

## **ABSTRAK**

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**Penyelesaian Sengketa Penanaman Modal Asing melalui Arbitrase ICSID: antara Mitos dan Realita**

Sejak tahun 1968, Indonesia telah meratifikasi Konvensi ICSID 1965 dengan Undang-Undang No.5 Tahun 1968 sebagai instrumen ratifikasi. Selama menjadi negara peserta Konvensi ICSID 1965, Indonesia telah 7 (tujuh) kali digugat dihadapan arbitrase ICSID. Penelitian ini menelaah tiga permasalahan hukum. Pertama, bagaimana prinsip mekanisme penyelesaian sengketa penanaman modal melalui arbitrase ICSID ditinjau dari keadilan? Kedua, bagaimana praktik penyelesaian sengketa penanaman modal melalui arbitrase ICSID? Ketiga, bagaimana seharusnya sikap Indonesia atas keanggotaannya pada Konvensi ICSID 1965 di masa mendatang? Untuk menjawab permasalahan hukum pertama, digunakan teori *redistributive justice* Frank J.Garcia dan teori keadilan bermartabat Teguh Prasetyo. Kemudian, teori penegakan hukum Soerjono Soekanto dimanfaatkan untuk menjawab permasalahan hukum kedua. Lalu, teori hukum kritis Robert W. Gordon dengan pendekatan dekonstruksi, *trashing*, dan genealogi diaplikasikan untuk menjawab permasalahan hukum ketiga. Untuk memenuhi Permenristekdikt No.44 Tahun 2015, penelitian ini merupakan penelitian interdisiplin. Oleh karena itu, penelitian ini menggunakan metode penelitian yuridis normatif dengan didukung metode penelitian yuridis empiris. Simpulan yang diperoleh: prinsip mekanisme penyelesaian sengketa penanaman modal melalui arbitrase ICSID tidak memenuhi unsur keadilan; penelitian ini juga mengungkapkan bahwa berbagai mitos tentang keunggulan arbitrase dibandingkan sistem peradilan bahwa arbitrase lebih cepat, lebih murah, dan arbiter dipilih para pihak ternyata tidak selalu benar, dan faktor non hukum secara dominan memengaruhi praktik penyelesaian sengketa melalui arbitrase ICSID dalam kasus Amco; dan Indonesia seharusnya keluar dari Konvensi ICSID 1965 ketika tidak mampu melakukan beberapa tindakan untuk semakin mengakomodasi kepentingan Indonesia.

**Kata-kata kunci:** arbitrase ICSID, Konvensi ICSID 1965, penyelesaian sengketa, penanaman modal asing langsung, keadilan, faktor non hukum, Indonesia

## **ABSTRACT**

### **The Dispute Settlement of Foreign Investment through ICSID Arbitration: between Myths and Reality**

Since 1968, Indonesia has ratified the 1965 ICSID Convention with Law No.5 of 1968 as the instrument ratification. While being a contracting state of the 1965 ICSID Convention, Indonesia has been sued 7 (seven) times before ICSID arbitration. This study examines three legal issues. Firstly, how is the principle of the mechanism for the settlement of investment dispute through ICSID arbitration reviewed in terms of justice? Secondly, how is the practice of the settlement of investment disputes through ICSID arbitration? Thirdly, what shall be conducted by Indonesia in relation to its membership in the 1965 ICSID Convention? To answer the first legal issue, redistributive justice theory of Frank J. Garcia and theory of dignified justice of Teguh Prasetyo are employed. Then, Soerjono Soekanto's law enforcement theory is employed to answer the second legal issue. Furthermore, Critical Legal Studies of Robert W. Gordon with the approaches of deconstruction, trashing, and genealogy is applied to answer the third legal issue. To fulfill Permenristekdikti No.44 of 2015, this research is an interdisciplinary research. Therefore, this research employs a normative legal research method supported by an empirical legal research method. The conclusions are: the principle of the mechanism for the settlement of investment disputes through ICSID arbitration does not fulfill the element of justice; this study also reveals that various myths about the superiority of arbitration compared to the judicial system that arbitration is faster and cheaper, and arbitrators are chosen by the parties do not always true, and non-legal factor predominantly influences the practice of the settlement of investment disputes through ICSID arbitration in Amco case; and Indonesia shall denounce the 1965 ICSID Convention provided Indonesia could not take several actions in order to accommodate more the interests of Indonesia.

**Key words:** ICSID arbitration, 1965 ICSID Convention, dispute settlement, foreign direct investment, justice, non-legal factor, Indonesia