

**From Procedural Acceptance – Towards Systemic Landscape:  
Redefining the Effect of *Amicus Curiae* in The Investor-State Dispute  
Settlement**

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**ABSTRACT**

This legal research has two purposes. First, to analyze how the participation of amicus curiae in the investor-state dispute settlement (ISDS) affect the procedural rights of disputing parties, by modifying the structure of the arbitration process. Second, to analyze how information obtained from the amicus curiae will affect the systemic policy-making contour of ISDS.

This legal research utilizes a normative approach and assessed the main issues of amicus curiae participation as reasoned from international practices. The research takes advantage of the international framework such as ICSID Convention and UNCITRAL Rules of Transparency in Treaty-Based Arbitration, which further corroborated with jurisprudence from investor-state arbitration.

The research result shows that: First, the participation of amicus curiae triggers possible jeopardy towards the procedural rights of disputing parties. This occurs because of how amicus curiae decrease disputing parties' capacity to invoke notion of confidentiality, and further enables third-party to initiate jurisdictional question. Moreover, the possible hostile positioning by amicus curiae will affect the fairness and efficiency of arbitration process. Second, the amicus curiae positively bolster the systemic contour of ISDS, by facilitating the interaction with other international legal regime, and further enhancing the legitimacy of the system. This occurs because of how the amicus curiae will prevent fragmentation of international law, and integrating wider array of interest into tribunal's decision-making process.

**Keyword:** International Arbitration, Investor-State Dispute Settlement, Amicus Curiae, Procedural Rights, Public Interest.

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## **Dari Kerangka Prosedur – Menjadi Dampak Sistemik: Mengevaluasi Peran Amicus Curiae dalam Mekanisme Penyelesaian Sengketa Investor-Negara**

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### **INTISARI**

Penelitian hukum ini memiliki dua tujuan. Pertama, untuk menganalisis bagaimana partisipasi amicus curiae dalam mekanisme penyelesaian sengketa investor-negara (ISDS) berdampak terhadap hak-hak prosedural pihak bersengketa, dengan memodifikasi struktur pada proses arbitrase. Kedua, untuk menganalisis bagaimana informasi yang diberikan oleh amicus curiae memiliki dampak sistemik terhadap ranah perumusan kebijakan ISDS.

Penelitian hukum ini menggunakan pendekatan hukum normatif dan pertanyaan besar mengenai partisipasi amicus curiae ditinjau berdasarkan praktik internasional. Penelitian ini menggunakan instrumen hukum internasional seperti ICSID Convention and UNCITRAL Rules of Transparency in Treaty Based Arbitration, yang kemudian diperkuat oleh yurisprudensi dari putusan arbitrase investasi internasional.

Hasil penelitian menunjukan bahwa: Pertama, partisipasi amicus curiae menimbulkan resiko terhadap hak-hak prosedural pihak bersengketa. Hal ini diakibatkan oleh sifat partisipasi amicus curiae yang dapat mengurangi hak pihak bersengketa untuk menggunakan perjanjian kerahasiaan, mengurangi efisiensi dan rasa keadilan apabila pihak ketiga bersifat agresif, serta memungkinkan pihak ketiga untuk mengajukan pertanyaan terkait yurisdiksi. Kedua, partisipasi amicus curiae akan memberikan dampak positif terhadap ranah sistemik ISDS pada level perumusan kebijakan dengan memfasilitasi interaksi dengan rezim hukum internasional lainnya, serta dengan meningkatkan legitimasi ISDS pada komunitas internasional.

**Kata Kunci:** Arbitrase Internasional, Penyelesaian Sengketa Investor-Negara, Amicus Curiae, Hak Prosedural, Kepentingan Umum.

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