

Modified prohibition as the best means of regulating double hatting in international investment arbitration under version three of the draft code of conduct for adjudicators in international investment disputes = 'Modified prohibition' selaku metode terbaik untuk mengatur double hatting dalam arbitrase internasional investasi dibawah versi tiga the draft code of conduct for adjudicators in international investment disputes

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Abstrak

Pengenalan The Third Version of The Draft Code memperkenalkan tiga metode yang diusulkan untuk mengatur double hatting dalam arbitrase investasi internasional. Pilihannya adalah "full prohibition", "modified prohibition", dan "disclosure with option to challenge". Diskusi telah muncul mengenai opsi mana yang paling sesuai dengan praktik dalam arbitrase investasi internasional yang telah membahas masalah double hatting dalam beberapa kasus. Skripsi ini menggunakan penelitian hukum normatif yang meliputi kajian doktrinal, yaitu kajian dan analisis terhadap doktrin-doktrin yang dianut oleh para sarjana hukum, serta dokumen-dokumen hukum yang relevan seperti yurisprudensi, perjanjian internasional. Setelah berkonsultasi dengan undang-undang kasus yang berhubungan dengan masalah pemalsuan topi, pedoman internasional, serta pendapat para sarjana pembenci ganda sebagai praktik tidak dilarang, melainkan keadaan khusus seputar pemalsuan topi adalah penyebab kekhawatiran terbesar. Selama seorang arbiter yang menjalankan peran ganda tidak menghalangi independensi atau ketidakberpihakan mereka, praktik itu sendiri diperbolehkan. Oleh karena itu, opsi "modified prohibition" akan paling cocok karena memberikan larangan yang ditargetkan terhadap keadaan yang telah terbukti menciptakan penampilan atau menunjukkan kurangnya independensi atau ketidakberpihakan.

.....The introduction of The Third Version of The Draft Code introduces three proposed methods of regulating double hatting within international investment arbitration. The options are "full prohibition", "modified prohibition", and "disclosure with option to challenge". Discussions have arisen concerning which option best fits with practice in international investment arbitration that has already addressed the issue of double hatting in several cases. This thesis shall utilize normative legal research which includes doctrinal study, meaning the study and analysis of doctrines adopted by legal scholars, as well as relevant legal documents such as jurisprudence, international agreements. After consulting case laws dealing with the issue of double hatting, international guidelines, as well as the opinions of scholars double hatting as a practice is not prohibited, but rather the specific circumstances surrounding double hatting are the biggest cause of concern. So long as an arbitrator practicing multiple roles does not impede on their independence or impartiality the practice itself is permissible. Therefore, a "modified prohibition" option would be best suited as it provides targeted prohibitions toward circumstances that have been proven to create an appearance or manifest lack of independence or impartiality.