

Yurisdiksi Counterclaim dalam Investor State Dispute Settlement di Indonesia = Jurisdiction of Counterclaims in Investor State Dispute Settlement in Indonesia

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Abstrak

Indonesia telah menyampaikan kekhawatirannya terhadap mekanisme penyelesaian sengketa investor dengan negara (Investor State Disputes Settlement atau ISDS), yang dinilai merugikan. Indonesia meninjau dan tidak memperpanjang beberapa Perjanjian Perlindungan Penanaman Modal (P4M) untuk menegosiasikan perjanjian baru yang lebih sesuai. Gugatan balik oleh negara dapat menyeimbangkan posisi dalam ISDS yang tidak simetris. ICSID dan UNCITRAL telah mengatur mekanisme gugatan balik, tetapi kasusnya masih jarang. Banyak gugatan balik ditolak karena tidak memenuhi persyaratan kesepakatan kedua pihak dan keterkaitan dengan klaim utama. Di Indonesia, dua kasus penting terkait gugatan balik adalah *Amco Asia Corporation and others v. Republic of Indonesia* dan *Hesham T. M. Al Warraq v. Republic of Indonesia*. Majelis arbitrase mengakui yurisdiksi Indonesia untuk mengajukan gugatan balik tetapi menolak gugatan karena gagal dalam substansi. Indonesia dapat menggunakan gugatan balik untuk mengurangi risiko dan biaya ISDS serta memastikan kepatuhan investor terhadap peraturan. Implementasi gugatan balik di Indonesia masih terbatas dan memerlukan reformasi. Meskipun banyak perjanjian investasi memungkinkan gugatan balik, keberhasilannya bergantung pada substansi dan landasan hukum yang kuat. Reformasi ISDS di Indonesia dapat memasukkan mekanisme gugatan balik untuk mencapai keseimbangan antara hak dan kewajiban negara dan investor asing.

.....Indonesia has expressed its concerns about the Investor-State Dispute Settlement (ISDS) mechanism, which is considered disadvantageous. Indonesia has reviewed and decided not to renew several Bilateral Investment Treaties (BITs) to negotiate new agreements that are more suitable. Counterclaims by the state can balance the asymmetrical positions within ISDS. ICSID and UNCITRAL have established counterclaim mechanisms, but such cases are still rare. Many counterclaims are rejected because they do not meet the agreement requirements of both parties and the connection with the main claim. In Indonesia, two significant cases related to counterclaims are *Amco Asia Corporation and others v. Republic of Indonesia* and *Hesham T. M. Al Warraq v. Republic of Indonesia*. The arbitration tribunal recognized Indonesia's jurisdiction to file counterclaims but rejected them due to lack of substance. Indonesia can use counterclaims to reduce the risks and costs of ISDS and ensure investor compliance with regulations. The implementation of counterclaims in Indonesia is still limited and requires reform. Although many investment treaties allow for counterclaims, their success depends on strong substantive and legal foundations. ISDS reform in Indonesia can include counterclaim mechanisms to achieve a balance between the rights and obligations of the state and foreign investors.