

Penerapan Countermeasure sebagai dasar pembelaan atas Internationally Wrongful Act negara terhadap investor asing dalam penyelesaian sengketa investasi Bab XI NAFTA (Studi kasus : Archer Daniels Midland Company, Tate & Lyle Ingredients Americas, Inc. lawan Mexico dan Corn Product International, Inc. lawan Mexico) = The application of Countermeasure as ground defense of state Internationally Wrongful Act to foreign investor based on investment dispute settlement of Chapter Eleven NAFTA (Case study: Archer Daniels Midland Company, Tate & Lyle Ingredients Americas, Inc. v. Mexico and Corn Product International, Inc. v. Mexico) / Endah Kartika Lestari

Endah Kartika Lestari, author

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Abstrak

Counter measure merupakan salah satu dari enam keadaan yang dapat mengecualikan internationally wrongful act negara. Dalam praktik penyelesaian sengketa, tidak selamanya dasar pembelaan dengan countermeasure diterima oleh Majelis sebagai suatu countermeasure yang sah. Countermeasure dapat dikatakan sah apabila pelaksanaannya telah memenuhi syarat-syarat yang telah ditentukan. Meksiko sebagai Tergugat dalam kasus Archer Daniels Midland Company, Tate & Lyle Ingredients Americas, Inc. melawan Meksiko dan Corn Products International, Inc. melawan Meksiko telah menjadikan countermeasure sebagai dasar pembelaan atas internationally wrongful act yakni pelanggaran terhadap ketentuan investasi Bab XI NAFTA. Majelis dalam dua kasus tersebut ternyata memutuskan countermeasure yang dilakukan oleh Meksiko tidak sah melalui pendekatan yang berbeda terhadap pengujian keabsahan countermeasure.

*Countermeasure is one of six circumstances precluding state internationally wrongful act. In the practice of dispute settlement, countermeasure as a ground defense is not always accepted by Tribunal as a legitimate countermeasure. Countermeasure can be considered as legitimate when its implementation has complied with the conditions specified. Mexico as a respondent in the case of Archer Daniels Midland Company, Tate & Lyle Ingredients Americas, Inc. v. the United Mexican States and Corn Products International, Inc. v. the United Mexican States, has made countermeasure as a ground defense of its internationally wrongful act that was a breach of investment provisions of Chapter XI NAFTA. Tribunal in both cases apparently concluded that countermeasure undertaken by Mexico was not a valid countermeasure through different approaches on testing the validity of countermeasure.*