

# Mekanisme penyelesaian perselisihan penanaman modal investor-negara melalui lembaga permanent court of arbitration = The mechanism for settling investor-state disputes through the permanent court of arbitration

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## Abstrak

Tesis ini akan membahas eksistensi penyelesaian sengketa penanaman modal melalui mekanisme investor-state dispute settlement ("ISDS") dalam perjanjian investasi internasional di lembaga arbitrase International Center for Settlement of Investment Disputes ("ICSID") dan Permanent Court of Arbitration ("PCA"), serta saran pengembangan penyelesaian ISDS melalui PCA yang dapat menjamin kepastian hukum dan mendukung kepentingan penanam modal asing (foreign investor) maupun negara penerima (host country). Penelitian ini adalah penelitian hukum normatif dan menggunakan data sekunder yang dianalisis secara deskriptif dengan metode penafsiran sistematis dan komparatif. Hasil penelitian mengungkapkan bahwa PCA saat ini cukup banyak dimanfaatkan sebagai forum penyelesaian sengketa penanaman modal internasional dan khususnya untuk menyediakan dukungan institusional bagi arbitrase ISDS yang timbul dari perjanjian investasi internasional yang dilakukan diluar kerangka Konvensi ICSID. Meskipun demikian, terdapat beberapa hal terkait dengan pengaturan penyelesaian sengketa pada PCA yang dapat dilakukan perubahan agar penyelesaian sengketa bagi mekanisme ISDS melalui PCA dapat benar-benar menjamin kepastian hukum bagi kedua pihak.

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This thesis is aimed to discuss the existence of investment dispute settlement through the investor-state dispute settlement ("ISDS") mechanism in international investment agreements settled through the International Center for Settlement of Investment Disputes ("ICSID") arbitration and the Permanent Court of Arbitration ("PCA"), as well as suggestions for developing ISDS mechanism through the PCA that can guarantee legal certainty and support the interests of foreign investors and host countries. This research is normative legal research and uses secondary data which are analyzed descriptively by a method of systematic and comparative interpretation. The results of the study revealed that the PCA is currently quite widely used as a forum for resolving international investment disputes and in particular to provide institutional support for ISDS arbitration arising from international investment agreements carried out outside the framework of the ICSID Convention. Nonetheless, there are a number of things related to the dispute resolution arrangements in the PCA that can be improved so that the dispute resolution for the ISDS mechanism through PCA can truly guarantee legal certainty for both parties.