

Penerapan klausul denial of benefits pada perjanjian investasi bilateral dalam menentukan yurisdiksi international centre for settlement of investment disputes (ICSID) dan permanent court of arbitration (PCA) = The application of denial of benefits clause under bilateral investment treaties in determining the jurisdiction of international centre for settlement of investment disputes (ICSID) and permanent court of arbitration (PCA)

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Abstrak

Penulisan ini membahas pengaturan Denial of Benefits dalam perjanjian investasi bilateral dan penerapannya dalam sengketa-sengketa arbitrase internasional. Klausul Denial of Benefits merupakan klausul yang memperbolehkan host state untuk tidak memberikan perlindungan dan keuntungan lainnya kepada investor asing dengan persyaratan sebagaimana diatur dalam perjanjian investasi. Klausul ini telah digunakan oleh berbagai lembaga arbitrase untuk menerima ataupun menolak sengketa investasi yang diajukan kepadanya. Untuk menganalisis permasalahan ini, digunakan penelitian hukum normatif dengan analisis yuridisnormatif. Hasil dari penelitian menunjukkan perkembangan penerapan klausul Denial of Benefits dalam menentukan yurisdiksi International Centre for Settlement of Investment Disputes (ICSID) dan Permanent Court of Arbitration (PCA).

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This writing discusses the Denial of Benefits clause under bilateral investment treaty and its application in international arbitration disputes. Denial of Benefits clause allows Host State to deny the treaty protection to foreign investors with certain conditions set forth in the investment treaty. This clause has been used by international arbitration tribunals to accept or reject investment disputes submitted to them. Legal normative study and normative-juridical analysis are used to analyse this issue. The result of this study shows the evolution of the use of Denial of Benefits clause in determining jurisdiction of international arbitration tribunal International Centre for Settlement of Investment Disputes (ICSID) and Permanent Court of Arbitration (PCA).