ABSTRAK

TINJAUAN YURIDIS TERHADAP GUGATAN INDIAN METALS & FERRO ALLOYS LIMITED (IMFA) TERHADAP PEMERINTAH REPUBLIK INDONESIA DITINJAU DARI AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Banyak negara-negara, khususnya negara berkembang, merasa diuntungkan dengan masuknya penanaman modal asing mengingat adanya dampak positif bagi pembangunan nasional negara tersebut. Dalam hal ini, penanaman modal asing diperuntukkan bagi pengembangan usaha dan menggali potensi menjadi kekuatan ekonomi riil dengan memanfaatkan potensi-potensi modal, skill atau managerial, dan teknologi yang dibawa oleh para investor asing.

Berbagai upaya telah dilakukan oleh negara-negara dalam rangka menarik minat investor asing, salah satunya adalah dengan memberikan fasilitas dan perlindungan hukum kepada investor asing melalui penandatanganan Perjanjian Promosi dan Perlindungan Penanaman Modal (“P4M”) dengan negara asal investor asing tersebut. P4M menjadi pendorong bagi negara penandatangan untuk saling menyajikan kebijakan yang dapat mendukung dan mempromosikan penanaman modal di masing-masing negara.


Untuk mengetahui sejauh mana efektifitas penyelesaian sengketa antara Pemerintah Republik Indonesia dengan investor asing, perlu dilakukan pengkajian terhadap penyelesaian kasus-kasus penanaman modal asing di Indonesia, seperti kasus gugatan Indian Metals & Ferro Alloys Limited (IMFA) terhadap Pemerintah Republik Indonesia yang penyelesaiannya dilakukan melalui Permanent Court of Arbitration di Singapura.

ABSTRACT


Many states, especially developing states, feel the benefit of the entry of foreign investment due to its positive impact to its state national development. In this matter, the foreign investment is used for business development and conversion of potential into a real economic power by making the use of potential capital, skill or managerial, and technology brought by the foreign investors.

Various efforts have been carried out by states with the intention to attract foreign investors, one of which is by providing legal facility and protection to the foreign investors through the signing of an Investment Promotion and Protection Agreement (Perjanjian Promosi dan Perlindungan Penanaman Modal / “P4M”) with the states where such foreign investors originated. P4M acts as a driving force of the contracting states to present each other’s policies which could support and promote the investment in each state.

Considering the above-mentioned advantages resulted from the entry of foreign investment, the Government of Republic of Indonesia continuously strives to sign P4M with other states with the intention to increase the level of foreign investment in Indonesia. Currently, the Government of Republic of Indonesia has signed 71 (seventy-one) P4M with other states, one of which is the Government of Republic of India, i.e. Agreement between the Government of Republic of Indonesia and the Government of the Republic of India for the Promotion and Protection of Investments on 8 February 1999.

In order to know the extent of effectiveness of dispute resolution between the Government of Republic of Indonesia and foreign investors, an assessment of the settlement of foreign investment disputes involving the Government of Indonesia should be undertaken, such as the lawsuit of Indian Metals & Ferro Alloys Limited (IMFA) against the Government of Republic of Indonesia which settlement is handled by the Permanent Court of Arbitration in Singapore.

Keywords: Foreign Investment Dispute, IMFA, Indian Metals & Ferro Alloys Limited, Indonesia – India BIT, Agreement between the Government of Republic of Indonesia and the Government of the Republic of India for the Promotion and Protection of Investments.