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   6. PLN's Claims of Illegality

Content:
Himpurna California Energy Ltd. v PT. (Persero) Perusahaan Listruik Negara, UNCITRAL Ad Hoc-Award of 4 May 1999

Final award of 4 May 1999

Author: Albert Jan van den Berg

Jurisdiction: Austria


Arbitrators: Jan Paulsson (President); Antonino Albert de Fina Setiawan SH

Case date: 4 May 1999

Parties:
Claimant: Himpurna California Energy Ltd. (Bermuda)
Defendant: PT. (Persero) Perusahaan Listruik Negara (Indonesia)

Topics: Investment Arbitration

Key Words:
applicable law of contract
decision ex aequo et bono
good faith settlement negotiations
scope of arbitration
jurisdiction to decide on termination
relationship of party to state
force majeure
fundamental breach of contract
termination of contract
wasted costs (damnum emergens)
lost profit (lucrum cessans)
abuse of rights
costs and legal fees


Source: Himpurna California Energy Ltd. v PT. (Persero) Perusahaan Listruik Negara, Final Award of 4 May 1999 in
Albert Jan van den Berg (ed), Yearbook Commercial Arbitration 2000 - Volume XXV, Volume XXV (Kluwer Law
International 2000) pp. 11 - 432

[...]
118. The tribunal commented, “[t]he members of the Arbitral Tribunal do not live in an ivory tower. Nor do they view the arbitral process as one which operates in a vacuum, divorced from reality. The arbitrators are well aware of the allegations that commitments by public-sector entities have been made with respect to major projects in Indonesia without adequate heed to their economic contribution to public welfare, simply because they benefited a few influential people. The arbitrators believe that cronyism and other forms of abuse of public trust do indeed exist in many countries, causing great harm to untold millions of ordinary people in a myriad of insidious ways. They would rigorously oppose any attempt to use the arbitral process to give effect to contracts contaminated by corruption. But such grave accusations must be proven. There is in fact no evidence of corruption in this case.”

Referring Principles:

IV.7.2 - Invalidity of contract due to bribery