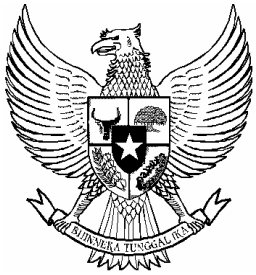

LEMBARAN NEGARA REPUBLIK INDONESIA

No.92, 2015 PENGESAHAN. *Agreement.* Asosiasi Bangsa-Bangsa Asia Tenggara. Republik Rakyat Tiongkok. Penyelesaian Sengketa. Kerja Sama Ekonomi.

PERATURAN PRESIDEN REPUBLIK INDONESIA

NOMOR 50 TAHUN 2015

TENTANG

PENGESAHAN *AGREEMENT ON DISPUTE SETTLEMENT MECHANISM OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA* (PERSETUJUAN TENTANG MEKANISME PENYELESAIAN SENGKETA BERDASARKAN PERSETUJUAN KERANGKA KERJA MENGENAI KERJA SAMA EKONOMI MENYELURUH ANTARA ASOSIASI BANGSA-BANGSA ASIA TENGGARA DAN REPUBLIK RAKYAT TIONGKOK)

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang : a. bahwa di Vientiane, Laos pada tanggal 29 November 2004, Pemerintah Republik Indonesia telah menandatangani *Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan tentang Mekanisme Penyelesaian Sengketa berdasarkan Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat Tiongkok), sebagai hasil perundingan antara Delegasi-delegasi Pemerintah Negara-negara Anggota Asosiasi Bangsa-bangsa Asia Tenggara dan Pemerintah Republik Rakyat Tiongkok;

b. bahwa Persetujuan dimaksudkan untuk menetapkan prosedur penyelesaian sengketa dan mekanisme formal untuk Persetujuan Kerangka Kerja dan Perjanjian-perjanjian di bawahnya agar tercapai keseragaman dalam penanganan sengketa diantara Negara-negara Pihak;

c. bahwa berdasarkan pertimbangan sebagaimana dimaksud pada huruf a dan huruf b, perlu mengesahkan Persetujuan tersebut dengan Peraturan Presiden;

Mengingat : 1. Pasal 4 ayat (1) dan Pasal 11 Undang-Undang Dasar Negara Republik Indonesia 1945;

2. Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 185, Tambahan Lembaran Negara Republik Indonesia Nomor 4012);

3. Peraturan Presiden Nomor 48 Tahun 2004 tentang Pengesahan *Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat China) (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 50);

4. Peraturan Presiden Nomor 25 Tahun 2011 tentang Pengesahan *Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan Perdagangan Barang dari Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat China) (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 54);

MEMUTUSKAN:

Menetapkan : PERATURAN PRESIDEN TENTANG PENGESAHAN *AGREEMENT ON DISPUTE SETTLEMENT MECHANISM OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA* (PERSETUJUAN TENTANG

MEKANISME PENYELESAIAN SENGKETA BERDASARKAN PERSETUJUAN KERANGKA KERJA MENGENAI KERJA SAMA EKONOMI MENYELURUH ANTARA ASOSIASI BANGSA-BANGSA ASIA TENGGARA DAN REPUBLIK RAKYAT TIONGKOK).

Pasal 1

Mengesahkan *Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-Operation between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan tentang Mekanisme Penyelesaian Sengketa berdasarkan Persetujuan Kerangka Kerja Mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat Tiongkok), yang telah ditandatangani pada tanggal 29 November 2004 di Vientiane, Laos, yang naskah aslinya dalam Bahasa Inggris dan terjemahannya dalam Bahasa Indonesia sebagaimana terlampir dan merupakan bagian yang tidak terpisahkan dari Peraturan Presiden ini.

Pasal 2

Apabila terjadi perbedaan penafsiran antara naskah terjemahan Persetujuan dalam Bahasa Indonesia dengan naskah aslinya dalam Bahasa Inggris sebagaimana dimaksud dalam Pasal 1, yang berlaku adalah naskah aslinya dalam Bahasa Inggris.

Pasal 3

Peraturan Presiden ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Peraturan Presiden ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 29 April 2015

PRESIDEN REPUBLIK INDONESIA,

JOKO WIDODO

Diundangkan di Jakarta
pada tanggal 29 April 2015

MENTERI HUKUM DAN HAK ASASI MANUSIA
REPUBLIK INDONESIA,

YASONNA H. LAOLY

AGREEMENT ON DISPUTE SETTLEMENT MECHANISM OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN") and the People's Republic of China ("China"), (collectively, "the Parties", or individually referring to an ASEAN Member State or to China as a "Party");

RECALLING the Framework Agreement on Comprehensive Economic Co-operation ("the Framework Agreement") between ASEAN and China signed by the Heads of Government/State of ASEAN Member States and China in Phnom Penh on the 4th day of November 2002;

RECALLING paragraph 1 of Article 11 of the Framework Agreement on the establishment of appropriate formal dispute settlement procedures and mechanism for the purposes of the Framework Agreement within 1 year after the date of entry into force of the Framework Agreement;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
Definitions

For the purposes of this Agreement, the following definitions shall apply unless the context otherwise requires:

(a) All the definitions in the Framework Agreement shall apply to this Agreement;

(b) "days" means calendar days, including weekends and holidays;

(c) "parties to a dispute", "parties to the dispute", or "parties concerned", means the complaining party and the party complained against;

(d) "complaining party" means any party or parties that requests for consultations under Article 4; and

(e) "party complained against" means any party to which the request for consultations is made under Article 4.

ARTICLE 2
Scope and Coverage

1. This Agreement shall apply to disputes arising under the Framework Agreement which shall also include the Annexes and the contents therein. Hereinafter, any reference to the Framework Agreement shall include all future legal instruments agreed pursuant to it unless where the context otherwise provides.

2. Any special or additional rules and procedures on dispute settlement contained in the Framework Agreement may be listed administratively by the ASEAN Secretariat as an Appendix to this Agreement with the consent of the Parties.

3. Unless otherwise provided for in this Agreement or in the Framework Agreement, or as the Parties may otherwise agree, the provisions of this Agreement shall apply with respect to the avoidance or settlement of disputes between or among the Parties concerning their respective rights and obligations under the Framework Agreement.

4. The provisions of this Agreement may be invoked in respect of measures affecting the observance of the Framework Agreement taken by central, regional or local governments or authorities within the territory of a Party.

5. Subject to paragraph 6, nothing in this Agreement shall prejudice any right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties.

6. Once dispute settlement proceedings have been initiated under this Agreement or under any other treaty to which the parties to a dispute are parties concerning a particular right or obligation of such parties arising under the Framework Agreement or that other treaty, the forum selected by the complaining party shall be used to the exclusion of any other for such dispute.

7. Paragraphs 5 and 6 above shall not apply where the parties to a dispute expressly agree to the use of more than one dispute settlement forum in respect of that particular dispute.

8. For the purposes of paragraphs 5 to 7, the complaining party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to, a dispute settlement panel or tribunal in accordance with this Agreement or any other agreement to which the parties to a dispute are parties.

ARTICLE 3
Liaison Office

1. For the purpose of this Agreement, each Party shall:

(a) designate an office that shall be responsible for all liaison affairs referred to in this Agreement;

(b) be responsible for the operation and costs of its designated office; and

(c) notify the other Parties of the location and address of its designated office within 30 days after the completion of its internal procedures for the entry into force of this Agreement.

2. Unless otherwise provided in this Agreement, the submission of any request or document under this Agreement to the designated office of any Party shall be deemed to be the submission of that request or document to that Party.

ARTICLE 4
Consultations

1. A party complained against shall accord due consideration and adequate opportunity for consultations regarding a request for consultations made by a complaining party with respect to any matter affecting the implementation or application of the Framework Agreement whereby:

(a) any benefit accruing to the complaining party directly or indirectly under the Framework Agreement is being nullified or impaired; or

(b) the attainment of any objective of the Framework Agreement is being impeded,

as a result of the failure of the party complained against to carry out its obligations under the Framework Agreement.[1]

2. Any request for consultations shall be submitted in writing, which shall include the specific measures at issue, and the factual and legal basis (including the provisions of the Framework Agreement alleged to have been breached and any other relevant provisions) of the complaint. The complaining party shall send the request to the party complained against and the rest of the Parties. Upon receipt, the party complained against shall acknowledge receipt of such request to the complaining party and the rest of the Parties simultaneously.

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[1] Non-violation disputes are not permitted under this Agreement.

3. If a request for consultations is made, the party complained against shall reply to the request within 7 days after the date of its receipt and shall enter into consultations in good faith within a period of not more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the party complained against does not respond within the aforesaid 7 days, or does not enter into consultations within the aforesaid 30 days, then the complaining party may proceed directly to request for the appointment of an arbitral tribunal under Article 6.

4. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the parties concerned shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Framework Agreement; and

(b) treat as confidential any information exchanged in the consultations which the other party concerned has designated as confidential.

5. Consultations shall be confidential, and are without prejudice to the rights of any Party in any further or other proceedings.

6. Whenever a Party (other than the parties to a dispute) considers that it has a substantial interest in consultations being held pursuant to this Article, such Party may notify the parties to a dispute in writing of its desire to be joined in the consultations within 10 days after the date of receipt of the request for consultations by the party complained against. Such Party shall be joined in the consultations provided that the party complained against agrees that the claim of substantial interest is well founded. The party complained against shall inform the complaining party and the rest of the Parties of its decision prior to the commencement of the consultations. If the request to be joined in the consultations is not accepted, the requesting Party shall be free to request for separate consultations under this Article.

7. In cases of urgency, including those which concern perishable goods, the parties concerned shall enter into consultations within a period of no more than 10 days after the date of receipt of the request by the party complained against. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request by the party complained against, the complaining party may proceed directly to request for the appointment of an arbitral tribunal under Article 6.

8. In cases of urgency, including those which concern perishable goods, the parties to a dispute and arbitral tribunals shall make every effort to accelerate the proceedings to the greatest extent possible.

ARTICLE 5
Conciliation or Mediation

1. The parties to a dispute may at any time agree to conciliation or mediation. They may begin at any time and be terminated by the parties concerned at any time.

2. If the parties to a dispute agree, conciliation or mediation proceedings may continue before any person or body as may be agreed by the parties to the dispute while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 6.

3. Proceedings involving conciliation and mediation and positions taken by the parties to a dispute during these proceedings, shall be confidential, and without prejudice to the rights of any Party in any further or other proceedings.

ARTICLE 6
Appointment of Arbitral Tribunals

1. If the consultations referred to in Article 4 fail to settle a dispute within 60 days after the date of receipt of the request for consultations or within 20 days after such date in cases of urgency including those which concern perishable goods, the complaining party may make a written request to the party complained against to appoint an arbitral tribunal under this Article. A copy of this request shall also be communicated to the rest of the Parties.

2. A request for the appointment of an arbitral tribunal shall give the reasons for the request, including the identification of:

(a) the specific measure at issue; and

(b) the factual and legal basis (including the provisions of the Framework Agreement alleged to have been breached and any other relevant provisions) for the complaint sufficient to present the problem clearly.

3. Where more than 1 complaining party requests the appointment of an arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be appointed by the parties concerned to examine the matter, taking into account their respective rights.

4. Where a single arbitral tribunal is appointed under paragraph 3, it shall organize its examination and present its findings to all the parties to the dispute in such manner that the rights which they would have enjoyed had separate arbitral tribunals examined the same matter are in no way impaired. If one of the parties to the dispute so requests, the arbitral tribunal may submit separate reports on the dispute to the parties concerned if the timeframe for writing the report so permits. The written submissions by a party to the dispute shall be made available to the other parties and each party to the dispute shall have the right to be present when any of the other parties to the same dispute presents its views to the arbitral tribunal.

5. Where more than 1 arbitral tribunal is appointed under paragraph 3 to examine the same matter, to the greatest extent possible, the same arbitrators shall be appointed by the parties concerned to serve on each of the separate arbitral tribunals and the timetable for the proceedings of each separate arbitral tribunal shall be harmonised.

ARTICLE 7
Composition of Arbitral Tribunals

1. Unless otherwise provided in this Agreement or the parties to the dispute agree, the arbitral tribunal shall have three members.

2. The complaining party shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 20 days of the receipt of the request for appointment of the arbitral tribunal under Article 6. The party complained against shall appoint an arbitrator to the arbitral tribunal pursuant to Article 6 within 30 days of its receipt of the request for appointment of the arbitral tribunal under Article 6. If any party to the dispute fails to appoint an arbitrator within such period, then the arbitrator appointed by the other party to the dispute shall act as the sole arbitrator of the tribunal.

3. Once the complaining party and the party complained against have appointed their respective arbitrators subject to paragraph 2, the parties concerned shall endeavour to agree on an additional arbitrator who shall serve as chair. If the parties concerned are unable to agree on the chair of the arbitral tribunal within 30 days after the date on which the last arbitrator has been appointed under paragraph 2, they shall request the Director-General of the World Trade Organization (WTO) to appoint the chair and such appointment shall be accepted by them. In the event that the Director-General is a national of one of the parties to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of either party to the dispute shall be requested to appoint the chair. If one of the parties to the dispute is a non-WTO member, the parties to the dispute shall request the President of the International Court of Justice to appoint the chair and such appointment shall be accepted by them. In the event that the President is a national of one of the parties to the dispute, the Vice President or the officer next in seniority who is not a national of either party to the dispute shall be requested to appoint the chair.

4. The date of composition of the arbitral tribunal shall be the date on which the chair is appointed under paragraph 3, or the 30th day after the receipt of the request under Article 6 where only a sole arbitrator of the tribunal is available.

5. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

6. Any person appointed as a member or chair of the arbitral tribunal shall have expertise or experience in law, international trade, other matters covered by the Framework Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence. Additionally, the chair shall not be a national of any party to a dispute and shall not have his or her usual place of residence in the territory of, nor be employed by, any party to a dispute.

7. Where the original arbitral tribunal is required for a matter as provided in this Agreement but cannot hear the matter for any reason, a new tribunal shall be appointed under this Article.

ARTICLE 8
Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with the Framework Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of the Framework Agreement, it shall recommend that the party complained against bring the measure into conformity with that provision. In addition to its recommendations, the arbitral tribunal may suggest ways in which the party complained against could implement the recommendations. In its findings and recommendations, the arbitral tribunal cannot add to or diminish the rights and obligations provided in the Framework Agreement.

2. The arbitral tribunal shall have the following terms of reference unless the parties to a dispute agree otherwise within 20 days from its composition:

> "To examine, in the light of the relevant provisions in the Framework Agreement, the matter referred to this arbitral tribunal by (name of party)... and to make findings, determinations and recommendations provided for in the Framework Agreement."

The arbitral tribunal shall address the relevant provisions in the Framework Agreement cited by the parties to a dispute.

3. The arbitral tribunal established pursuant to Article 6 above:

(a) shall consult regularly with the parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory resolution;

(b) shall make its decision in accordance with the Framework Agreement and the rules of international law applicable between the parties to the dispute; and

(c) shall set out, in its decision, its findings of law and fact, together with the reasons therefore.

4. The decision of the arbitral tribunal shall be final and binding on the parties to the dispute.

5. An arbitral tribunal shall take its decision by consensus; provided that where an arbitral tribunal is unable to reach consensus, it may take its decision by majority opinion.

6. The arbitral tribunal shall, in consultation with the parties to the dispute and apart from the matters set out in paragraphs 2, 3, 4 of Article 6 and Article 9, regulate its own procedures in relation to the rights of parties to be heard and its deliberations.

ARTICLE 9

Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The venue for the substantive meetings of the arbitral tribunal shall be decided by mutual agreement between the parties to the dispute, failing which the first substantive meeting shall be held in the capital of the party complained against, with the second substantive meeting to be held in the capital of the complaining party.

3. After consulting the parties to the dispute, the arbitral tribunal shall, as soon as practical and possible within 15 days after the composition of the arbitral tribunal, fix the timetable for the arbitral process. In determining the timetable for the arbitral process, the arbitral tribunal shall provide sufficient time for the parties to the dispute to prepare their respective submissions. The arbitral tribunal should set precise deadlines for written submissions by the parties to the dispute and they shall respect these deadlines.

4. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a party to a dispute from disclosing statements of its own positions or its submissions to the public; a party to a dispute shall treat as confidential information submitted by any of the other parties concerned to the arbitral tribunal which the submitting party has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of any of the other parties concerned, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

5. The rules and procedures pertaining to the proceedings before the arbitral tribunal as set out in Annex 1 of this Agreement shall apply unless the arbitral tribunal decides otherwise after consulting the parties to the dispute.

6. The report of the arbitral tribunal shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made. The deliberations of the tribunal shall be confidential. Opinions expressed in the report of the arbitral tribunal by an individual arbitrator shall be anonymous.

7. Following the consideration of submissions, oral arguments and any information before it, the arbitral tribunal shall issue a draft report to the parties concerned, including both a descriptive section relating to the facts of the dispute and the arguments of the parties to the dispute and the arbitral tribunal's findings and conclusions. The arbitral tribunal shall accord adequate opportunity to the parties concerned to review the entirety of its draft report prior to its finalization and shall include a discussion of any comments by the parties concerned in its final report.

8. The arbitral tribunal shall release to the parties to the dispute its final report within 120 days from the date of its composition. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to issue its report to the parties to the dispute within 60 days from the date of its composition. When the arbitral tribunal considers that it cannot release its final report within 120 days, or within 60 days in cases of urgency, it shall inform the parties concerned in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the composition of an arbitral tribunal to the release of the report to parties to the dispute exceed 180 days.

9. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the parties concerned.

ARTICLE 10
Third Parties

1. Any Party having a substantial interest in a dispute before an arbitral tribunal and having notified its interest in writing to the parties to such a dispute and the remaining Parties (hereinafter referred to as a "third party"), shall have an opportunity to make written submissions to the tribunal. These submissions shall also be given to the parties to a dispute and may be reflected in the report of the arbitral tribunal.

2. Third parties shall receive the submissions of the parties to a dispute to the first meeting of the arbitral tribunal.

3. If a third party considers that a measure already the subject of an arbitral tribunal proceedings nullifies or impairs benefits accruing to it under the Framework Agreement, such Party may have recourse to normal dispute settlement procedures under this Agreement.

ARTICLE 11
Suspension and Termination of Proceedings

1. Where the parties to the dispute agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon the request of any party to a dispute, the arbitral proceeding shall be resumed after such suspension. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the parties concerned agree otherwise.

2. The parties to a dispute may agree to terminate the proceedings of an arbitral tribunal established under this Agreement before the release of the final report to them, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the parties to the dispute that the dispute be settled amicably.

ARTICLE 12
Implementation

1. The party complained against shall inform the complaining party of its intention in respect of implementation of the recommendations and rulings of the arbitral tribunal.

2. If it is impracticable to comply immediately with the recommendations and rulings of the arbitral tribunal, the party complained against shall have a reasonable period of time in which to do so. The reasonable period of time shall be mutually determined by the parties to the dispute or, where the parties concerned fail to agree on the reasonable period of time within 30 days of the release of the arbitral tribunal's final report, any of the parties to the dispute may refer the matter to the original arbitral tribunal wherever possible which shall, following consultations with the parties concerned, determine the reasonable period of time within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 45 days after the date of the referral of the matter to it.

3. Where there is disagreement as to the existence or consistency with the Framework Agreement of measures taken within the reasonable period of time referred to in paragraph 2 to comply with the recommendations of the arbitral tribunal, such dispute shall be referred to the original arbitral tribunal, wherever possible. The arbitral tribunal shall provide its report to the parties to the dispute within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 75 days after the date of the referral of the matter to it.

ARTICLE 13
Compensation and Suspension of Concessions or Benefits

1. Compensation and the suspension of concessions or benefits are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or benefits is preferred to full implementation of a recommendation to bring a measure into conformity with the Framework Agreement. Compensation is voluntary and, if granted, shall be consistent with the Framework Agreement.

2. If the party complained against fails to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal within the reasonable period of time determined pursuant to paragraph 2 of Article 12, that party shall, if so requested, enter into negotiations with the complaining party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

3. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining party to enter into negotiations on compensatory adjustment, the complaining party may request the original arbitral tribunal to determine the appropriate level of any suspension of concessions or benefits conferred on the party which has failed to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal. The arbitral tribunal shall provide its report to the parties to the dispute within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the parties concerned in writing of the reasons for the delay and shall submit its report no later than 45 days after the date of the referral of the matter to it. Concessions or benefits shall not be suspended during the course of the arbitral proceedings.

4. Any suspension of concessions or benefits shall be restricted to those accruing under the Framework Agreement to the party which has failed to bring the measure found to be inconsistent with the Framework Agreement into compliance with the recommendations of the arbitral tribunal. That party and the rest of the Parties shall be informed of the commencement and details of any such suspension.

5. In considering what concessions or benefits to suspend:

   (a) the complaining party should first seek to suspend concessions or benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with the Framework Agreement or to have caused nullification or impairment; and

(b) the complaining party may suspend concessions or benefits in other sectors if it considers that it is not practicable or effective to suspend concessions or benefits in the same sector.

6. The suspension of concessions or benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with the Framework Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.

ARTICLE 14
Language

1. All proceedings pursuant to this Agreement shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Agreement shall be in the English language. If any original document is not in the English language, a party submitting it for use in the proceedings pursuant to this Agreement shall provide an English translation of that document.

ARTICLE 15
Expenses

1. Each party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. The costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the parties to a dispute.

ARTICLE 16
Amendments

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Parties.

ARTICLE 17
Depositary

For ASEAN, this Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

ARTICLE 18
Entry Into Force

1. This Agreement shall enter into force on 1 January 2005.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 January 2005.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by 1 January 2005, the rights and obligations of that Party under this Agreement shall commence on the date of the completion of such internal procedures.

4. A Party shall upon the completion of its internal procedures for the entry into force of this Agreement notify all the other Parties in writing.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China.

DONE at Vientiane, Lao PDR this Twenty Ninth Day of November in the Year Two Thousand and Four, in duplicate copies in the English Language.

For Brunei Darussalam

PEHIN DATO ABDUL RAHMAN TAIB
Minister of Industry and Primary Resources

For the People's Republic of China

BO XILAI
Minister of Commerce

For the Kingdom of Cambodia

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia

MARI ELKA PANGESTU
Minister of Trade

For the Lao People's Democratic Republic

SOULIVONG DARAVONG
Minister of Commerce

For Malaysia

RAFIDAH AZIZ
Minister of International Trade and Industry

For the Union of Myanmar

SOE THA

For *the Republic of the Philippines*

CESAR V. PURISIMA
Secretary of Trade and Industry

For *the Republic of Singapore*

LIM HNG KIANG
Minister for Trade and Industry

For *the Kingdom of Thailand*

WATANA MUANGSOOK
Minister of Commerce

For *the Socialist Republic of Viet Nam*

TRUONG DINH TUYEN
Minister of Trade

ANNEX 1

RULES AND PROCEDURES FOR THE ARBITRAL PROCEEDINGS

1. Before the first substantive meeting of the arbitral tribunal with the parties to the dispute, the parties concerned shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

2. The complaining party shall submit its first submission in advance of the first submission of the party complained against unless the arbitral tribunal decides, in fixing the timetable referred to in paragraph 3 of Article 9 and after consultations with the parties to the dispute, that the parties concerned should submit their first submissions simultaneously. When there are sequential arrangements for the submission of first submissions, the arbitral tribunal shall establish a firm time-period for receipt of the submission of the party complained against. Any subsequent written submissions shall be submitted simultaneously.

3. At its first substantive meeting with the parties to the dispute, the arbitral tribunal shall ask the complaining party to present its submissions. Subsequently, and still at the same meeting, the party complained against shall be asked to present its submissions.

4. Formal rebuttals shall be made at the second substantive meeting of the arbitral tribunal. The party complained against shall have the right to present its submission first, and shall be followed by the complaining party. The parties to the dispute shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

5. The arbitral tribunal may at any time put questions to the parties to the dispute and ask them for explanations either in the course of a meeting with the parties concerned or in writing.

6. The parties to the dispute shall make available to the arbitral tribunal a written version of their oral statements.

7. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 2 to 6 shall be made in the presence of the parties to the dispute. Moreover, each party's written submissions, including any comments on the draft report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other party. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under its consideration.

8. The arbitral tribunal may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a party to the dispute, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a party or parties to the dispute, or on its own volition, select, in consultation with the parties to the dispute, scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal.

NASKAH PENJELASAN

PENGESAHAN
AGREEMENT ON DISPUTE SETTLEMENT MECHANISM
OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE
ECONOMIC CO-OPERATION
BETWEEN
THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS
AND THE PEOPLE'S REPUBLIC OF CHINA

(PERSETUJUAN TENTANG MEKANISME PENYELESAIAN SENGKETA
BERDASARKAN PERSETUJUAN KERANGKA KERJA
MENGENAI KERJA SAMA EKONOMI MENYELURUH
ANTARA
ASOSIASI BANGSA-BANGSA ASIA TENGGARA
DAN REPUBLIK RAKYAT TIONGKOK)

BAB I

PENDAHULUAN

A. LATAR BELAKANG

Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China (Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-Bangsa Asia Tenggara dan Republik Rakyat China) ditandatangani pada tanggal 4 November 2002 di Phnom Penh, Kamboja.

Persetujuan tersebut merupakan landasan awal antara ASEAN dan China yang bertujuan untuk menciptakan kerja sama ekonomi antara kedua pihak dan membangun mekanisme penting untuk penguatan dan pengembangan stabilitas ekonomi di kawasan, serta memperhatikan peranan dan kontribusi penting para pelaku usaha dalam meningkatkan perdagangan dan investasi antara para pihak.

Memperhatikan hal tersebut dan semakin meningkatnya kontribusi dan keterlibatan para pelaku usaha, maka ASEAN dan Republik Rakyat Tiongkok (RRT) sepakat untuk mengatur mekanisme penyelesaian sengketa dalam suatu perjanjian tersendiri untuk menyelesaikan sengketa-sengketa yang timbul diantara para Pihak terkait pelaksanaan Persetujuan Kerangka Kerja.

Untuk itu, para Pihak sepakat dan telah menandatangani *Agreement on Dispute Settlement Mechanism under the Framework Agreement between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan tentang Mekanisme Penyelesaian Sengketa berdasarkan Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat Tiongkok) selanjutnya disebut sebagai "Persetujuan DSM", yang ditandatangani di Vientiane, Laos, tanggal 29 November 2004.

Persetujuan DSM dimaksudkan sebagai payung hukum bagi prosedur penyelesaian sengketa dalam pelaksanaan Persetujuan Kerangka Kerja ASEAN-RRT beserta Perjanjian-perjanjian pelaksanaannya agar tercapai kepastian dan keadilan bagi para Pihak.

Persetujuan DSM akan berlaku untuk setiap kerja sama yang diselesaikan dibawah kerangka kerja sama ASEAN-RRT, seperti kerja sama di bidang perdagangan barang, perdagangan jasa, investasi, dan setiap kerja sama yang akan diselesaikan kemudian.

Pemberlakuan Persetujuan DSM akan dilakukan melalui dengan

Peraturan Presiden sejalan dengan ketentuan Pasal 9 dan Pasal 16 Ayat (3) Undang-Undang Nomor 24 tahun 2000 tentang Perjanjian Internasional serta Pasal 22 Persetujuan DSM.

B. TUJUAN PENGESAHAN

Tujuan pengesahan Persetujuan DSM untuk menciptakan dasar hukum untuk memberlakukan ketentuan-ketentuan dalam Persetujuan DSM yang akan memberikan kepastian dan keadilan bagi para Pihak, khususnya bagi para pelaku usaha di bawah kerja sama ASEAN-RRT yang pada akhirnya diharapkan dapat meningkatkan kepastian kerja sama di antara Para Pihak.

C. POKOK-POKOK ISI PERSETUJUAN

Persetujuan DSM terdiri dari 18 (delapan belas) Pasal dengan rincian sebagai berikut:

1. Definisi mencakup istilah-istilah yang wajib digunakan dalam Persetujuan Mekanisme Penyelesaian Sengketa (Pasal 1 huruf a), diantaranya: "hari" adalah hari-hari kalender, termasuk akhir pekan dan hari libur (Pasal 1 huruf b). "para pihak pada suatu sengketa", "para pihak yang sedang bersengketa", atau "para pihak yang berkepentingan", adalah pihak pemohon dan pihak termohon (Pasal 1 huruf c). “pihak pemohon” adalah setiap pihak atau para pihak yang meminta konsultasi berdasarkan Pasal 4 (Pasal 1 huruf d). “pihak termohon” adalah setiap pihak yang dimintakan konsultasi berdasarkan Pasal 4 (Pasal 1 huruf e).
2. Lingkup dan Cakupan dalam Persetujuan DSM wajib berlaku untuk sengketa-sengketa yang timbul dalam Persetujuan Kerangka Kerja yang meliputi Lampiran-lampiran dan isi didalamnya. (Pasal 2 ayat 1).
3. Setiap Pihak wajib menunjuk suatu kantor penghubung yang wajib bertanggung jawab untuk semua urusan sebagaimana dirujuk dalam Persetujuan ini. (Pasal 3 huruf a).
4. Setiap Pihak termohon wajib memberikan pertimbangan yang sesuai dan kesempatan yang memadai untuk konsultasi berkenaan dengan konsultasi yang diajukan oleh Pihak pemohon. (Pasal 4 ayat 1).
5. Setiap permintaan konsultasi wajib disampaikan secara tertulis, yang wajib meliputi kebijakan-kebijakan spesifik yang menjadi isu, dan fakta-fakta dan dasar hukum (termasuk ketentuan-ketentuan dalam Persetujuan Kerangka Kerja yang diduga telah dilanggar, dan setiap ketentuan-ketentuan terkait lainnya) dalam keluhannya. (Pasal 4 ayat 2).
6. Dalam melakukan konsiliasi atau mediasi maka Para pihak pada suatu sengketa dapat setiap saat menyepakati konsiliasi atau mediasi.

Konsiliasi atau mediasi dapat dimulai setiap saat dan diakhiri oleh pihak yang terkait setiap saat. (Pasal 5 ayat 1).

7. Penunjukan Mahkamah Arbitrase dilakukan apabila konsultasi sebagaimana dirujuk dalam Pasal 4 gagal menyelesaikan suatu sengketa dalam waktu 60 hari setelah tanggal diterimanya konsultasi tersebut atau dalam 20 hari setelah tanggal tertentu dalam keadaan mendesak, termasuk berkenaan dengan barang-barang mudah rusak, pihak pemohon dapat mengajukan permohonan tertulis kepada pihak termohon untuk menunjuk mahkamah arbitrase berdasarkan Pasal ini (Pasal 6 ayat 1).
8. Ketentuan mengenai Susunan Mahkamah Arbitrase wajib memiliki tiga anggota (Pasal 7 ayat 1).
9. Fungsi Mahkamah Arbitrase adalah untuk melakukan penilaian yang obyektif terhadap sengketa didepan sidang, termasuk pemeriksaan fakta-fakta dari kasus tersebut dan keberlakuan dan kesesuaian dengan Persetujuan Kerangka Kerja. (Pasal 8 ayat 1).
10. Proses Hukum di Mahkamah Arbitrase wajib bersidang dalam sesi tertutup. Para pihak yang sedang bersengketa wajib hadir pada sidang-sidang hanya apabila diundang oleh mahkamah arbitrase untuk tampil di muka sidang. (Pasal 9 ayat 1).
11. Setiap Pihak yang memiliki suatu kepentingan substansial dalam suatu sengketa dimuka mahkamah arbitrase dan yang telah memberitahukan kepentingannya secara tertulis kepada para pihak dan para pihak lainnya (selanjutnya disebut sebagai "pihak ketiga"), wajib memiliki kesempatan untuk menyampaikan laporan tertulis kepada mahkamah. Penyampaian tersebut wajib juga diberikan kepada para pihak pada suatu sengketa dan dapat dicerminkan dalam laporan mahkamah arbitrase. (Pasal 10 ayat 1).
12. Mengatur mengenai Penangguhan dan Pengakhiran proses hukum dimana apabila para pihak yang bersengketa sepakat, mahkamah arbitrase dapat menangguhkan pekerjaannya setiap saat untuk suatu jangka waktu tidak lebih dari 12 bulan sejak tanggal kesepakatan tersebut. Berdasarkan permintaan dari setiap pihak pada suatu sengketa, proses arbitrase wajib dilanjutkan setelah penangguhan tersebut. Apabila pekerjaan mahkamah arbitrase telah ditunda selama lebih dari 12 bulan, otoritas pembentukan mahkamah arbitrase wajib gugur kecuali para pihak yang terkait menyepakati sebaliknya. (Pasal 11 ayat 1).
13. Ketentuan Pelaksanaan mewajibkan Para Pihak termohon untuk memberitahukan kepada pihak pemohon mengenai keinginannya dalam hal pelaksanaan rekomendasi dan pengaturan dari mahkamah arbitrase. (Pasal 12 ayat 1).
14. Mengatur mengenai kompensasi dan penangguhan konsesi atau manfaat yang merupakan kebijakan-kebijakan sementara yang

tersedia dalam hal bahwa rekomendasi-rekomendasi dan pengaturan-pengaturan tidak dilaksanakan dalam jangka waktu yang wajar. Namun demikian, tidak ada kompensasi maupun penangguhan konsesi atau manfaat yang disukai untuk pelaksanaan sepenuhnya atau suatu rekomendasi yang membawa suatu kebijakan untuk disesuaikan dengan Persetujuan Kerangka Kerja. Kompensasi bersifat sukarela dan, apabila diberikan, wajib konsisten dengan Persetujuan Kerangka Kerja. (Pasal 13 ayat 1).

15. Bahasa resmi yang digunakan selama proses hukum dalam Persetujuan DSM ini wajib dilakukan dalam bahasa inggris (Pasal 14 ayat 1).
16. Pengaturan mengenai biaya-biaya oleh masing-masing pihak yang bersengketa wajib menanggung biaya arbiter yang ditunjuk dan biaya sendiri dan biaya hukum (Pasal 15 ayat 1).
17. Pengaturan mengenai perubahan atas ketentuan-ketentuan dalam Persetujuan ini dapat dimodifikasi melalui perubahan-perubahan yang disepakati bersama secara tertulis oleh Para Pihak (Pasal 16).
18. Sekretaris Jenderal ASEAN wajib menyimpan dan menyampaikan salinan naskah asli Persetujuan DSM ini kepada setiap Negara Anggota ASEAN (Pasal 17).
19. Ketentuan mengenai pemberlakuan dimana Persetujuan ini wajib mulai berlaku pada tanggal 1 Januari 2005. Para Pihak wajib untuk menyelesaikan prosedur internalnya untuk berlakunya Persetujuan ini sebelum tanggal 1 Januari 2005. Apabila suatu Pihak tidak mampu menyelesaikan prosedur internalnya untuk berlakunya Persetujuan ini pada tanggal 1 Januari 2005, hak dan kewajiban dari Pihak tersebut berdasarkan Persetujuan ini wajib dimulai pada tanggal penyelesaian prosedur internalnya dimaksud. Suatu Pihak sejak penyelesaian prosedur internalnya untuk berlakunya Persetujuan ini wajib memberitahukan kepada para Pihak lainnya secara tertulis. (Pasal 18).

BAB II

KEUNTUNGAN, KONSEKUENSI, DAN URGENSI PENGESAHAN

A. KEUNTUNGAN

Pengesahan Persetujuan DSM dimaksud akan menguntungkan Pihak Indonesia, antara lain:

1. Adanya dasar hukum dalam pelaksanaan persetujuan mekanisme penyelesaian sengketa terutama atas kebutuhan untuk memperdalam hubungan ekonomi Indonesia dengan negara-negara ASEAN lainnya dan juga dengan RRT pada Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara ASEAN dan RRT;
2. Tercapainya kepastian dan keadilan bagi Para pemangku kepentingan khususnya bagi Para pelaku usaha dalam menjalankan usahanya di bawah kerangka kerja sama ASEAN-RRT;
3. Meningkatnya kepercayaan para pelaku usaha asing untuk bekerja sama dengan Pihak Indonesia.
4. Adanya pedoman hukum yang seragam terkait pelaksanaan Persetujuan DSM antara ASEAN dan RRT, khususnya bagi para pelaku usaha Indonesia.

B. KONSEKUENSI

Pengesahan Persetujuan DSM juga memberikan konsekuensi bagi Indonesia, antara lain:

1. Perlunya dilakukan sosialisasi bagi para pelaku usaha dan instansi teknis terkait;
2. Perlunya menyelaraskan peraturan-peraturan teknis di bidang perdagangan dan investasi dengan ketentuan-ketentuan yang berlaku dalam Persetujuan DSM;
3. Perlunya menyiapkan pedoman teknis mengenai pelaksanaan ketentuan Persetujuan DSM.

C. URGENSI PENGESAHAN

1. Landasan Filosofis

Sebagai wujud tanggung jawab pemerintah dalam menciptakan rasa keadilan dan kesetaraan di dalam kerangka kerja sama ASEAN dan RRT, khususnya bagi para pelaku usaha di kawasan maka perlu disusun suatu norma yang dapat melindungi kepentingan diantara pelaku usaha untuk menjamin kepastian, keadilan, dan manfaat dalam kerja sama yang dilakukan Pemerintah oleh Negara Mitra Persetujuan Perdagangan Bebas (FTA).

Mekanisme penyelesaian sengketa yang disepakati oleh Indonesia dalam kerangka *ASEAN-China FTA* dimaksudkan sebagai bentuk fasilitasi dan mekanisme penyelesaian yang bersifat menguntungkan para Pihak serta mewadahi kepentingan-kepentingan para pelaku usaha yang melakukan aktivitas ekonominya dikawasan tersebut.

Untuk itu, Indonesia sepakat untuk menerima pengaturan mengenai ketentuan-ketentuan yang diatur dalam Persetujuan DSM tersebut dengan tetap mengamankan kepentingan nasional secara keseluruhan dan khususnya bagi para pelaku usaha Indonesia.

Oleh karena itu, pemerintah Indonesia perlu secara konsisten menjalankan dan menyusun pedoman teknis dalam melaksanakan Persetujuan DSM berdasarkan ketentuan nasional yang disesuaikan dengan ketentuan-ketentuan internasional lainnya.

2. Landasan Sosiologis

Kerja sama antara ASEAN dengan RRT dalam Persetujuan DSM diharapkan dapat mendorong kepastian hukum yang dapat meningkatkan nilai perdagangan barang dan jasa serta investasi langsung dari ASEAN dan RRT serta diharapkan mampu meningkatkan kepercayaan para pelaku usaha Indonesia untuk mengakses pasar RRT. Dengan adanya kepercayaan dan kepastian hukum tersebut akan membuka peluang akses pasar yang lebih luas bagi Negara-negara Anggota ASEAN dan RRT, Dan bila terjadi sengketa antara para Pihak, maka tercipta suatu pedoman hukum yang seragam antara ASEAN dan RRT.

3. Landasan Yuridis

Pengesahan Persetujuan DSM dilandasi oleh peraturan perundang-undangan nasional antara lain:

a. Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 185, Tambahan Lembaran Negara Republik Indonesia Nomor 4012);
b. Undang-Undang Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 156, Tambahan Lembaran Negara Republik Indonesia Nomor 3882);
c. Keputusan Presiden Nomor 48 Tahun 2004 tentang Pengesahan *Framework Agreement On Comprehensive Economic Cooperation Between The Association Of Southeast Asian Nations And The People's Republic Of China* (Persetujuan Kerangka Kerja Mengenai Kerja Sama Ekonomi Menyeluruh Antara Pemerintah Negara-Negara Anggota Perhimpunan Bangsa-Bangsa Asia Tenggara Dan Republik Rakyat China) (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 50).

BAB III

KAITAN DENGAN PERATURAN PERUNDANG-UNDANGAN

A. PERATURAN PERUNDANG-UNDANGAN YANG TERKAIT DENGAN PERSETUJUAN DSM

Peraturan perundang-undangan nasional yang terkait dengan Persetujuan DSM ini, antara lain:

1. Undang-Undang Nomor 5 Tahun 1968 tentang Penyelesaian Perselisihan antara Negara dan Warga Negara Asing mengenai Penanaman Modal (*Convention on the Settlement of Investment Disputes between States and Nationals of other States*);
2. Undang-Undang Nomor 7 Tahun 1994 tentang Pengesahan *Marrakesh Agreement on Establishing the World Trade Organization* (Persetujuan Marrakesh mengenai Pembentukan Organisasi Perdagangan Dunia);
3. Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa;
4. Undang-Undang Republik Indonesia Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri;
5. Undang-Undang Republik Indonesia Nomor 24 Tahun 2000 tentang Perjanjian Internasional;
6. Keputusan Presiden Republik Indonesia Nomor 37 Tahun 1997 tentang Pengesahan *Protocol on Dispute Settlement Mechanism* (Protokol Mekanisme Penyelesaian Sengketa).

B. HARMONISASI PERATURAN PERUNDANG-UNDANGAN

Setelah dipelajari, muatan Persetujuan DSM ini tidak bertentangan dengan peraturan perundang-undangan yang berlaku. Namun demikian, masih diperlukan penyusunan pedoman teknis untuk melaksanakan secara efektif Persetujuan DSM dimaksud.

BAB IV

PENUTUP

A. KESIMPULAN

Para Menteri Perdagangan Negara-negara Anggota ASEAN dan RRT telah menandatangani *Agreement on Dispute Settlement Mechanism under the Framework Agreement between the Association of Southeast Asian Nations and the People's Republic of China* (Persetujuan tentang Mekanisme Penyelesaian Sengketa berdasarkan Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat Tiongkok) selanjutnya disebut sebagai "Persetujuan DSM", yang ditandatangani di Vientiane, Laos, tanggal 29 November 2004.

Dengan ditandatanganinya Persetujuan DSM tersebut, maka akan menguntungkan Pihak Indonesia, antara lain: (i) Adanya dasar hukum dalam pelaksanaan persetujuan mekanisme penyelesaian sengketa terutama atas kebutuhan untuk memperdalam hubungan ekonomi Indonesia dengan negara-negara ASEAN lainnya dan juga dengan China pada Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara ASEAN dan China; (ii) Tercapainya kepastian dan keadilan bagi Para pemangku kepentingan khususnya bagi para pelaku usaha dalam menjalankan usahanya di bawah kerangka kerja sama ASEAN-China; (iii) Meningkatnya kepercayaan para pelaku usaha asing untuk bekerja sama dengan Pihak Indonesia; dan (iv) Adanya pedoman hukum yang seragam terkait pelaksanaan Persetujuan DSM antara ASEAN dan China, khususnya bagi para pelaku usaha Indonesia.

Untuk itu terdapat beberapa konsekuensi bagi Indonesia yang perlu dipahami, antara lain: (i) Perlunya dilakukan sosialisasi bagi para pelaku usaha dan instansi teknis terkait; (ii) Perlunya menyelaraskan peraturan-peraturan teknis di bidang perdagangan dan investasi dengan ketentuan-ketentuan yang berlaku dalam Persetujuan DSM; dan (iii) Perlunya menyiapkan pedoman teknis mengenai pelaksanaan ketentuan Persetujuan DSM.

B. REKOMENDASI

Berdasarkan hal-hal tersebut di atas, mengingat muatan Persetujuan DSM memenuhi Pasal 11 Undang-Undang Perjanjian Internasional dan berdasarkan Pasal 22 Persetujuan, Pemerintah Indonesia perlu segera mengesahkan "*Agreement on Dispute Settlement Mechanism under the*

Framework Agreement between the Association of Southeast Asian Nations and the People's Republic of China (Persetujuan tentang Mekanisme Penyelesaian Sengketa berdasarkan Persetujuan Kerangka Kerja mengenai Kerja Sama Ekonomi Menyeluruh antara Asosiasi Bangsa-bangsa Asia Tenggara dan Republik Rakyat Tiongkok)" dengan Peraturan Presiden.