

**FORCED DIVESTMENT IN THE MINING SECTOR IN CONNECTION
WITH INDIRECT EXPROPRIATION UNDER INTERNATIONAL
INVESTMENT LAW: REVIEW TOWARDS INDONESIA'S FORCED
DIVESTMENT REGULATIONS IN LAW NO. 3 OF 2020 AND
GOVERNMENT REGULATION NO. 96 OF 2021**

By:

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ABSTRACT

This legal research is aimed to analyze the threshold of indirect expropriation in international investment law and to analyze whether Indonesia's forced divestment regulation in Law No. 3 of 2020 and Government Regulation No. 96 of 2021 differs from indirect expropriation and can be justified with the principles in international law.

In building the analysis and arguments on these issues, this legal research uses a normative legal approach by conducting literature review. The types of data that is used consists of primary legal sources, which are authoritative legally binding instruments such as case laws, treaties, regulations, and BITs; and secondary legal sources, which includes books, legal dictionaries, and comments on court decisions. The data collection method is both electronically and physically. The data analysis is served within the scope of a qualitative method where the data is an 'analytical descriptive' data gained by observing the norms and principles in international investment law.

This legal research found that first, there are two elements in indirect expropriation which are the elements of 'investment property' and 'taking.' Furthermore, indirect expropriation should be distinguished from non-compensable regulatory measures, and this can be done by looking at three cumulative factors, which are the impact of the measure, the extent to which the government's action interferes with investors' reasonable-investment legitimate expectation, and the characteristics of the government's measure. Secondly, applying these thresholds, it is found that Indonesia's forced divestment in the mining sector in Law No. 3 of 2020 and Government Regulation No. 96 of 2021 does not amount to indirect expropriation, as the aforementioned three factors are not fulfilled. Furthermore, the regulation on forced divestment is justifiable by international principles, which are the state's autonomy in economics choices and permanent sovereignty over natural resources.

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Regulation No. 96 of 2021

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Universitas Gadjah Mada, 2022 | Diunduh dari <http://etd.repository.ugm.ac.id/>

Keywords: forced divestment, forced divestment in the mining sector, expropriation, indirect expropriation, international investment law.

***KEBIJAKAN DIVESTASI SAHAM DI SEKTOR PERTAMBANGAN
SEHUBUNGAN DENGAN PENGAMBILALIHAN TIDAK LANGSUNG
BERDASARKAN HUKUM INVESTASI INTERNASIONAL: TINJAUAN
TERHADAP PERATURAN DIVESTASI SAHAM INDONESIA DALAM UU.
3 TAHUN 2020 DAN PERATURAN PEMERINTAH NO. 96 TAHUN 2021***

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INTISARI

Penelitian hukum ini bertujuan untuk menganalisis ambang batas pengambilalihan tidak langsung dalam hukum investasi internasional dan untuk menganalisis apakah kebijakan divestasi saham Indonesia pada UU No. 3 Tahun 2020 dan Peraturan Pemerintah No. 96 Tahun 2021 berbeda dengan pengambilalihan tidak langsung, dan dapat dibenarkan dengan prinsip-prinsip dalam hukum internasional.

Dalam membangun analisis dan argumentasi atas permasalahan tersebut, penelitian hukum ini menggunakan pendekatan hukum normatif dengan melakukan studi pustaka. Jenis data yang digunakan terdiri dari sumber hukum primer, yang merupakan instrumen yang mengikat secara hukum otoritatif seperti hukum kasus, perjanjian, peraturan, dan BIT; dan sumber hukum sekunder, yang meliputi buku, kamus hukum, dan komentar atas putusan pengadilan. Metode pengumpulan data dilakukan secara elektronik dan fisik. Analisis data disajikan dalam ruang lingkup metode kualitatif dimana data merupakan data 'deskriptif analitis' yang diperoleh dengan memerhatikan norma dan prinsip dalam hukum investasi internasional.

Penulisan hukum ini menemukan bahwa pertama, terdapat dua unsur dalam pengambilalihan tidak langsung yaitu unsur 'properti investasi' dan 'pengambilan.' Pengambilalihan tidak langsung harus dibedakan dari tindakan peraturan yang tidak dapat dikompensasi, dan ini dapat dilakukan dengan melihat tiga faktor kumulatif, dampak dari tindakan tersebut, sejauh mana tindakan pemerintah mengganggu ekspektasi investasi yang wajar dari investor, dan karakteristik tindakan pemerintah. Kedua, dengan menerapkan ambang batas ini, ditemukan bahwa kewajiban divestasi saham di sektor pertambangan di Indonesia pada UU No. 3 Tahun 2020 dan Peraturan Pemerintah No. 96 Tahun 2021 tidak termasuk pengambilalihan tidak langsung, karena ketiga faktor di atas tidak terpenuhi. Dvestasi saham tersebut juga dibenarkan oleh prinsip internasional, yaitu otonomi negara dalam pilihan ekonomi dan kedaulatan permanen atas sumber daya alam.

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***Kata kunci:** kewajiban divestasi saham, divestasi saham sektor pertambangan, pengambilan alih, pengambilalihan tidak langsung, hukum investasi internasional.*



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