

**IMPLEMENTASI PRINSIP *RIGHT TO ECONOMIC SELF-
DETERMINATION* (RESD) DALAM KERANGKA
PERJANJIAN INVESTASI BILATERAL
(Studi Putusan Arbitrase ICSID Nomor ARB/12/14 dan ARB/12/40 antara
Churchill Mining Plc dan Planet Mining Pty Ltd melawan Indonesia 2019)
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ABSTRAK

Prinsip *Right to Economic Self-Determination* (RESD) dalam hukum internasional menjamin hak setiap negara untuk menentukan nasib ekonominya sendiri tanpa campur tangan pihak luar. Dalam praktiknya, prinsip ini sering diuji melalui sengketa investasi asing, salah satunya dalam kasus Churchill Mining Plc dan Planet Mining Pty Ltd v. Indonesia pada 2019, yang menyoroti permasalahan hak kedaulatan ekonomi negara dan perlindungan hukum terhadap investor asing melalui Perjanjian Investasi Bilateral (*Bilateral Investment Treaty*, BIT).

Tujuan penelitian ini adalah untuk mengetahui pengaturan Prinsip *Right to Economic Self-Determination* (RESD) dalam hukum internasional dan menganalisis penyelesaian sengketa arbitrase dalam putusan nomor ARB/12/14 dan ARB/12/40 antara Churchill Mining Plc dan Planet Mining Pty Ltd dengan Indonesia. Tipe penelitian yang digunakan adalah yuridis normatif dengan metode pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Spesifikasi penelitian adalah deskriptif analitis dengan sumber data sekunder. Pengumpulan data dilakukan dengan studi kepustakaan yang disajikan dalam bentuk teks naratif dan dianalisis secara normatif kualitatif.

Hasil penelitian menunjukkan Prinsip RESD diatur dalam berbagai instrumen internasional seperti 1966 ICCPR dan ICESCR, Piagam PBB 1945, 1974 CERDS, Piagam ASEAN 2007, Piagam Afrika tentang Hak Asasi Manusia dan Hak-Hak Rakyat 1981 dan beberapa Resolusi Majelis Umum PBB, serta Pasal 33 UUD 1945 yang menjamin otonomi negara mengelola sumber daya alam demi kesejahteraan rakyat tanpa intervensi asing. Indonesia mengimplementasikan hak menentukan nasib ekonomi sendiri ini melalui tindakan pencabutan Izin Usaha Pertambangan (IUP) yang didasari pelanggaran hukum nasional. Tribunal Arbitrase ICSID memenangkan Pemerintah Indonesia dengan menolak seluruh klaim dari Churchill Mining dan Planet Mining. Komite *ad hoc* ICSID menerbitkan putusan bersifat final dan mengabulkan klaim Pemerintah Indonesia atas penggantian biaya berperkara sebesar 9,4 juta dollar Amerika.

Kata Kunci: RESD; penanaman modal asing; penyelesaian sengketa internasional; arbitrase.

**IMPLEMENTATION OF THE PRINCIPLE OF THE RIGHT TO
ECONOMIC SELF-DETERMINATION (RESD) WITHIN THE
FRAMEWORK OF BILATERAL INVESTMENT TREATIES**

*(Study of ICSID Arbitral Awards Nos. ARB/12/14 and ARB/12/40 between
Churchill Mining Plc and Planet Mining Pty Ltd v. Indonesia 2019)*

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ABSTRACT

The Principle of the Right to Economic Self-Determination (RESD) in international law guarantees the right of every state to determine its own economic destiny without outside interference. This principle is recognized in various international and national legal instruments. In practice, this principle is often tested through foreign investment disputes, one of which is the 2019 case of Churchill Mining Plc and Planet Mining Pty Ltd vs Indonesia, which highlights the tension between a state's economic sovereignty rights and legal protection for foreign investors through Bilateral Investment Treaties (BITs).

The purpose of this study is to determine the regulation of the Right to Economic Self-Determination (RESD) Principle in international law and to analyze the arbitration dispute resolution in decisions number ARB/12/14 and ARB/12/40 between Churchill Mining Plc and Planet Mining Pty Ltd with Indonesia. The type of research used is normative juridical with a legislative approach, case approach, and conceptual approach. The research specification is descriptive analytical with secondary data sources. Data collection was carried out through a literature study presented in the form of narrative text and analyzed normatively and qualitatively.

The results of the study show that the RESD principle is regulated in various international instruments such as the 1966 ICCPR and ICESCR, the 1945 UN Charter, the 1974 Charter of Economic Rights and Duties of States, the 2007 Charter of The Association of Southeast Asian Nations, 1981 African Charter on Human and Peoples' Rights and UN General Assembly resolutions, as well as Article 33 of the 1945 Constitution, which guarantees the autonomy of the state to manage natural resources for the welfare of the people without foreign intervention. Indonesia implements this right to determine its own economic destiny through the revocation of Mining Business Permits (IUP) based on domestic regulatory violations. Ad hoc committee of the ICSID Arbitration Tribunal ruled in favor of the Indonesian government by rejecting all claims from Churchill Mining and Planet Mining. ICSID issued a final decision and granted the Indonesian government's claim for reimbursement of litigation costs amounting to US\$9.4 million.

Keywords: RESD; foreign investment; international dispute resolution; arbitration.