

RELEVANSI PRINSIP RIGHT TO ECONOMIC SELF DETERMINATION TERHADAP KEDAULATAN INDONESIA DALAM BILATERAL INVESTMENT TREATY (BIT)

INTISARI

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Eksistensi kedaulatan suatu negara merupakan prinsip hakiki dari negara-bangsa (*nation-state*) dan asas utama dalam hubungan internasional, termasuk dalam perjanjian investasi bilateral atau *Bilateral Investment Treaty (BIT)*. *BIT* berfungsi sebagai instrumen hukum internasional untuk mendukung tata kelola Penanaman Modal Asing yang dibangun di atas premis hubungan *reciprocal* atau hubungan timbal balik yang saling menguntungkan (*mutual benefit*) antara perlindungan investasi bagi negara asal investor (*home state*) pada satu sisi serta pertumbuhan ekonomi dan kemakmuran negara tuan rumah (*host state*) pada sisi lain. Secara teoritis, penandatanganan BIT akan memberikan manfaat bagi negara tuan rumah dan investor. Namun, implementasi BIT saat ini menimbulkan perdebatan dan kritik. BIT seharusnya menunjukkan karakter hubungan timbal balik, ternyata hanya bersifat formalitas dan tidak seimbang karena implementasinya lebih menguntungkan investor negara-negara maju. Kritik dan perdebatan yang paling tajam muncul dalam wacana nasional Indonesia dan wacana internasional adalah karena rezim BIT tidak hanya berkaitan dengan aspek ekonomi semata, akan tetapi BIT mempengaruhi aspek penting dari suatu negara, yaitu kedaulatan negara tuan rumah. Pemerintah Indonesia mengambil kebijakan terminasi sejumlah BIT, salah satu faktor penyebab terminasi tersebut karena kerangka BIT dan implementasinya saat ini dapat menginterferensi kedaulatan regulatif, yudikatif dan administratif negara tuan rumah. Berdasarkan pada latar belakang tersebut, maka penelitian ini bertujuan untuk mengidentifikasi suatu prinsip alternatif bagi pemerintah Indonesia untuk membangun suatu kerangka BIT dengan tetap berpegang pada prinsip perlindungan investor asing dan menjaga kedaulatan negara. Prinsip tersebut adalah prinsip *Right to Economic Self-Determination (RES)*.

Penelitian ini merupakan penelitian hukum normatif yaitu penelitian terhadap asas – asas hukum, teori hukum, penelitian terhadap sistematika hukum, dan relevansi hukum. Penelitian ini dilaksanakan secara ilmiah untuk menemukan kebenaran mengenai relevansi prinsip RES di dalam negosiasi dan formulasi BIT. Dengan demikian fokus penelitian ini adalah interpretasi hukum terhadap eksistensi dan implementasi prinsip RES dalam melindungi kedaulatan Indonesia dalam melakukan *bargaining position* untuk menegaskan kedaulatan Indonesia di dalam BIT.

Berdasarkan temuan dan analisis kajian disertasi ini, maka dapat disimpulkan, bahwa pemerintah Indonesia dapat melindungi kedaulatannya dalam negosiasi dan formulasi BIT dengan negara mitra atas dasar prinsip RES. Klaim RES itu sendiri dimiliki oleh negara Indonesia karena negara dapat membuktikan bahwa Indonesia memiliki kemauan dan kemampuan menjalankan tiga prinsip utama implementasi kedaulatan negara, yaitu secara bertanggung jawab (*responsibility*), sesuai tata pemerintahan yang baik (*good governance*), dan standar keadaban (*standard of civilization*) Internasional. Tiga prinsip ini diwujudkan dalam kemauan dan kemampuan negara untuk menjamin *political good* dalam menjalankan hubungan investasi asing dengan investor asing dan negara mitra. *Political good* dalam konteks ini adalah pemerintahan yang demokratis (*democracy*), supremasi hukum (*rule of law*), tata pemerintahan yang baik (*good governance*) dan pemberantasan korupsi (*anti-corruption*).

Kata Kunci: RES, BIT, Kedaulatan sebagai Tanggung Jawab.

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**THE RELEVANCE OF RIGHT TO ECONOMIC SELF-DETERMINATION
PRINCIPLE ON THE SOVEREIGNTY OF INDONESIA IN BILATERAL
INVESTMENT TREATY (BIT)**

ABSTRACT

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The existence of the sovereignty of a state is an essential principle of a nation-state and the main foundation in international relations, including in bilateral investment treaty or BIT. BIT functions as an international legal instrument to support FDI (Foreign Direct Investment) governance that is built on the premise of reciprocal relationships or mutual benefit interrelationships between investment protection for the home state and investors on the one hand and economic growth and prosperity of the host state on the other side. Theoretically, the signing of Bilateral Investment Treaty (BIT) will provide benefits to the host state and investors. However, the implementation of BIT is currently causing debate and criticism. BIT, which is actually expected to show the character of mutual benefit interrelationships, turns out to be just a formality and is unbalanced because its implementation is more beneficial to investors from developed countries. The sharpest criticism and debate in Indonesia's national discourse and international discourse arises due to the fact that BIT regime is not only concerned with economic aspect, but BIT also influences the important aspect of a state, namely the sovereignty of the host state. The government of Indonesia decided to terminate a number of BITs, one of the factors causing such termination is because the current BIT framework and its implementation can interfere with regulative, cooperative and administrative sovereignty of the host state. Based on the aforementioned background, this study aims to identify an alternative principle for the government of Indonesia in developing a BIT framework by adhering to the principle of protecting foreign investors and safeguarding the sovereignty of the state. Such principle is commonly called as the principle of Right to Economic Self-Determination (RESDD).

This research is a normative legal research, which is a research on the foundations of law, legal systematics, and the relevance of law. This research was carried out scientifically to find out the truth about the relevance of the RESDD principle in BIT negotiations and formulations. Thus, the focus of this research is to conduct legal interpretation on the existence and implementation of RESDD principle in protecting the sovereignty of Indonesia by increasing the bargaining position to uphold the sovereignty of Indonesia in the BIT.

According to the findings and analysis of this dissertation study, it can be concluded that the government of Indonesia can protect its sovereignty in negotiating and formulating BIT with partner states on the basis of the RESDD principle. RESDD claims are owned by Indonesia because the state can prove that Indonesia has the will and ability to carry out the three main principles of implementing state sovereignty, namely responsibly (responsibility), in accordance with the good governance, and according to the International standard of civilization. These three principles are manifested in the willingness and ability of the state to guarantee political good in carrying out foreign investment relations with foreign investors and partner states. The political good in this context is a democratic government (democracy), rule of law, good governance and eradication of corruption (anti-corruption)

Keywords: *Right to Economic Self-Determination (RESDD), Bilateral Investment Treaty (BIT), Sovereignty as a Responsibility.*

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