

Upaya Pembatalan Putusan Arbitrase Internasional dengan Alasan Melanggar Ketertiban Umum pada Lembaga Peradilan di Indonesia = Attempts of the Annulment of the International Arbitration Award for the Reason of Violating Public Policy and/or Public Order in Judicial Institutions in Indonesia

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Abstrak

Alternatif Penyelesaian Sengketa atau Alternative Dispute Resolution terdiri dari berbagai macam pilihan, salah satunya adalah arbitrase, yang dapat dilakukan dengan arbitrase nasional maupun arbitrase internasional. Putusan yang dibuat melalui arbitrase bersifat final dan binding, sehingga menutup kemungkinan bagi pihak yang bersengketa untuk memohonkan upaya hukum lainnya atas putusan arbitrase, baik banding, kasasi maupun peninjauan kembali. Namun, pada kenyataannya masih ditemui banyak upaya hukum yang dilakukan terhadap putusan arbitrase seperti pembatalan. Putusan arbitrase internasional yang diamanatkan oleh Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa diharuskan mendapat eksekutor dari lembaga peradilan Indonesia terlebih dahulu, yaitu Pengadilan Negeri Jakarta Pusat. Salah satu syarat agar suatu putusan arbitrase internasional dapat dilaksanakan adalah tidak melanggar ketertiban umum. Tidak adanya pembatasan maupun definisi yang kongkret atas ketertiban umum, menjadikan celah hukum bagi pihak yang merasa tidak puas dengan suatu putusan arbitrase internasional mengajukan upaya pembatalan putusan arbitrase tersebut. Kementerian Pertahanan Republik Indonesia saat ini sedang melakukan upaya baik secara perdata maupun pidana atas pembatalan putusan arbitrase internasional dengan alasan melanggar ketertiban umum atas kasusnya dengan Navayo International AG dan Hungarian Export Credit Insurance PTE LTD yang mana telah diputus dengan Putusan International Chamber of Commerce Nomor 20472/HTG tertanggal 22 April 2021. Hal ini didasari karena adanya dugaan tindak pidana korupsi dalam perjanjian kerjasama pengadaan satelit komunikasi pertahanan. Guna menciptakan kepastian hukum bagi semua pihak diperlukannya penegasan terkait definisi kongkret dari pelanggaran ketertiban umum serta batasan-batasan yang menjadikan terkategori melanggar ketertiban umum.

.....Alternative Dispute Resolution consists of various options, one of which is arbitration, which can be carried out by national arbitration or international arbitration. Decisions made through arbitration are final and binding, thus closing the possibility for disputing parties to apply for other legal remedies for arbitration awards, whether appeal, cassation or review. However, in reality there are still many legal efforts made against arbitral awards such as annulment. International arbitral awards mandated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution are required to get an executor from an Indonesian judicial institution first, namely the Central Jakarta District Court. One of the conditions for an international arbitral award to be enforceable is not to violate public order and/or public policy. The absence of concrete limitations or definitions of public order creates a legal loophole for a party who is dissatisfied with an international arbitral award submitting an effort to annul the arbitral award. The Ministry of Defense of the Republic of Indonesia is currently making efforts both civilly and criminally to annul the international arbitration award on the grounds of violating public order in its case with Navayo International AG and

Hungarian Export Credit Insurance PTE LTD which has been decided by International Chamber of Commerce Decision Number 20472/ HTG dated April 22, 2021. This was based on allegations of corruption in the cooperation agreement for the procurement of defense communication satellites. In order to create legal certainty for all parties, it is necessary to affirm the concrete definition of a violation of public order and the limitations that make it categorized as a violation of public order.