

Keluarnya suatu negara dari konvensi ICSID dan kaitannya dengan BIT

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Abstrak

The tendency to use the Bilateral Investment Treaty (BITs) by investors as a legal basis to file an international arbitration claim against the HostCountry is increasing recently. Denunciations of the International Center for Settlement of Investment Disputes (ICSID) as well as the termination of several BITs by some other countries raise complex legal issues in the international investment regime. Since Indonesia has been and still experiencing legal suits before the ICSID international arbitration, the discourse to take the similar path, i.e. to denounce from ICSID Convention and terminate some of its BITs, is emerging. This paper discusses the questions that arise with respect to the denunciation of the ICSID Convention and with the termination of BITs. The denunciation is still debatable since there are different interpretations as to whether the denouncing state remains bound by the Convention; and the existence of "survival clause" in BIT creates the possibility for an investor to file a claim before the ICSID international arbitration, even though it has terminated the BIT.;