

Penyelesaian sengketa penanaman modal asing di bidang pertambangan minerba

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Abstrak

Thesis ini membahas penyelesaian sengketa penanaman modal asing dibidang pertambangan minerba, berikut permasalahan-permasalahan yang muncul pada penyelesaian sengketa tersebut. Sebelumnya penyelesaian sengketa antara Pemerintah dengan penanam modal asing (investor) diselesaikan berdasarkan kesepakatan Kontrak Karya dan Perjanjian Karya Pengusahaan Pertambangan Batu Bara, dimana para pihak dapat menentukan forum penyelesaian sengketa yaitu salah satunya melalui arbitrase internasional. Pilihan penyelesaian sengketa melalui arbitrase internasional sejalan ketentuan Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal yang mengatur bahwa penyelesaian sengketa dibidang penanaman modal antara Pemerintah dengan penanam modal asing akan diselesaikan melalui arbitrase internasional yang harus di sepakati oleh para pihak. Namun saat ini ketentuan penyelesaian sengketa untuk penanaman modal asing di bidang minerba berdasarkan ketentuan Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan batubara tidak ditentukan secara jelas, undang-undang ini hanya menentukan bahwa setiap sengketa yang muncul dalam pelaksanaan IUP, IPR, atau IUPK diselesaikan melalui pengadilan dan arbitrase dalam negeri sesuai dengan ketentuan peraturan perundang-undangan, tidak ditentukan dengan jelas penyelesaian sengketa untuk penanam modal asing dan arbitrase internasional. Dalam pembahasan thesis ini banyak ditemukannya permasalahan terkait penyelesaian sengketa penanaman modal asing dibidang minerba yang meliputi permasalahan dalam peraturan perundang-undangan, sikap pemerintah mapun para pihak yang bersengketa dalam memandang sengketa penanaman modal asing dibidang minerba, belum seragamnya sikap hakim dalam melihat yurisdiksi arbitrase internasional dan keputusan arbitrase internasional. menyikapi permasalahan -permasalahan diatas, kegiatan penanaman modal asing dibidang minerba termasuk penyelesaian sengketa haruslah didukung oleh sistem hukum yang efektif yang didalamnya terdiri atas substansi, struktur dan budaya hukum yang saling mendukung satu sama lain. Selain itu, hukum akan mendorong datangnya modal asing dibidang minerba apabila dapat menciptakan predictability, stability, dan fairness.

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ABSTRACT

This Thesis discusses Foreign Investment Dispute Resolution in Mineral and Coal Mining, including the problems arisen in dispute resolution there of. Previously, the dispute resolution between government and foreign investor (investor) is settled according to agreement of Contract of Work (KK) and Work Agreement of Coal Mining Production (PKP2B) where parties here of is able to determine the dispute resolution forum namely through international arbitration. The option of dispute resolution through international arbitration subject to the Law No. 25 2007 regarding Investment which govern the dispute resolution between government and investor is settled through international arbitration that must be conducted by the consent of both parties. At present, however, the rule of dispute resolution for the foreign investment of mineral and coal according to the Law No.4 Year 2009 regarding Mineral and Coal Mining does not stipulated clearly,

this Law only determine that every dispute occur in implementation of IUP,IPR or IUPK is settled before the court or national arbitration according to the Law, it does not clearly stated for the foreign investment and international arbitration.

In the Thesis, it will be more discussed about the problems regarding the foreign investment dispute resolution in mineral and coal that entail the issues in Law, government policy, the parties in dispute, and their perspective in foreign investment dispute resolution in mineral and coal issue, the different opinion of judges regarding the jurisdiction of international arbitration and the sentence of international arbitration. To look upon the issues mentioned above, the activities of foreign investment in mineral and coal including the dispute resolution must be supported by the effective legal system that comprise the substance, structure and legal culture which is sustained each other. Besides that, the law will support the foreign capital inflow in mineral and coal industry if it is able to create predictability, stability, dan fairness.