



INITIATING THE ASEAN ARBITRATION BOARD AS A FORUM FOR SETTLEMENT OF INVESTMENT LEGAL DISPUTES IN THE FRAMEWORK OF INTEGRATION OF THE ASEAN ECONOMIC COMMUNITY (AEC) REGION (Integrative Legal Theory as the Basis for the Study with an Analytical Knife)

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ABSTRACT

The impact of liberalization and globalization of the world economy is that all countries in the ASEAN region, have become an area of a borderless economic community (AEC). This has triggered an increase in the foreign investment business and its legal disputes, which of course need legal certainty for dispute resolution. The parties must resolve it through general courts (litigation), or alternative dispute resolution out of court or arbitration (non-litigation). Therefore, it becomes a legal issue: what are the legal aspects of resolving legal disputes between the Indonesian government and foreign investors; and what efforts should be made to facilitate the settlement of investment law disputes, within the framework of regional integration of the ASEAN economic community? This study aims to analyze investment dispute resolution and the idea of establishing an MEA arbitration body as a forum for resolving investment legal disputes between business actors. This study uses a normative juridical method, which is based on library research to obtain secondary data, sourced from primary, secondary, and tertiary legal materials. The specifications of the analytical descriptive research describe the establishment of the MEA arbitration body and the potential positive impacts. The data analysis method used is juridical qualitative. The results of the study indicate that the development of investment business legal dispute resolution in the MEA area requires the AEC Arbitration Board as a forum for resolving investment disputes between business actors, mainly due to differences in legal systems between countries.

Keywords: marulak pardede; business law: investment disputes, ASEAN arbitration board

INTRODUCTION

The international community's agreement on economic liberalization and globalization has triggered an increase in foreign investment business activities, which are highly competitive, requiring transparency and legal certainty for dispute resolution that is inseparable from national and international investment business transactions. With a population of about 620 million people, the community of countries in the ASEAN region (AEC) is increasingly developing in various sectors, and its member countries are competing to benefit from this development.¹ The traffic of

commodities and services is believed to be more intense. AEC will provide unlimited opportunities for business players in ASEAN countries to develop their business empires, as well as expand their investment, production, and market focus throughout the Southeast Asian region, as ASEAN becomes a borderless economic area. Indonesia must implement the AEC agreement, and be prepared to face the possible risks, one of which is legal risk.²

Prior to the ASEAN Economic Community (AEC), ASEAN countries already had an ASEAN

¹ FISIPOL, Universitas Gajah Mada: "International Conference Of ASEAN Studies 2014: Jelang Pasar Bebas ASEAN, Pemerintah Dianjurkan Melibatkan Peran Swasta", accessed September 20, 2022, <https://www.ugm.ac.id/id/berita/9336-jelang-pasar-bebas->

² Dr. Ricardo Simanjuntak, S.H., LL.M., ANZIIF, CIP. "Dispute Settlement Mechanism Under the ASEAN Legal Frameworks: a collective Commitment Creating the Rules-Based ASEAN Economic Community," (Kontan Publishing: Jakarta: Tanpa Tahun), 165-166.

Free Trade Area (AFTA), liberalization of trade barriers, and the ASEAN Comprehensive Investment Agreement (ACIA) to overcome investment barriers. The effects of globalization that have swept across the world, have resulted in a large number of parties in international transactions followed by the phenomenon of the emergence of investment disputes. In legal relations arising from the existence of an agreement between the parties, both foreign investors and local partners and/or with the government through a cooperation agreement, allowing for a difference of opinion or denial in the performance of obligations of the agreement made which leads to a dispute in the cooperation. To resolve these disputes and problems, the parties must seek a settlement through a general court (litigation) established by the state, or through alternative dispute resolution outside the court or the arbitration (non-litigation).

In fact, why are domestic and foreign investors less interested in investing in Indonesia? In recent years, investment business disputes between countries have increased significantly. The five countries that experienced the most were those with major economic challenges, namely the United States, Britain, Germany, China, and Brazil. This was implied at the Asia-Pacific Forum for International Arbitration (AFIA) by the Singapore representative, Dulac Elodie, 2nd Annual Symposium For Arbitrators and Mediators in Jakarta.³ Legal practitioners must be more focused on responding to the situation in the globalization era which increasingly opens the possibility of disputes between countries, which require special attention. The characteristics of these disputes are more complicated when compared to disputes that occur between parties within the same country, due to differences in jurisdiction and culture, and the collection of evidence from several countries. Regarding the specific characteristics, Francesca Depalois, an expert on alternative dispute resolution (Alternatif Penyelesaian Sengketa 'APS') from Italy, assessed that dispute resolution between countries would be more effective if they were resolved through mediation or arbitration. The two options offer

³ "Sengketa Bisnis Antar Negara Meningkatkan Signifikan. Lebih efektif Diselesaikan melalui Alternative Penyelesaian Sengketa", <https://www.hukumonline.com/berita/a/sengketa-bisnis-antar-negara-meningkat-signifikan-lt565ed170aaa05/>, diakses pada 12/08/22.

flexibility in timing, as well as the selection of locations and procedures. Moreover, if there is a dispute where one of the disputing parties comes from a country with a corrupt judicial system. Judiciary can be very complicated (tricky) and the costs and efforts that must be incurred are quite large. However, to ensure that the mediation or arbitration undertaken can be truly effective, the parties must remember the purpose of taking the Alternative Dispute Resolution, to obtain results that can be carried out in other jurisdictions or to maintain relations between the parties in dispute. It is important to determine the type of Alternative Dispute Resolution that should be chosen by the parties. In implementing the Alternative Dispute Resolution, the parties need to compare the facilities that can be obtained. For example, the location and facilities of the organizing institution.

According to Toni Budidjaja, Partner of the law firm Budidjaja & Associates Indonesia, in resolving disputes between countries, the parties must have knowledge of the laws of the jurisdictions of other countries. Understanding business between countries is also a requirement that must be fulfilled, so it requires the ability to work in the midst of various cultures.⁴ This is to ensure that the parties understand the ongoing process. Even if there is a translator, the legal advisor is expected to be able to ensure that the translator correctly translates the meaning conveyed in the right words. In accordance with the New York Convention 1958, the obligations of the parties are reciprocal.⁵ Therefore, in the context of Indonesia, the party dealing with a party originating from Indonesia must state whether they are parties to the New York Convention or not. Regarding the implementation of the mediation results and Arbitral Awards, there are special conditions that must be met if the decision is to be implemented in Indonesia, including there must be a valid arbitration agreement; the arbitration tribunal has the authority to examine cases, and the results do

⁴ "Sengketa Bisnis Antar Negara Meningkatkan Signifikan. Lebih efektif Diselesaikan melalui Alternative Penyelesaian Sengketa", *hukumonline*, accessed September 22, 2022, <https://www.hukumonline.com/berita/a/sengketa-bisnis-antar-negara-meningkat-signifikan-lt565ed170aaa05/>

⁵ Marwah Diah M, "Prinsip dan Bentuk-Bentuk Alternatif Penyelesaian Sengketa Diluar Pengadilan", (Jakarta: Hukum dan Masyarakat, 2018), 116

not conflict with the public interest. There is no clear definition of the public interest, therefore, the parties must be careful to understand it.⁶

In resolving disputes through international arbitration, there are various different characters when compared to settlement forums in the litigation route. The choice of international forum has consequences for the language used internationally, which is quite unique. The procedural law that becomes the guideline is chosen by the parties themselves.⁷ Mastery of arbitration procedural law is one of the keys to success in winning cases through this forum. The arbitration forum is based on UNCITRAL law, then the choice of procedural law is UNCITRAL. If the forum is ICSID, then the choice of procedural law uses ICSID. The procedural law model in UNCITRAL is more flexible for the parties, especially when they want to regulate the mechanism themselves. Generally, the parties negotiate and determine how the trial will proceed. If the arbitration tribunal agrees, then the arbitration tribunal will later make a statement stating that the UNCITRAL rules have been violated, as agreed upon by the parties. This is in accordance with Article 32 paragraph (1) (2) (3) of Law No.25 of 2007 concerning Investment. The ICSID Convention which was established on the basis of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966, has been ratified by Indonesia through Law No. 5 of 1968 Regarding the settlement of disputes between the State and Foreign Citizens regarding investment in conjunction with Article 1 point 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts.⁸

Likewise, lawyers who are litigating in international arbitration must master the Indonesian positive law, because disputes based on the Indonesian positive law are resolved through international arbitration mechanisms. In

⁶ “Sengketa-Bisnis-Antar-Negara-Meningkat-Signifikan”, *Hukumonline*, accessed September 22, 2022, <https://www.hukumonline.com/berita/baca/lt565ed170aaa05/>.

⁷ Frans Hendra Winarta, *Hukum Penyelesaian Sengketa*, (Jakarta: Sinar Grafika, 2019), 12-15.

⁸ Marulak Pardede, *Hukum Perjanjian, Teknologi Informasi dan Kejahatan*, Depok, Jawa Barat: Papas Sinar Sinanti, 2021, 212 dan 249.

arbitration procedural law, every argument must be based on the law, so that foreign lawyers may have more control over the Indonesian positive law aspects. For example, the opposing party used expert witnesses from the Netherlands who controlled the Civil Code. This has greatly influenced the views of the Arbitration Tribunal. Foreign lawyers rely on Indonesian lawyers too, because the disputed contract must use Indonesian law. So it is not appropriate to hire a foreign law firm because contract disputes use Indonesian law. Facing an arbitration process that does not adhere to the civil law legal system (in Indonesia), it is necessary to have the help of a foreign lawyer, according to the context of the case being handled.⁹

Agreements among ASEAN countries are not only binding on member countries but also binding on people. Since 1 January 2016, Indonesia has entered the free market era throughout Southeast Asia AEC. The flow of goods and services across countries is increasingly dynamic, and the risk of business disputes also increasing. In this ASEAN cross-border trade dispute, arbitration has also become one of the options for the settlement forum. According to legal practitioner Frans Hendra Winarta, arbitration has developed into an effective and efficient method of dispute resolution, because of its flexible and confidential settlement and a final and binding decision.¹⁰. The purpose of writing this scientific paper is to contribute ideas in order to improve the settlement of investment legal disputes in the AEC Region in the future.

Therefore, the problems in writing this scientific paper are: what are the legal aspects of resolving legal disputes between the Indonesian government and foreign investors; and what efforts should be made to facilitate the settlement of investment legal disputes, within the framework of the integration of the AEC Region? This is a distinguishing and significant indication that this scientific paper contains novelty and distinguishes it from other similar scientific papers, compared

⁹ Hukum online: “Kiat-Hadapi-Lawyer-Asing- Di-Forum-Arbitrase-Internasional”, <https://www.hukumonline.com/berita/baca/lt56bcae05190fa/5->, 11 Februari 2016.

¹⁰ Hukum Online: “Panduan Untuk Orang Hukum Memasuki MEA”, <https://www.hukumonline.com/berita/baca/lt567ea80fdd5ae/panduan-untuk-orang-hukum-memasuki-mea>, 26 Desember 2016.

to several previous similar legal studies that have been carried out, among others, are:

1. Fariz Mauldiansyah's research: examines the subject matter: procedural dispute resolution mechanisms over the dispute resolution framework of the trade and investment regime in ASEAN which is associated with the preferences of ASEAN member countries towards the use of the dispute resolution system in the WTO.¹¹
2. Research conducted by Putrirahmatillah: examines the problem of resolving foreign direct investment disputes in accordance with Law No. 25 of 2007 concerning investment in the implementation of the AEC 2015 in Indonesia, which aims to find out how to regulate foreign investment Dispute Resolution in Indonesia in the context of the AEC.¹²

RESEARCH METHODOLOGY

The method used in the writing of this scientific paper is statute approach method, namely juridical-normative, which uses legal materials,¹³ primary, secondary and tertiary,¹⁴ related to legal developments in society according to the subject matter; The nature of this research is

juridical-normative¹⁵. The research specification, analytical descriptive, describes the establishment of the ASEAN arbitration body and then analyzed it to see if it has the potential to have a positive impact on the settlement of investment disputes in the ASEAN economic community. This research is categorized as normative legal research,¹⁶ examining the principles and rules of law, using a statute approach.¹⁷ Scientific research procedures to find the truth based on the logic of legal science from the normative side.¹⁸ The technique of collecting legal materials for this research was carried out utilizing a literature study of primary and secondary legal materials, as well as searching for legal materials through the internet.¹⁹

The Data analysis method is descriptive-qualitative, processing legal materials by analyzing, then concluding by deductive means.²⁰

This research uses the Integrative Legal Theory from Romli Atmasasmita, as an analytical knife (tool) to find answers to the problems identified and also as a basis for providing solutions and recommendations to find understanding between the parties involved in the application of the legal aspects of the judiciary for the settlement of legal disputes on online buying and selling agreements involving the banking business industry in the digital era. According to Romli Atmasasmita, the law cannot be separated from human life, so discussing the law cannot be separated from human life. Good law is the law that is in accordance with the law that lives in society. This theory wants to reconstruct the thoughts of Mochtar Kusumaatmadja and Satjipto Rahardjo by producing a new theory, namely the

¹¹ Mauldiansyah, Fariz, Program Magister Hukum, Universitas Indonesia, "Prosedur dan Efektivitas Mekanisme Penyelesaian Sengketa Perdagangan dan Investasi dalam ASEAN", *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol.6, Nomor 1 Januari 2022. E-ISSN: 2656-6753, p-ISSN: 2598-9944, DOI: 10.36312/jisip.v6i.2729/http://ejournal.mandalanursa.org/index.php/JISIP/index.

¹² Putrirahmatillah, Fakultas Hukum UNSRAT, Manado, "Penyelesaian sengketa investasi asing langsung dalam menurut UU.No.25 Tahun 2007 Tentang penanaman modal dalam penerapan MEA 2015 di Indonesia", *Jurnal Lex Crimen* Vo.VII/No.6/Agustus/2018.

¹³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 1986, 52, Lihat Pula C.F.G. Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad Ke-20*, Bandung: Alumni, 1994, 134 dan Lihat Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali, 1986, 14-15.

¹⁴ Bagir Manan, *Penelitian di Bidang Hukum*, *Jurnal Hukum Puslitbangkum* Nomor 1-1999, (Pusat Penelitian Perkembangan Hukum, Lembaga Penelitian Univ. Padjadjaran Bandung: 1999), 3-6

¹⁵ Lili Rasjidi, *Metode Penelitian Hukum, dalam Filsafat Ilmu, Metode Penelitian, dan Karya Tulis Ilmiah Hukum*, Bandung: Monograf, Juli 2005, 7.

¹⁶ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1990), 11-12,

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2006) 35

¹⁸ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), 57

¹⁹ Dr. Muhaimin, S.H., M.Hum., *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), 64-65.

²⁰ Ariesto Hadi Sutopo, Adrianus Arief, *Terampil Mengolah Data Kualitatif*, (Kencana, Jakarta: 2019), 16-18.

reconstruction of Development Legal Theory by Mochtar Kusumaatmadja and Progressive Legal Theory by Satjipto Rahardjo so that the Integrative Legal Theory was born. Integrative Legal Theory provides enlightenment regarding the relevance and importance of law in Indonesian human life and reflects that law as a system that regulates people's lives cannot be separated from the culture and character of its people, the geographical location of the environment, and people's views of life. Belief in Integrative Legal Theory is the function and role of law as a means of unifying and strengthening society and the bureaucracy in dealing with developments and dynamics of life, both within the scope of the Unitary State of the Republic of Indonesia and within the scope of international developments. According to Romli Atmasasmita, the Integrative Legal Theory can be used to analyze, anticipate, and recommend legal solutions, which not only consider normative aspects, but also social, economic, political, and security aspects

DISCUSSION AND ANALYSIS

1. Information Technology Trends and Trade Business Disputes

In the era of globalization, the rapid development of information technology cannot be separated from business activities. The use of electronic systems for trading activities, which is conventional, namely transactions, there is an agreement on goods or an agreement on services, there is buying and selling, there is the implementation of work, the context of which is how to see in the context of trade. Definitions of e-business and e-commerce, the impression is very close. E-commerce is broader, because commercial activities, something that is interactive, transactions between person A and person B come out. Its application in a broad sense is a matter of activity, which is almost the same as commercial.²¹

²¹ Iman Sujono, "Pengaturan E-Commerce Dalam Transaksi Elektronik di Indonesia," *International Journal Electronic Commerce*, DOI10.5281/zenodo.3407955. September 2019. Imam Sujono @Student .smc.edu IndonesiaX Online Course. 1.

Quayle,²² in 2002, (as quoted in I Putu Agus Eka, 2015), added the definition of E-Commerce as sharing forms of electronic data exchange or Electronic Data Interchange (EDI) involving sellers and buyers via mobile devices, e-mail, mobile connected devices, on the internet and intranets. Chaffey defines E-Commerce as all forms of information exchange processes between organizations and stakeholders based on electronic media that are connected to a network. Another term is also known as E-Business,²³ business is processed electronically, in collaboration with business partners. In the practice of conducting electronic commerce, there are four types of transaction categories in E-Commerce.²⁴ J.Satrio, in his book, Chapter II of the Second Book of the Civil Code, states that: An engagement born of a contract/agreement shows that the legislators judge both of them the same.²⁵ Electronic system trading transactions are regulated by Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (PPMSE). Consumer protection, regulated in PP No. 80/2019 PMSE Article 13 paragraph (1). Article 25 paragraphs (1) and (2) of PP No. 80/2019 mentions storing: data and information on financial transactions for a minimum of 10 years, and the unrelated data is 5 years.

Regarding the sale and purchase agreement with the online system with dispute resolution through arbitration, the settlement of trade disputes through online buying and selling agreements, as well as with the banking service business, can be resolved easier through arbitration (non-litigation) than through litigation (judicial).²⁶

²² I Putu Agus Eka Pratama, *E-Commerce, E-Business dan Mobile Commerce*, (Bandung: Informatika Bandung, 2015), 2

²³ Chandra Ahmadi dan Dadang Hermawan, *E-Business & E-Commerce*, (Yogyakarta: Andi, 2013), 9

²⁴ I Putu Agus Eka Pratama, *Op.cit.*, 11-17

²⁵ J. Satrio, *Hukum Perjanjian*, Bandung: Citra Aditya Bakti, 1992, 19

²⁶ Series: *Advances in Social Science, Education and Humanities Research, Volume: 549. Title: Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*; ATLANTIS PRESS, PERANCIS, ISBN: 978-94-6239-454-4, ISSN: 2352-5398, Publication Date: 1 Januari 2020. Marulak Pardede1,* Henry Donald Lbn Toruan1 Mosgan Situmorang1 Syprianus Aristeus1, 2020, "The

Edmon Makarim, argues, that: online buying and selling, electronic buying and selling, and the legal terms of the agreement electronically, have not been specifically regulated in Indonesia.²⁷ Article 1320 of the Civil Code regulates the conditions for the validity of the agreement for the parties or the third party.²⁸ This trading business can be legally problematic if the ordered goods do not deliver the goods immediately or delay delivery.²⁹ In this sale and purchase contract, the perpetrators have the right to rehabilitate their good name if it is not legally proven, the consumer's loss does not result in the goods and/or services being traded.³⁰ According to Nieuwenhus, the statement of will contains a proposal to enter into an agreement that will be closed.³¹ The process of buying and selling online, offering and accepting online is no different from the process in general.³² Cancellation of the agreement can be done in the event of fraud committed by online sellers, wrong images, misguided nature, or intentionally misleading behavior from the opposite party.³³ Consumers are protected by Article 1365 to Article 1369 of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection (UUPK).³⁴ According to

Settlement of Consumer Disputes by Virtual Mediation Particularly on Banking and Buying Services Online,”

²⁷ Dr. Edmon Makarim, S.Kom, “Kompilasi Hukum Telematika, Jakarta, 2018, Penerbit: Raja Grafindo”, 222. “Transkrip, E-Commerce, 14 September 2019. <https://libera.id/blogs/aspek-hukum-bisnis-ecommerce/> diakses 15/10/2020 15:49; Jurnal Privat Law, Edisi 07 Januari 2019.

²⁸ J. Satrio, Op.cit., 125

²⁹ Mila Nila Kusuma Dewi, *Penyelesaian Sengketa Dalam Perjanjian Jual Beli Secara Online*, Jurnal Cahaya Keadilan . Vol 5. No. 2 (2017), 78

³⁰ Yudha Sri Wulandari, Perlindungan Hukum bagi Konsumen terhadap Transaksi Jual Beli E-Commerce AJUDIKASI : Jurnal Ilmu Hukum, Vol. 2 No. 2. Desember 2018, 199-210

³¹ Nieuwenhus dalam Abdul Halim Barkatullah dan Teguh Prasetyo, *Bisnis E-Commerce: Studi Sistem Keamanan dan Hukum di Indonesia*, Yogyakarta: Pustaka Pelajar, 2006, 88

³² Ainul Yaqin, Akibat Hukum Wanprestasi Dalam Jual Beli Online Menurut Undang-Undang Informasi dan Transaksi Elektronik, *Dinamika: Jurnal Ilmiah Ilmu Hukum*, Vol. 25. No. 26 (2019), 14

³³ Abdul Halim Barkatullah dan Teguh Prasetyo, Op.cit., 93

³⁴ Ahmadi Miru, *Prinsip-prinsip Perlindungan Hukum bagi Konsumen di Indonesia*, Jakarta: Rajawali Pers,

H.Ahmad M.Ramli, further implementation of consumer protection is needed, including online consumer protection by adopting the consumer protection principles of the United Nations (UN) and the Organization for Economic Co-operation and Development (OECD).³⁵ Default, is the debtor's responsibility; if the engagement is reciprocal, the creditor can cancel the agreement.³⁶ Muhamad Djumhana, said,³⁷ guaranteeing the confidentiality of all public data in relation to banks, people trust banks, and entrust their money to banks or take advantage of bank services (Law No. 10 of 1998 on banking). Law No. 8/1999 protects bank customers by limiting the standard clauses set by the bank (Article 18).

AEC has become a single market for countries in Southeast Asia. This unification is seen as important to increase the bargaining position, when dealing with a stronger country that has already been integrated so that its market will be easily exploited. Several countries will carry out a single policy as well. Countries with many producers will be easier to deal with when policies are uniform. The competition will be symmetrical. However, the single market will also have a negative impact, because several countries will dominate so it is affected by the dominant country in policy making. Usually, countries that give a lot of color to single market policies are countries with large markets. However, a country that has strong and efficient business actors also has the potential to become a policy-making elite.

In the context of AEC, Indonesia is quite potential as a country that dominates the single market policy, because it has a large market. Countries with a small market but strong business actors, such as Singapore, also have the potential to dominate.³⁸ However, Indonesia does not yet have strong business actors and has not yet

2013, 71

³⁵ H. Ahmad M. Ramli, *Cyber Law dan HAKI dalam Sistem Hukum Indonesia*, Bandung : Refika Aditama, 2010, 27

³⁶ Purwahid Patrik dalam Ahmad Miru, Ibid, 72

³⁷ Muhammad Djumhana. 2012. *Banking Law in Indonesia*. Bandung: PT Citra Aditya Bakti. Thing. 157.

³⁸ Hukum Online.com: “Hikmahanto: Masih Banyak Persoalan Investasi Yang Harus Dibenahi”, <https://www.hukumonline.com/berita/baca/1t5630ac43e98c6/hikmahanto--masih-banyak-persoalan-investasi-yang-harus-dibenahi>, 28 Oktober 2015.

become a country that has a conducive investment climate. If Indonesia becomes a big market, but the problem of foreign investment remains unresolved, then Indonesia must be prepared for the consequences where Southeast Asian countries prefer to invest in other countries. This means that there is no correlation between the big market promised by Indonesia and job creation in this country. This situation, of course, does not benefit Indonesia, which has a large workforce compared to other ASEAN countries. When an ASEAN country such as Indonesia promises a large market, but the investment climate is not yet conducive, then the production of goods can be done in other countries. Various investment problems, such as legal uncertainty, politics, SARA, illegal levies, and even labor strikes, will result in greater costs.³⁹ How important it is for various stakeholders, rulers and entrepreneurs, and other related parties to fix the socio-political conditions in the Republic of Indonesia so that they are free from hate speech, as well as socially discriminatory behavior (SARA) that can lead to the division of the Republic of Indonesia.

Therefore, it is deemed necessary for the Ministers of law from ten ASEAN countries to establish an Investment Dispute Resolution Arbitration Board, as a means to anticipate the emergence of business disputes in line with the increasing economic interactions and transactions in the Southeast Asian region. To realize the expected ASEAN community, all ASEAN countries must support and help each other. However, on the one hand, ASEAN market players act based on the legal system owned by their respective countries so without the establishment of such a legal framework, it is feared to hamper economic activity in the region in the event of a dispute. Regulations are designed to reduce risks for business people, especially SMEs involved in cross-border trade to increase activity capacity and contribute to economic development and ASEAN growth. In addition to economic activity, community mobilization in the region has also increased with an illustration that since 2015 there has been an increase in population migration

³⁹ Hukum Online.com: “Hikmahanto: Masih Banyak Persoalan Investasi Yang Harus Dibenahi”, <https://www.hukumonline.com/berita/baca/lt5630ac43e98c6/hikmahanto--masih-banyak-persoalan-investasi-yang-harus-dibenahi>, 28 Oktober 2015.

between Indonesia, Malaysia, Singapore, and Thailand. The consequences of regional integration can create a situation of high crime rates that take advantage of the rapid growth of ASEAN community activities. For this reason, it is the duty of countries in the ASEAN region to put in place appropriate legal instruments to prevent and face challenges arising from criminal acts. Following up on the formation of the legal formula, senior officials in the legal field of ASEAN or ASLOM held a meeting in Nusa Dua and a meeting at the level of the minister of law (ALAWMM) on 22 October 2015.⁴⁰

For consumer protection in electronic transactions, dispute resolution has a tendency to choose an arbitration forum,⁴¹ namely through the Consumer Dispute Resolution Agency (Badan Penyelesaian Sengketa Konsumen ‘BPSK’). For disputes that are relatively small in number, the judge is single. Lawyers for the parties are not allowed to attend. The Consumer Dispute Resolution Agency decision cannot be compared unless it is contrary to applicable law.⁴² In Mediation, the main responsibility for achieving a reconciliation remains in the hands of the parties themselves.⁴³ In Black’s Law Dictionary: A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.⁴⁴

Business and investment dispute resolution through a non-litigation path, Alternative Dispute Resolution (ADS) can virtually be an alternative choice for dispute resolution because the cost is relatively cheaper than using litigation.

⁴⁰ Hukum Online.com: “10 Menteri Hukum di ASEAN Bentuk Formula Antisipasi Sengketa”, <https://www.hukumonline.com/berita/baca/lt56262d8ccc186/10-menteri-hukum-di-asean-bentuk-formula-antisipasi-sengketa>, 20 Oktober 2015.

⁴¹ Rizka Syafriana, *Perlindungan Konsumen dalam Transaksi Elektronik*, Jurnal : De Lega Lata, Volume I, Nomor 2, Juli – Desember 2016, 433

⁴² Marianus Gaharpung dalam Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Jakarta: Sinar Grafika, 2016, 126

⁴³ Frans Hendra Winarta, *Indonesian and International National Arbitration Dispute Resolution Laws* (Jakarta: Sinar Grafika, 2011).

⁴⁴ *Black Law Dictionary*, Eight Edit (West Publishing Co, 2004).

Given the development of information technology in business, as well as the current global situation and conditions, especially in the event of an outbreak such as the COVID-19 pandemic era, it is time for legal breakthroughs to resolve civil business disputes, both nationally, especially in the global scope, through virtual. More and more people are realizing its advantages and abandoning myths regarding alternative dispute resolution. In the midst of the current free market trend, commercial disputes are one of the consequences that follow. Moreover, the dispute involves parties who have different legal jurisdictions. This situation encourages more companies to choose the mediation route in resolving the commercial disputes they face. The trend towards Alternative Dispute Resolution (APS) is because basically mediation and arbitration have their own advantages. This should be compared with efforts to resolve disputes through the courts. More and more people are now realizing that mediation and arbitration are effective dispute resolutions. One of the important factors in assessing the effectiveness is related to confidentiality. In the commercial world, disputes that are known to the public can have an impact on the image that may end up in reduced income. Therefore, entrepreneurs prefer to resolve disputes through mediation or arbitration. Confidentiality of the parties is only known to the disputing parties and the parties who are the arbitrators or mediators. In contrast the judiciary is open to the public.⁴⁵

In addition, other advantages that can be obtained by the parties by choosing the path of mediation or arbitration are savings, efficiency is an important thing in the commercial world. He further explained that there are two forms of efficiency that are promised alternative dispute resolution. First, cost savings, by taking the company's mediation or arbitration route to save costs. Because there is no need to spend money hiring legal counsel. Second, saving time, arbitration can be decided in almost half the time it would take if the dispute was resolved through litigation. Meanwhile, mediation can be completed in a shorter time. The parties do not need to waste much time going back and forth listening to

⁴⁵ Ajinderpal Singh, Partner firma hukum asal Singapura, Rodyk & Davidson LLP, dalam *2nd Annual Symposium For Arbitrators and Mediators* di Jakarta, Rabu, 02/12/

witnesses or gathering a lot of evidence. Australian Alternative Dispute Resolution (APS) practitioner Campbell Bridge said in some cases mediation could be completed in a matter of weeks. In fact, mediation that is ad-hoc in the extreme can be completed in just a few days. This illustrates that the two Alternative Dispute Resolution (APS) are very efficient in terms of time. This trend may also not only occur in Australia.⁴⁶

International arbitration in Australia is governed by the International Arbitration Act 1974 (For example) ("IA") as amended in 2010, 2015, and 2018. The legal and institutional framework relating to arbitration in Australia has been significantly changed over the past decade as part of reforms in arbitration proceedings aimed at promoting Australia as an attractive regional seat for international arbitration. The Commonwealth of Australia is of course a federation, with six states and two territories. The Commonwealth of Australia is composed of six States – New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia, and two mainland Territories – the Australian Capital Territory and Northern Territory, where each State and Territory represents jurisdiction separately. Domestic arbitration is governed by the Commercial Arbitration Act ("CAA") of each State and Territory. As a further part of Australia's arbitration reform, all States and Territories adopted uniform legislation for domestic arbitration under the UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law"). This has resulted in a fairly uniform, harmonized, and modern regime governing international and domestic arbitration in Australia.

Due to a comprehensive legal reform of the arbitration law in Australia over the last decade (2002 – 2022), followed by various Australian court decisions restating pro-arbitration policies, the international arbitration is on the rise in Australia. Of course, COVID-19 has had a significant impact on dispute resolution in Australia, particularly by introducing virtual audiences and online platforms, which have now become the

⁴⁶ "Menteri Hukum di ASEAN bentuk Formula Antisipasi Sengketa", *Hukumonline*, accessed September 23, 2022 <https://www.hukumonline.com/berita/baca/lt56262d8ccc186/10-menteri-hukum-di-asean-bentuk-formula-antisipasi-sengketa>

norm rather than the exception. However, this sudden shift to fully virtual arbitration may have positive implications for the future of arbitration in Australia. With virtual hearings becoming the norm, Australia was finally able to overcome a major hurdle in establishing itself as a global center for international arbitration – its remote geographic location – and rise to the level of its main regional competitors such as Singapore or Hong Kong.⁴⁷

Globally, mediation and arbitration are increasingly being chosen. Mainly, in resolving commercial disputes. In connection with this trend, the public's opening up to Alternative Dispute Resolution (ADR), a myth that often hinders people from choosing Alternative Dispute Resolution (ADR), is that the results of mediation or arbitration cannot be enforced as court decisions. There are no rules or procedures in any country that prevent the execution of mediation or arbitration decisions. As a result, the results of the previous mediation or arbitration are considered not legally strong.⁴⁸

In the era of the ASEAN Economic Community, international trade has become increasingly open. In this context, mediation and arbitration are increasingly needed. Because sometimes disputes between the parties are unavoidable. However, in the settlement, the parties are looking for alternatives that can protect them related to trade secrecy, long-term relations, and executions in other countries. In the last twenty years, there has been an impressive movement towards mediation as well as arbitration in the resolution of trade disputes. These two things become alternative dispute resolutions that are chosen in international trade contracts.

⁴⁷ “Arbitrase Internasional di Australia: Kerangka Hukum dan Kelembagaan”, *International Arbitration Attorney*, accessed September 23, 2022, <https://www.International-arbitration-attorney.com/id/international-arbitrasi-on-in-australia-legal-and-institutional-framework/>

⁴⁸ Tony Budidjaja, perwakilan Asia Pacific Forum for International Arbitration (AFIA) Indonesia, dalam AFIA Symposium ke-41 yang merupakan hasil kerja sama Budidjaja & Associates, Universitas Pelita Harapan, dan *hukumonline*, Kamis (10/9) di Jakarta. <https://www.hukumonline.com/berita/baca/lt565ec0065abc6/ini-alasan-mediiasi-dan-arbitrase-makin-banyak-dipilih->

Currently, the trend in international trade contracts is that the dispute resolution method is made in stages. Often the first stage is negotiation. The parties put forward the principle of deliberation and consensus to find solutions together. If this does not work, then the matter is brought to the mediation stage. Before going to arbitration, there are also other steps that are often taken, namely expert opinion through the dispute adjudication board. The selection of methods for negotiation and arbitration is related to justice. The two methods, make justice can be determined by the parties themselves. The execution of arbitration must be brought to court first. The court's decision must also be brought to court again for execution if the assets are outside the jurisdiction of the court that decided. The methods of arbitration and mediation are now becoming more flexible. In a sense, there is no longer a rigid boundary between the two. Nowadays, there is a new term in dispute resolution which is a combination of mediation and arbitration, namely med-arb.

In the med-arb, it becomes easier for the arbitrator to bring the parties to a favorable decision. This is because the arbitration process has been preceded by mediation. Usually, the mediator in the mediation is an arbitrator who individually changes functions. The arbitration proceedings have been suspended. The time count is also not deleted, meaning that if the arbitration process is continued later, the 180-day time limit will still be reduced by the previous process. Thus, arbitration and mediation do not mix in one process. Most of these methods are chosen by parties involving the government or state-owned enterprises. This is because in practice they are usually able to resolve disputes that arise and there is a will to make peace immediately. However, an arbitration decision is needed to avoid state loss audit cases. If only decisions between them can be litigated, then the results of the mediation are brought to the arbitrator. Some argue that this is unfair because the arbitrator has heard what the parties want during the mediation. However, it is in the interests of all parties so that the decision is in accordance with their wishes.⁴⁹

⁴⁹ “Kombinasi Mediasi Arbitrase yang Untungkan Semua Pihak”, *Hukumonline*, accessed September 23, 2022, <https://www.hukumonline.com/berita/baca/lt55f24d14b40d9/med-arb--kombinasi-mediiasi-arbitrase-yang-untungkan-semua-pihak>

In the financial sector, various ways to avoid disputes between financial service institutions and consumers continue to be carried out by arbitration and mediation bodies. One of them came from the Indonesian Capital Market Arbitration Board or known as BAPMI (Badan Arbitrase Pasar Modal Indonesia). In addition to providing arbitration and mediation services, the BAPMI provides binding opinion services, which are provided by the BAPMI carried out before the dispute occurs. This is in accordance with the mandate of Law Number 30 of 1999 concerning Arbitration as in Article 52. Meanwhile, in Article 53 states that the binding opinion as referred to in Article 52 cannot be contested through legal remedies. In addition, the Indonesian Insurance Mediation Agency (BMAI) was established to improve the image of the insurance business in Indonesia, by resolving insurance claim disputes. The insured party is rarely satisfied with the outcome of the claim decision. This also triggers a bad image of the insurance business in the eyes of the public.⁵⁰

Understanding and explaining theories, and principles regarding the types of typology of dispute resolution, among others, are as follows: Arbitration in business dispute resolution is caused by its informal procedures so that it can be put in motion quickly coupled with the nature of the decision being final and binding. Mediation is an alternative form of dispute resolution that grows and develops in line with the human desire to resolve disputes quickly and satisfy both parties. A conciliation is a form of dispute resolution option where a neutral third party has the authority to compel the parties to comply with and carry out the things decided by the third party. Negotiation is a dispute resolution option in which there is a bargaining process from each party to reach an agreement which was previously preceded by two-way communication to express the wishes and the subject matter. Consultation is a dialogue in which there are activities of sharing and exchanging information to ensure that the parties consulted are more aware of the problems faced and the right way to solve them because consultation leads to decision making. so consultation is about action

⁵⁰ “Inilah Cara Badan Arbitrase Kurangi Sengketa”, *hukumonline*, accessed September 23, 2022, <https://www.hukumonline.com/berita/baca/lt527b79ff53406/inilah-cara-badan-arbitrase-kurangi-sengketa?>

and oriented towards results as a form of problem-solving. Expert assessment as a form of dispute resolution option which aims to bring together the disputing parties by assessing the subject matter of the dispute carried out by one or several experts in the field related to the subject of the dispute to reach an agreement.⁵¹

The general principles of arbitration have been normalized into Law No.30/1999, including a. The principle of autonomy for the parties to choose: 1. Arbitration forum, 2. Place of arbitration, 3. Applicable law, 4. Arbitrator, 5. Language; b. The principle of the arbitration agreement determines the arbitration authority; c. The principle of prohibition of court intervention unless the law provides otherwise; d. The principle of arbitration examination is “private and confidential”; e. The principle of “*audi et alteram Partem*”; f. The principle of representation (power) is facultative; g. The principle of the permissibility of incorporating third parties in the arbitration process; h. The principle of arbitration examination is in writing; i. The principle of time limitation for arbitration proceedings; j. The principle of peace is facultative; k. The principle of proof; l. The principle of the arbitral award and binding opinion is “final and binding”; m. The principle of religiosity of the arbitral award; n. The principle of the arbitral award is based on law or based on “*ex aequo et bono*”; o. the principle of “dissenting opinions”; p. The principle of the cost of the case is borne by the litigants; q. The principle of implementation of the arbitral award by the court; r. The principle of reciprocity in the recognition and enforcement of arbitral awards s. international; t. The principle of public order in the recognition and implementation of arbitral awards u. international; v. The principle of annulment of the arbitral award for the reasons that are limited. w. The principle of religiosity of arbitral awards is a unique principle and comes from the philosophical values of the Indonesian people. In addition to the above, there is also the principle of being fast and cost-effective. In general, all case examinations (disputes) both through litigation and by litigation have the principle of being simple, fast, and low cost. This principle is confirmed in the laws and

⁵¹ Nyoman Satyayudha Dananjaya, S.H., MKn & Kadek Agus Sidiarawan, S.H., M.H, Planning Group, “Buku Ajar Penyelesaian Sengketa Alternatif” Fakultas Hukum Universitas Udayana, Denpasar, 2018,24-28.

regulations, especially the Law on Judicial Power. The principles adopted by the Law on Judicial Power are in line with the principles adopted by arbitration institutions as contained in Article 48 paragraph (1) of Law No. 30/1999 which states that all examination activities on disputes must be carried out and resolved within a maximum of 180 one hundred and eighty days). Several factors support the creation of a quick and low-cost case or dispute resolution process in an arbitration institution, including 1. The freedom given to the parties to determine their own proceedings, which is of course the selection of a short and fast procedure so that it will clearly support the direction fast, efficient and cost-effective dispute resolution. 2. In general, the parties in the arbitration are legal subjects who have good faith in both desires to resolve the dispute. Thus, the dispute resolution becomes lighter and faster because of the support from the disputing parties themselves. 3. Liking through an arbitration institution means litigation outside the court, this situation will directly lead to a quick, concise, and precise settlement. This is because the complicated and long bureaucratic path is cut off, as happens in judicial institutions. 4. The specialty of the final and binding arbitral award which eliminates legal remedies, in other words, the examination and settlement process is only one stage without any legal remedies that can prolong the dispute resolution. The application of the basic principles of arbitration is basically an obligation, as well as a responsibility, for all parties related to the use of arbitration as an alternative settlement of trade disputes. However ideal the basic principles of arbitration may be, they will lose their meaning and essence if in practice they are not carried out properly. In line with this, it is necessary to cultivate a culture and ethics in business behavior among the business community in order to always uphold the attitudes of honesty, trust, openness, and propriety, 8 Suleman Batubara et al, *International Arbitration for Foreign Investment Dispute Resolution, Achieve Asa Success*, Jakarta, 2013, page 25 to 27 with good faith and volunteerism in business activities. Arbitration is only possible to develop properly if the culture and business ethics are well developed. Courts have a very important meaning for the future and development of arbitration as an alternative settlement of trade disputes in Indonesia. In its position as “out of court dispute resolution”, arbitration does not have the public

authority as contained in the court institution (state court). The court has an important meaning as a “supporting institution” for the smooth running of the arbitration process and the implementation of the arbitral award. In principle, Law No. 30/1999 prohibits court intervention in arbitration except in certain cases regulated by law. The Court’s authority to intervene in matters of a. Appointment of the arbitrator in case the parties do not reach an agreement; b. Selection of arbitrators; c. To adjudicate the right of denial against the arbitrator; d. To give acknowledgment or disapproval of international arbitral awards; e. To execute National Arbitral Award and International Arbitration. f. To adjudicate the application for annulment of the arbitral award. The authority of the court to intervene in arbitration is not intended to reduce or even completely eliminate the position or role of arbitration, but rather is intended to expedite the arbitration processes so that they take place properly. Increasing public confidence in arbitration is useful for reducing the burden on courts and for providing attractive options for resolving trade disputes more effectively and efficiently. Court intervention is avoided as far as possible unless the law allows and does not conflict with applicable principles. It is necessary to develop a broad understanding that arbitration is not a competitor to the court which will reduce the role and authority of the Court. 4. Definition of Arbitration 28 Article 1 number (1) of Law No. 30/1999, Arbitration is a way of resolving civil disputes outside the general court based on an arbitration agreement made in writing by the disputing parties. From this definition, there are 3 things that can be started from the given definition, namely: a. Arbitration is a form of agreement b. The arbitration agreement must be made in writing c. The arbitration agreement is an agreement to resolve disputes that are carried out outside the general court. Disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights that according to laws and regulations are fully controlled by the disputing parties. In the Elucidation of Article 66 letter b of Law no. 30/1999, it is stated that what is meant by “the scope of trade law” are activities, including but not limited to: commerce; banking; finance; capital investment; industry; intellectual property rights. Therefore, considering the development of information technology in the banking business, as well as the current global

situation and conditions, especially in the era of the Covid-19 pandemic, in accordance with Romli Atmasasmita's integrative legal theory, it is time for a legal breakthrough to resolve civil business disputes, both nationally, particularly on a global scale, through the Virtual Court of Arbitration and Alternative Dispute Resolution (APS) /ADR.

2. Investment Dispute Resolution

In principle, investors who invest in Indonesia expect their investments to be carried out as well as possible and not cause disturbances, either from the government itself or from the surrounding community. The better and safer the investors in running their business, the greater the profit they will get in the future. The main goal of investors in making investment is to get the maximum profit. Even though the investors have run their business well, it is possible that their business will cause problems with the government and the surrounding community. For example, the Indonesian government has revoked investment permits from investors, while their investment permits have not yet expired. The problem now is how to resolve disputes that arise between investors and the Indonesian government or the surrounding community. Investment seen from the aspect of financing is divided into two types, namely, investment sourced from domestic capital (PMDN) and investment sourced from foreign capital (PMA). Investments sourced from domestic capital (PMDN) are investments originating from domestic financing. Investments sourced from foreign capital (PMA) are investments originating from foreign financing. If a dispute occurs between a domestic investor and the Indonesian government and the surrounding community, the law used is Indonesian law.

Investors want legal protection, on the other hand, the Government also sees the possibility of investment disputes, both between the Government and domestic investors and the Government and foreign investors. It does not even rule out the possibility of disputes between fellow investors. For this reason, regulations are needed to strengthen legal certainty in the ease of doing business and investing in Indonesia. Dispute resolution is prioritized to be resolved through a consensus mechanism through consultation and negotiation, and needs to be limited to a certain period of time so that there is a certainty for investors. Article 25 paragraph (3) of the ICSID Convention stipulates

that disputes submitted to arbitration still require the approval of the government of the country being sued, in this case, the recipient country of capital. Even if a foreign arbitration decision has been made, for example, there are rules that stipulate that the award can only be enforced if it fulfills a number of conditions stipulated in the Procedure for Implementing a Foreign Arbitral Award. Foreign arbitral awards can be enforced in Indonesia after obtaining them from the Supreme Court.⁵²

The pattern of settlement of investment business disputes can be carried out in two ways, which are taken by domestic investors, between the Indonesian government and domestic investors, namely: dispute resolution through non-litigation or commonly known as alternative dispute resolution (ADR); and litigation. In dispute resolution through non-litigation or ADR, there are five ways of resolving disputes, namely: consultation; negotiations; mediation; conciliation; or expert judgment. If the five methods cannot be resolved by both parties, one of the aggrieved parties may submit the matter to the court. The procedure that must be followed is that the domestic investor submits a lawsuit to the court in the area where the legal action was taken and where the dispute occurred. The court will then decide the case. Article 32 of Law No. 25 of 2007 concerning Investment, determines how to resolve disputes arising in investment between the government and domestic investors.⁵³ Deliberation and consensus is a typical Indonesian dispute resolution method, no party loses and wins, in line with the nature of the Indonesian nation which avoids open conflict.⁵⁴

2.1. Litigation Path (Court)

Settlement of disputes through litigation, resolved by the court, the decision is binding. The use of the litigation system has advantages:

⁵² "Pemerintah Susun Aturan Penyelesaian Sengketa Investasi", *Hukumonline*, accessed September 23, 2022, <https://www.hukumonline.com/berita/baca/lt5767b55a1b40f/pemerintah-susun-aturan-penyelesaian-sengketa-investasi>

⁵³ Judhy Maramis Walangare. Penyelesaian Sengketa Tentang Penanaman Modal Dalam Negeri Menurut Undang-Undang Nomor 25 Tahun 2007, *Journal Lex Crimen* Vol. V/No. 4/Apr-Jun/2016, 44.

⁵⁴ Rustanto, *Hukum Nasionalisasi Modal Asing*, (Kuwais:Jakarta Timur, 2012), 253.

decision-making at least to a certain extent ensures that power cannot influence the outcome and can guarantee social peace; very good at finding faults and problems of the opposite party; standard procedures that are fair and provide broad opportunities for the parties to be heard before making a decision; bring community values to resolve personal disputes; not only resolving disputes but also ensuring public order, which is explicitly or implicitly stated in the law. However, the drawbacks are: forcing the parties to an external position; requiring a defense (advocacy) for any intent to influence the decision; raising substantive issues, and procedures, common interests; time-consuming and financial costs; proven facts are not always able to express real concerns; does not seek to repair or restore the relationship of the parties; and not suitable for polycentric disputes involving many parties, many problems, and several possible alternative solutions; requires the limitation of disputes and issues, so that judges are better prepared to make decisions.

Courts are the most appropriate forum for resolving disputes. Developing countries are generally of the opinion that the authority to adjudicate disputes in the economic field, including investment, is in the national court of the country concerned.⁵⁵ It is the obligation of investors in Indonesia to apply the principles of Good Corporate Governance (GCG), to create a government that is clean, transparent, accountable, effective, efficient, and responsive to the aspirations and interests of the community.⁵⁶ Must complete their obligations, such as paying all debts that arise during their business activities, paying wages or salaries of workers, and fulfilling labor rights, according to the applicable laws and regulations.⁵⁷ Must know what actions are permitted and which are prohibited, subject to regulations.⁵⁸ If they do

⁵⁵ Huala Adolf, *Hukum Penyelesaian Sengketa Penanaman Modal*, (Keni Media: Bandung, 2018), 2

⁵⁶ Sentosa Sembiring, *Hukum Investasi: pembahasan dilengkapi dengan Undang-Undang Nomor 25 Tahun 2007 Cetakan Pertama*, Nuansa Aulia, Bandung, 2017, . 310 - 312.

⁵⁷ Jonker Sihombing, *Hukum Penanaman Modal di Indonesia*, (PT. Alumni: Bandung, 2019), 131.

⁵⁸ "Penyelesaian Sengketa Tentang Penanaman Modal Dala Negeri Menurut Undang-Undang", Neliti, accessed September 23, 2022, [https://www.neliti.com/publications/147668/penyelesaian-sengketa-tentang-penanaman-modal-dalam-negeri-menurut-undang-](https://www.neliti.com/publications/147668/penyelesaian-sengketa-tentang-penanaman-modal-dalam-negeri-menurut-undang-undang)

not fulfill their obligations and responsibilities, they will be subject to administrative sanctions in the form of written warnings, restrictions on business activities, freezing and revocation of business activities, and/or investment facilities. In addition to administrative sanctions, criminal sanctions can also be imposed, in the case of investors carrying out business activities based on work agreements or cooperation contracts with the government, committing corporate crimes in the form of tax crimes, inflating recovery costs and other costs to minimize profits, which causes state losses⁵⁹ and has obtained a court decision that has permanent legal force, the government terminates the agreement or cooperation contract with the investor.⁶⁰

Settlement of investment disputes through the State Administrative Court ('Pengadilan Tata Usaha Negara' PTUN) can only be carried out if: there is no request to decide disputes concerning foreign investment at ICSID; and the object of the dispute is a state administrative decision. According to Hikmahanto Juwana,⁶¹ ICSID is an alternative dispute resolution forum that has two special characteristics, namely: First, ICSID only resolves disputes involving investment. Second, the litigants are investors and the government of a country where the investor invest their capital. What is disputed is the government's actions that harm foreign investors. However, when it comes to foreign investment, the settlement can be done at the State Administrative Court, as long as the object of the dispute is a state administrative decision.⁶² Article 1 paragraph 9

undang

⁵⁹ Marulak Pardede, *Tindak Pidana Korupsi Korporasi Dalam Bidang Perpajakan*, diterbitkan dalam *Jurnal Penelitian Hukum DE JURE*, IPHI, P-ISSN:1410-5632, E-ISSN:2579-8561 Terakreditasi Nasional No: 10/E/KPT/2019, Volume 20, Nomor 3 September 2020; Karya ini dipublikasikan dibawah lisensi Creative Commons attribution 4.0 International License

⁶⁰ Hulman Panjaitan, *Hukum Penanaman Modal Asing*, (Cv. Indhill Co: Jakarta, 2003), 33.

⁶¹ Hikmahanto Juwana, "Akhir Perjanjian Untuk Menarik Investor Asing," Universitas Indonesia, accessed September 22, 2022, <https://law.ui.ac.id/v3/akhiri-perjanjian-untuk-menarik-investor-asing/>

⁶² Dr. Flora Dianti, S.H., M.H., "Wewenang PTUN Menyelesaikan Sengketa Penanaman Modal Asing, *Bisnis & Investasi*", *Hukumonline*, accessed September

of Law No. 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, stipulates that state administrative decisions are in writing issued by state administrative bodies or officials containing state administrative legal actions based on applicable laws and regulations, are concrete, individual and final, which have legal consequences for a person or civil legal entity.

Some examples of cases where disputes between foreign investors and the government were resolved through the State Administrative Court, among others: The decision of the Palembang State Administrative Court Number 26/G/2017/PTUN-PL, the Plaintiffs (PT. Brayan Bintang Tiga Energi and PT. Sriwijaya Bintang Tiga Energi) is a foreign investment company. The object of the lawsuit is the Decree of the Governor of South Sumatra, Number: 724/KPTS/DISPERTAMBEN/2016 concerning Revocation of Mining Business License for Exploration and Production Operations of Mineral and Coal in South Sumatra Province, dated 30 November 2016. The Plaintiffs consider that the Governor of South Sumatra is not authorized to carry out the revocation of the Mining Business License (IUP) of the plaintiffs. The panel of judges of the Palembang Administrative Court then declared that they had the absolute and relative authority to examine, decide and resolve disputes related to the object of the lawsuit. The panel of judges granted Plaintiff's claim in its entirety, declaring that the Decree of the Governor of South Sumatra Number 24/KPTS/DISPERTAMBEN/2016 was invalid. The governor of South Sumatra was ordered to revoke his decision.

2.2. Non-Litigation Path (Alternative Dispute Resolution/ADR)

To avoid conflicts in court execution, the disputing parties use the ADR method. This trend can be seen in countries, including Australia, Singapore, Malaysia and Indonesia. The litigation system is considered unsuitable for resolving disputes, because it is considered morally wrong, causing a distance between state law and the prevailing social reality. Referring to consensus and the tendency to avoid conflict in society, litigation

becomes unsuitable for resolving disputes, and is even seen as endangering harmony.⁶³ Litigation is considered to have failed to integrate the people with their local norms, has raised the popularity and function of mediation (chotei), as well as improved relations or conciliation (Nankai) as an out-of-court dispute resolution institution in contract practice in Japan.

Settlement of investment disputes through non-litigation (ADR) as a procedure agreed upon by the parties outside the court, refers to Article 1 paragraph (10) of Law No. 30 of 1999. This method is divided into five ways, namely: consultation; negotiations; mediation; conciliation; or expert judgment. The provisions used for the settlement of disputes between countries and foreign nationals refer to The International Center for the Settlement of Investment Dispute (ICSID), which was born from the Convention on the Settlement of Investment Dispute Between States and National of Other States, is an agency that intentionally founded the World Bank, established on 14 October 1966 in the United States. Its head office is in Washington, United States of America. Its purpose and authority are to resolve disputes that arise in the investment sector between a country and a foreign country among the countries participating in the convention. ICSID also regulates two patterns of dispute resolution, namely through conciliation and arbitration.

Settlement of investment disputes through conciliation in ICSID, is an attempt to reconcile the wishes of the disputing parties to reach an agreement and resolve the dispute, as regulated in Articles 28 to 35, Chapter Three of the ICSID Convention and Rules of Procedure for Conciliation Proceeding (Conciliation Rules), which covers; conciliation commission, commission members, submission of conciliation, type of dispute, request for conciliation, the appointment of the number of conciliators, the process of conciliation settlement, and settlement of conciliation. Dispute resolution can first be attempted through conciliation, namely in the form of a proposal whose decision is not binding. If deemed necessary, the parties

22, 2022 <https://www.hukumonline.com/klinik/a/wewenang-ptun-menylesaikan-sengketa-penanaman-modal-asing-lt5e89e37da3ebe>

⁶³ Paulus Efendi Lotulung, "Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) dan Court Connected Dispute Resolution (Penyelesaian Sengketa yang Terkait dengan Pengadilan), Proyek Penelitian dan Pengembangan Mahkamah Agung-RI, 2000, 39-50.

may proceed to arbitration proceedings. The Commission acts as a judge on its authority or jurisdiction, which has the authority to determine whether the requirements of a dispute submitted to it have met the requirements of the convention and whether the object of the dispute is within its jurisdiction. After the Commission was formed, the President of the World Bank asked the parties to make a written report on their respective positions. The conciliation process is preceded by a consultation in which the President of the World Bank will ensure the knowledge of the parties about the conciliation procedure, which will specifically review the views of the parties regarding the language to be used, the number of commission members required to establish a quorum, evidence, etc. The President of the World Bank bases the conciliation process on the initial agreement of the parties. The venue for the Commission's hearings is private and confidential. At any time during the trial session, each party may present witnesses or experts who it deems to be able to provide relevant evidence. In order to reach an agreement between the parties, the Commission can submit its recommendations, and if it reaches an agreement, the Commission must close the trial and make a report that includes the problems in the trial and note that the parties have succeeded in reaching an agreement.

The parties to the dispute through arbitration, desire a fair settlement with a transparent method.⁶⁴ The problem lies in determining how to resolve disputes fairly. Included in the determination of the legal system that will be used in the trial process.⁶⁵ If you use the national legal system of the host country of foreign investment, it is likely to attract objections from foreign investors, for fear of being unfair. The tribunal consists of an arbitrator or an odd number of arbitrators appointed and agreed upon by the parties and the procedure is in two phases, namely in writing followed by an oral process.⁶⁶ Foreign investors can be protected from

⁶⁴ Ida Bagus Rahmadi Supancana, *Kerangka Hukum dan Kebijakan Investasi Langsung di Indonesia*, Cetakan Pertama, (Ghalia Indonesia, Bogor, 2016), 87.

⁶⁵ Rustanto, *Hukum Nasionalisasi Modal Asing*, (Kuwais: Jakarta Timur, 2012), 257

⁶⁶ "Penyelesaian Sengketa Hukum Penanaman Modal melalui International Center for Settlement of International Disputes (ICSID)", *Hukum Penanaman Modal*, accessed September 22, 2022, [https://](https://hukumpenanamanmodal.com/sengketa-hukumpenanaman-modal/penyelesaian-sengketa-hukumpenanaman-modal-melalui-international-center-for-settlement-of-international-disputes-icsid/)

investment risks including political risks (such as confiscation of assets or nationalization). It should be remembered that Article 2 of Law No. 5 of 1968 states that the government has the authority to give approval, that a dispute regarding investment between the Republic of Indonesia and a foreign citizen is decided according to the convention, and to represent the Republic of Indonesia in the dispute with the right of substitution. Thus, it does not automatically mean that every dispute must be resolved by the ICSID arbitration board. This is carried out so that there is no longer any doubt about the implementation of the decision of the arbitration institution.⁶⁷

Today, the trend in various countries, including Australia, Singapore, Malaysia, and Indonesia, for the disputing parties to use arbitration and ADR, to avoid conflicts in court executions, the litigation system is considered unsuitable for resolving disputes, because it is considered to have been wrong morals, causing a distance between state law and prevailing social reality. In accordance with the integrative legal theory of Prof.Dr. Romli Atmasasmita, S.H., LL.M, refers to consensus and the tendency to avoid conflict in society, causing litigation to become unsuitable for resolving disputes, and is even seen as endangering harmony. Litigation is considered to have failed to integrate the people with their local norms, has raised the popularity and function of mediation, as well as improved relations or conciliation as an institution for dispute resolution outside the court.

3. Efforts That Should Be Taken.

3.1. The Government Must Ensure an Investment Climate

Several cases of disputes between the Indonesian government and foreign investors include Amco Asia Corporation (1981); Camex Asia Holding (2004); Kaltim Prima Coal (2007); Ravat Ali Rizvi (2011); Churchill Mining and Planet Mining Pty.Ltd (2012); PT. Newmont Nusa Tenggara (2014); and Oleaves Pte, Ltd (2016), through ICSID, are suspected to have brought huge losses to Indonesia, both material

hukumpenanamanmodal.com/sengketa-hukumpenanaman-modal/penyelesaian-sengketa-hukumpenanaman-modal-melalui-international-center-for-settlement-of-international-disputes-icsid/.

⁶⁷ Huala Adolf dan An An Candrawulan, *Op-Cit*, 19

and immaterial, such as a long settlement period, and the amount of costs. Therefore, the regulation should be reviewed as a form of legal reform and development of national law. Indonesia as a newly independent country, in the 1960s, invited foreign investment, by ratifying the ICSID convention.⁶⁸

PT. Newmont Nusa Tenggara (PT. NNT), filed a judicial review application, and even sued the Indonesian government in the International Court of Arbitration, for being prohibited from exporting concentrate and building smelters (refining) or mining and mineral processing plants. The Applicant asked the Constitutional Court (MK) to declare Article 169 letter b and Article 170 of Mineral and Coal Mining Law contradict the 1945 Constitution and have no binding legal force, and the state violated the previously agreed upon agreement.⁶⁹ The arguments for the petition for review of the Mineral and Coal Mining Law to the Constitutional Court (MK): Article 169 and Article 170 of Mineral and Coal Mining Law, assessed that these two articles are considered to cause legal uncertainty because they contradict each other. In article 169 letter a it is stated that the work contract and work agreement that existed before the enactment of the Mineral and Coal Mining Law, remain valid/adjusted, until the expiration of the contract/agreement. However, Article 170 is required to carry out purification which is not regulated in the agreement. This contract of work and agreement lasts 75 years and must be complied with and is a general provision regulated by the Mineral and Coal Mining Law, and cannot affect this agreement. The enactment of the regulation has the effect that foreign partners will terminate the Contract of Work with mineral mining PT. Newmont Nusa Tenggara (PT NNT). Since the enactment of the Mineral and Coal Mining Law, Newmont has also rejected the existence of this decree (*beleid*). In fact, this

⁶⁸ “Peranan ICSID Sebagai Lembaga Penyelesaian Perselisihan Penanaman Modal Asing”, Kompasiana, accessed September 22, 2022, <https://www.kompasiana.com/evita40556/5cbf505495760e67554e4bf8/peran-icsid-sebagai-lembaga-penyelesaian-perselisihan-penanaman-modal-asing>.

⁶⁹ “Pemegang Saham Newmont Gugat UU Minerba”, *Hukumonline*, accessed September 22, 2022, <https://www.hukumonline.com/berita/baca/lt544902695b5b6/pemegang-saham-newmont-gugat-uu-minerba?page=2>, 23 Oktober 2014.

company sued the Indonesian government in the International Court of Arbitration, for being prohibited from exporting concentrates and building smelters (refining) or mining and mineral processing plants. Therefore, the applicant asked the Constitutional Court (MK) to declare Article 169 letter b and Article 170 of Mineral and Coal Mining Law contrary to the 1945 Constitution and have no binding legal force.

The Constitutional Court’s Assembly held the first trial of the judicial review of Article 169 letter b and Article 170 of Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba). The Mineral and Coal Mining Law states that companies are required to carry out refining, thus making it difficult to export. While this provision does not regulate the agreement signed in 1986 and is valid for 75 years. Article 169 letter b states, “The provisions contained in the article on the contract of work and agreement of work for coal mining concessions as referred to in letter a is adjusted no later than 1 (one) year after this law is promulgated, except regarding state revenues.” “Contract holders as referred to in Article 169 who are already in production are required to carry out the purification as referred to in Article 103 paragraph (1) no later than 5 (five) years from the promulgation of this law.” As a result of this regulation, Newmont is in danger of going bankrupt and has laid off around 3,200 employees. Likewise, the applicant who has been carrying out mineral mining activities for decades is in danger of going bankrupt because Newmont is collaborating with foreign partners. Germany, Australia, Russia, and France are very serious about the issue of state and corporate interests.⁷⁰

The renegotiation process against the provisions of article 67 of 107 of Mineral and Coal Mining Law: holders of a contract of work (COW), should be able to continue and there will be no setbacks, even though the dispute with Newmont continues. A total of 40 holders of the contract of work have agreed to renegotiate the contract of work in accordance with the implementation of Law No. 4 of 2009 concerning Mineral and Coal Mining. One of the points stated

⁷⁰ “Penyelesaian Sengketa Perjanjian Investasi Perlu Dikritisi”, *Hukumonline*, accessed September 21, 2022, <https://www.hukumonline.com/berita/baca/lt563a01e22b985/penyelesaian-sengketa-perjanjian-investasi-perlu-dikritisi?page=2>

in Law no. 4 of 2009 concerning Mineral and Coal Mining is the imposition of new provisions related to exports, export duties, as well as a ban on the export of copper concentrate which has been in effect since January 2017. Newmont and its majority shareholder who is a Dutch legal entity, Nusa Tenggara Partnership BV, as one of the large companies holding a contract of work, rejected the ban on the export of concentrates and finally filed a lawsuit in international arbitration. The government has asked Newmont to withdraw the lawsuit and resume negotiations on the renegotiation of the contract of work. However, PT. Newmont remains adamant about taking the case to international arbitration.⁷¹

The government's dispute with Newmont can actually lead to a good settlement for both parties. However, the dispute between mining processing company PT Newmont Nusa Tenggara and the government must be resolved in international arbitration, resulting in problems in the investment climate of the mining sector. Supposedly this investment dispute resolution can lead to a good settlement for both parties, and provide an example of the government's firm action in dispute resolution. The government's steps can be properly reflected, which will lead to the completion and also ongoing mining investment. The government should be able to provide regulatory certainty and the government's position to support the progress of the mining industry and continue to protect the interests of investors, which is expected to provide better certainty for future investment plans. Indonesia is a state of law (*rechtsstaat*), therefore national law must be sovereign and be the commander in chief in resolving all the nation's problems. However, to settle disputes between the state and foreign nationals regarding investment in the hegemony of international arbitration law, the government handed over the mechanism to ICSID. Currently, Indonesian law is seen as a rule that is not standardized and not rigid, so it is possible that national law can still be changed as long as it meets the requirements to keep up with the times in order to achieve state goals. Legal changes should ideally have positive implications

⁷¹ "Pemerintah Jamin Kasus Newmont Tak Ganggu Iklim Investasi", *Hukumonline*, accessed September 20, 2022, <https://www.hukumonline.com/berita/baca/lt53ce53bb4c65e/pemerintah-jamin-kasus-newmont-tak-ganggu-iklim-investasi>

with the value of justice, usefulness, and legal certainty in order to strengthen the development and reform of national laws.⁷²

Previously, Churchill Mining also sued the Indonesian government over the issuance of dual mining licenses. The mechanism actually protect the owners of capital from the application of national laws and regulations, which protect the interests of the people. This mechanism is intentionally created in the business law system, to provide protection to investors. As a result, the government loses its sovereignty in making national policies that favor the people. Protection of the interests of the owners of capital, and investment has become a legal system of universal international treaties. However, this investment protection agreement became a double standard for ex-colonial countries. Because the agreement became a rule that provided protection for foreign ex-colonial companies that emphasized the compensation aspect in the event of nationalization by a newly independent country.

The existence of the Multilateral Investment Guarantee Agency, World Bank Group, based in Washington DC, USA, plays an important role in providing investment protection guarantees and protecting investments from non-commercial risks and can help investors gain access to funding sources with better financial terms and conditions. For example Project description On 4 March 2022, MIGA member of the world bank group issued guarantees: supporting the construction of a solar power plant in Malawi; eradication of covid 19-pillar 1 in Bogota, Colombia, December 2020; UM6P Opening of the state-of-the-art university campus in Morocco dated 12 July 2022; facilitate the acquisition of the Bhola power plant in Bangladesh dated 08 August 2022; Issued a record 54 guarantees totaling \$4.9 billion in FY22 dated 01 August 2022; Supporting the digital economy

⁷² Series: *Advances in Social Science, Education and Humanities Research, Volume: 592, Title: Proceedings of the 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)*, ATLANTIS PRESS, PERANCIS, ISBN: 978-94-6239-454-4, ISSN: 2352-5398, Publication Date: 1 Januari 2021: Marulak Pardede1,* Henry Donald Lbn Toruan1 Mosgan Situmorang1 Sypranus Aristeus1, 2021, "Legal Breakthrough Step as an Effort to Improve Competitiveness Climate and Guarantee Legal Certainty for Investment in Indonesia,"

in sub-Saharan Africa dated 29 July 2022; MIGA also supports an international consortium of efforts to modernize power plants in Uzbekistan dated 26 July 2022; and others.⁷³

Investment protection agreements became known after Second World War ended, made to provide guarantees for the protection of the existence of foreign investment. Countries that invest outside their borders feel the need for legal protection. Some things that underlie it, among others: colonized countries become independent, and the act of taking over assets or nationalization. So, in the investment protection agreement, the capital owner asks for equal and fair treatment between foreign and domestic investors. Another clause that is usually contained in an agreement is the obligation of the state to compensate corporations, due to war, armed conflict, revolution, state emergency, riot or rebellion, which is given in the form of compensation or reparation. It also regulates protection from nationalization actions, and settlement of disputes over the position of the state and corporations, on a par. Foreign investors are always afraid of being politicized, many investment protection agreements are signed by state representatives, without knowing the details of the contents of the agreement, and later it is known that there are things that must be criticized from the agreement. Not only in Indonesia but in many developing countries, many decision-makers do not understand the details of the decisions they make. International treaties cannot simply be terminated but must refer to the clauses in the agreement. Currently, the polarization of interests is not only between developed and developing countries but has shifted to being a country dealing with corporations.

3.2. Making Regulatory Improvements

In an effort to prepare the State of Indonesia to face risks and an effective and efficient investment dispute resolution forum, it is necessary to propose changes to Arbitration and Alternative Dispute Resolution (Arbitration Law), which are not in accordance with the current context of international arbitration. For example, the continuity of arbitration duties with courts in Singapore and Australia. In these two countries,

⁷³ “Low Income Countries”, *Multilateral Investment Guarantee Agency (MIGA)*, accessed September 22, 2022, <https://www.miga.org/IDA>

arbitration has developed as a forum for resolving business disputes. Important things that must be revised in the Arbitration Law are, among others, principles. The doctrine implies the competence of the arbitrators (assemblies) to decide their own jurisdiction. Indonesia is actually not a country that has adopted the UNCITRAL Model Law (Model Law) as the applicable arbitration law, but some of the principles in the Model Law, such as the separation principle, are contained in the Arbitration Law. The principle of competence needs to be emphasized in the revision of the Arbitration Law so that the panel has the authority to determine its own competence. Consequently, all objections from either party to the jurisdiction of the tribunal can be submitted to the tribunal and it will be decided by itself.⁷⁴

Revise to Article 70 of Arbitration Law, which stipulates that in an Arbitral Award the parties may apply for annulment if the decision is suspected to contain elements regulated in it. The arbitral award is final. This means that there is no further legal action against the arbitral award. Even if there are objections, the above principles will determine the objections of the parties. In an Arbitral Award, the court must be the party that strengthens the decision, not even cancels it. Once the parties choose arbitration, they must always submit because they are bound by an agreement that is resolved through arbitration. The parties have promised and will not break the promise, will be subject to, no appeal, not go to court, and strengthened by the court because of coercion.⁷⁵

For this reason, the Government of Indonesia needs to create a conducive market climate for domestic and foreign business players, continue to deregulate the trade sector so that more and conduct deregulation in the form of a stimulus package aimed at encouraging the infrastructure, finance, or taxation, employment and other sectors necessary for trading and investment activities. It is necessary to establish protection policies that are not excessive and intelligent, improve regulations that become obstacles, and strengthen coordination between government agencies.⁷⁶

⁷⁴ Suhariyono, AR,; “Pembentukan Peraturan Perundang-Undangan Yang Baik (Pedoman Praktis), (Papas Sinar Sinanti : Depok, 2021), 67.

⁷⁵ Suhariyono, Ibid, 29.

⁷⁶ “Jelang MEA Praktisi Usul Perubahan UU.Arbitrase”, *Hukumonline*, accessed September

3.3. Initiating the Establishment of the ASEAN Arbitration Board

Establishing a legal formula designed to reduce risks for business actors, especially SMEs involved in cross-border trade, so as to increase activity capacity and contribute to economic development and ASEAN growth. To anticipate investment disputes, with the increasing interaction and economic transactions in the Southeast Asia region, it is necessary to immediately create an ASEAN economic community. It is hoped that all ASEAN countries should support and help each other. With the implementation of the ASEAN Economic Community (AEC), business interactions and transactions are increasingly wide open. However, on the one hand, ASEAN market players act based on the legal system owned by their respective countries so that without the establishment of a legal framework, it is feared that it will hamper economic activity in the region in the event of a dispute. The consequences of regional integration can create a situation of high lawlessness due to the rapid growth of ASEAN community activities.

To be able to put in place the right legal instruments to prevent and face challenges that arise from unlawful acts, the idea to realize the establishment of the ASEAN Arbitration Board as a forum for resolving investment disputes between business actors within the framework of the integration of AEC Region is very important to be realized immediately. The AEC opens the flow of goods, services, and labor across the national borders of 10 Southeast Asian countries, so it is very possible for investment business disputes to occur, especially the legal systems between different countries. The readiness of stakeholders in Indonesia, especially Indonesian advocates, must have good knowledge of the legal system in other Southeast Asian countries. The establishment of an ASEAN arbitration body has the potential to have a positive impact on resolving investment disputes in the ASEAN economic community. This idea is indeed not easy to realize, especially if the arbitration body will become a kind of supranational, which defeats the national laws of each ASEAN country. According to Mariam Darus

20, 2022, <https://www.hukumonline.com/berita/baca/lt566fb4d7bd39a/jelang-mea--praktisi-usul-perubahan-uu-arbitrase>.

Badruzaman, the idea of establishing an ASEAN Arbitration is felt to be very important, but it is not easy to realize it. Efforts to create a supranational body at the ASEAN level are not easy, due to differences in the legal and constitutional system, currency, and ASEAN human rights courts, as well as the political reality in ASEAN which is not willing to give up its national sovereignty, contributes to its influence.⁷⁷

CLOSING

1. Conclusion

Legal aspects of the settlement of investment legal disputes between the Indonesian government and foreign investors can be resolved through courts (litigation) and alternative dispute resolution outside the court (ADR) non-litigation; deliberation, and consensus, as well as international arbitration.

An effort that should be made to facilitate the settlement of investment legal disputes, within the framework of the integration of the AEC Region, is to create a legal formula designed to reduce risks for foreign investors, as well as the idea of establishing an ASEAN Arbitration Board as a forum for resolving investment disputes between business actors within the framework of the integration of the MEA region,

2. Suggestions

To facilitate the settlement of investment disputes, it is necessary to create the right legal instrument to prevent and deal with the settlement of investment disputes in the AEC Region. For this reason, the idea of establishing the ASEAN Arbitration Board as a forum for resolving investment disputes between business actors within the framework of the integration of the AEC Region is very important to be realized immediately. For this reason, the readiness of stakeholders in Indonesia, especially advocates, should provide reliable knowledge about the legal system in other Southeast Asian countries. This idea is indeed not easy to realize, especially if the arbitration body will become a kind of

⁷⁷ "Ide Arbitrase ASEAN Dalam Pertemuan Alumnus FH.USU", *Hukumonline*, accessed September 21, 2022, <https://www.hukumonline.com/berita/baca/lt56af59b0a1b8f/ide-arbitrase-asean-dalam-pertemuan-alumnus-fh-usu>. 1 Februari, 2016.

supranational, which defeats the national laws of each ASEAN country. Efforts to create a supranational body at the ASEAN level are not easy, differences in the legal and constitutional system, currency, ASEAN human rights courts, as well as political realities in ASEAN which are not willing to give up their national sovereignty, contributes to its influence.

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