

ANALISIS KOMPARATIF TERHADAP PELAKSANAAN PUTUSAN ARBITRASE INTERNASIONAL DI INDONESIA DAN AMERIKA SERIKAT

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INTISARI

Penelitian mengenai Analisis Komparatif Terhadap Pelaksanaan Putusan Arbitrase Internasional Di Indonesia dan Amerika Serikat, bertujuan untuk mengetahui hukum acara alternatif penyelesaian sengketa (*alternative dispute resolution*) melalui arbitrase di Indonesia; mengetahui hukum acara alternatif penyelesaian sengketa (*alternative dispute resolution*) melalui arbitrase di Amerika Serikat; mengetahui perbandingan pelaksanaan putusan arbitrase internasional di Indonesia dan Amerika Serikat; dan mempelajari pengalaman Amerika Serikat dalam memberikan solusi terhadap pelaksanaan putusan arbitrase internasional di Indonesia. Penelitian ini bersifat deskriptif dengan jenis komparatif-normatif. Penelitian ini digunakan untuk mempelajari peraturan perundang-undangan, yurisprudensi dan norma-norma hukum, perbandingan lintas yurisdiksi akan dilakukan pada sistem hukum ini, khususnya terkait pelaksanaan putusan arbitrase internasional di Amerika Serikat. Data Sekunder yang diperoleh dianalisis secara kualitatif untuk kemudian ditarik sebuah kesimpulan.

Dari hasil penelitian alasan penolakan dan pembatalan pelaksanaan putusan arbitrase internasional di Indonesia secara tegas telah diatur dalam Pasal 66 Undang-Undang No. 30 Tahun 1999 maupun Pasal V *New York Convention 1958*. Sejak Undang-Undang No. 30 Tahun 1999 diundangkan, terdapat beberapa kasus penolakan dan pembatalan putusan arbitrase internasional di Indonesia seperti Karaha Bodas melawan Pertamina dan PLN dan E. D. & F. MAN (Sugar) Ltd. melawan Yani Haryanto dan Astro All Asia Networks Plc (Astro) melawan PT. Ayunda Prima Mitra (APM). Sedangkan Amerika Serikat membuktikan bahwa terlepas dari sejumlah pembelaan yang tersedia berdasarkan Pasal V *New York Convention 1958* dalam melaksanakan putusan arbitrase internasional, belum terdapat kasus yang muncul dimana pengadilan Amerika Serikat menolak untuk melaksanakan putusan arbitrase internasional. Misalnya dalam kasus *COMMISA* melawan *PEMEX*, pengadilan Amerika Serikat justru mengakui putusan arbitrase internasional yang ditolak berdasarkan hukum dimana putusan arbitrase internasional dibuat (*lex arbitri*).

Kata kunci: pelaksanaan putusan arbitrase internasional, Indonesia, Amerika Serikat.

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COMPARATIVE ANALYSIS OF THE IMPLEMENTATION OF INTERNATIONAL ARBITRATION AWARDS IN INDONESIA AND THE UNITED STATES OF AMERICA

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ABSTRACT

Research on Comparative Analysis of the Implementation of International Arbitration Awards in Indonesia and the United States, aims to determine alternative dispute resolution through arbitration in Indonesia; know the procedural law of alternative dispute resolution through arbitration in the United States; know the comparison of the implementation of international arbitration awards in Indonesia and the United States; and learning the experience of the United States in providing solutions to the implementation of international arbitration awards in Indonesia. This research is descriptive with comparative-normative type. This research is used to study statutory regulations, jurisprudence and legal norms, cross-jurisdictional comparisons will be carried out in this legal system, especially regarding the implementation of international arbitration awards in the United States. Secondary data obtained were analyzed qualitatively and then a conclusion was made.

From the results of the research, the reasons for the rejection and cancellation of the implementation of international arbitration awards in Indonesia are expressly regulated in Article 66 of Law No. 30 of 1999 and Article V of the New York Convention 1958. Since Law No. 30 of 1999 was promulgated, there were several cases of refusal and annulment of international arbitration awards in Indonesia such as Karaha Bodas against Pertamina and PLN and E. D. & F. MAN (Sugar) Ltd. against Yani Haryanto and Astro All Asia Networks Plc (Astro) against PT. Ayunda Prima Mitra (APM). Meanwhile, the United States proved that regardless of the number of pleas available under Article V of the New York 1958 Convention in implementing international arbitration awards, no case has yet emerged in which a United States court has refused to enforce an international arbitration award. For example, in the case of COMMISA against PEMEX, United States courts have instead recognized international arbitration awards that were rejected under the law in which the international arbitration award was made (lex arbitri).

Keywords: implementation of international arbitration awards, Indonesia, United States.

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