

ULTRA PETITA AS GROUNDS FOR THE NON-ENFORCEMENT OF FOREIGN ARBITRAL AWARDS WITHIN THE INDONESIAN LEGAL FRAMEWORK: REVISITING THE PUBLIC POLICY EXCEPTION IN THE CASE OF PT SUMI ASIH V VINMAR OVERSEAS LTD

By Michelle Joice Purba¹ and Irna Nurhayati²

ABSTRACT

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards allows contracting states to refuse enforcement of foreign arbitral awards based on public policy exceptions. This exception is typically interpreted at the domestic level, leading to varying definitions across different states. This research focuses on how Indonesia interprets the public policy exception in the non-enforcement of foreign arbitral awards, specifically examining the case of PT Sumi Asih v. Vinmar Overseas Ltd, where the issue was whether an *ultra petita* foreign arbitral award falls under the public policy exception. The study uses a qualitative case study approach, analyzing primary legal materials such as the 1958 New York Convention and Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, along with secondary sources such as books, expert opinions, and past judicial decisions.

In light of the aforementioned objectives and research methodologies, this Legal Research concludes the following: *firstly*, claims of an *ultra petita* award should be considered part of the Indonesian public policy exception as it aims to protect societal rights and regulations that prevent judges, including arbitrators, from deciding beyond submitted issues or requests; *secondly*, the Indonesian practice tends to apply a broad interpretation of public policy, allowing domestic laws, including the prohibition of *ultra petita* decisions, to be encompassed within public policy exceptions; *thirdly*, enforcing an *ultra petita* foreign arbitral award would cause fundamental economic, legal, and social concerns, which should be included within the public policy exception to justify non-enforcement; and *fourthly*, the threshold for determining a public policy exception in Indonesia should not be whether the issues is considered a public interest of the country rather than private interests, as both interests are inextricably linked and can collectively lead to a public policy concern.

Keywords: Non-enforcement of Foreign Arbitral Awards, *Ultra Petita*, Public Policy, Article V of the 1958 New York Convention, Indonesian Arbitration

¹ Student of the Faculty of Law Universitas Gadjah Mada (S1 IUP 2020).

² Lecturer at the Department of Business Law, Faculty of Law Universitas Gadjah Mada.

ULTRA PETITA SEBAGAI DASAR PENOLAKAN PELAKSANAAN PUTUSAN ARBITRASE ASING DALAM KERANGKA HUKUM INDONESIA: MENINJAU KEMBALI ANALISIS KETERTIBAN UMUM DALAM KASUS PT SUMI ASIH V VINMAR OVERSEAS LTD

Oleh Michelle Joice Purba¹ dan Irna Nurhayati²

INTISARI

Konvensi New York 1958 tentang Pengakuan dan Pelaksanaan Putusan Arbitrase Asing menyediakan upaya bagi negara-negara anggotanya untuk menyatakan penolakan atas pelaksanaan putusan arbitrase asing dengan menggunakan pengecualian ketertiban umum. Pengecualian ini biasanya diinterpretasikan di tingkat domestik, yang menyebabkan definisi yang berbeda-beda di berbagai negara. Penelitian ini berfokus pada bagaimana Indonesia menginterpretasikan pengecualian ketertiban umum dalam menolak pelaksanaan putusan arbitrase asing, dengan meneliti secara khusus kasus PT Sumi Asih v. Vinmar Overseas Ltd, yang mana isu utama yang hendak dikaji adalah apakah putusan arbitrase asing ultra petita termasuk dalam pengecualian ketertiban umum. Studi ini menggunakan pendekatan studi kasus kualitatif, menganalisis bahan hukum primer seperti Konvensi New York 1958 dan Undang-undang No. 30/1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, serta sumber sekunder seperti buku, pendapat ahli, dan putusan-putusan pengadilan sebelumnya.

*Berdasarkan tujuan dan metodologi penelitian yang disebutkan di atas, penelitian hukum ini menyimpulkan sebagai berikut: **pertama**, klaim atas putusan ultra petita dapat dianggap sebagai pengecualian ketertiban umum untuk melindungi hak dan peraturan masyarakat yang mencegah hakim atau arbiter memutuskan melebihi isu yang diajukan; **kedua**, praktik di Indonesia cenderung menerapkan interpretasi luas terhadap pengecualian ketertiban umum, termasuk larangan putusan ultra petita; **ketiga**, melaksanakan putusan arbitrase asing ultra petita akan menimbulkan kekhawatiran ekonomi, hukum, dan sosial yang mendasar, yang harus dimasukkan dalam pengecualian ketertiban umum sebagai dasar penolakan sebuah putusan arbitrase asing; dan **keempat**, ambang batas untuk menentukan pengecualian ketertiban umum di Indonesia seharusnya mempertimbangkan kepentingan publik dan pribadi, karena keduanya terkait dan dapat menimbulkan masalah ketertiban umum.*

Kata Kunci: Penolakan Pelaksanaan Putusan Arbitrase Asing, Ultra Petita, Ketertiban Umum, Pasal V Konvensi New York 1958, Hukum Arbitrase Indonesia.

¹ Mahasiswa Fakultas Hukum Universitas Gadjah Mada.

² Dosen Departemen Hukum Dagang, Fakultas Hukum Universitas Gadjah Mada