

## Pandangan Mahkamah Agung terhadap unsur tipu muslihat dalam pembatalan putusan arbitrase (Studi kasus putusan-putusan Mahkamah Agung) = The supreme court opinion on element of deception in arbitral Award Revocation (Case Study Decision of Supreme Court)

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### Abstrak

Tesis ini mengkaji mengenai: (i) unsur tipu muslihat yang berdasarkan Pasal 70 UU Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa adalah sebagai salah satu unsur pembatalan putusan arbitrase serta bagaimana pembatalannya; dan (ii) pendapat hakim mengenai penerapan Pasal 70 UU Arbitrase yang mekanisme pembatalannya tidak secara lengkap diatur dalam UU Arbitrase. Metode penelitian yang digunakan dalam penelitian ini adalah penelitian yuridis normatif. Hasil penelitian menunjukkan bahwa UU Arbitrase belum mengatur dengan lengkap dan jelas mengenai bagaimana pelaksanaan pembatalan putusan arbitrase utamanya yang disebabkan oleh adanya tindakan tipu muslihat dari salah satu pihak yang bersengketa dalam forum arbitrase. Mahkamah Agung berpendapat unsur tipu muslihat tidak harus dibuktikan dengan suatu putusan pidana berkekuatan hukum tetap terlebih dahulu seperti yang teridentifikasi dalam Putusan Mahkamah Agung Nomor 425 B/Pdt.Sus-Arbt/2016, Putusan Nomor 807 B/Pdt.Sus-Arbt/2016. Mahkamah Agung dalam putusan lain berpendapat bahwa unsur tipu muslihat harus dapat dibuktikan dalam sebuah putusan pidana berkekuatan hukum tetap agar keadilan serta kepastian hukum dapat terus terjaga seperti tercantum dalam Putusan Mahkamah Agung Nomor 480 B/Pdt.Sus-Arbt/2017. Mahkamah Agung belum dapat menggali hukum yang sesuai untuk pembatalan putusan arbitrase karena unsur tipu muslihat.

This thesis research examines: (i) elements of deception based on Article 70 of the Arbitration Law and Alternative Dispute Resolution as one of the elements of revocation of the arbitration award and how it is revoked; and (ii) the opinion of the judge regarding the application of Article 70 of the Arbitration Law which the mechanism for arbitral award revocation is not completely regulated in the Arbitration Law. The research method used in this study is normative juridical research, namely research on the principles of law, legal systematics, the degree of legal synchronization and research on legal history through a legal approach and a number of judges' decisions related to the revocation of the award. The results of the study indicate that the Arbitration Law has not yet provided a complete and clear explanation of how the revocation of the main arbitration award was caused by the deception of one of the parties to the dispute in the arbitration forum. The Supreme Court argue that the element of deception does not have to be proven by a criminal decision with permanent legal force as identified in the Decision of the Supreme Court Number 425 B/Pdt.Sus-Arbt/2016, Decision Number 807 B/Pdt.Sus-Arbt/2016. Other judges argue that the element of deception must be proven in a criminal decision with a permanent legal force so that justice and legal certainty can be maintained as stated in the Decision of the Supreme Court Number 480 B/Pdt.Sus-Arbt/2017. The Supreme Court has not been able to dig up the appropriate law for the revocation of the arbitral award caused by element of deception.