

Potensi masalah treaty shopping dan forum shopping dalam ketentuan investor state dispute settlement atas tumpang tindih persetujuan peningkatan dan perlindungan penanaman modal di Regional ASEAN = Potential problem of treaty shopping and forum shopping in investor state dispute settlement provision on overlap investment agreement in ASEAN Region

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Abstrak

Investor-state dispute settlement adalah ketentuan yang umum terdapat di P4M. Ketentuan tersebut bertujuan untuk memberikan perlindungan kegiatan investasi asing di negara penerima investasi. Ketentuan tersebut juga terdapat di ACIA dan lebih dari satu P4M bilateral yang berlaku di ASEAN. Banyaknya P4M yang berlaku tersebut mengakibatkan banyaknya ketentuan investor-state dispute settlement yang berlaku pula di ASEAN karena tidak seragamnya ketentuan investor-state dispute settlement di setiap P4M. Adanya perbedaan ketentuan tersebut dapat dimanfaatkan oleh investor asing untuk mencari keuntungan dari suatu P4M bagi kegiatan investasi yang dilakukan di negara ASEAN lainnya. Keuntungan tersebut dapat diraih dengan cara treaty shopping dan forum shopping.

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Investor-state dispute settlement is a common provision in a BIT. The provision is intended to provide protection of foreign investment activity in the host state. The provision could also be found in ACIA and more than one BIT in ASEAN. Those investment agreements resulted many investor-state dispute settlement are in force in the ASEAN because there is no uniform provision of the investor-state dispute settlement in each of those agreements. The difference in those provisions could be used by foreign investors to get benefits from a BIT or ACIA for their investment activities in other ASEAN countries. The benefits could be achieved by treaty shopping and forum shopping.