

Jurisdictional Challenges and Investor Protections: Lesson Learned from Indonesia's Failure to Safeguard Foreign Investments during Asian Financial Crisis

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ABSTRACT

This research examines jurisdictional contentions made by the Parties in the investment disputes during the Asian Financial Crisis, and to analyse whether such contentions are aligned with the precedents set forth in international investment disputes. This research further examines the claims and measures made by the Parties, while also analysing the causes of Indonesia's failure to protect foreign investments and the justifiability of its measures. Lastly, this research further analyses Indonesia's legal framework for investor protections during the Asian Financial Crisis and proposes improvements to prevent future international investment disputes.

This research uses a normative approach to examine Indonesia's foreign investment disputes during the Asian Financial Crisis, focusing on jurisdictional and substantive issues in the *Himpurna* and *KBC* cases. It assesses the legality of Indonesia's measures under international investment law based on presidential decrees, investment contracts, case laws, and supporting literature. Furthermore, this research analysis was conducted through qualitative research, by collecting data through case studies-based approach.

This legal writing finds several key aspects, such as Indonesia's failure to comply with the precondition to arbitration requirements in the contract and Indonesia's misinterpretation of the subject-matter of the dispute with foreign investors in the jurisdictional stage of the cases, and Indonesia's breach of standards of protection towards foreign investors during the Asian Financial Crisis through arbitrary measures such as enactment of several Presidential Decrees without any due process with foreign investors and failure to honour IPP contract provisions. Lastly, this legal writing finds recommendations for Indonesia's current legal framework to prevent international investment disputes in the future.

Keywords: Foreign Investments, Investment Law, Investor Protections, Asian Financial Crisis, Jurisdiction, State Measures

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Tantangan Yurisdiksi dan Pelindungan Investor: Pelajaran yang Diambil dari Kegagalan Indonesia dalam Melindungi Investasi Asing selama Krisis Keuangan Asia

INTISARI

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Penelitian ini mengkaji sengketa yurisdiksi yang diajukan oleh para pihak dalam sengketa investasi selama Krisis Keuangan Asia, serta menganalisis apakah sengketa tersebut sejalan dengan preseden yang ditetapkan dalam sengketa investasi internasional. Penelitian ini juga mengkaji klaim dan tindakan yang diajukan oleh para pihak, sambil menganalisis penyebab kegagalan Indonesia dalam melindungi investasi asing dan keabsahan tindakan yang diambil. Terakhir, penelitian ini menganalisis kerangka hukum Indonesia untuk perlindungan investor selama Krisis Keuangan Asia dan mengusulkan perbaikan untuk mencegah sengketa investasi internasional di masa depan.

Penelitian ini menggunakan pendekatan normatif untuk mengkaji sengketa investasi asing di Indonesia selama Krisis Keuangan Asia, dengan fokus pada isu-isu yurisdiksi dan substansial dalam kasus Himpurna dan KBC. Penelitian ini mengevaluasi legalitas langkah-langkah yang diambil oleh Indonesia berdasarkan hukum investasi internasional, dengan mengacu pada keputusan presiden, kontrak investasi, putusan pengadilan, dan literatur pendukung. Selain itu, analisis penelitian ini dilakukan melalui penelitian kualitatif, dengan mengumpulkan data melalui pendekatan studi kasus.

Tulisan hukum ini mengidentifikasi beberapa aspek kunci, seperti kegagalan Indonesia dalam memenuhi persyaratan pra-syarat arbitrase dalam kontrak dan kesalahpahaman Indonesia terhadap substansi sengketa dengan investor asing pada tahap yurisdiksi kasus-kasus tersebut, serta pelanggaran Indonesia terhadap standar perlindungan terhadap investor asing selama Krisis Keuangan Asia melalui tindakan sewenang-wenang seperti penerbitan beberapa Keputusan Presiden tanpa proses hukum yang semestinya dengan investor asing dan kegagalan untuk menghormati ketentuan kontrak IPP. Terakhir, tulisan hukum ini menemukan rekomendasi untuk kerangka hukum Indonesia saat ini guna mencegah sengketa investasi internasional di masa depan.

Kata kunci: Investasi Asing, Hukum Investasi, Perlindungan Investor, Krisis Keuangan Asia, Yurisdiksi, Langkah-langkah Pemerintah

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