

Perlindungan Lingkungan sebagai Dasar Pencabutan Izin Usaha Investor dalam Hukum Investasi Internasional = Revocation of Investor Concession in Respect to Environmental Protection under International Investment Law

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Abstrak

Penelitian ini menganalisis bagaimana perlindungan lingkungan dapat menjadi dasar alasan pencabutan atau penolakan izin usaha investor asing dalam hukum investasi internasional, baik melalui klausul perjanjian investasi internasional maupun pertimbangan majelis arbitrase International Centre for Settlement of Investment Disputes (ICSID). Pada dasarnya, tindakan host state untuk alasan perlindungan lingkungan yang berdampak terhadap investor asing dapat dibenarkan dengan prinsip right to regulate dan doktrin police powers. Akan tetapi, sejauh mana tindakan perlindungan lingkungan host state dapat dibenarkan masih tidak konsisten. Penelitian ini disusun dengan menggunakan metode penelitian doktrinal dengan mengkaji upaya perlindungan lingkungan di dalam hukum investasi internasional, khususnya perjanjian investasi internasional. Kemudian, penelitian ini berfokus pada pembahasan lima kasus sengketa investasi internasional terbaru yang berkaitan dengan pencabutan atau penolakan izin usaha investor di sektor pertambangan atas dasar perlindungan lingkungan, yaitu kasus *Infinito v. Costa Rica*, *Eco Oro v. Colombia*, *Rockhopper v. Italy*, *Lone Pine v. Canada*, dan *Gabriel v. Romania*. Berdasarkan analisis pertimbangan majelis arbitrase dan perbandingan kelima kasus tersebut, tindakan perlindungan lingkungan host state dapat dibenarkan dengan analisis yang sangat ketat berdasarkan berbagai fakta dan faktor kasus per kasus. Penafsiran dan ambang batas yang diterapkan majelis arbitrase juga berperan dalam menentukan kewajiban kompensasi yang harus diberikan host state atas pelanggaran substantive protections.

.....This study analyses how the environmental protection can be the basis for revoking or rejecting an foreign investor's concession under international investment law, both through international investment agreement clauses and reasoning of the International Centre for Settlement of Investment Disputes (ICSID) Tribunals. In principle, host state measures for environmental protection objectives can be justified by the principle of the right to regulate and police powers doctrine. Nevertheless, the extent to which host state environmental protection measures can be justified remains inconsistent. This study was compiled through doctrinal research method by firstly examining environmental protection efforts under international investment law, particularly international investment agreements. Further, this study focuses on five recently concluded investor-State dispute settlement cases that concern revocation or rejection of investors' concession in the mining sector for environmental protection, namely *Infinito v. Costa Rica*, *Eco Oro v. Colombia*, *Rockhopper v. Italy*, *Lone Pine v. Canada* and *Gabriel v. Romania*. Based on the analysis of the Tribunals' reasons and comparison of those cases, host states' environmental protection measures can be justified with a very strict analysis based on various facts and factors within case-by-case basis. The interpretation and threshold applied by the Tribunals also play a significant role in determining whether the host state is obligated to pay compensation for violating substantive protections.