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Colonization Through Contracts: A Juridical Analysis of State Contracts with Transnational Corporations from the Perspective of Jurisdictional Law and Maritime Spatial Utilization

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Abstrak: *Penelitian ini bertujuan untuk menganalisis penerapan hukum oleh hakim dalam perkara tindak pidana kekerasan yang mengakibatkan kematian oleh pelaku anak terhadap anak korban serta perlindungan hukum terhadap anak pelaku berdasarkan Putusan Nomor 8/Pid.Sus-Anak/2021/PN Bjw. Penelitian menggunakan metode yuridis empiris dengan pendekatan studi kasus dan pendekatan perundang-undangan. Lokasi penelitian dilakukan di Kecamatan So'a, Kabupaten Ngada dan Pengadilan Negeri Bajawa. Data diperoleh melalui wawancara dan studi kepustakaan dengan melibatkan 33 informan yang terdiri atas hakim, anak pelaku, keluarga korban, keluarga pelaku, guru, dan masyarakat. Hasil penelitian menunjukkan bahwa penerapan hukum oleh hakim didasarkan pada ketentuan Undang-Undang Perlindungan Anak dan Undang-Undang Sistem Peradilan Pidana Anak dengan mempertimbangkan aspek yuridis dan non yuridis, seperti usia anak, penyesalan pelaku, dan peluang pembinaan. Perlindungan hukum terhadap anak pelaku diberikan sejak tahap penyidikan hingga pelaksanaan pidana melalui pendampingan hukum, pemeriksaan secara humanis, persidangan tertutup, serta pembinaan dalam lembaga pemasyarakatan. Dengan demikian, pemidanaan terhadap anak tidak hanya berorientasi pada penghukuman, tetapi juga pada rehabilitasi dan perlindungan hak anak.*

INTRODUCTION

In the contemporary international legal order, the relationship between sovereign states and transnational corporations (TNCs) has evolved into one of the most complex domains where global economic interests intersect with the fundamental principles of state sovereignty. The increasing flow of foreign investment, driven by trade liberalization and globalization, has accelerated the proliferation of international investment agreements and contractual arrangements between states and TNCs, which now number in the thousands worldwide.[1]

Contracts between states and TNCs, particularly those involving mining, energy, and the exploitation of natural resources, including maritime spaces, possess unique characteristics that distinguish them from ordinary commercial contracts. When a state enters into a contract with a TNC, it does not act merely as an ordinary private legal subject, but rather in its capacity as the sovereign authority over national territory and resources. This dual capacity, whereby the state functions both as a public authority and a private contracting party, creates profound legal complexities.[2]

The phenomenon referred to by some scholars as "contractual colonization" describes a condition in which the imbalance of power between developing states and multinational TNCs produces contractual clauses that systematically undermine long-term national interests. This phenomenon does not constitute "colonization" in the classical colonial sense; rather, it operates through legal mechanisms that appear legitimate and voluntary, making it significantly more difficult to identify and challenge.[3]

The most critical aspect of such contracts lies in the state's position as a party acting on behalf of the dignity and interests of the nation. Unlike private disputes between individuals, where losses are personal in nature, losses incurred by a state in contracts with TNCs represent collective losses borne by the entire population and often extend across generations. Compensation payments imposed on states in favor of foreign investors, frequently amounting to billions of dollars, are fundamentally derived from public tax revenues and national development budgets.[4]

In the context of legal jurisdiction and the utilization of maritime spaces, this issue becomes increasingly significant given that marine resources constitute strategic national assets recognized under international law as belonging to the nation and intended for the greatest prosperity of the people. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) has established a clear jurisdictional framework for coastal states over various maritime zones, ranging from internal waters, territorial seas, contiguous zones, Exclusive Economic Zones (EEZs), to continental shelves. However, its implementation in contractual arrangements with TNCs often weakens the legal position of the state.[5]

Comparative studies of the experiences of developing countries in Africa, Southeast Asia, and Latin America reveal a consistent pattern: when states engage in contractual negotiations with TNCs without adequate legal expertise, the outcome is often long-term structural disadvantages that substantially outweigh the short-term investment benefits obtained.[6]

This study aims to: (1) analyze the legal construction that positions the state as a party bearing the nation's responsibility in contracts with TNCs; (2) identify contractual clauses that may

[1] M. Sornarajah, The International Law on Foreign Investment, 4th ed. (Cambridge: Cambridge University Press, 2017), hlm. 3–5.
[2] John H. Dunning & Sarianna M. Lundan, Multinational Enterprises and the Global Economy, 2nd ed. (Cheltenham: Edward Elgar Publishing, 2008), hlm. 18–21.
[3] Muthucumaraswamy Sornarajah, "Power and Justice in Foreign Investment Arbitration," Journal of International Arbitration 14, No. 3 (1997): 103–140.
[4] Kyla Tienhaara, The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy (Cambridge: Cambridge University Press, 2009), hlm. 2.
[5] Uche Ewelukwa Ofodile, "Africa and the International Investment Regime: Rethinking the ISDS Debate," Journal of World Investment and Trade 19, No. 1 (2018): 49–100.
[6] Gus Van Harten, Investment Treaty Arbitration and Public Law (Oxford: Oxford University Press, 2007), hlm. 60–75.

potentially harm national interests, particularly in the utilization of maritime spaces; (3) examine the legal dimensions of jurisdiction and the 1982 UNCLOS within the context of transnational agreements; and (4) formulate strategic recommendations for states to protect national interests. This research employs a normative juridical approach supported by comparative analysis of various international investment agreements and relevant arbitration cases. The novelty of this study lies in the integration of maritime jurisdiction perspectives with the analysis of transnational contracts, two areas that have traditionally been examined separately.

RESULTS AND DISCUSSION

1. State Contracts with Transnational Corporations: Conceptual and Juridical Foundations

Contracts signed between states and transnational corporations (TNCs) are legally recognized under doctrine as *state contracts* or *investment agreements*. Within this framework, states do not act solely in their private capacity (*iure gestionis*), but frequently also in their public capacity (*iure imperii*). This duality of legal capacity creates complexities that are absent in conventional commercial contracts and renders any adverse consequences arising from such agreements potentially detrimental to the nation as a whole.[7]

From a juridical perspective, contracts between states and TNCs may take the form of Production Sharing Contracts (PSC), Contracts of Work, Build-Operate-Transfer (BOT) agreements, or Bilateral Investment Treaties (BITs). Each form entails distinct rights and risks; however, all carry implications for public state responsibility rather than merely corporate obligations. In contracts involving maritime spaces, such as offshore oil and gas concession agreements or marine conservation area management contracts, states exercise their authority as sovereign holders of maritime jurisdiction, as guaranteed under the 1982 United Nations Convention on the Law of the Sea (UNCLOS).[8]

From the perspective of international law, the validity of such contracts is subject to the principle of pacta sunt servanda, as enshrined in the 1969 Vienna Convention on the Law of Treaties. However, this principle does not automatically override the doctrine of Permanent Sovereignty over Natural Resources (PSNR), which is likewise recognized under international law through United Nations General Assembly Resolution No. 1803 (XVII) of 1962. The tension between these two principles constitutes the core arena of debate in international investment contract disputes.[9]

The Barcelona Traction doctrine, developed by the International Court of Justice (ICJ) in its 1970 judgment, emphasizes the distinction between state obligations of an erga omnes character owed to the international community and obligations arising within the framework of bilateral contractual relationships. In the context of state contracts with TNCs, when losses occur, the fundamental question becomes: to whom is responsibility owed, and who ultimately bears the burden of such losses? The answer clearly points to the nation as a whole, as the true owner of the resources and sovereignty that have been contractually committed.[10]

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[7] Surya P. Subedi, International Investment Law: Reconciling Policy and Principle, 3rd ed. (Oxford: Hart Publishing, 2016), hlm. 100.

[8] Vienna Convention on the Law of Treaties, 23 Mei 1969, 1155 UNTS 331, Pasal 26: "Pacta sunt servanda."

[9] Cecilia Olivet & Pia Eberhardt, Profiting from Injustice: How Law Firms, Arbitrators and Financiers Are Fuelling an Investment Arbitration Boom (Brussels: Transnational Institute & Corporate Europe Observatory, 2012), hlm. 5–10.

[10] International Court of Justice, Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment of 5 February 1970, ICJ Reports 1970, para. 33–35

2. Power Asymmetry in Contract Negotiations: The Root of Contractual Colonization

Colonization through contracts does not occur instantaneously. Rather, it emerges as the cumulative result of imbalances embedded in the negotiation process. Multinational TNCs generally possess highly experienced legal teams, supported by leading international law firms specializing in investment arbitration, alongside extensive knowledge of international arbitral jurisprudence. The legal budgets of major TNCs may reach hundreds of millions of dollars annually, a financial capability that far exceeds the capacity of most legal ministries in developing countries.[11]

This imbalance produces what M. Sornarajah describes as a "structural disadvantage", namely, a disadvantage deeply embedded within the contractual text itself. Such inequality operates at several levels: first, disparities in information and technical expertise; second, disparities in resources available for conducting due diligence and contractual scenario simulations; third, imbalances in bargaining power, often exacerbated by developing countries' urgent need for foreign investment; and fourth, unequal access to the continuously evolving body of international arbitral jurisprudence.[12]

For example, stabilization clauses effectively "freeze" the applicable legal framework at the time the contract is signed for the benefit of investors. In the context of maritime spatial utilization, this may prevent states from enforcing updated environmental regulations, new safety standards, or revised maritime zoning provisions, even when such changes are necessary to protect public interests and marine ecosystems. Ironically, clauses designed to provide legal certainty for investors may instead become instruments that deprive states of their constitutional authority to perform their regulatory functions.[13]

From the perspective of critical international legal scholarship, scholars such as Kate Miles argue that the current regime of international investment law constitutes a legacy of nineteenth and early twentieth-century economic imperialism, during which industrialized states developed legal instruments to safeguard their capital in colonial territories. Although formal colonialism has ended, the structural foundations of this asymmetric protection continue to persist within contemporary bilateral investment treaties (BITs) and multilateral trade agreements.[14]

3. The State as a Representative of the Nation and the Dimension of Collective Loss

One of the most fundamental distinctions between state contracts and ordinary civil agreements is that, when entering into contracts, the state acts in the name of and for the benefit of its entire population. In sovereignty theory, the state embodies the collective will of the nation. It is not merely a corporate entity pursuing shareholder profit, but rather a trustee of the collective rights of its people, including rights over natural resources and maritime spaces.[15]

The most significant juridical consequence of this principle is that any loss suffered by the state in contracts with TNCs constitutes a loss borne by the nation as a whole, rather than merely by the ministry or governmental institution responsible for signing the contract. When an

[11] Tarcisio Gazzini, Interpretation of International Investment Treaties (Oxford: Hart Publishing, 2016), hlm. 45–68.
[12] M. Sornarajah, "Resistance and Change in the International Law on Foreign Investment," dalam Reconceptualising International Investment Law from the Global South, ed. Nicolás M. Perrone & David Schneiderman (Cambridge: Cambridge University Press, 2019), hlm. 15.
[13] Todd Weiler, "Balancing Human Rights and Investor Protection: A New Approach for a Different Legal Order," Boston College International and Comparative Law Review 27, No. 2 (2004): 429–456.
[14] UNCLOS United Nations Convention on the Law of the Sea, 10 Desember 1982, 1833 UNTS 3, Pasal 56 dan 77.
[15] Arbitral Tribunal (UNCITRAL), Churchil Mining Plc. v. Republic of Indonesia, PCA Case No. 2012-40, Award on Jurisdiction, 24 February 2014.

international arbitral award obliges a state to pay compensation amounting to billions of dollars, such liability is borne by the national budget, financed through taxpayers' contributions. In a very real sense, every citizen bears the consequences of contractual decisions that they may neither have known about nor consented to.[16]

In the context of maritime spatial utilization law, these implications become even broader and more intergenerational in scope. The 200-nautical-mile Exclusive Economic Zone (EEZ), guaranteed under UNCLOS, contains biological and non-biological wealth that constitutes an inheritance for both present and future generations. Article 56 of UNCLOS explicitly affirms that coastal states possess "sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources" within the EEZ. Contracts granting long-term exploitation rights to TNCs in such areas, without adequate protective mechanisms, risk causing irreversible ecological, economic, and geopolitical harm.[17]

The collective dimension of such losses is further reinforced by the International Law Commission (ILC) in its Draft Articles on Responsibility of States for Internationally Wrongful Acts, which recognizes that internationally wrongful conduct attributable to a state generates responsibility on the part of the state as a whole, rather than solely upon the officials or organs responsible for the conduct. The same logic applies in reverse: losses incurred by the state due to poorly negotiated contracts constitute losses suffered by the nation collectively, rather than merely bureaucratic failures.[18]

The collective nature of such losses also has important implications for the democratic legitimacy of contract negotiation processes. If contracts binding the entire nation are negotiated without transparency and without adequate mechanisms of public accountability, such processes undermine the principles of democratic governance. This explains why several states have introduced requirements for parliamentary approval or independent review of strategic transnational contracts.[19]

4. *Critical Clauses in State-TNC Contracts and Their Implications for Jurisdiction and Maritime Space Utilization*

a. *Dispute Settlement Clauses and the Investor-State Dispute Settlement (ISDS) Mechanism*

Dispute settlement clauses constitute one of the most critical contractual provisions and frequently become a major source of state losses. When contracts designate international arbitration as the forum for dispute resolution, such as under the rules of ICSID, UNCITRAL, or the ICC, states implicitly consent to relinquishing part of their jurisdiction to foreign adjudicatory forums. From the perspective of jurisdictional law, this represents a form of submission by a sovereign state to legal systems that do not necessarily reflect national interests.[20]

The Investor-State Dispute Settlement (ISDS) mechanism enables TNCs to bring claims directly against states before international arbitral tribunals, thereby bypassing domestic judicial

[16] Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Evaluation Report on the Indonesian Bilateral Investment Agreement 2014-2022 (Jakarta: Coordinating Ministry for Economic Affairs, 2022), pp. 8-12.
[17] Yannick Radi, "The Application of the Most-Favoured-Nation Clause to the Dispute Settlement Provisions of Bilateral Investment Treaties," European Journal of International Law 18, No. 4 (2007): 757–774.
[18] Kate Miles, The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital (Cambridge: Cambridge University Press, 2013), hlm. 5–30.
[19] Stephan W. Schill, The Multilateralization of International Investment Law (Cambridge: Cambridge University Press, 2009), hlm. 38–55.
[20] United Nations General Assembly Resolution 1803 (XVII), Permanent Sovereignty over Natural Resources, 14 Desember 1962

systems. Data from the United Nations Conference on Trade and Development (UNCTAD) indicate that by the end of 2022, more than 1,200 ISDS cases had been registered globally, with investors receiving substantial arbitral awards in many cases. Of particular concern is the trend showing that developing countries account for a disproportionately higher share of respondents compared to developed states.[21]

The case of Churchill Mining Plc. v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40) serves as one of the most illustrative examples in the Southeast Asian context. The claims brought by foreign investors against Indonesia demonstrate how ISDS clauses embedded in bilateral investment treaties may be utilized to seek compensation for policy changes that are lawful under domestic law. The prolonged and costly arbitration proceedings, financed through the national budget, represent a tangible manifestation of how disputes originating from investment contracts may ultimately become a collective burden borne by the entire nation.[22]

b. Stabilization Clauses

Stabilization clauses effectively "freeze" the legal framework applicable at the time a contract is signed in order to safeguard investors' interests. In the context of maritime spatial utilization, such clauses may prevent states from implementing updated marine environmental regulations, revising maritime zoning boundaries, or enforcing new safety standards within concession areas. Cotula distinguishes between full freeze stabilization clauses, which prohibit any legal changes affecting investors, and economic equilibrium clauses, which require compensation for legal changes negatively affecting investment profitability.[23]

Both forms present challenges from the perspectives of state sovereignty and sustainable maritime governance. Within the Exclusive Economic Zone (EEZ), where coastal states bear obligations of conservation and management under Articles 61 and 62 of UNCLOS, stabilization clauses restricting state regulatory authority create a direct conflict between international legal obligations and contractual commitments. States thus find themselves in a constrained position: on one hand, they are obligated to comply with UNCLOS provisions; on the other hand, they face the risk of compensation claims from investors for fulfilling those obligations.[24]

c. Choice of Law Clauses

Choice of law clauses referring to foreign legal systems or to "principles of international law" without explicit reference to the domestic law of the host state may fundamentally weaken the legal position of the state. In disputes concerning the exploitation of marine resources, the exclusion of domestic law may amount to the disregard of legal frameworks specifically established to protect national public interests, including provisions relating to marine resource-sharing mechanisms and environmental preservation obligations.[25]

Gazzini argues that the application of "principles of international law" as governing law in investment contracts frequently results in the marginalization of the domestic legal systems of

[21] Nico Schrijver, "Permanent Sovereignty over Natural Resources versus the Common Heritage of Mankind: Complementary or Contradictory Principles?" dalam International Economic Law with a Human Face, ed. F. Weiss et al. (The Hague: Kluwer, 1998), hlm. 19.
[22] Anthea Roberts, Triangular Treaties The Extent and Limits of Investment Treaty Rights, Harvard International Law Journal 56, No. 2 (2015) 353-418
[23] Nartnirun Junngan, ""The Host State's Right to Regulate and Investor Protection in International Investment Law," Journal of World Investment & Trade 18, No. 4 (2017)- 614 673.
[24] UNCTAD, World Investment Report 2023: Investing in Sustainable Energy for All (Geneva: United Nations, 2023), hlm. 65–80.
[25] law.ui.ac.id, "Hikmahanto Juwana (Media Indonesia): End the Agreement to Attract Foreign Investors!", April 20, 2026. Available online: https://law.ui.ac.id/akhiri-perjanjian-untuk-menarik-investor-asing/

developing countries. Arbitration proceedings applying international legal standards without due consideration of local legal contexts tend to generate outcomes prioritizing investor protection over the public interests of host states. This issue becomes particularly problematic in maritime contexts, where domestic legal systems often contain more progressive provisions regarding ecosystem protection and benefit-sharing than the minimum standards embodied in international investment law.[26]

d. Most-Favoured-Nation (MFN) and Fair and Equitable Treatment (FET) Clauses

MFN and FET clauses represent investment protection standards that are frequently interpreted expansively by international arbitral tribunals. Radi argues that MFN clauses in the context of dispute settlement may even allow investors to “import” more favorable procedural rights from other investment agreements that do not directly apply to them, a phenomenon he describes as a “Trojan Horse” within international investment law.[27]

The expansive interpretation of FET clauses by international arbitral tribunals has consistently constrained states’ regulatory authority, even in policy measures that are fully legitimate from the perspective of public law. In the context of maritime spatial utilization, this implies that states may be accused of violating FET obligations merely for enforcing newly enacted marine environmental regulations, despite such regulations being grounded in obligations arising from UNCLOS and other international environmental agreements.[28]

Table 1: Comparative Analysis of Critical Clauses in TNC Contracts and Their Implications for State Sovereignty

Type of Clause	Substance of the Clause	Risk to the State	Implications for Maritime Space
Stabilization Clause	Freezes the legal framework applicable at the time the contract is signed	The state loses its regulatory authority within concession areas	Inability to update conservation regulations in the EEZ
ISDS Clause	Allows investors to sue the state before international arbitral tribunals	The state bears arbitration costs and compensation payments funded through the national budget	Disputes over offshore oil and gas contracts may involve claims amounting to billions of dollars
Choice of Law Clause	Foreign law or “international law” serves as the *lex contractus*	Domestic law and local environmental standards may be disregarded	Marine ecosystem protection provisions may be marginalized

[26] Wahyu Nugroho, "Negotiation of State Contracts with Foreign Investors: Perspective of Sovereignty and National Development," Journal of Development Law 48, No. 2 (2018): 260–280.
[27] Putu Sudarma Sumadi, "State Relations with Foreign Investors: A Review of International Law and National Law, Journal of International Law 12, No. 2 (2015): 199.
[28] Anthea Roberts, "Triangular Treaties: The Extent and Limits of Investment Treaty Rights," Harvard International Law Journal 56, No. 2 (2015): 353–418.

Type of Clause	Substance of the Clause	Risk to the State	Implications for Maritime Space
MFN Clause	Equal or more favorable treatment than that granted to other investors	Investors may claim more advantageous standards from other BITs	Unintended liberalization of access to maritime zones
FET Clause	Fair and equitable treatment of investors	Regulatory changes may be considered violations of FET	New marine environmental regulations may trigger compensation claims

Source: Compiled and processed by the author from various sources, 2026.

5. Jurisdictional Law and Maritime Space Utilization in Transnational Contracts

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) divides maritime space into various jurisdictional zones, each conferring distinct rights and obligations upon coastal states. Within the Exclusive Economic Zone (EEZ), extending up to 200 nautical miles, coastal states possess sovereign rights for the exploration, exploitation, conservation, and management of natural resources, both living and non-living, within the water column and seabed. On the continental shelf, which may extend up to 350 nautical miles, coastal states hold exclusive rights to explore and exploit the natural resources of the seabed and subsoil.[29]

When states contract these sovereign rights to transnational corporations (TNCs), a delegation of authority occurs that, from a juridical perspective, must be undertaken with exceptional caution. The principle of Permanent Sovereignty over Natural Resources (PSNR) affirms that rights over natural resources cannot be permanently alienated. United Nations General Assembly Resolution No. 1803 (XVII) of 1962 explicitly recognizes that the rights of peoples and nations to permanent sovereignty over their wealth and natural resources must be exercised in the interest of national development and the well-being of the population concerned. This principle constitutes the normative foundation that should guide every contract concerning the utilization of marine resources.[30]

In practice, however, a fundamental tension exists between the PSNR principle and international investor protection mechanisms. Schrijver argues that these two principles, namely PSNR and international investment protection, originate from fundamentally different philosophies: PSNR emphasizes the right of states to manage their natural resources in the national interest, whereas the international investment protection regime prioritizes legal certainty and the protection of investors' property rights. Reconciling these competing principles remains an unresolved normative challenge within international law.[31]

Within the territorial jurisdiction dimension, contracts involving permanent installations in maritime spaces, such as offshore drilling platforms, submarine cables, or large-scale aquaculture facilities, also generate complex legal questions concerning jurisdiction over personnel, the

[29] Damos Dumoli Agusman, International Treaty Law: A Study of Theory and Indonesian Practice, 3rd ed. (Bandung: Refika Aditama, 2020), p. 112.
[30] [30]M. Fitzmaurice & O. Elias, Contemporary Issues in the Law of Treaties (Utrecht: Eleven International Publishing, 2005), hlm. 38-102.
[31] Permanent Court of Arbitration, Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador, PCA Case No. 2009-23, Final Award, 31 August 2018.

applicable law governing workplace accidents, and liability for environmental damage. Contractual ambiguity regarding these matters may create legal loopholes that TNCs can exploit to avoid responsibility, while host states ultimately bear the financial burden of environmental remediation and restoration.[32]

Jurisdictional concerns also arise in the management of transboundary resources. Articles 63 and 64 of UNCLOS establish obligations of cooperation among states in the management of straddling fish stocks and highly migratory species. When concession agreements with TNCs fail to incorporate such obligations, or even create incentives for excessive exploitation inconsistent with UNCLOS conservation requirements, states not only undermine their own national interests but also risk breaching obligations owed to the international community.[33]

6. *Case Studies: The Experience of Developing Countries in Natural Resource Contracts with TNCs*

The case of Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (ICSID Case No. ARB/97/3) represents one of the most significant precedents in international investment law, illustrating how concession contracts between governments and foreign investors may evolve into disputes that drain state resources for more than a decade. Originating from a public water service contract in Argentina, the dispute ultimately resulted in Argentina being required to pay compensation, the burden of which was effectively borne by the Argentine people as a whole.[34]

The case of Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador (PCA Case No. 2009-23) provides another example highly relevant to the natural resource context. Although originating from environmental contamination on land, the underlying logic of the dispute, whereby a major oil corporation challenged a developing state through the ISDS mechanism to shield its interests from domestic court judgments, is highly applicable to maritime mining and energy contracts. This case demonstrates how ISDS clauses may even be used to obstruct the enforcement of valid domestic judicial decisions.[35]

In the Indonesian context, several investment arbitration disputes involving the mining and energy sectors, including activities in maritime areas, have provided valuable lessons regarding the importance of contract negotiation quality. The Churchill Mining Plc. case and related disputes demonstrate that weaknesses in contractual drafting, unclear definitions, and inconsistencies between contracts and national regulations have frequently become the basis of claims advanced by TNCs.[36]

Indonesia’s review of bilateral investment treaties (BITs), conducted by the Coordinating Ministry for Economic Affairs during the 2014–2022 period, demonstrates that the country has undertaken significant measures to reassess BITs deemed excessively favorable to investors. Indonesia’s process of terminating and renegotiating BITs provides a relevant example of state

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[32] ICSID, Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, Award, 20 August 2007.

[33] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (New York: United Nations, 2001), Pasal 4–8.

[34] Putu Sudarma Sumadi, "State Relations with Foreign Investors: A Review of International Law and National Law, Journal of International Law 12, No. 2 (2015): 199.

[35] Lorenzo Cotula, "Regulatory Takings, Stabilization Clauses and Sustainable Development," OECD Global Forum on International Investment VII (2008): 1–22.

[36] Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Evaluation Report of the Indonesian Bilateral Investment Agreement 2014–2022 (Jakarta: Coordinating Ministry for Economic Affairs, 2022), pp. 8–12.

efforts to strengthen its legal position in contractual relations with foreign investors. Nevertheless, such processes also require advanced legal expertise in order to avoid generating new legal risks during transitional phases.[37]

A similar pattern can be observed across Sub-Saharan African countries, where natural resource contracts with TNCs, often signed under pressure arising from investment needs and, in some instances, corruption, have produced long-term losses far exceeding the short-term benefits received. Uche Ewelukwa Ofodile documents how African states frequently lose not only revenues from their natural resources but also the capacity to independently govern those resources, a condition aptly described as a form of neo-colonialism through legal instruments.[38]

Based on the comprehensive analysis above, at least five legal and institutional strategies may be adopted by states to strengthen their position in dealings with TNCs:

First, the establishment of permanent, multidisciplinary, and highly competent contract negotiation teams. One of the most fundamental institutional weaknesses faced by developing countries in negotiations with TNCs is the absence of dedicated permanent legal teams specializing in transnational contracts. Such teams should include experts in international investment law, maritime law, economics, and diplomacy with substantial experience in international treaty negotiations. Weakness in even one area, for instance, a lack of understanding regarding the implications of ISDS clauses in maritime jurisdiction contexts, may prove detrimental to long-term national interests.

Second, the development of a national model contract reflecting standards for the protection of national interests. Such model contracts should explicitly safeguard the state's right to regulate, establish more balanced dispute settlement mechanisms, including mediation and the use of domestic courts as a first forum, and incorporate dynamic environmental standards consistent with UNCLOS obligations. Schill argues that the standardization of investment contracts at the national level constitutes one of the most effective ways to reduce information asymmetry and bargaining power disparities during negotiations.

Third, strengthening independent and transparent contract review mechanisms prior to contract execution. Any contract involving strategic natural resources, including marine resources, should undergo an independent review process involving international law experts, academic institutions, and relevant civil society representatives. Such review should not be regarded merely as an administrative formality but rather as a crucial mechanism for identifying clauses potentially detrimental to national interests before contracts become legally binding.

Fourth, reforming the ISDS mechanism or adopting more balanced alternative dispute settlement systems. Several countries, including Australia, South Africa, and Brazil, have taken bold measures to reject or limit ISDS clauses in their investment agreements. Alternatives worth considering include the establishment of a permanent multilateral investment court, mandatory mediation before arbitration, and restricting ISDS clauses solely to disputes directly related to state expropriatory actions.

Fifth, enhancing state institutional capacity in maritime law and international investment law in an integrated manner. Professor Hikmahanto Juwana emphasizes the importance of sustainable negotiation capacity-building, including expert exchange programs with international institutions, the development of accessible databases of investment arbitration precedents for

[37] International Las Association, "Report of the Comminee on Winding-up of Companies, Repon of the Sttry-Ninth Conference (Londor, 2000), hlm. 622-644.
[38] Jorge Daniel Taillant & Jonathan Bonnitcha, "International Investment Law and Human Rights, dalam Investment Treaty Law, ed Christins Binder et al, (Oxford: BIICL, 2005), hlm. 59-30

government negotiators, and the establishment of legal academic networks capable of providing rapid input during contract negotiation processes.

Table 2: Comparative Analysis of State Strategies in Addressing Contracts with TNCs

Country	Measures Adopted	Mechanisms Developed	Outcome
Australia	Rejected ISDS clauses in certain bilateral agreements	Mandatory mediation mechanism prior to arbitration	Reduced exposure to investment arbitration claims
Brazil	Did not ratify agreements containing ISDS provisions; developed its own BIT model	*Cooperation and Investment Facilitation Agreements* (CIFA)	A more balanced investment protection model
Indonesia	Termination and renegotiation of BITs during 2014–2019	Development of Indonesia's BIT model incorporating provisions safeguarding the *right to regulate*	Process remains ongoing; transitional risks persist
South Africa	Terminated several BITs with European countries	National Investment Protection Act emphasizing domestic court jurisdiction	Strengthened domestic jurisdiction in investment disputes

Source: Compiled and processed from UNCTAD, World Investment Report 2023, and other relevant sources.

CONCLUSION

Contracts between states and transnational corporations constitute a legal arena that extends far beyond ordinary commercial transactions. When a state enters into a contract, particularly one involving the utilization of natural resources in maritime spaces, it acts in the name of and for the benefit of the entire nation, exercising a dual capacity as both a public authority and a contracting party. Any losses arising from such contracts do not constitute personal losses borne by the officials who signed them; rather, they represent collective losses suffered by the entire population, producing intergenerational consequences that may be irreversible, especially when marine resources, regarded as a shared national heritage, are involved.

The phenomenon of colonization through contracts represents a reality that must be confronted with heightened legal awareness and adequate institutional preparedness. The asymmetry of power between developing states and multinational transnational corporations, reinforced by an international investment law regime that has historically favored investor protection, creates conditions in which weaknesses in contract negotiations may ultimately result in the long-term sacrifice of state sovereignty. Critical contractual clauses, such as stabilization clauses, ISDS mechanisms, choice of law clauses, Most-Favoured-Nation (MFN) provisions, and

Fair and Equitable Treatment (FET) standards, if not negotiated with caution, may effectively constrain a state's ability to exercise its regulatory functions in the governance and utilization of maritime spaces. When this occurs, not only are economic interests compromised, but also the integrity of state jurisdiction over maritime territories as guaranteed under the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

This study emphasizes that states must possess strong legal capacity at every stage of contractual engagement with transnational corporations, ranging from negotiation and drafting to independent review and dispute management. The involvement of competent international legal experts, robust national model contracts containing explicit sovereignty protection provisions, and transparent review mechanisms are not merely technical options but strategic necessities directly linked to safeguarding national sovereignty and public welfare. Reforming transnational contract policies in ways that prioritize national interests, including the reconsideration of imbalanced ISDS mechanisms, therefore constitutes an urgent legal agenda.

SUGGESTIONS

Based on the findings of this study, several strategic recommendations are proposed:

First, the government should establish a Transnational Contract Review Agency tasked with conducting independent reviews of all contracts involving transnational corporations (TNCs) in strategic sectors, including the maritime sector, prior to their execution. This body should possess a clear legal mandate and the authority to recommend amendments to contractual clauses or reject agreements deemed potentially detrimental to national interests.

Second, a specialized curriculum should be developed within graduate-level legal education and diplomatic training programs, encompassing international investment law, maritime law, international treaty negotiation, and ISDS dispute management. The shortage of qualified human resources in these fields constitutes one of the most fundamental structural weaknesses and must be addressed through long-term investment in legal education.

Third, Indonesia and other developing countries should strengthen coordination in advocating for the reform of the ISDS mechanism at the multilateral level, including within forums such as UNCITRAL and UNCTAD. The establishment of a collective position among developing countries in negotiations concerning the international investment regime would significantly enhance bargaining power compared to isolated national efforts.

Fourth, every contract involving maritime zones should explicitly incorporate the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the principle of Permanent Sovereignty over Natural Resources (PSNR), current international environmental standards, and clauses expressly preserving the state's right to regulate in the public interest without incurring obligations to compensate investors.

Fifth, there is a pressing need for national legislation specifically regulating minimum contractual standards in agreements between states and TNCs, including mandatory parliamentary review for contracts involving strategic national assets exceeding a specified threshold value. Such legislation should provide legal certainty in negotiation processes while simultaneously safeguarding the long-term interests of the nation.

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