

ANALYSIS ON THE MEASURES AMOUNTING TO EXPROPRIATION: TEMPORARY ASSET-FREEZE AS A POTENTIAL FORM OF EXPROPRIATION TOWARDS AN INVESTOR

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ABSTRACT

Foreign Direct Investment (FDI) has been a crucial driver of economic growth in many countries, including Indonesia. However, the risk of expropriation—where governments seize private property—remains a significant concern for investors. With the increase in FDI, it is essential to understand and mitigate these risks through Bilateral Investment Treaties (BITs) and other international agreements designed to protect foreign investments from arbitrary expropriation. This study analyze whether temporary asset-freezing measures can be considered a form of indirect expropriation under international investment law and evaluates the legality of such measures based on interpretations of BITs and arbitral tribunal decisions.

The research uses doctrinal legal analysis, examining primary materials like BITs, international conventions, case laws, and policies, along with secondary sources such as books and journals on international investment law. Data is collected through a literature review and analyzed qualitatively with comparative legal interpretation. The study finds that both direct and indirect expropriations pose risks to investors, with indirect expropriation occurring when government measures deprive investors of the use, value, or control of their assets. Temporary asset-freezing measures can potentially constitute indirect expropriation, depending on the context and extent of deprivation.

In examining past arbitral tribunal decisions, the research highlights key factors such as the economic impact, duration, and purpose of the measures. The study also explores the legal frameworks established by BITs and past tribunal decisions to interpret the conditions under which asset-freezing can be deemed lawful or unlawful. The research concludes that while temporary asset-freezing measures may constitute indirect expropriation, their legality depends on several factors, including the measure's economic impact and adherence to principles outlined in international investment agreements. The study emphasizes the need for clear guidelines and consistent application of legal standards to protect foreign investors while allowing states to regulate for public purposes.

Keywords: Expropriation, Foreign Direct Investment, Bilateral Investment Treaties, Asset-Freezing, International Investment Law, Indirect Expropriation.

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ANALISIS TERHADAP PERATURAN YANG BERPOTENSI MENJADI EKSPROPRIASI: PEMBEKUAN ASET SEMENTARA SEBAGAI BENTUK EKSPROPRIASI TERHADAP INVESTOR

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INTISARI

Investasi Langsung Asing (FDI) adalah pendorong penting pertumbuhan ekonomi, termasuk di Indonesia, namun ekspropriasi—di mana pemerintah menyita properti pribadi—tetap menjadi risiko signifikan. Studi ini menyelidiki apakah pembekuan aset sementara dapat dianggap sebagai ekspropriasi tidak langsung menurut hukum investasi internasional dan mengevaluasi legalitasnya berdasarkan BIT dan keputusan tribunal arbitrase.

Penelitian ini menggunakan analisis hukum doktrinal, memeriksa BIT, konvensi internasional, kasus hukum, kebijakan, serta buku dan jurnal terkait hukum investasi internasional. Data dikumpulkan melalui tinjauan literatur dan dianalisis secara kualitatif. Studi menemukan bahwa ekspropriasi tidak langsung terjadi ketika langkah pemerintah menghilangkan penggunaan, nilai, atau kontrol investor atas aset mereka, dan pembekuan aset sementara bisa menjadi ekspropriasi tidak langsung tergantung konteks dan tingkat perampasan.

Penelitian menyoroti faktor-faktor seperti dampak ekonomi, durasi, dan tujuan langkah-langkah tersebut, serta mengeksplorasi kerangka hukum BIT dan keputusan tribunal sebelumnya. Kesimpulannya, legalitas pembekuan aset sementara bergantung pada beberapa faktor termasuk dampak ekonomi dan kepatuhan terhadap prinsip-prinsip dalam perjanjian investasi internasional, serta perlunya pedoman yang jelas dan konsisten untuk melindungi investor asing sambil memungkinkan regulasi negara untuk tujuan publik.

Keywords: Expropriation, Foreign Direct Investment, Bilateral Investment Treaties, Asset-Freezing, International Investment Law, Indirect Expropriation

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