

BIT Indonesia-Singapore: "Indonesia Sovereignty is Threatened by the Foreign Investor Lawsuit"

Jakarta, October 17, 2018. On October 11, 2018 in Bali on the sidelines of the IMF-World Bank Annual Meeting, Indonesia and Singapore signed a Bilateral Investment Treaty (BIT) to protect Singapore's investments that will come into Indonesia. This is because, along with the signing of the BIT Indonesia-Singapore, they also signed MoU on Investment Cooperation related to investment in several sectors such as Industry 4.0, tourism, financial technology, and education.

We, the Indonesian Civil Society, urge the Government of Indonesia **not to ratify** the Bilateral Investment Treaty with Singapore because the signing of the agreement threatens the state's sovereignty. We also demand that the Government of Indonesia to **expose the transparency text of the agreement and involve the public at large in the decision-making process** both in government institutions and legislative institutions.

We consider that the signing, which was conducted in parallel with the annual meeting of the IMF and World Bank in Bali last week (8-14 October 2018), **increasingly shows the nuances of alignment from the Government of Indonesia to the neo-liberal system that maintains corporate impunity rather than the protection of people's rights.** This is because the BIT Agreement contains one of the World Bank's instruments in providing maximum protection to foreign investors under the ICSID Convention. This instrument is known as the mechanism of the foreign investor's lawsuit against the state or known as Investor to State Dispute Settlement (ISDS). **So, we expressly reject the ISDS mechanism including the BIT Indonesia-Singapore which has provided maximum protection to foreign investors rather than maximum protection for the people.**

Deterioration for the Government of Indonesia's Commitment to Stop the Implementation of BIT

From the 1960s to 2013, Indonesia had as many as 63 BIT. The impact of those BIT, Indonesia already has at least 8 experience cases of foreign investor lawsuit against Indonesia with the value of claims for compensation by foreign investors reaching billions of dollars. Several cases such as the lawsuit of Rafat Ali Rizvi (BIT Indonesia-UK), Churcill Mining (BIT Indonesia-UK), Newmont (BIT Indonesia-Netherlands), India Metal Ferro Alloys (BIT Indonesia-India), and Oleovest Ltd (BIT Indonesia-Singapore). In fact, the future potential of the Indonesian case if BIT is not terminated, it may extend to various sectors such as health, where some countries have experienced foreign investor lawsuit related to health and medicine issues.

In the agreement, contains many provisions that require Indonesia to provide maximum protection to foreign investors by not doing things such as: discrimination, nationalization, as well as security measures against foreign investors. If Indonesia violates, then Indonesia can be sued by foreign investors in international arbitration as the habit of an international investment agreement which contains an Investor to State Dispute Settlement or ISDS.

The impact of this BIT has been recognized by the Government of Indonesia, where international investment agreements containing ISDS mechanisms have been eliminating the sovereignty of the state (policy space) and the function of the state in carrying out human rights obligations to the people. The adverse impact of the ISDS dispute mechanism does not stop there. But it affects the financial state loss, when state was sued to pay the potential losses suffered by foreign corporations which value reaches trillions of rupiah. For example, Churcill Mining in 2012 sued the State for US \$ 1.2 billion, equivalent to Rp. 14.4 trillion. That value in the 2015 state budget is almost equivalent to the allocation subsidies for food, which worth IDR 18.9 trillion.

In 2013, the Government of Indonesia had decided to review and stop the implementation of BIT with several countries by the reason that BIT raises major problems with state policy-making practices. There are 4 basic reasons for Indonesia to review and terminate BIT, namely: **First**, *there is no balance between investor protection and national sovereignty*; **Second**, *the provisions in the agreement provide protection and extensive rights for foreign investors, allowing the host country to loss the policy space to implement its own development goals*. **Third**, *the problems arising from Investor-State Dispute Settlement (ISDS) have increased Indonesia's exposure to investor lawsuits in*

international arbitration. **Fourth**, the provisions of international investment agreements have the potential to override national laws.

Alfred De Zayas, UN Independent Experts on the Promotion of Democratic and Equitable International Orders, stated the impact from mechanism application of the ISDS has prevented the state from carrying out its obligations to respect, fulfill and protect human rights. De Zayas ensures that the loss of state policy space because of the adoption of the ISDS mechanism is contrary to Article 28 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights.

Therefore, **the signing of the BIT Indonesia-Singapore is a form of denying the Government Indonesia's commitment to protecting the interests of the people** that have been made since 2013.

The Disappearance of Democracy

The signing of the BIT Indonesia-Singapore on October 11, 2018 was escaped from the public attention, and even the parliament. The closed participation and public access to the information and draft text of the agreement in the BIT negotiations has threatened the democracy and the protection of human rights. Moreover, the BIT Indonesia-Singapore was passed or ratified without requiring the approval from the House of Representatives Republic of Indonesia (DPR-RI), so that the control of the people/legislative over the power of the Government has been lost, so this was contrary to the Constitution.

Whereas in Article 11 paragraph (2) of the 1945 Constitution stated: *"The President in making other international agreements **which arising an extensive and fundamental consequences for the lives of the people** related to the financial burden of the state, and / or requires changes or the formation of laws **must be approved by the House of Representatives** "*.

The BIT agreement has a broad and fundamental impact on people's lives, especially when the state no longer has free space to make policy (loss of policy space) and became a hostage by the foreign corporate interests due to the threat of ISDS lawsuit. In fact, Professor of International Law at the University of Indonesia, Prof. Hikmahanto Juwana, in his statement as an expert at the Case NO.13 / PUU-XVI / 2018 on Law No.24 of 2000 concerning International Agreements in the Constitutional Court, helped strengthen the importance of the House of Representatives approval related to BIT. (This lawsuit was filed on February 14, 2018 by this Coalition).

In his statement, Prof. Hikmahanto Juwana stated: *"within the BIT implementation signed by the Government evidently had an impact that is no longer merely technical. But there is a fundamental consequence of the BIT where investors can sue the State in international arbitration and has the potential to be defeated by the Investor. So that the agreement needs to be done carefully by the state, and it can be understood that the **BIT is indeed an agreement which cannot be categorized as an international agreement which does not require DPR approval/ require the approval of Parliament.***

Therefore, because of it's a fundamental impact on people's life, then it is deservedly the BIT between Indonesia and Singapore should get the consent of the people. If not, then the **BIT Indonesia-Singapore should be considered unconstitutional.**

We are the undersigned, Indonesian Civil Society Coalition for Economic Justice:

1. Indonesia for Global Justice (IGJ)
2. Solidaritas Perempuan
3. Indonesia AIDS Coalition (IAC)
4. Kesatuan Nelayan Tradisional Indonesia (KNTI)
5. Koalisi Rakyat untuk Keadilan Perikanan (KIARA)
6. Indonesian Human Rights Committee For Social Justice (IHCS)
7. Konfederasi Pergerakan Rakyat Indonesia (KPRI)
8. LIPS Sedane
9. Wahana Lingkungan Hidup Indonesia (WALHI)
10. KRuHA
11. Kesatuan Perjuangan Rakyat (KPR)
12. YLBHI
13. Serikat Petani Kelapa Sawit (SPKS)
14. Farmer's Initiative for Ecological Livelihoods and Democracy (FIELD)
15. Bina Desa
16. PPMI SPSI Bekasi

17. Gerak Lawan
18. Konfederasi Serikat Nasional (KSN)
19. Serikat Pekerja PT PLN (Persero) - SP PLN
20. Federasi Buruh Transportasi Plabuhan Indonesia (FBTPI)
21. Federasi Serikat Pekerja Farmasi dan Kesehatan Reformasi (FSP Farkes R)
22. Federasi Serikat Buruh Kerakyatan (SERBUK - Indonesia)

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