

**ANALISIS KONSEP DAN PENERAPAN *INDIRECT EXPROPRIATION*
DALAM SENGKETA ARBITRASE INVESTASI DI INTERNATIONAL
CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTE**

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis konsep dan parameter *indirect expropriation* dalam sengketa arbitrase investasi. Selain itu, penelitian ini bertujuan untuk mengidentifikasi penerapan konsep dan parameter *indirect expropriation* dalam beberapa putusan di ICSID, yaitu: 1) *Lupaka Gold Corp. v. Republik of Peru* (ICSID Case No. ARB/20/46); 2) *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB (AF)/11/2); 3) *Mining Limited v. The Bolivarian Republic of Venezuela* (ICSID Case No. ARB (AF)/12/5); dan 4) *Burlington Resources Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/05).

Penelitian ini merupakan penelitian hukum normatif serta dilakukan melalui studi kepustakaan untuk mendapatkan data sekunder. Data sekunder yang didapatkan terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Data yang telah diperoleh dianalisis menggunakan metode analisis kualitatif dengan penarikan kesimpulan menggunakan metode induktif.

Hasil penelitian dan pembahasan menunjukkan bahwa majelis arbitrase menggunakan doktrin *sole effect*, *police powers*, *proportionality*, dan *legitimate expectation* sebagai parameter analisis tindakan *indirect expropriation*. Lebih lanjut, suatu ekspropriasi dianggap sah jika bertujuan untuk kepentingan umum, non-diskriminatif, melalui *due process of law*, dan disertai kompensasi yang *prompt*, *adequate*, dan *effective*. Dalam beberapa putusan ICSID, ditemukan karakteristik yang bervariasi terhadap penerapan konsep dan parameter *indirect expropriation*. Demi menghindari banyaknya sengketa mengenai *indirect expropriation* di kemudian hari, negara disarankan menyusun pengaturan yang lebih eksplisit untuk membedakan secara tegas antara regulasi sah tanpa kompensasi dan tindakan yang setara dengan ekspropriasi. ICSID juga disarankan agar berperan lebih proaktif dalam menjaga konsistensi putusan, misalnya dengan menerbitkan pedoman interpretasi resmi atau memperbarui *Arbitration Rules* terkait standar *indirect expropriation*.

Kata Kunci: Arbitrase Investasi, ICSID, *Indirect Expropriation*

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ANALYSIS OF THE CONCEPT AND APPLICATION OF INDIRECT EXPROPRIATION IN INVESTMENT ARBITRATION DISPUTES AT THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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ABSTRACT

*This study aims to examine and analyze the concepts and parameters of indirect expropriation in investment arbitration disputes. Furthermore, this study aims to identify the application of these concepts and parameters in several ICSID awards, namely: 1) *Lupaka Gold Corp. v. Republic of Peru* (ICSID Case No. ARB/20/46); 2) *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB (AF)/11/2); 3) *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela* (ICSID Case No. ARB (AF)/12/5); and 4) *Burlington Resources Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/05).*

This research constitutes normative legal research conducted through library research to obtain secondary data. The secondary data obtained comprises primary, secondary, and tertiary legal materials. The obtained data were analyzed using qualitative analysis methods, with conclusions drawn using the inductive method.

The results of the research and discussion indicate that arbitral tribunals utilize the doctrines of sole effect, police powers, proportionality, and legitimate expectation as parameters for analyzing acts of indirect expropriation. Furthermore, an expropriation is considered lawful if it is for a public purpose, non-discriminatory, carried out under due process of law, and accompanied by prompt, adequate, and effective compensation. In several ICSID awards, varied characteristics were observed regarding the application of the concept and parameters of indirect expropriation. To avoid a proliferation of future disputes regarding indirect expropriation, states are advised to formulate more explicit provisions to strictly distinguish between lawful non-compensable regulation and measures tantamount to expropriation. It is also suggested that ICSID play a more proactive role in maintaining the consistency of awards, for instance, by issuing official interpretation guidelines or updating Arbitration Rules related to indirect expropriation standards.

Keywords: Investment Arbitration, ICSID, Indirect Expropriation

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