

Penerapan teori kualifikasi dan pilihan forum dalam Perkara no. 247/PDT.G/2010/PN.JKT.PST dan perkara di United States Bankruptcy Court Southern District of New York No. 08-13555 (JMP) =
Implementation of the theory of qualifications choice of forum in case no. 247/PDT.G/2010/PN.JKT.PST at United States Bankruptcy Court Southern District of New York case no. 08-13555 (JMP)

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Abstrak

Penelitian ini bertujuan untuk menganalisis sengketa yang terjadi antara PT Mobile 8 Telecom dan Lehman Brothers Special Financing berhubungan dengan transaksi swap derivatif yang didokumentasikan dalam dokumen Confirmation dan ISDA Master Agreement. Selanjutnya, dilakukan kualifikasi berdasarkan teori HPI terhadap interpretasi hakim Pengadilan Jakarta Pusat dan hakim United States Bankruptcy Court Southern District of New York perihal dokumen Confirmation. Lebih lanjut dilakukan dianalisis mengenai forum yang berwenang dalam mengadili masing-masing perkara berdasarkan pendekatan hukum acara perdata yang berlaku dan teori-teori HPI terhadap ketentuan-ketentuan yang terdapat dalam dokumen Confirmation dan ISDA Master Agreement.

.....This research aims to analyze the dispute occurred between PT Mobile 8 Telecom and Lehman Brothers Special Financing in regards to swap derivative transactions, which documented in Confirmation and ISDA Master Agreement. Hereafter, qualification analysis based on PIL's theory is conducted upon judges in Central Jakarta District Court Judges and United States Bankruptcy Court Southern District of New York Judges' interpretations regarding Confirmation document. Furthermore, there is an analysis regarding the competent forum to proceed each case by using the approach in the applicable civil procedural law and other theories of PIL, to the provisions in the Confirmation and ISDA Master Agreement.