ketua Pengadilan Negeri Jakarta Pusat atau Mahkamah Agung dalam memeriksa permohonan penolakan eksekutur oleh tereksekusi terletak pada asas *point d'interet point d'action*. Selain itu, dalam memberikan pertimbangan, pengadilan telah mempertegas adanya keterpisahan penolakan eksekutur dengan pembatalan putusan. Adanya penegasan keterpisahan tersebut mampu mempertegas pula kedudukan putusan penolakan eksekutur yang berbeda dengan kedudukan putusan pembatalan.

Kata Kunci: Kerangka Hukum, Dasar Pemeriksaan, Penolakan Eksekutur, Arbitrase Internasional, New York Convention 1958

¹ Mahasiswa Konsentrasi Hukum Acara Perdata, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta.

² Dosen Departemen Hukum Perdata, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta.

***THE STANCE OF REQUEST FOR REFUSAL OF ENFORCEMENT OF
INTERNATIONAL ARBITRATION AWARD BY THE PARTY WHOM IT
IS INVOKED BASED FROM PARTIAL INCORPORATION OF
ARTICLE V (1) NEW YORK CONVENTION 1958***

Rafi Akmal Raharjo¹ dan Herliana²

ABSTRACT

This study aims to analyze the position of the application for rejection of the execution of international arbitral awards by executed within the framework of national law. In addition, this study is also aimed at finding out the basis and considerations of the court in the application for refusal of the execution of an international arbitral award by the executioner. The analysis of these two aspects was carried out because the non-affirmation of Article V (1) of the New York Convention 1958 into Law 30/1999 caused uncertainty about the procedure for refusal of execution by execution.

This legal research is a normative juridical research supported by interviews with resource person. This study uses primary data from interview results and secondary data which includes primary, secondary, and tertiary legal materials. In terms of nature, this legal research has a descriptive nature because it is intended to obtain an overview of the conditions for the non-affirmation of the provisions of Article V (1) of the New York Convention 1958 into Law 30/1999 and the position of the application for refusal of the execution by the executor.

The results of the study show that within the framework of national law, the application for refusal of the execution that is granted has an equal position with the verdict. The basis of the authority of the Chairman of the Central Jakarta District Court or the Supreme Court in examining the application for refusal of execution by the executed lies in the principle of point d'interet point d'action. In addition, in providing consideration, the court has emphasized the separation between the refusal of the executor and the cancellation of the decision. The affirmation of separation is able to affirm the position of the decision to reject the execution, which is different from the position of the decision to cancel the decision.

Keywords: Legal Framework, Basis of Examination, Enforcement Refusal, International Arbitration, New York Convention 1958

¹ Undergraduate Student of Civil Procedural Law Concentration, Faculty of Law, Gadjah Mada University, Yogyakarta.

² Lecturer in Civil Law Department, Faculty of Law, Gadjah Mada University, Yogyakarta.