

Pentingnya Pengaturan Security For Costs di Perjanjian Investasi Internasional bagi Indonesia dalam Menghadapi Gugatan Investasi Internasional = The Importance of Security for Costs' Provision in International Investment Agreements for Indonesia in Defending International Investment Claims

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Abstrak

Security for Costs merupakan suatu fenomena hukum yang berkembang dalam penyelesaian sengketa investor-negara, yang dapat dipahami sebagai suatu bentuk tindakan sementara untuk investor asing memberikan jaminan mengenai pembayaran biaya yang dimintakan oleh negara tuan rumah dalam melakukan pembelaan atas gugatan yang diajukan oleh investor asing. Tesis ini menganalisis, pertama, alasan pentingnya pengaturan security for costs dalam perjanjian investasi internasional bagi Indonesia berdasarkan praktik permohonan security for costs dalam sengketa *García Armas v. Venezuela* yang diselesaikan menggunakan aturan arbitrase ICSID dan *Herzig v. Turkmenistan* yang menggunakan aturan arbitrase UNCITRAL, dan kedua, pengaturan security for costs dalam perjanjian investasi internasional yang dapat melindungi kepentingan Indonesia berdasarkan perkembangan pengaturan security for costs dalam aturan arbitrase ICSID dan aturan arbitrase UNCTIRAL, dalam undang-undang tentang arbitrase yang berlaku di Inggris dan Indonesia, serta contoh-contoh dalam perjanjian investasi internasional yang disepakati pada masa proses reformasi penyelesaian sengketa investor-negara. Penelitian tesis ini merupakan penelitian hukum normatif dengan menganalisis penerapan security for costs berdasarkan aturan arbitrase dalam putusan-putusan arbitrase investasi, dan dalam perjanjian investasi internasional. Kesimpulan dari penelitian ini adalah, pertama, pengaturan security for costs dalam perjanjian investasi internasional dapat menyeimbangkan kepentingan investor asing dan negara tuan rumah, menghindari kemungkinan eksploitasi mendapatkan keuntungan yang dilakukan oleh investor asing, dan untuk menjaga integritas prosedural penyelesaian sengketa investor-negara. Kedua, Indonesia dapat menerapkan pengaturan security for costs yang telah ada dalam perjanjian investasi internasional mengenai kewenangan majelis arbitrase, syarat-syarat, mekanisme, dan akibat hukum dari perintah security for costs.

.....Security for Costs has been an emerging legal phenomenon in investor-state dispute settlement, which can be defined as a form of provisional or interim measure for a foreign investor to provide security for the payment of costs requested by the host state in defending a claim brought by the foreign investor. This research discusses, first, the importance of the provision of security for costs in international investment agreements for Indonesia based on the practice of the application of security for costs in the *García Armas v. Venezuela* dispute which was resolved under the UNCITRAL Arbitration Rules and *Herzig v. Turkmenistan* dispute which was resolved under the ICSID Arbitration Rules, and second, discusses the provision of security for costs in international investment agreements that may protect Indonesia based on the development of the provision of security for costs in ICSID Arbitration Rules and UNCTIRAL Arbitration Rules, in the laws on arbitration in the United Kingdom and Indonesia, and examples in international investment agreements signed during the investor-state dispute settlement reform process. This research is a normative legal research by examining the application of security for costs under arbitration rules in

investment arbitration awards, and in international investment agreements. The findings of this research are, first, the provision of security for costs in international investment agreements may balance the interests of foreign investors and host countries, may avoid the possibility of profit exploitation by foreign investors, and may maintain the procedural integrity of investor-state dispute settlement. Second, Indonesia may apply the provision of security for costs in international investment agreements based on the existing provision of security for costs on the authority of the arbitral tribunal, the requirements, the mechanism, and the legal consequences of the security for costs order.