

SKRIPSI

**EFEKTIVITAS PENYELESAIAN SENGKETA
INTERNASIONAL MELALUI MEKANISME *INVESTOR-STATE
DISPUTE SETTLEMENT* (ISDS) DALAM *INTERNATIONAL
CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTE* (ICSID)**

*Diajukan Sebagai Syarat Untuk Memperoleh Gelar Sarjana Hukum Di Fakultas
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ABSTRAK

EFEKTIVITAS PENYELESAIAN SENGKETA INTERNASIONAL MELALUI MEKANISME *INVESTOR-STATE DISPUTE SETTLEMENT* (ISDS)

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Investor-State Dispute Settlement (ISDS) adalah mekanisme penyelesaian sengketa penanaman modal asing antara investor dan negara, dimana investor dapat menggugat suatu negara di forum arbitrase internasional. Penyelesaian sengketa investor dan negara banyak dilakukan menggunakan mekanisme ISDS meningkat sejak tahun 2001. Di satu sisi, mekanisme ini dianggap memberikan jaminan hukum bagi investor untuk melindungi asetnya dari tindakan sewenang-wenang negara. Namun di sisi lain, ISDS juga dipandang sebagai bentuk liberalisasi berlebihan yang mengurangi ruang gerak negara dalam mengatur kebijakan publik contohnya negara Venezuela yang telah mendapatkan gugatan sebanyak 55 kali dalam mekanisme ISDS. Penting untuk mengkaji efektivitas ISDS secara menyeluruh melalui kasus nyata yang melibatkan negara dari latar belakang berbeda. Rumusan masalah yang dikemukakan sebagai berikut (1) Bagaimana Pengaturan Mekanisme *Investor-State Dispute Settlement* (ISDS) Sebagai Penyelesaian Sengketa Dalam Hukum Internasional dan (2) Bagaimana Efektivitas Mekanisme *Investor-State Dispute Settlement* (ISDS) Dalam Penyelesaian Sengketa Internasional. Penelitian ini menggunakan Metode penelitian yuridis normatif, metode pendekatan perundang-undangan (*statute approach*). Hasil penelitian menyimpulkan 1) Pengaturan mekanisme ISDS terdapat dalam ICSID dalam Pasal 25 ayat (1) ICSID yaitu yurisdiksi dari *Centre* meliputi setiap sengketa hukum yang timbul secara langsung dari suatu investasi, antara suatu negara dengan warga negara dari peserta lain. (2) Efektifitas mekanisme *Investor-State Dispute Settlement* (ISDS) sebagai mekanisme dalam Penyelesaian sengketa dilihat melalui *International Centre for Settlement Of Investments Dispute* (ICSID) adalah efektif dalam menyelesaikan sengketa karena dari 1.400 kasus yang ada sekitar 1.050 kasus telah selesai diputuskan. Mengenai dampak dari putusan ICSID tersebut akan diukur efektivitas hukum menurut Soerjono Soekanto yang menghasilkan Kekurangan Sistem Hukum, Klausul yang ambigu, Inkonsistensi suatu Putusan, Tujuan ICSID yang tidak tercapai, Kapasitas Arbiter, Putusan yang erorr, Jangka waktu tidak terbatas, Biaya yang tidak dibatasi, kurangnya transparansi, potensi penyalahgunaan kekuasaan oleh investor, *Regulatory Chill*, Krisis legitimasi dan kedaulatan negara, kritikan public dan mengabaikan kepentingan nasional. Negara merasa kekurangan dan ketidakefektifan dari ISDS ini merugikannya

Kata Kunci: Efektivitas, Penyelesaian sengketa, Hukum Internasional, Mekanisme, *Investor-State Dispute Settlement*.

ABSTRACT

EFFECTIVENESS OF INTERNATIONAL DISPUTE SETTLEMENT THROUGH THE INVESTOR-STATE DISPUTE SETTLEMENT (ISDS) MECHANISM

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Investor-State Dispute Settlement (ISDS) is a dispute resolution mechanism foreign investment between investors and countries, where investors can sue a country in an international arbitration forum. The settlement of investor and state disputes has been widely carried out using the ISDS mechanism since 2001. On the one hand, this mechanism is considered to provide legal guarantees for investors to protect their assets from arbitrary state actions. However, on the other hand, ISDS is also seen as a form of excessive liberalization that reduces the state's room for maneuver in regulating public policy for example Venezuela, which has received 55 lawsuits in the ISDS mechanism. It is important to examine the effectiveness of ISDS as a whole through real cases involving countries from different backgrounds. The formulation of the problem presented is as follows (1) How is the Regulation of the Investor-State Dispute Settlement (ISDS) Mechanism as a Dispute Settlement in International Law and (2) How Effective is the Investor-State Dispute Settlement (ISDS) Mechanism in International Dispute Settlement. This study uses the normative legal research method, the statute approach method. From the results of the author's research, it was found 1) The ISDS mechanism regulation is contained in ICSID in Article 25 paragraph (1) ICSID, namely the jurisdiction of the Center covers any legal dispute arising directly from an investment, between a country and citizens of another participant. (2) The effectiveness of the Investor-State Dispute Settlement (ISDS) mechanism as a dispute resolution mechanism, as seen through the International Centre for Settlement of Investment Disputes (ICSID), is effective in resolving disputes because out of 1,400 cases, around 1,050 cases have been decided. Regarding the impact of ICSID decisions, the effectiveness of the law will be measured according to Soerjono Soekanto, which results in deficiencies in the legal system, ambiguous clauses, inconsistencies in decisions, unachieved ICSID objectives, arbitrator capacity, erroneous decisions, unlimited timeframes, and unlimited costs. lack of transparency, potential abuse of power by investors, regulatory chill, crisis of legitimacy and state sovereignty, public criticism, and disregard for national interests. The state feels that the shortcomings and ineffectiveness of ISDS are detrimental to it.

Keyword: Effectiveness, Dispute Settlement, International Law, Mechanisme, Investor-State Dispute Settlement.