

Pengakuan dan pelaksanaan Putusan Arbitrase Asing di Indonesia = Recognition and enforcement of Foreign Arbitration Awards in Indonesia

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Abstrak

Tesis ini membahas mengenai pengakuan dan pelaksanaan putusan arbitrase asing di Indonesia. Indonesia telah mengaksesi Konvensi New York 1958 sejak 1981 yang berarti Indonesia tunduk pada konvensi untuk mengakui dan melaksanakan putusan dari arbitrase asing. Selanjutnya Indonesia membuat Peraturan Mahkamah Agung Nomor 1 Tahun 1990 tentang Tata Cara Pelaksanaan Putusan Arbitrase Asing sebagai peraturan pelaksana dan mengisi kekosongan dari peraturan hukum. Pada tahun 1990 dibuat Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa yang memuat peraturan mengenai arbitrase asing. Meskipun telah terdapatnya aturan yang mengatur mengenai putusan arbitrase asing akan tetapi pelaksanaan dari putusan arbitrase asing belum berjalan dengan baik. Indonesia dianggap sebagai “unfriendly arbitration state” yang terkadang sulit untuk melaksanakan putusan arbitrase, terutama yang melibatkan pihak asing. Pelaksanaan ini menjadi penting sebab penyelesaian sengketa kerap menjadi pilihan utama bagi investor asing. Metode penelitian yang digunakan dalam penelitian ini adalah doktrinal terhadap bahan hukum serta dilakukan studi putusan dengan Nomor Putusan 26/PK/Pdt.Sus-Arbt/2016, Putusan Nomor 88 PK/Pdt.Sus-Arbt/2014, Putusan Nomor 795 K/Pdt.Sus-Arbt/2017. Putusan Nomor 154 K/Pdt/2018. Hasil penelitian menunjukkan bahwa Indonesia telah memiliki ketentuan hukum mengenai putusan arbitrase asing. Pada studi putusan menunjukkan terdapat satu putusan yang ditolak dan tiga putusan yang diterima untuk diakui akan tetapi pihak yang kalah dalam putusan tersebut mengajukan upaya hukum sehingga putusan arbitrase asing tidak berjalan. Efektivitas dari putusan arbitrase belum berlaku efektif.

.....This thesis discusses the recognition and implementation of foreign arbitration awards in Indonesia. Indonesia has acceded to the 1958 New York Convention since 1981, which means that Indonesia is subject to the convention to recognize and enforce awards from foreign arbitration. Furthermore, Indonesia made Supreme Court Regulation Number 1 of 1990 Concerning Procedures for Executing Foreign Arbitration Awards as implementing regulations and filling the gaps in legal regulations. In 1990 Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution was enacted which contained regulations regarding foreign arbitration. Even though there are rules governing foreign arbitration awards, the implementation of foreign arbitration awards has not gone well. Indonesia is considered an “unfriendly arbitration state” where it is sometimes difficult to implement arbitration awards, especially those involving foreign parties. This implementation is important because dispute resolution is often the main choice for foreign investors. The research method used in this research is doctrine on legal materials and a decision study was carried out with Decision Number 26/PK/Pdt.Sus-Arbt/2016, Decision Number 88 PK/Pdt.Sus-Arbt/2014, Decision Number 795 K/Pdt.Sus-Arbt/2017, Decision Number 154 K/Pdt/2018. The research results show that Indonesia has legal provisions regarding foreign arbitration awards. The study of decisions shows that there was one decision that was rejected and three decisions that were accepted to be recognized, but the party who lost the decision filed legal action so that the foreign arbitration award did not take effect.

The effectiveness of the arbitration award has not yet become effective.