

Penerapan Article V(1)(b) Konvensi New York 1958 dalam permohonan pelaksanaan Putusan Arbitrase Asing pada Pengadilan Amerika Serikat dan Inggris = The Application of Article V(1)(b) of the 1958 New York Convention in the Application for enforcement of foreign Arbitral Awards in the United States and England Court

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Abstrak

Penelitian ini meninjau mengenai penerapan Article V(1)(b) Konvensi New York 1958 dalam permohonan pelaksanaan putusan arbitrase asing pada pengadilan Amerika Serikat dan Inggris, dengan menggunakan metode yuridis normatif melalui studi kepustakaan. Berdasarkan hasil penelitian, dapat diketahui bahwa Amerika Serikat dan Inggris merupakan negara anggota peserta Konvensi New York 1958 yang telah menerapkan reciprocity reservation berdasarkan Article I(3) konvensi tersebut. Penerapan Article V(1)(b) di kedua negara tersebut tunduk pada standar hukum nasional masing-masing mengenai due process. Sebagaimana dapat dilihat dalam kasus CEEG (Shanghai) Solar Science & Technology Co. Ltd. V. Lumos LLC, Tianjin Port Free Trade Zone Int'l Trade Serv. Co. v. Tiancheng Chempharm, Inc. U.S. dan Zavod Ekran Oao v. Magneco Metrel UK Ltd, pengadilan menerapkan standar yang berbeda dan memiliki pertimbangan yang berbeda dalam menentukan apakah telah terjadi pelanggaran terhadap Article V(1)(b) Konvensi New York 1958.

.....This research attempts to examine the application of Article V(1)(b) of the 1958 New York Convention in the application for enforcement of foreign arbitral awards in the United States and England Court, using the juridical normative research method through literature studies. The findings of this research shows that the United States of America and England are parties to the 1958 New York Convention and have implemented the reciprocity reservation based on Article I(3) of the convention. The application of Article V(1)(b) in both countries is subject to the due process standard in each of their respective national laws. As seen from the cases of CEEG (Shanghai) Solar Science & Technology Co. Ltd. V. Lumos LLC, Tianjin Port Free Trade Zone Int'l Trade Serv. Co. v. Tiancheng Chempharm, Inc. U.S., and Zavod Ekran Oao v. Magneco Metrel UK Ltd, the courts have applied different standards and have set forth different considerations in determining whether there has been a breach of Article V(1)(b) of the 1958 New York Convention.