

Alasan alasan pembatalan putusan arbitrase suatu kajian normatif dan yuridis = The reasons of revocation of arbitral award legal and practical analysis

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Abstrak

Tesis ini membahas alasan pembatalan putusan arbitrase berdasarkan Undang-Undang No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa ("UU No. 30/1999") berdasarkan sifat final dan mengikat putusan arbitrase. Kelebihan arbitrase berupa sifat putusan yang final dan mengikat, pada praktiknya tidak sepenuhnya benar karena baik dalam UU No. 30/1999, New York Convention dan UNCITRAL Model Law terdapat alasan-alasan pembatalan putusan arbitrase, terlebih lagi dalam Penjelasan Umum Bab VII UU No. 30/1999 terdapat frase "antara lain" yang membuka celah adanya alasan lain bagi Pengadilan untuk membatalkan putusan arbitrase di luar ketentuan Pasal 70 UU No. 30/1999.

Metode penelitian yang digunakan dalam menganalisa permasalahan-permasalahan yang dirumuskan pada Bab 1 adalah metode yuridis normatif dan data yang digunakan adalah data primer, sekunder dan tersier. Hasil penelitian tesis ini adalah UU No. 30/1999 mengatur alasan pembatalan putusan arbitrase yang bersifat limitatif, keberadaan frase "antara lain" pada Penjelasan Umum Bab VII UU No. 30/1999 menyebabkan ketidakpastian hukum dan alasan pembatalan putusan arbitrase yang diatur dalam New York Convention dan UNCITRAL Model Law berbeda dengan alasan pembatalan putusan arbitrase dalam UU No. 30/1999. Adapun penelitian ini menyarankan agar Penjelasan Umum Bab VII UU No. 30/1999 dimohonkan pembatalannya ke Mahkamah Konstitusi karena frase "antara lain" dalam Penjelasan Umum Bab VII UU No. 30/1999 tersebut bertentangan dengan Pasal 70 UU No. 30/1999 dan mereduksi sifat final dan mengikat putusan arbitrase.

.....This thesis discusses the reasons for the revocation of arbitral award under the Act No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Law No. 30/1999") based on the character of the final and binding arbitration award. The advantage of arbitration is the character of its final and binding award, while in practice it is not entirely true because either in the Law 30/1999, the New York Convention or in the UNCITRAL Model Law, the reasons for the revocation of the arbitration award can be found, moreover, in General Explanation Chapter VII of Law No. 30/1999 contained the phrase "among others" which opened the rift for other reasons for the Court to revoke the arbitral award beyond the provision of Article 70 of Law No. 30/1999.

The method used in analyzing problems formulated in Chapter 1 is normative juridical method and the data which used are primary, secondary and tertiary data.

The results of this thesis are the Law 30/1999 regulate the limited revocation of arbitral award, where the phrase "among others" on the General Explanation of Chapter VII of the Act No. 30/1999 cause legal uncertainty and the reasons for the revocation of an arbitral award which is set in the New York Convention and the UNCITRAL Model Law are different from the reasons for the revocation of arbitral award in Law 30/1999.

This thesis suggests that General Explanation Chapter VII of Law No. 30/1999 should be applied for its revocation to the Constitutional Court because the phrase "among others" in the General Explanation

Chapter VII of Law No. 30/1999 contrary to Article 70 of Law No. 30/1999 and reducing the final and binding character of arbitral award.