

PERSONAL DATA PROTECTION AND EVIDENCE IN INTERNATIONAL INVESTMENT ARBITRATION: A SOUTHEAST- ASIAN PERSPECTIVE

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ABSTRACT

Personal data protection law triggered unclarities to the evidentiary rule in investment arbitration. The question whether data protection law is applicable to investment arbitration and what constitute a lawful data processing during evidentiary process remained ambiguous. This research was aimed to answer these two questions by taking into account the personal data protection laws in Southeast Asian Countries.

In the absence of current literatures, these questions were answered by relying on qualitative-comparative analysis on regulations in Southeast Asian Countries, soft-laws, and literatures. Finally, this research argued that: *Firstly*, data protection laws may apply to investment arbitration evidentiary process in Southeast Asian Countries, with a lack of interoperability between each data protection laws; and *Secondly*, that there is a similar obligations among each data protection laws in Southeast Asian Countries. It is recommended that government in Southeast Asian Countries shall pursue interoperability between their data protection laws, while scholars and practitioners shall develop a comprehensive guideline for data protection law during evidentiary process in investment arbitration.

Keywords: data protection; evidence; investment arbitration; Southeast Asia; comparative law.

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PERLINDUNGAN DATA PRIBADI DAN PEMBUKTIAN DI ARBITRASE INVESTASI INTERNASIONAL: PERSPEKTIF ASIA TENGGARA

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INTISARI

Aturan perlindungan data pribadi memicu ketidakjelasan aturan pembuktian dalam arbitrase investasi. Pertanyaan apakah undang-undang perlindungan data berlaku untuk arbitrase investasi dan keabsahan pemrosesan data yang sah selama proses pembuktian tetap ambigu. Penelitian ini bertujuan untuk menjawab dua pertanyaan tersebut dengan memperhatikan undang-undang perlindungan data pribadi di negara-negara Asia Tenggara.

Karena kurangnya literatur yang ada saat ini, penelitian ini mencoba menjawab pertanyaan tersebut dengan mengandalkan analisis kualitatif-komparatif terhadap regulasi di negara-negara Asia Tenggara, aturan yang tidak mengikat, dan literatur. Terakhir, penelitian ini berpendapat bahwa: Pertama, adanya kemungkinan bahwa undang-undang perlindungan data pribadi berlaku untuk proses pembuktian arbitrase investasi di negara-negara Asia Tenggara, dengan kurangnya interoperabilitas antara masing-masing undang-undang perlindungan data pribadi; dan Kedua, adanya kewajiban yang sama di antara masing-masing undang-undang perlindungan data di negara-negara Asia Tenggara. Penelitian ini merekomendasikan bahwa pemerintah di negara-negara Asia Tenggara harus mengupayakan interoperabilitas antara undang-undang perlindungan data mereka, sementara para sarjana dan praktisi harus mengembangkan pedoman yang komprehensif untuk undang-undang perlindungan data selama proses pembuktian dalam arbitrase investasi.

Kata kunci: *perlindungan data pribadi; pembuktian; arbitrase investasi; Asia Tenggara; hukum komparatif.*

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