

## Peranan Bilateral Investment Treaty dalam Pelindungan Hukum dan Dampak Pengakhirannya terhadap Investor Asing di Indonesia: Studi Kasus Churchill Mining v. Indonesia

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### INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis peranan Bilateral Investment Treaty (BIT) dalam memberikan pelindungan hukum bagi investor asing, serta mengkaji dampak hukum dari pengakhiran BIT terhadap iklim investasi di Indonesia dengan mengambil studi kasus *Churchill Mining melawan Indonesia*. Permasalahan ini menjadi relevan mengingat pergeseran kebijakan Indonesia yang sejak tahun 2015 secara bertahap mengakhiri berbagai BIT, termasuk dengan Inggris, yang sebelumnya menjadi dasar pelindungan hukum bagi investor asing di forum arbitrase internasional.

Metode penelitian yang digunakan adalah normatif-yuridis dengan sifat deskriptif-analitis. Data penelitian diperoleh melalui studi kepustakaan dengan mengkaji bahan hukum primer berupa peraturan perundang-undangan nasional, perjanjian internasional, putusan arbitrase ICSID, dan bahan hukum sekunder serta tersier yang relevan. Data yang terkumpul dianalisis secara kualitatif untuk memahami implikasi pembatalan BIT, khususnya terkait prinsip Fair and Equitable Treatment (FET), pelindungan terhadap ekspropriasi, dan mekanisme penyelesaian sengketa internasional.

Hasil penelitian menunjukkan bahwa keberadaan BIT berperan penting dalam memberikan kepastian hukum dan jaminan pelindungan bagi investor asing, termasuk akses terhadap forum arbitrase internasional. Namun, pengakhiran BIT oleh Indonesia membawa konsekuensi terhadap berkurangnya kepastian hukum yang dapat memengaruhi kepercayaan investor. Kasus *Churchill Mining melawan Indonesia* mencerminkan ketegangan antara kedaulatan negara dalam mengatur sumber daya alam dengan kewajiban melindungi hak investor asing. Oleh karena itu, diperlukan keseimbangan antara kepentingan nasional dan komitmen hukum internasional agar Indonesia tetap mampu menjaga stabilitas iklim investasi sekaligus menegakkan kedaulatannya.

**Kata Kunci: Bilateral Investment Treaty, Investor, Fair and Equitable Treatment, Ekspropriasi, ICSID, Churchill Mining.**

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*The Role of Bilateral Investment Treaty in Legal Protection and the Impact of Its Termination on Foreign Investors in Indonesia: A Case Study of Churchill Mining v. Indonesia*

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**ABSTRACT**

*This research aims to examine the role of Bilateral Investment Treaties (BITs) in providing legal protection for foreign investors and to analyse the legal consequences of BIT termination on the investment climate in Indonesia, with a particular focus on the case of Churchill Mining v. Indonesia. This issue is highly relevant considering Indonesia's policy shift since 2015 to gradually terminate several BITs, including with the United Kingdom, which previously served as the legal foundation for investor protection in international arbitration forums.*

*The research applies a normative juridical method with a descriptive-analytical approach. Data were collected through a literature study, involving primary legal materials such as national legislation, international treaties, and ICSID arbitral awards, as well as relevant secondary and tertiary sources. The data were qualitatively analysed to assess the implications of BIT termination, especially concerning the principles of Fair and Equitable Treatment (FET), protection against expropriation, and mechanisms for international dispute settlement.*

*The findings indicate that BITs play a vital role in ensuring legal certainty and protection for foreign investors, including granting access to international arbitration forums. However, Indonesia's decision to terminate BITs has reduced legal certainty, potentially undermining investor confidence. The Churchill Mining case illustrates the tension between a state's sovereign right to regulate its natural resources and its obligation to protect foreign investors. Therefore, a balance must be maintained between national interests and international legal commitments to safeguard Indonesia's investment climate while upholding state sovereignty.*

*Keywords: Bilateral Investment Treaty, Foreign Investors, Fair and Equitable Treatment, Expropriation, ICSID, Churchill Mining*

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