

Komparasi mekanisme penyelesaian sengketa antara bilateral investment treaty (BIT) dengan investment chapter comprehensive economic partnership agreement (CEPA) (The promotion and protection of investment agreement v investment chapter comprehensive economic partnership agreement antara Republik Indonesia dan Australia) = Comparison of dispute settlement mechanism between bilateral investment treaty (BIT) with investment chapter comprehensive economic partnership agreement (CEPA) (The promotion and protection of investment agreement v investment chapter comprehensive economic partnership agreement between the government of The Republic of Indonesia and The Government of Australia).

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Abstrak

This thesis is aimed to discuss the arrangement of investment dispute settlement through the investor-state dispute settlement ("ISDS") mechanism in international investment agreements. The agreements are the Bilateral Investment Treaty ("BIT") and the Investment Chapter Comprehensive Economic Partnership Agreement ("IC-CEPA") which involves the Government of the Republic of Indonesia and the Government of Australia as parties to both agreements. This research is a 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 ISDS mechanism settlement at BIT was not much different when compared to the mechanism settlement at the IC-CEPA even though both of them appointed ICSID and UNCITRAL as international arbitration institutions for ISDS. However, with the enactment of IC-CEPA which replaced BIT, it will guarantee legal certainty for both parties especially related to avoiding claims that are filed separately but contain the same substance.

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Tesis ini akan membahas pengaturan penyelesaian sengketa penanaman modal melalui mekanisme investor-state dispute settlement ("ISDS") dalam perjanjian investasi internasional, dalam hal ini the Bilateral Investment Treaty ("BIT") serta Investment Chapter Comprehensive Economic Partnership Agreement ("IC-CEPA") yang melibatkan Republik Indonesia dan Australia sebagai para pihak dalam kedua perjanjian tersebut. Penelitian ini adalah penelitian hukum normatif dan menggunakan data sekunder yang dianalisis secara deskriptif dengan metode penafsiran sistematis dan komparatif. Hasil penelitian mengungkapkan bahwa pengaturan mekanisme penyelesaian sengketa ISDS pada BIT tidak banyak perbedaan jika dibandingkan dengan pengaturan mekanismenya pada IC-CEPA meskipun keduanya sama-sama menunjuk ICSID dan UNCITRAL sebagai institusi arbitrase internasional bagi ISDS. Namun demikian, dengan diberlakukannya IC-CEPA yang menggantikan BIT, akan memberikan jaminan kepastian hukum bagi kedua pihak terutama terkait menghindari gugatan yang diajukan secara terpisah namun berisi substansi yang sama.