

Analisis kinsistensi penerapan prinsip Fair and Equitable Treatment (FET) terhadap putusan arbitrase atas Investor State Dispute Settlement (ISDS) = Consistency analysis of the application of the Fair and Equitable Treatment (FET) principle to the arbitration award of the Investor State Dispute Settlement (ISDS)

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Abstrak

Thesis ini mengangkat isu mengenai peninjauan kembali Analisis Konsistensi Penerapan Prinsip Fair and Equitable Treatment (FET) terhadap Putusan Arbitrase atas Investor-State Dispute Settlement (ISDS) serta eksistensinya dalam Perjanjian Investasi Internasional yang terdapat dalam Bilateral Investment Treaties (BITs). Isu eksistensi dan inkonsisten ISDS saat ini telah memicu perdebatan mengingat banyaknya gugatan yang diajukan oleh korporasi (MNC/TNC) yang dalam hal ini sebagai investor kepada negara tuan rumah (host state) yang dianggap merugikan host state dalam menjalankan kebijakan di negaranya. Kekurangan-kekurangan yang ada pada ISDS telah membuat hilangnya kepercayaan publik dan karenanya, dibentuklah investment Court System (ICS) sebagai sebuah alternatif mekanisme penyelesaian sengketa yang lebih kredible dengan mencantumkan prinsip-prinsip International Arbitrator Independence. Prinsip Fair and Equitable Treatment (FET) merupakan salah satu prinsip utama dalam hukum investasi internasional, dimana negara tempat investasi ditanamkan (host state) berkewajiban untuk menjamin perlakuan yang adil dan setara terhadap investasi yang dilakukan oleh investor asing. Dalam perkembangannya, terdapat perdebatan dalam mendefinisikan prinsip FET.

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This research pose an issue concerning of reviewing the Consistency Analysis in the Application of the Fair and Equitable Treatment (FET) Principle to the Arbitration Award of the Investor-State Dispute Settlement (ISDS) and existence which are accommodated in International Investment Agreements contained in Bilateral Investment Treaties (BITS). The of the existence and incosistency of the current ISDS has sparked an intense debate considering a lot of a lawsuit filed by the corporation (MNC/TNC) which in this case as an investor to the host state were considered detrimental to the them in running the domestic. The shortcomings of ISDS have caused a loss of public confidence and hence, an Investment Court System (ICS) was formed as an alternative to a more credible dispute resolution mechanism by including the principles of the International Independence Arbitrator. The principle of Fair and Equitable Treatment (FET) is one of the main principles in international investment law, where the country where investment is invested (host state) is obliged to guarantee fair and equal treatment of investments made by foreign investors. In its development, there is a debate in defining the principle of FET.