

**ANALISIS TERHADAP PRINSIP *FAIR AND EQUITABLE TREATMENT*
DALAM *BILATERAL INVESTMENT TREATY*
(STUDI KASUS: CHURCHILL MINING PLC MELAWAN REPUBLIK
INDONESIA)**

ABSTRAKSI

Bilateral Investment Treaty (BIT) merupakan salah satu cara yang dilakukan oleh pemerintah Indonesia dengan negara lain untuk menunjang pelaksanaan penanaman modal asing di Indonesia dengan harapan akan terciptanya keadaan saling menguntungkan bagi kedua negara, terlebih lagi dengan adanya prinsip *fair and equitable treatment* di dalam suatu BIT yang diharapkan dapat memberikan perlindungan bagi kedua belah pihak.

Metode penulisan yang digunakan dalam penelitian ini adalah yuridis normatif atau studi pustaka yaitu untuk mengkaji prinsip-prinsip hukum dengan mengumpulkan bahan melalui buku, jurnal, internet, peraturan perundang-undangan dan karya tulis ilmiah lainnya yang berhubungan dengan tujuan penulisan penelitian ini.

Prinsip *fair and equitable treatment* merupakan standar yang paling banyak digunakan oleh investor asing sebagai dasar gugatan dalam proses penyelesaian sengketa investasi yang muncul dari BIT, seperti yang dilakukan Churchill Mining Plc terhadap Republik Indonesia di forum internasional seperti International Centre for Settlement of Investment Disputes (ICSID). Menurut Churchill Mining Plc, pencabutan Izin Usaha Pertambangan (IUP) milik Ridlatama Group, telah melanggar standar penjaminan dan perlindungan yang berlaku dalam perjanjian investasi bilateral antara United Kingdom dengan Republik Indonesia, khususnya mengenai prinsip *fair and equitable treatment*.

Hasil penelitian ini menunjukkan bahwa Indonesia tidak melakukan pelanggaran terhadap prinsip *fair and equitable treatment* karena pencabutan IUP Ridlatama Group didasarkan pada alasan yang jelas dan sudah sesuai dengan ketentuan perundang-undangan yang berlaku di Indonesia. Selain itu, hakikat prinsip *fair and equitable treatment* yang sangat sederhana dan luas membuat tidak adanya satu definisi tepat akan prinsip ini, oleh karenanya diperlukan kajian yang lebih mendalam untuk melihat bagaimana pengaturan dan penerapannya dalam penyelesaian sengketa investasi di kemudian hari.

Kata Kunci: *Bilateral Investment Treaty*, Prinsip *Fair and Equitable Treatment*, Penanaman Modal Asing

**AN ANALYSIS OF THE PRINCIPLE OF FAIR AND EQUITABLE
TREATMENT IN BILATERAL INVESTMENT TREATY
(CASE STUDY: CHURCHILL MINING PLC AGAINST REPUBLIC OF
INDONESIA)**

ABSTRACT

Bilateral Investment Treaty (BIT) is one way in which the Indonesian government with other countries to support the implementation of foreign direct investment in Indonesia with the hope of creating a mutually beneficial situation for both countries, especially with the principle of the fair and equitable treatment in a BIT that is expected to provide protection for both parties.

Writing method used to compile this research is the normative juridical approach or library research to conduct a study of the principle of law by collecting material from books, journal, the internet, legislation and other scholarly writings which closely related to the intent and purpose of the preparation of this research.

The fair and equitable treatment principle is the most used standard by claimants in investment arbitration originated from BIT, as Churchill Mining Plc did against the Republic of Indonesia in the International Centre for Settlement of Investment Disputes (ICSID). Churchill Mining Plc said that the revocation of Ridlatama Group's Mining Permit breaches the guaranteed and enforceable standards of protection in agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia, particularly regarding the principle of fair and equitable treatment.

This research shows that the Republic of Indonesia does not violate the fair and equitable treatment principle on the revocation of Ridlatama Group's Mining Permit because the Mining Permits revocation is accordance with the provisions of laws and regulations in force in the Republic of Indonesia. In addition, the simple and board objective nature of the standard gives no precise definition of fair and equitable treatment, so the further research of this principle is needed to see how the arrangement and its application in investment dispute settlement in the future.

Keywords: Bilateral Investment Treaty, Fair and Equitable Treatment Principle, Foreign Direct Investment