

Pembatalan Putusan Arbitrase Berdasarkan Ketentuan Pasal 70 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa Ditinjau dari Sudut Kepastian Hukum dan Keadilan = The Annulment of Arbitral Award Based on Article 70 of Law Number 30 Year 1999 Regarding Arbitration and Alternative Dispute Resolution In the Frame Work of Legal Certainty and Justice

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Abstrak

[ABSTRAK

Penerapan ketentuan Pasal 70 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa (?UU Arbitrase?) telah menimbulkan kontroversi akibat ketentuan tersebut tidak konsisten dan tidak ada aturan yang tegas. Penelitian ini bermaksud untuk mencari korelasi yang tepat terhadap penerapan Pasal 70 dihubungkan dengan penjelasan pasal itu sendiri dan penjelasan pada bagian umum UU Arbitrase sehingga dapat menjamin tercapainya kepastian hukum keadilan bagi para pihak bersengketa. Permasalahan mendasar adalah apakah alasan untuk mengajukan permohonan pembatalan putusan arbitrase bersifat limitatif atau non-limitatif, dan bagaimana pembuktian alasan-alasan tersebut apakah diperlukan keputusan Pengadilan terlebih dahulu atau tidak. Bagaimana sikap Mahkamah Agung terhadap pembatalan putusan arbitrase ini, apakah telah memenuhi asas kepastian hukum dan keadilan bagi para pihak. Penelitian ini dilakukan dengan metode penelitian yuridis normatif. Penulis menemukan bahwa ternyata ketentuan Pasal 70 dan putusan Mahkamah Agung tentang permohonan pembatalan putusan arbitrase ini sangat beragam dan tidak konsisten sehingga menimbulkan ketidakpastian hukum dan keadilan. Dilain pihak, aturan tentang upaya hukum untuk pembatalan putusan arbitrase juga tidak bisa dihapuskan sama sekali karena bisa terjadi putusan arbitrase diambil dalam keadaan yang salah sehingga dapat menimbulkan ketidakadilan apabila putusan tersebut tetap dipertahankan. Oleh karenanya perlu dilakukan perbaikan atas aturan arbitrase yang mengatur tentang upaya hukum pembatalan putusan sehingga dapat tercapainya kepastian hukum dan memenuhi rasa keadilan masyarakat.

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ABSTRACT

The application of the provisions of Article 70 of Law No. 30 Year 1999 Regarding Arbitration and Alternative Dispute Resolution (?Arbitration Act?) has caused controversy due to such article are inconsistent and there is no strict rule. This research intends to find out the correlation of the application of Article 70 associated with its elucidation and the general description of the Arbitration Act, to ensure the achievement of legal certainty and justice for disputing parties. The fundamental issues in respect of the annulment of arbitral award is whether the reasons of annulment is qualified limitative or non-limitative and whether is required prior final court decision or not. What is the opinion of the Supreme Court on such annulment of the arbitral award which has fulfilled the principle of legal certainty and justice for disputing parties. This research was conducted with juridical normative research methods. Authors found that the Article 70 and Supreme Court?s decision regarding the annulment of the arbitral award has caused legal uncertainty and injustice due to being indistinct and inconsistent. On the other hand, the rule of law remedy

for the annulment of the arbitral award could not be eliminated completely because there are still any conditions where the arbitral award was taken in the wrong circumstances that can lead to uncertainty and injustice when the award is retained. Therefore, it is necessary to improve the arbitration rules which regulates legal remedy of application of the annulment of the award to ensure the legal certainty and justice in society.

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