

ABSTRAK

Investor-State Dispute Settlement (ISDS) merupakan suatu mekanisme penyelesaian sengketa antara investor dan negara penerima investasi (*host state*) karena suatu pelanggaran terhadap Hukum Investasi Internasional. Berdasarkan data UNCTAD, alasan yang sering diajukan dalam gugatan ISDS umumnya meliputi empat hal permasalahan yakni Most Favoured Nations, National Treatment, Non Expropriation, dan Fair and Equitable Treatment. Namun pengaturan penyelesaian sengketa investasi dengan mekanisme ISDS dianggap lebih berpihak kepada pihak investor dibandingkan kepada *host state* karena sebagian besar IIA mengizinkan ISDS diajukan oleh investor, dan dalam prakteknya investor merupakan satu-satunya penggugat yang diizinkan. Ketidakeimbangan kedudukan para pihak dalam mekanisme ISDS memberikan pemikiran *counter-claim* sebagai upaya menyeimbangkan kedudukan investor dan *host state* dalam mekanisme ISDS. Selain itu pentingnya *counter-claim* dalam mekanisme ISDS antara lain karena belum ada aturan yang seragam mengenai *counter-claim*, *counter-claim* memungkinkan responden untuk mencari keadilan di forum yang sama sehingga lebih efisien. Serta bagi *host state*, *counter-claim* dapat digunakan untuk membersihkan reputasi *host state* atas gugatan yang diajukan oleh investor. Penelitian ini mengkaji klausula counterclaim yang dapat diadopsi dalam BIT Indonesia sehingga dapat menyeimbangkan kedudukan para pihak dalam mekanisme ISDS, khususnya Indonesia sebagai *host state*. Penelitian hukum yang digunakan adalah pendekatan konseptual (*conceptual approach*), pendekatan perundang-undangan (*statute approach*), dan pendekatan kasus (*case approach*) dalam membahas counterclaim dalam mekanisme ISDS serta dalam menganalisa rumusan klausula counterclaim yang dapat di adopsi dalam Bilateral Investment Treaty (BIT) Indonesia.

Kata kunci : *Investor-State Dispute Settlement (ISDS), Bilateral Investment Treaty (BIT), Counter-claim.*

ABSTRACT

The Investor-State Dispute Settlement (ISDS) is a dispute resolution mechanism between investors and host state due to a violation of International Investment Law. Based on UNCTAD data, the reasons often asked in the ISDS lawsuit generally include four issues, namely Most Favored Nations, National Treatment, Non-Expropriation, and Fair and Equitable Treatment. However, the regulation of investment dispute settlement with the ISDS mechanism is considered to be more favorable to investors than to the host state because most of the IIA allows ISDS to be submitted by investors, and in practice investors are the only plaintiffs allowed. The imbalance of the position of the parties in the ISDS mechanism gives the thought of counter-claims as an effort to balance the position of investors and the host state in the ISDS mechanism. Besides the importance of counter-claim in the ISDS mechanism, among others, because there is no uniform rule regarding counter-claims, counter-claims allow respondents to seek justice in the same forum so that it is more efficient. As well as for host states, counter-claims can be used to clean the host state's reputation for a lawsuit filed by an investor. This study examines counterclaim clauses that can be adopted in Indonesian BIT so that they can balance the position of the parties in the ISDS mechanism, especially Indonesia as a host state. Legal research used is the conceptual approach, statute approach, and case approach in discussing counterclaim in the ISDS mechanism and in analyzing the formulation of counterclaim clauses that can be adopted in the Bilateral Investment Treaty (BIT) Indonesia.

Keywords: Investor-State Dispute Settlement (ISDS), Bilateral Investment Treaty (BIT), Counter-claim.