

Penerapan prinsip necessity dalam sengketa investasi internasional studi kasus krisis argentina = Application of necessity principle in international investment disputes case study argentine crisis

Rizky Banyualam Permana, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20422416&lokasi=lokal>

Abstrak

Menurut prinsip necessity, negara dapat dibenarkan melanggar hukum internasional jika ada ancaman terhadap kepentingan esensial negara. Untuk melindungi perekonomian dalam krisis, Argentina mengeluarkan kebijakan yang melanggar perlindungan investor dalam BIT. Argentina digugat ke ICSID dan terjadi variasi putusan, ada putusan yang membenarkan necessity dan ada pula putusan yang menolak. Tulisan ini meninjau penerapan prinsip necessity dikaitkan dengan sengketa investasi yang terjadi. Penulis menelusuri perkembangan necessity dan penerapannya dalam sengketa, lalu meninjau pertimbangan Majelis Arbitrase ICSID. Necessity menurut Pasal 25 Draft Articles sulit diterapkan dalam sengketa investasi karena perumusan yang limitatif. Necessity lebih mudah diterapkan dalam BIT yang bersifat *lex specialis*, yaitu Pasal XI BIT AS - Argentina.

*According to necessity principle, state can be excused for breach of international law if there are threats to the essential interest of the State. To protect its economy during crisis, Argentine enacted policies that violate investor protection in BIT. Argentine was sued to ICSID, and awards are varied. Some Tribunals accept Argentine's necessity defense, and some others don't. This thesis revisits the application of necessity principle in the context of investment disputes. Author will trace the development of necessity and its application in various disputes, then analyze related ICSID Tribunal awards. Necessity according Article 25 Draft Articles is considered inapplicable in the context of investment dispute because of its strict formulation. Invocation of necessity is considered less difficult if stipulated in BIT as *lex specialis*, in this particular case is Article XI of US - Argentina BIT.*