

TABLE OF CONTENTS

| | |
|------------------------------------------------------------------------------------|-----|
| ENDORSEMENT | i |
| APPROVAL | ii |
| ACKNOWLEDGEMENTS | iii |
| DISCLAIMER | v |
| TABLE OF CONTENT | vi |
| ABSTRACT | ix |
| INTISARI | x |
| | |
| CHAPTER ONE: INTRODUCTION | 1 |
| A. UNDERLYING BACKGROUND | 1 |
| B. RESEARCH QUESTIONS | 5 |
| C. RESEARCH PURPOSES | 6 |
| D. ORIGINALITY OF RESEARCH | 6 |
| E. BENEFIT OF RESEARCH | 10 |
| | |
| CHAPTER TWO: LITERATURE REVIEW | 11 |
| A. INTERNATIONAL ARBITRATION..... | 11 |
| 1. DEVELOPMENTS AND CHARACTERISTICS INTERNATIONAL ARBITRATION .. | 11 |
| 2. THE BENEFIT OF INTERNATIONAL ARBITRATION | 12 |
| 3. SUBMITTING A DISPUTE TO AN ARBITRATION | 15 |
| B. RELEVANT SOURCES FOR EVIDENTIARY RULES UNDER INTERNATIONAL ARBITRATION | 18 |
| 1. PARTIES' ARBITRATION AGREEMENT | 18 |
| 2. LAW GOVERNING THE ARBITRATION | 19 |
| 3. INSTITUTIONAL RULES..... | 21 |
| 4. IBA RULES ON TAKING OF EVIDENCE | 21 |

| | |
|----------------------------------------------------------------------------------------------|-----------|
| 5. PRECEDENTS..... | 22 |
| C. EVIDENTIARY RULES UNDER INTERNATIONAL ARBITRATION..... | 26 |
| 1. PROCEDURE TO SUBMIT AN EVIDENCE | 26 |
| 2. ADMISSIBILITY OF EVIDENCE | 27 |
| a. Tribunal’s discretion in determining the admission of evidence..... | 27 |
| b. Materiality and Relevance test..... | 28 |
| c. Party’s Right to Present its Case..... | 30 |
| d. Public Policy..... | 31 |
| e. Procedural Economy and Proportionality..... | 33 |
| | |
| CHAPTER THREE: RESEACH METHOD..... | 36 |
| A. CHARACTERISTIC OF RESEARCH..... | 36 |
| B. SOURCES OF DATA..... | 37 |
| C. DATA COLLECTION METHOD..... | 38 |
| D. DATA ANALYSIS..... | 39 |
| | |
| CHAPTER FOUR: RESEARCH RESULT AND ANALYSIS..... | 41 |
| A. GENERAL TREATMENT OF ILLEGALLY OBTAINED EVIDENCE UNDER INTERNATIONAL ARBITRATION..... | 41 |
| 1. ANALYSIS ON CASES THAT HAVE ACCEPTED ILLEGALLY OBTAINED EVIDENCE | 42 |
| a. Caratube v. Kazakhstan | 42 |
| b. Hulley Enterprises v. Russia..... | 44 |
| c. Kiliç İnşaat İthalat İhracat Sanayi Ve Ticaret Anonim Şirketi v. Turkmenistan, | 45 |
| d. Sivasspor Kulübü v. UEFA (CAS 2014/A/3625)..... | 46 |
| e. Gambrinus v. Venezuela..... | 49 |
| 2. ANALYSIS ON CASES THAT HAVE REJECTED THE ADMISSION OF ILLEGALLY OBTAINED EVIDENCE..... | 51 |
| a. Methanex v. USA | 51 |
| b. Libananco v. Turkey..... | 54 |
| c. ConocoPhillips v. Venezuela..... | 57 |
| d. EDF v. Romania | 60 |
| e. OPIC Karimum Corporation v. Venezuela..... | 64 |
| 3. GENERAL APPROACHES TO ILLEGALLY OBTAINED EVIDENCE..... | 65 |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| B. REFLECTING THE INCONSISTENCY: ANALYSIS ON THE CONSIDERATION AND REASONING USED BY TRIBUNALS IN THE ADMISSION OF ILLEGALLY OBTAINED EVIDENCE..... | 68 |
| 1. GOOD FAITH AND PROCEDURAL FAIRNESS CONSIDERATIONS | 69 |
| 2. MATERIALITY AND RELEVANCE | 73 |
| 3. BALANCING THE INTEREST IN FINDING THE TRUTH AND HARM CAUSED BY THE ADMISSION OF THE EVIDENCE | 75 |
| 4. AVAILABILITY OF THE DOCUMENT TOWARDS THE PUBLIC | 77 |
| 5. REFLECTING THE DIFFERING CONSIDERATIONS IN THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE..... | 79 |
| C. POTENTIAL SOLUTIONS OFFERED TO ARBITRATORS, INSTITUTIONS AND LAW-MAKERS | 82 |
| 1. POTENTIAL SOLUTIONS FOR ARBITRATORS | 84 |
| a. The Utilization of Clean-Hands test | 84 |
| b. Thorough Assessment on Relevant Public Policies..... | 86 |
| 2. SOLUTIONS OFFERED TO INSTITUTIONS AND COMMUNITIES | 89 |
| 3. SOLUTIONS OFFERED TO JUDGES AND LEGISLATORS..... | 90 |
| CHAPTER FIVE: CLOSURE | 93 |
| A. CONCLUSION | 93 |
| 1. ON THE GENERAL TREATMENT OF ILLEGALLY OBTAINED EVIDENCE IN INTERNATIONAL ARBITRATION..... | 93 |
| 2. ON THE CONSISTENCY OF THE CONSIDERATIONS USED BY INTERNATIONAL ARBITRAL TRIBUNAL IN DETERMINING THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE | 94 |
| 3. ON THE POTENTIAL SOLUTIONS OFFERED TO RELEVANT ACTORS | 94 |
| B. RECOMMENDATION | 95 |
| 1. FOR FUTURE STUDIES | 95 |
| 2. FOR ACADEMICS..... | 96 |
| 3. FOR THE INDONESIAN GOVERNMENT..... | 96 |
| BIBLIOGRAPHY | 98 |