

## ABSTRAK

Pengembangan energi terbarukan merupakan cara Pemerintah untuk mengurangi kebergantungan masyarakat Indonesia terhadap energi fosil khususnya untuk memenuhi kebutuhan tenaga listrik. Beberapa studi telah memperkirakan energi fosil akan habis dalam beberapa tahun sehingga pengembangan energi terbarukan sangat diperlukan. Indonesia mempunyai banyak sumber energi terbarukan dan apabila dikembangkan akan memberikan manfaat bagi masyarakat Indonesia. Namun, Indonesia belum mempunyai cukup teknologi dan kemampuan untuk mengembangkan energi terbarukan sehingga memerlukan bantuan dari penanaman modal asing. Pemerintah berupaya untuk menarik investor asing melalui pemberian fasilitas penanaman modal asing yang salah satunya adalah insentif berupa pembelian tenaga listrik oleh PT. PLN kepada pengembang energi terbarukan. Namun, pemberian tarif tenaga listrik yang terlalu tinggi akan memberikan celah sengketa ISDS apabila sewaktu-waktu Pemerintah tidak membayarkan tarif kepada investor atau mengubah peraturan energi terbarukan dengan besaran tarif yang membuat investor tidak dapat mendapatkan keuntungan dari kegiatan investasinya. Penelitian ini akan mengkaji potensi gugatan ISDS dengan dasar Fair and Equitable Treatment dan Indirect Expropriation. Metode penelitian yang digunakan adalah pendekatan perundang-undangan (statute approach) dalam membahas regulasi penanaman modal asing di sektor energi terbarukan, pendekatan konsep (conceptual approach) dalam menganalisis prinsip hukum investasi internasional yang menjadi dasar putusan arbitrase internasional dan pendekatan kasus (case approach) dalam menganalisis kasus ISDS mengenai pengembangan Energi Terbarukan. Pemerintah perlu untuk berhati-hati dalam menetapkan peraturan energi terbarukan karena perubahan peraturan yang memberikan kerugian bagi investor akan berpotensi untuk digugat ke ISDS berdasarkan prinsip Fair and Equitable Treatment dan Indirect Expropriation.

Kata Kunci : Energi Terbarukan, Prinsip Fair and Equitable Treatment dan Indirect Expropriation, Hukum investasi asing.

## ABSTRACT

The development of renewable energy is a means pursued by the Indonesian government to reduce its reliance on fossil fuels, especially to fulfill electrical energy needs. Several studies have predicted that fossil energy will have been depleted in coming years, making the development of renewable energy a necessity. Indonesia has many sources of renewable energy which, if developed, would be beneficial for Indonesians. However, Indonesia has insufficient technology and capacity to develop renewable energy, thus making it reliant on foreign investment. The government has attempted to draw foreign investors through the giving of foreign investment facilities, including incentives through the purchase of electrical energy through PT. PLN to renewable energy developers. However, the setting of an overly high price for the purchase of electrical energy may open up the possibility for the government to be sued in an ISDS forum if the government ever chooses not to pay investors or alter its renewable energy regulations to set prices which deprives investors of profits from his or her investment. This thesis will analyze the potential for ISDS suits based on Fair and Equitable Treatment and Indirect Expropriation. The research methods utilized are statutory approach in analyzing of regulations concerning foreign investment in the renewable energy sector, conceptual approach in analyzing principles of international investment law forming the basis of international arbitral decisions, and case approach in analyzing ISDS cases on the development of renewable energy. A conclusion is drawn that the Indonesian government must be cautious in creating renewable energy regulations as changes which cause losses to investors are potential grounds for a suit in the ISDS fora based on the principles of Fair and Equitable Treatment and Indirect Expropriation.

Keywords: Renewable Energy, Fair and Equitable Treatment and Indirect Expropriation, Foreign Investment Law.