

Penerapan state of necessity dalam bilateral investment treaty = Implementation of state of necessity in bilateral investment treaty

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Abstrak

ABSTRAK

Skripsi ini membahas ketentuan State of Necessity dalam Bilateral Investment Treaty ("BIT") sebagai dasar bagi para pihak dalam BIT untuk mengesampingkan pelaksanaan tanggung jawab negara atas tindakan pelanggaran kewajiban internasional dalam BIT. Analisis dilakukan dengan menggunakan studi kasus atas sengketa LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc ("LG&E") melawan Republik Argentina melalui pendekatan metode yuridis normatif. Permasalahan utama dari penerapan State of Necessity dalam kasus tersebut antara lain sifat self judging klausul State of Necessity dalam BIT serta akibat penerapan State of Necessity terhadap keberlakuan BIT dan kewajiban pemberian ganti rugi. Hasil pembahasan skripsi ini menyarankan perlunya pengaturan State of Necessity dalam BIT yang disepakati oleh setiap negara termasuk dalam BIT yang disepakati oleh Indonesia untuk menyeimbangkan kewajiban perlindungan investasi dan kepentingan esensial negara.

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ABSTRACT

This thesis explores the provision of State of Necessity in Bilateral Investment Treaty ("BIT") as a basis for the Parties to preclude the implementation of state responsibility against its wrongful act violating international obligations of BIT. The analysis will be conducted with regard to the case of LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc ("LG&E") against Argentine Republic by using normative legal method. The main problems of the implementation of state of necessity in the case are the self judging characteristic of State of Necessity provision in BIT and the consequences of its implementation on the enforceability of BIT and the obligation of reparation. The result of this thesis suggest the importance of the regulation of State of Necessity in the BIT including the BIT agreed by Indonesia in order to balance investment protection and the safeguarding of essential interests of the State.