

# Keterlibatan Third Party Funder dalam Sengketa Arbitrase Internasional: Kaitannya dengan Pembebanan Biaya Kerugian Putusan Arbitrase Internasional (Studi Putusan Tomorrow Sales Agency Private Ltd. v. SBS Holdings Inc. & Ors. Judgment) = Involvement of Third Party Funder in International Arbitration Disputes: In Relation to the Imposition of Adverse Costs of International Arbitration Awards (Case Study on Tomorrow Sales Agency Private Ltd. v. SBS Holdings Inc. & Ors. Judgment)

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## Abstrak

Third party funding merupakan salah satu opsi pendanaan arbitrase yang dapat dipilih dalam menyelesaikan sengketa melalui arbitrase internasional. Walaupun third party funder berperan sebagai pemberi dana untuk pelaksanaan arbitrase, third party funder kerap dituntut oleh pihak lawan dalam arbitrase untuk turut menanggung beban biaya kerugian yang dijatuhkan majelis arbitrase dalam putusan arbitrase internasional. Penelitian ini menggunakan metode penelitian doktrinal. Penelitian ini menelaah pengaturan terkait third party funding dalam dan keterlibatan third party funder dalam menanggung biaya kerugian dalam putusan arbitrase internasional di beberapa badan arbitrase internasional, yaitu SIAC, ICSID, ICC, HKIAC, dan CIETAC. Penelitian ini juga meninjau penerapan pengaturan third party funding tersebut dalam praktik, melalui analisis Putusan Tomorrow Sales Agency Private Ltd. v. SBS Holdings Inc. & Ors. Judgment FAO(OS)(COMM) 59/2023 and CM NOS. 14793/2023 & 14794/2023. Analisis penerapan peraturan juga ditunjang dengan analisis Putusan Essar Oilfields Services Limited v. Norscot Rig Management Pvt Limited [2016] EWHC 2361 (Comm) dan Putusan AMT Cameroun, AMT SA Advance Maritime Transports, and Privinvest v. AZ and Navitrans No. 20/12332. Penelitian ini menunjukkan pentingnya penegasan pengaturan untuk melindungi third party funder dari tuntutan untuk dibebani tanggung jawab atas biaya kerugian yang dijatuhkan dalam putusan arbitrase internasional.

.....Third party funding is a funding option for parties intending to resolve disputes through international arbitration. Despite its role as a funder solely for the purposes of the arbitration, there have been instances where third-party funders are sued by an opposing party in the arbitration to share the burden of adverse costs imposed by the arbitral tribunal in an international arbitration award. This study uses a doctrinal research method. This study examines regulations related to third party funding and the involvement of third party funders regarding adverse costs liability arising from international arbitration awards in several international arbitration bodies, namely SIAC, ICSID, ICC, HKIAC, and CIETAC. This study also reviews the application of the regulations in practice through a case analysis of the Tomorrow Sales Agency Private Ltd. v. SBS Holdings, Inc. & Ors. FAO(OS)(COMM) Decision 59/2023 and CM Nos. 14793/2023 & 14794/2023 Judgment. The analysis of the application of the regulations is also supported by analyzing the Essar Oilfields Services Limited v. Norscot Rig Management Pvt Limited [2016] EWHC 2361 (Comm) Judgment and the AMT Cameroun, AMT SA Advance Maritime Transports, and Privinvest v. AZ and Navitrans No. 20/12332 Judgment. This study demonstrates the importance of establishing stricter regulatory frameworks to protect third party funders from claims for adverse costs imposed in international

arbitration awards.