

Aspek hukum perdata internasional terhadap penerapan batasan commercial activity dalam sengketa imunitas BUMN Indonesia di pengadilan asing = Private international law aspects on the application of commercial activity exception for Indonesian state owned enterprises immunity dispute in foreign court

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Abstrak

Menurut teori imunitas mutlak, tindakan suatu negara berdaulat tidak dapat diuji oleh pengadilan asing, sehingga dalam melakukan kegiatan seperti perdagangan, negara biasanya berlindung di balik tameng kedaulatan. Meningkatnya peran negara dalam perdagangan internasional menyebabkan teori imunitas mutlak tidak dipertahankan lagi. Amerika Serikat dan Australia menerapkan teori imunitas negara terbatas. Hal ini terlihat dalam perkara Anglo-Iberia melawan Jamsostek di Amerika Serikat dan Garuda Indonesia melawan Australia Competition and Consumer Commission di Australia. Dalam perkara pertama, Jamsostek dikategorikan sebagai perwakilan negara yang tindakannya tidak bersifat komersial sehingga berhak atas imunitas. Sedangkan dalam perkara kedua, Garuda Indonesia dikategorikan sebagai perwakilan negara yang tindakannya bersifat komersial sehingga tidak berhak mendapatkan imunitas.

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According to absolute sovereign immunity doctrine, sovereign acts cannot be adjudicated by foreign courts. Therefore, states can use their sovereignty to avoid lawsuits from trade disputes. However, the increasing participation of states in international trade led to restriction of sovereign immunity. USA and Australia apply restrictive sovereign immunity doctrine. This is concluded from Anglo-Iberia against Jamsostek case in USA and Garuda Indonesia against Australia Competition and Consumer Commission case in Australia. In the former, Jamsostek was categorized as a state representative whose actions were not of commercial nature and was entitled to immunity. Whereas, in the latter, Garuda Indonesia was categorized as a state representative whose action has commercial nature and thus was not entitled to immunity.