

Dampak stabilization clause di dalam kontrak-kontrak investasi asing terhadap hak asasi manusia = The impact of stabilization clauses in foreign investment contracts to human rights.

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Abstrak

[ABSTRAK

Skripsi ini dilatarbelakangi oleh permasalahan karena adanya stabilization clause di dalam kontrak-kontrak investasi asing yang dapat berpengaruh negatif terhadap perkembangan Hak Asasi Manusia. Hal ini terjadi karena stabilization clause membatasi kemampuan negara untuk memberlakukan hukum baru terhadap investasi sebagai suatu bentuk pemberian kepastian hukum kepada investor asing. Permasalahan menjadi kian kompleks karena stabilization clause juga membatasi ruang negara untuk memberlakukan hukum baru mengenai Hak Asasi Manusia. Akibatnya, terjadi konflik antara kewajiban negara menuruti kontrak investasi dan kewajiban internasional negara atas Hak Asasi Manusia. Pembahasan permasalahan ini menggunakan penelitian hukum normatif dengan analisis yuridis-normatif. Hasil dari penelitian ini adalah menjelaskan adanya stabilization clause dalam kontrak investasi untuk melindungi investor asing dari tindakantindakan sepihak negara yang dapat merugikan investasi asing. Selain itu, terdapat dampak negatif yang dapat ditimbulkan oleh stabilization clause dalam kontrak investasi terhadap Hak Asasi Manusia. Kasus BTC Pipeline dan Kasus Mittal Steel menunjukkan bahwa stabilization clause yang menghambat hak legislatif negara mengenai HAM akan berdampak negatif terhadap perkembangan HAM serta berpotensi memunculkan pelanggaran-pelanggaran HAM di negara tersebut.

ABSTRACT

This thesis is motivated by the problematic usage of stabilization clauses in foreign investment contracts which may have possible negative impacts to the development of Human Rights. This occurs as stabilization clauses aim to limit a state's capability to enact new laws and regulation to the investment. Stabilization clauses are tools for a state to create legal certainty to the investment. The situation became more complex when a stabilization clause also limits the state's rights to enact new laws and regulations regarding Human Rights. As a consequence, a conflict arises between a state's contractual duty and its international human rights obligation. This thesis uses normative legal research and juridical-normative analysis to address the issue. The outcome of this study is to point out that the existance of stabilization clauses were to protect foreign investors from a state's unilateral action which may harm the investment.

Additionally, there is a possible negative impact which stabilization clauses may cause to Human Rights. Both the BTC Pipeline case and Mitall Steel case indicate that stabilization clauses which limit the state's legislative rights regarding Human Rights will cause negative impacts to the state's Human Rights development and would potentially result in Human Rights violations.;This thesis is motivated by the problematique usage of stabilization clauses in

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