

## TABLE OF CONTENT

APPROVAL PAGE .....	i
ACKNOWLEDGEMENT PAGE.....	ii
STATEMENT OF AUTHENTICITY .....	iii
PREFACE .....	iv
TABLE OF CONTENT .....	x
CHAPTER I	
INTRODUCTION .....	1
A. Background .....	1
B. Research Question.....	7
C. Purposes .....	8
D. Function .....	8
E. Literature Review.....	9
CHAPTER II	
THEORITICAL FRAMEWORK .....	13
A. Understanding the Rationale behind the Defense against responsibility under the International Investment Law .....	13
1. Sovereignty under International Trade and Investment Regime.....	13

2. The Raising Needs of Policy Space for State .....	16
B. General Overview of the Source of International Law .....	17
1. International Investment Agreement ('IIA') as Source of International Law .....	20
2. Customary International Law as a Source of International Law .....	23
3. General Principles of Law as a Source of International Law .....	26
4. Judicial Decision and Teaching of the Most Highly Qualified Publicist as a Source of International Law .....	27
C. General Overview concerning International Investment Law and Regulation especially in Indonesia .....	29
1. General Overview of International Investment Law .....	29
2. General Overview of Indonesia's Foreign Investment Regulation .....	31
D. General Overview of Defense from Responsibility under International Law	34
1. Internationally Wrongful Act of a State .....	35
2. Circumstances Precluding Wrongfulness .....	37
 CHAPTER III	
RESEARCH METHOD .....	41
A. Research Category .....	41

B. Data Finding Method .....	42
C. Method of Document Analysis .....	43
CHAPTER IV	
RESEARCH RESULT AND ANALYSIS .....	48
A. The Concept of Defense under International Investment law.....	48
1. The Scope of Defense Applicable .....	48
2. The Scope of Financial Crises .....	50
3. Existing Clauses under Indonesia IIA and its Applicability to Justify the Non-Performances of International Obligation .....	51
3.1. ‘Compensation for Losses’ Clause.....	52
3.2. ‘Temporary Safeguard Measure’ Clause .....	57
3.3. ‘Preclusion Clause’ .....	59
3.4. General Exception Clause .....	61
3.5. Security Exception Clause .....	63
3.6. Necessity Clause .....	65
B. Justifying Economic Crises as Defense from Responsibility .....	68
1. Economic crises within the scope permissible objective under the defense clause .....	68

1.1.	Economic crisis as event of serious balance of payment .....	69
1.2.	Economic crisis as a disturbance of public order.....	73
1.3.	Economic crisis as threat to essential security interest of state.....	76
1.4.	Economic crisis as threat to essential interest of state .....	78
2.	Indicator of Severity of the situation which justifies the actions .....	79
2.1.	Public Debt to GDP Ratio.....	80
2.2.	Balance of Payment.....	81
3.	Measure that are justified to be taken during the situation.....	82
3.1.	Self-judging nature of the Measures .....	82
3.2.	Requirement of notification to other parties .....	85
3.3.	The measure must be consistent with membership's obligation to international organization.....	87
3.4.	The measure must be the only way available to counter the crisis ....	90
3.5.	The measures shall be necessary to rectify the situations .....	91
3.6.	The measure shall be withdrawn should the situation had perished ..	94
4.	Situations that barred state from invoking the defense clause .....	95
4.1.	Contribution of the State towards the crisis .....	95
4.2.	The obligation concerned preclude the plea of defense .....	96

CHAPTER V

CLOSING .....	98
A. Conclusion .....	98
B. Recommendation.....	99
BIBLIOGRAPHY .....	100