

## **Environmental Protection in Investor-State Dispute Settlement: Analyzing ICSID Tribunal Rulings in Rockhopper v Italy and Perenco v Ecuador**

Salma Mawa Kamila<sup>1</sup> and Linda Yanti Sulistiawati, S.H., M.Sc., Ph.D.<sup>2</sup>

### **ABSTRACT**

Against the backdrop of the increasing number of environmental protection issues in the investor-State dispute settlement (ISDS) cases before the ICSID Tribunal, this Legal Research aims to analyze (1) the applicability of environmental protection principles in the ICSID proceeding according to the ICSID Convention; and (2) how these principles are articulated and discussed in environmental ISDS cases before the ICSID Tribunal through case study of Rockhopper v. Italy and Perenco v. Ecuador.

This Legal Research is conducted through normative comparative approach, which combines treaty interpretation and case study. Accordingly, the data used in this study is secondary data, which include various legal resources such as treaties, case laws, and scholarly writings. In this regard, the data collected was analysed in a descriptive manner under a qualitative method.

This Legal Research found that (1) although the ICSID Tribunal is bound by the ICSID Convention, the ICSID Convention does not inherently mandate environmental protection principles as it is a treaty having procedural nature, whereas environmental protection principles are of substantive nature. However, environmental protection still can be incorporated into the dispute resolution process through procedural mechanisms, such as constitution of arbitrator, applicable law, and counterclaim. In addition, (2) the discussion of environmental protection principles in Rockhopper is minimal and limited where the Tribunal only identified one principle, particularly due to unsupportive applicable law. Differently, the discussion of environmental protection principles in Perenco is rather expansive where the Tribunal identified five principles, owing to supportive applicable law and counterclaims.

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**Keywords:** Environmental Protection, ICSID, Environmental Protection Principles, Rockhopper, Perenco

## **Perlindungan Lingkungan dalam Penyelesaian Sengketa Negara-Investor: Analisis Putusan ICSID dalam Kasus Rockhopper v Italia dan Perenco v Ekuador**

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### *INTISARI*

Dengan latar belakang semakin banyaknya isu perlindungan lingkungan hidup dalam penyelesaian sengketa investor-negara (ISDS) di Tribunal ICSID, Penelitian Hukum ini bertujuan untuk menganalisis (1) penerapan prinsip-prinsip perlindungan lingkungan hidup dalam proses peradilan ICSID menurut Konvensi ICSID; dan (2) bagaimana prinsip-prinsip tersebut diartikulasikan dan dibahas dalam kasus-kasus ISDS lingkungan hidup di Tribunal ICSID melalui studi kasus Rockhopper v. Italia dan Perenco v. Ekuador.

Penelitian Hukum ini dilakukan melalui pendekatan normatif, yang memadukan penafsiran perjanjian dan studi kasus. Dengan demikian, data yang digunakan dalam penelitian ini adalah data sekunder, yang meliputi berbagai sumber hukum seperti perjanjian, yurisprudensi, dan karya tulis ilmiah. Terkait hal tersebut, data yang terkumpul dianalisis secara deskriptif dengan metode kualitatif.

Penelitian Hukum ini menemukan bahwa (1) walaupun Tribunal ICSID terikat pada Konvensi ICSID, Konvensi ICSID pada hakikatnya mengamanatkan prinsip-prinsip perlindungan lingkungan karena merupakan perjanjian yang bersifat prosedural, sedangkan prinsip-prinsip perlindungan lingkungan bersifat substantif. Namun, perlindungan lingkungan masih dapat dimasukkan ke dalam proses penyelesaian sengketa melalui mekanisme prosedural, seperti pembentukan arbiter, hukum yang berlaku, dan gugatan balik. Selain itu, (2) pembahasan prinsip perlindungan lingkungan hidup dalam Rockhopper sangat minim dan terbatas di mana Pengadilan hanya mengidentifikasi satu prinsip, terutama karena hukum yang berlaku tidak mendukung. Sebaliknya, pembahasan prinsip perlindungan lingkungan hidup dalam Perenco cenderung lebih luas di mana Pengadilan mengidentifikasi lima prinsip, dikarenakan hukum yang berlaku mendukung dan adanya gugatan balik yang dilancarkan Ekuador kepada investor.

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Perlindungan Lingkungan, ICSID, Prinsip Perlindungan Lingkungan,  
Perenco,



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