

# Analisis yuridis kesepakatan para pihak dalam pengenyampingan keberlakuan upaya hukum pembatalan putusan arbitrase oleh pengadilan negeri = Juridical analysis on the parties agreement to waive legal remedy on cancellation of arbitration award by district court

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## Abstrak

Putusan arbitrase yang bersifat final dan mengikat bagi para pihak, akan tetapi Pasal 70 UU No. 30 tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa memberikan upaya untuk mengajukan permohonan pembatalan melalui Pengadilan Negeri. Upaya hukum permohonan pembatalan mengakibatkan proses penyelesaian sengketa menjadi berlarut-larut, meskipun para pihak telah sepakat untuk mengenyampingkan upaya hukum permohonan pembatalan tersebut. Penelitian ini adalah penelitian deskriptif yang bersifat yuridis normatif dengan metode pendekatan perundang-undangan statute approach, pendekatan konseptual conceptual approach dan pendekatan kasus case approach. Tindakan salah satu pihak yang mengajukan permohonan pembatalan putusan arbitrase meskipun telah dikesampingkan dalam perjanjian secara hukum telah dianggap melakukan cidera janji wanprestasi dan melanggar asas kekuatan mengikat pacta sunt servanda dari Pasal 1338 ayat 1 KUH Perdata dan melanggar asas kepastian hukum. Kesepakatan pengenyampingan upaya pembatalan putusan arbitrase telah meniadakan dan melepaskan hak para pihak untuk mengajukan pembatalan putusan arbitrase melalui pengadilan, namun dalam praktek majelis hakim sama sekali tidak mempertimbangkan adanya kesepakatan pengenyampingan tersebut, sebaliknya tetap memeriksa dan mengadili pokok perkara dan membatalkan putusan arbitrase yang telah bersifat final dan mengikat. Seharusnya, majelis hakim dalam mengeluarkan putusan tetap berpedoman pada isi perjanjian yang dibuat oleh para pihak sebagai konsekuensi dari asas pacta sunt servanda sepanjang perjanjian arbitrase tersebut telah memenuhi syarat sahnya perjanjian sebagaimana Pasal 1320 sampai dengan Pasal 1337 KUH Perdata.

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Arbitration award is final and binding for the parties, however Article 70 of Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolutions provides a right to file a request for cancellation through the District Court. The legal remedy to request annulment caused the dispute settlement process extended, even though the parties have agreed to waive legal remedy on such cancellation. The research is descriptive research which is normative juridical and the approaches are statute approach, conceptual approach and case approach. The request for the cancellation of an arbitral award filed by the party even though it has been ruled out in the treaty is considered as a breach of contract and violates the principle of pacta sunt servanda of Article 1338 paragraph 1 of Indonesian Civil Code and has violated the legal certainty principle. A waiver agreement for the cancellation of the arbitral award has nullified and waived the parties 39 right to file the annulment of the arbitral award through the court, however in practice the judges did not consider the existence of the waiver agreement, on the contrary to examine and adjudicate the case and nullify the final and binding arbitral award. Supposedly, the judges in issuing the decision shall remain guided by the contents of the agreement made by the parties as a consequence of pacta sunt servanda principle as long as the arbitration agreement has met the requirements of the validity of the agreement as regulated in Article

1320 to Article 1337 Indonesian Civil Code.