

Gagasan pengadopsian pranata emergency arbitration dan emergency interim relief ke dalam hukum arbitrase Indonesia = The idea of adopting emergency arbitration and emergency interim relief regulations into Indonesian arbitration law

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Abstrak

Tesis ini mengkaji mengenai: (i) implementasi pranata Emergency Arbitration dan Emergency Interim Relief di beberapa negara; dan (ii) cara pengadopsian pranata tersebut ke dalam hukum arbitrase Indonesia. Metode penelitian yang digunakan adalah penelitian empiris dengan menggunakan pendekatan perbandingan, pendekatan perundang-undangan dan pendekatan kasus. Hasil penelitian menunjukkan bahwa pranata Emergency Arbitration dan Emergency Interim Relief ini merupakan mekanisme yang dapat digunakan bagi para pihak yang memerlukan tindakan segera dalam keadaan mendesak bahkan sebelum dibentuknya majelis arbitrase. Pranata ini ditujukan untuk mempertahankan ataupun memulihkan status quo hingga akhir persidangan serta menjaga ketertiban proses arbitrase. Berbagai lembaga arbitrase internasional mulai mengadopsi pranata ini yang diperkenalkan pertama kali di tahun 1990 oleh ICC. Pranata ini dinilai dapat melindungi kepentingan mendesak para pihak, prosesnya sangat cepat serta dapat meningkatkan voluntary compliance. Akan tetapi, finalitas putusan Emergency Arbitrator masih menjadi isu kontroversial, akibat tidak dapat ditegakkan di bawah New York Convention 1958. Negara-negara mulai menerapkan strategi masing-masing guna mengatasi problematika tersebut, yaitu mengaturnya dalam hukum nasional masing-masing; melalui New York Convention 1958; dan melalui pendekatan analogi atas hukum nasional yang telah ada. Melihat berbagai kelebihan pranata ini serta kultur berperkara masyarakat Indonesia yang masih sering menunda-nunda pelaksanaan putusan arbitrase sehingga kepentingan pihak yang menang menjadi dirugikan. Maka sudah sepantasnya Indonesia juga ikut mengadopsi pranata ini ke dalam peraturan lembaga arbitrase terkait mengenai hukum acara dan aturan teknis serta ke dalam UU No.30 Tahun 1999, khususnya pasal mengenai definisi arbiter darurat serta pasal pengakuan dan penegakan Emergency Interim Relief.

.....This thesis examines (i) the implementation of Emergency Arbitration and Emergency Interim Relief regulations in several countries; and (ii) the method of adopting this regulations into Indonesian Arbitration law. The method used in this research is empirical research using a comparative approach, statutory approach, and case approach. The research results show that Emergency Arbitration and Emergency Interim Relief regulations are mechanisms that can be used for parties who require immediate action in an urgent situation even before the arbitral tribunal was formed. This regulation is aimed at maintaining or restoring the status quo until the end of the trial as well as maintaining order in the arbitration process. Various international arbitration institutions have begun to adopt this regulation which was first introduced in 1990 by the ICC. This regulation is considered to be able to protect the urgent interests of the parties, very fast process and can increase voluntary compliance. However, the finality of the Emergency Arbitrator's decision is still a controversial issue, because it cannot be enforced under the 1958 New York Convention. Countries have begun to implement their respective strategies to overcome these problems, namely regulating them in their respective national laws; through the New York Convention 1958; and through an

analogy approach to existing national laws. Seeing the various advantages of this regulation and also the Indonesian litigation culture who often delay the implementation of arbitrator decisions and cause the disadvantage for the interests of the winning party. Then it is appropriate that Indonesia also adopts this regulation into the arbitration institutions rules regarding procedural law and technical rules as well as into Law No.30 of 1999 regarding the definition of emergency arbitrator also the recognition and enforcement of Emergency Interim Relief.