

Kajian terhadap keanggotaan Indonesia di Internasional Center for Settlement of Investment Dispute (ICSID) ditinjau dari hukum organisasi Internasional = Study on Indonesia membership in International Center for Settlement of Investment Dispute (ICSID) in accordance with International organization law / Alfi Fudhola

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Abstrak

ABSTRACT

International Center for Settlement of Investment Dispute (ICSID) merupakan forum penyelesaian sengketa investasi antara investor asing dengan negara penerima investasi (host state). Lembaga ini didirikan atas prakarsa dari International Bank for Reconstruction and Development (IBRD) pada tanggal 18 Maret 1965 dengan membentuk Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Konvensi ICSID). Pada perkembangannya, proses penyelesaian sengketa di ICSID menuai banyak kritik terutama dari negara-negara berkembang. Kritik tersebut meliputi permasalahan arbiter yang dapat memiliki peran ganda sehingga menimbulkan isu konflik kepentingan, permasalahan tidak adanya batasan waktu sehingga mengakibatkan durasi waktu yang lama, permasalahan biaya yang mahal untuk biaya penasihat hukum, biaya prosedural (legal cost) dan biaya insidental lainnya, dan implikasi adanya mekanisme pembatalan yang menyebabkan timbulnya isu kepastian hukum pada putusan. Permasalahan-permasalahan tersebut merupakan permasalahan yang menjadi isu bagi negara berkembang termasuk Indonesia. Kebijakan Pemerintah Indonesia terkait peninjauan Bilateral Investment Treaties (BIT) merupakan momentum yang tepat untuk mengkaji ulang keanggotaan Indonesia di ICSID, terkait Indonesia harus melakukan penarikan diri dari ICSID ataukah Indonesia harus tetap menjadi anggota ICSID dengan melakukan tindakantindakan yang sesuai.

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ABSTRACT

International Center for Settlement of Investment Dispute (ICSID) is an investment dispute resolution forum between foreign investors and host state. ICSID was established by initiative of the International Bank for Reconstruction and Development (IBRD) on March 18, 1965 to form the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). In its development, the process of dispute resolution in the ICSID gets a lot of criticism, especially from developing countries. The criticisms include concerns that the arbitrator may have a dual role which rise an issue of conflict of interest; no limitation time which is stipulated in ICSID Convention resulting in long duration of time; cost problems including cost of legal counsel, procedural costs (legal costs) and

other expenses incidental cost; and implications of annulment mechanism that causes the issue of legal certainty in the decision. These problems have become an issue for developing countries, including Indonesia. Indonesian government's policy to review the Bilateral Investment Treaties (BIT) is an appropriate moment to review Indonesia's membership in ICSID: either Indonesia must withdraw from ICSID or Indonesia should remain its membership by performing the appropriate actions.