

**INVESTOR-STATE DISPUTE SETTLEMENT (ISDS) MELALUI LEMBAGA ARBITRASE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)**

DAN

ASEAN COMPREHENSIVE INVESTMENT AGREEMENT (ACIA)

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INTISARI

Penelitian mengenai Analisis Perbandingan Hukum Penyelesaian Sengketa *Investor-State Dispute Settlement* (ISDS) melalui Lembaga Arbitrase *International Centre for Settlement of Investment Disputes* (ICSID) dan ASEAN *Comprehensive Investment Agreement* (ACIA), bertujuan untuk mengetahui dan menganalisis bagaimana peran *Investor-State Dispute Settlement* (ISDS) dalam penanganan Sengketa Investasi Internasional berbasis perjanjian (*Treaty-Based Investment Arbitration*) serta membandingkan mekanisme penyelesaian sengketa *Investor-State Dispute Settlement* (ISDS) dalam Lembaga arbitrase *International Centre for Settlement of Investment Dispute* (ICSID) dan ASEAN *Comprehensive Investment Agreement*.

Penelitian ini menggunakan metode penelitian normatif, yang bersifat deskriptif-analitis dengan pendekatan penelitian yang digunakan adalah pendekatan perundang-undangan, pendekatan konseptual, pendekatan historis, dan pendekatan perbandingan. Data sekunder yang diperoleh dianalisis secara kualitatif untuk kemudian ditarik sebuah kesimpulan.

Dari hasil penelitian, sampai dengan saat ini peran ISDS masih sangat eksis terhadap penyelesaian sengketa investor – state. Studi komparatif antara ICSID dan ACIA terkait dengan persamaan dan perbedaan mekanisme yang disediakan ACIA sifatnya lebih luas dengan yang disediakan dalam ICSID. Persamaanya adalah berlaku bagi sengketa investasi, sama-sama memiliki mekanisme penyelesaian sengketa melalui instrument ISDS, menyediakan konsiliasi dan arbitrase sebagai bentuk penyelesaian sengketa. Sedangkan perbedaannya subyek hukum sengketa berbeda, untuk ICSID antara investor dengan negara sedangkan ACIA negara-negara yang melakukan perjanjian ASEAN, ICSID hanya menggunakan ISDS sedang ACIA bisa menggunakan ISDS dan *Vientiane protocol*. Pemerintah Indonesia dalam hal menghadapi gugatan arbitrase telah mampu melaksanakan seluruh upaya perlawanan yang dimungkinkan berdasarkan *rules and regulations* atau berdasarkan yurisprudensi, menyusun strategi dan argumen untuk meyakinkan majelis tribunal dan memperkuat posisi pemerintah Indonesia, serta memenangkan gugatan arbitrase internasional terhadap pemerintah Indonesia.

Kata kunci: Mekanisme penyelesaian sengketa investor-state, peran ISDS, ICSID, ACIA.

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**COMPARATIVE ANALYSIS OF DISPUTE SETTLEMENT LAWS ON THE
INVESTOR-STATE DISPUTE SETTLEMENT (ISDS)
IN THE INTERNATIONAL CENTER FOR SETTLEMENT OF INVESTMENT
DISPUTES (ICSID)
AND
THE ASEAN COMPREHENSIVE INVESTMENT AGREEMENT (ACIA)**
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ABSTRACT

Research on Comparative Analysis of Investor-State Dispute Settlement (ISDS) Laws through the International Center for Settlement of Investment Disputes (ICSID) and ASEAN Comprehensive Investment Agreement (ACIA) Arbitration Institutions, aims to identify and analyze the role of Investor-State Dispute Settlement (ISDS) in handling international Treaty-Based Investment Arbitration and to compare the mechanism of Investor-State Dispute Settlement (ISDS) in the International Center for Settlement of Investment Dispute (ICSID) Arbitration and the ASEAN Comprehensive Investment Agreement.

This research uses a normative research method, which is a descriptive-analytical research with statutory, conceptual, historical, and comparative approaches. The secondary data obtained for this research were analyzed qualitatively to then draw the conclusion. Based on the conducted research, the role of ISDS still exists in the settlement of investor-state disputes up until now. The comparative studies on the similarities and differences between ICSID and ACIA provided in the ACIA are broader than those provided in the ICSID. The similarity applies to the investment disputes, both provide dispute resolution mechanism through the ISDS instrument, both provide conciliation and arbitration as a form of dispute resolution. While the difference is on the subjects of the dispute, which for ICSID are between the investors and the countries, while in the ACIA the subjects of the dispute are the countries who signed the ASEAN agreements. The resolution protocol used in ICSID is only ISDS while the ACIA stated that the parties can use ISDS and the Vientiane protocol. The Indonesian government in dealing with arbitration claims has been able to carry out all possible countermeasures based on rules and regulations or based on jurisprudence, develop strategies and arguments to convince the tribunal assembly and strengthen the position of the Indonesian government, and win an international arbitration lawsuit against the Indonesian government.

Keywords: Investor-state dispute settlement mechanism; the role of ISDS, ICSID, ACIA.

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