

Yurisdiksi Mahkamah Internasional sebagai Pengadilan Tingkat Banding atas Penyelesaian Sengketa di Organisasi Internasional: Studi ICAO = The Jurisdiction of the International Court of Justice as a Court of Appeal over the Settlement of Disputes in International Organizations: A Study of ICAO

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Abstrak

Pada prinsipnya, ICJ hanya memiliki yurisdiksi asli, di mana ICJ bertindak sebagai pengadilan tingkat pertama dan terakhir. Namun, beberapa perjanjian internasional ICAO memberikan yurisdiksi banding kepada ICJ, di mana ICJ bertindak sebagai pengadilan tingkat banding dari Dewan ICAO. Adapun ICJ telah menjatuhkan tiga putusan sebagai pengadilan tingkat banding dari Dewan ICAO. Walaupun demikian, instrumen hukum ICJ dan ICAO serta praktik ICJ dalam putusan-putusannya tidak memberikan landasan yang komprehensif mengenai yurisdiksi banding ICJ. Oleh karena itu, penelitian ini menganalisis (1) dasar hukum dan ruang lingkup yurisdiksi ICJ sebagai pengadilan tingkat banding dari Dewan ICAO berdasarkan instrumen hukum ICJ dan ICAO; (2) praktik penerapan yurisdiksi ICJ sebagai pengadilan tingkat banding dari Dewan ICAO dalam Kasus ICAO 1972; dan (3) konsistensi praktik penerapan yurisdiksi ICJ sebagai pengadilan tingkat banding dari Dewan ICAO dalam Kasus ICAO 2020. Melalui penelitian dengan metode yuridis normatif dan pendekatan kualitatif, dapat disimpulkan sebagai berikut. Pertama, Pasal 84 Konvensi Chicago, Pasal II(2) IASTA, serta Pasal 36(1) dan 37 Statuta ICJ menjadi dasar hukum yurisdiksi ICJ sebagai pengadilan tingkat banding dari Dewan ICAO; tetapi instrumen hukum ICJ dan ICAO tidak mengatur secara spesifik mengenai ruang lingkup yurisdiksi tersebut. Kedua, praktik ICJ dalam Kasus ICAO 1972 memperjelas ruang lingkup yurisdiksi bandingnya—terutama mengenai jenis putusan yang dapat diajukan banding, yakni meliputi bukan hanya putusan Dewan ICAO atas merits, tetapi juga atas yurisdiksi; serta ruang lingkup peninjauan yang diterapkan pada persidangan banding, yakni standar peninjauan *de novo*. Ketiga, praktik ICJ dalam Kasus ICAO 2020 konsisten dengan praktiknya dalam Kasus ICAO 1972; dan semakin memperjelas ruang lingkup yurisdiksi banding ICJ—terutama memperjelas bahwa standar peninjauan *de novo* diterapkan bukan hanya terhadap pertanyaan hukum, tetapi juga terhadap pertanyaan fakta.

.....In principle, the ICJ only has an original jurisdiction, wherein it acts as a court of first and last instance. However, several ICAO treaties provide the ICJ with an appellate jurisdiction, wherein it acts as a court of appeal from the ICAO Council. The ICJ has rendered three judgments as a court of appeal from the ICAO Council. Nevertheless, the legal instruments of the ICJ and ICAO as well as the ICJ's practice in its judgments do not provide a comprehensive basis regarding the ICJ's appellate jurisdiction. Therefore, this study analyzes (1) the legal basis and scope of the ICJ's jurisdiction as a court of appeal from the ICAO Council based on the legal instruments of the ICJ and ICAO; (2) the practice in applying the ICJ's jurisdiction as a court of appeal from the ICAO Council in the 1972 ICAO Case; and (3) the consistency of the practice in applying the ICJ's jurisdiction as a court of appeal from the ICAO Council in the 2020 ICAO Case. Through research using normative juridical method and qualitative approach, the following conclusions can be drawn. First, Article 84 of the Chicago Convention, Article II(2) of the IASTA, as well

as Articles 36(1) and 37 of the ICJ Statute constitute the legal basis of the ICJ's jurisdiction as a court of appeal from the ICAO Council; but the legal instruments of the ICJ and ICAO do not specifically regulate the scope of that jurisdiction. Second, the ICJ's practice in the 1972 ICAO Case clarifies the scope of its appellate jurisdiction—particularly regarding the types of decisions that are subject to appeal, which include not only the ICAO Council's decisions on the merits, but also on jurisdiction; and the scope of review that applies in appellate proceedings, namely a *de novo* standard of review. Third, the ICJ's practice in the 2020 ICAO Case is consistent with its practice in the 1972 ICAO Case; and further clarifies the scope of the ICJ's appellate jurisdiction—particularly by clarifying that a *de novo* standard of review is applied not only to questions of law, but also to questions of fact.