

# Penerapan kewenangan penyaringan perkara oleh majelis arbitrase berdasarkan pasal 41 ayat (5) peraturan arbitrase ICSID = The application of tribunal's authority to dismiss a case pursuant to rule 41 (5) of ICSID arbitration rules

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## Abstrak

Pasal 41 ayat 5 Peraturan Arbitrase ICSID memberikan kewenangan kepada Majelis Arbitrase untuk menyaring perkara yang memenuhi unsur "manifestly without legal merit." Penulis melakukan kajian terhadap tiga dari dua puluh lima putusan yang telah dijatuhkan oleh Majelis Arbitrase ICSID terhadap keberatan yang diajukan berdasarkan Pasal 41 ayat 5 Peraturan Arbitrase ICSID. Penulis menggunakan metode penelitian yuridis-normatif dalam penulisannya. Penelitian ini Penulis lakukan untuk menjelaskan secara jelas dan lengkap aspek Hukum Perdata Internasional dan hasil interpretasi Majelis Arbitrase ICSID terhadap Pasal 41 ayat 5 Peraturan Arbitrase ICSID, khususnya terhadap unsur "manifestly without legal merit," pada perkara Global Trading Resource Corporation and Globex International, Inc. v. Ukraine Perkara ICSID Nomor ARB/09/11 , Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg and RSM Production Corporation v. Grenada Perkara ICSID Nomor ARB/10/6 , dan Accession Mezzanine Capital L.P. and Danubius Keresked h z Vagyonkezel Zrt. v. Hungary Perkara ICSID Nomor ARB/12/3.

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Rule 41 (5) of ICSID Arbitration Rules gives Tribunal the authority to dismiss a case which is manifestly without legal merit. This thesis contains the analysis on three out of twenty five award or decisions rendered by Tribunal on the objection which invoked Rule 41 (5) of ICSID Arbitration Rules. The research for this thesis is conducted in a normative legal research method. It is the intention of this thesis to describe the aspects of Private International Law and the outcome of Tribunal's interpretation on Rule 41 (5) of ICSID Arbitration Rule, specifically regarding the element of "manifestly without legal merit," in the cases of Global Trading Resource Corporation and Globex International, Inc. v. Ukraine ICSID Case No. ARB/09/11, Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg and RSM Production Corporation v. Grenada (ICSID Case No. ARB/10/6), dan Accession Mezzanine Capital L.P. and Danubius Kereskedohaz Vagyonkezel Zrt. v. Hungary (ICSID Case No. Nomor ARB/12/3).