

Tinjauan Hukum Perdata Internasional dalam Gugatan Perbuatan Melanggar Hukum dengan Unsur Asing di Pengadilan Indonesia Terkait Perjanjian Utang-Piutang Untuk Kegiatan Jual-Beli Saham. = The Review of Private International Law on Tort Lawsuit with Foreign Elements in Indonesian Court related to Loan Agreement for the Sale and Purchase of Shares.

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Abstrak

Penanaman modal asing semakin banyak terjadi di Indonesia dengan cairnya batas-batas negara akibat arus globalisasi dan meningkatnya pertumbuhan ekonomi. Akibatnya, permasalahan hukum di Indonesia kini banyak melibatkan unsur-unsur asing yang memerlukan penanganan lebih khusus. Salah satu permasalahan yang sering terjadi adalah sengketa utang-piutang untuk kegiatan jual-beli saham. Sengketa itu tidak jarang diajukan ke pengadilan atas dasar Perbuatan Melanggar Hukum (PMH), meskipun pemberian pinjaman itu dibuat berdasarkan perjanjian. Berdasarkan sudut pandang Hukum Perdata Internasional (HPI), PMH yang di dalamnya mengandung unsur asing merupakan suatu permasalahan HPI. Unsur asing dalam PMH itu dapat menimbulkan pertanyaan terkait hukum manakah yang berlaku dalam menangani gugatan PMH itu serta pengadilan manakah yang memiliki wewenang untuk memeriksanya. Pada skripsi ini, akan dilakukan penelitian dengan metode hukum yuridis normatif untuk memeriksa kewenangan Pengadilan Indonesia dalam penyelesaian gugatan PMH pada kasus antara Tan Beng Phiau Dick vs Nava Bharat (Singapore) Pte Limited, dkk dan kasus antara Mitomo Shoji vs Aim Holding, dkk. Berdasarkan penelitian ini, diketahui bahwa bahwa Pengadilan Indonesia memiliki kewenangan untuk memeriksa dan mengadili kasus antara Tan Beng Phiau Dick vs Nava Bharat (Singapore) Pte Limited. Sedangkan pada kasus antara Mitomo Shoji vs Aim Holding, dkk Pengadilan Indonesia tidak memiliki wewenang karena kasus ini bukanlah PMH, namun wanprestasi berdasarkan perjanjian yang di dalamnya terdapat pilihan forum di Pengadilan Tokyo.

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Foreign investment is increasingly being carried out in Indonesia with the melting of national borders due to globalization and the increased of economic growth. As a result, legal issues in Indonesia currently involve a lot of foreign aspects that need to be handled with the special treatment. One of the issues that often occurs is regarding loan agreement dispute for the sale and purchase of share. It is not rare for the dispute to be brought before Indonesian Court on the basis of Tort, even though the loan itself is given base on agreements. From the standpoint of Private International Law (PIL), the Tort that contains foreign elements is PIL legal issue. This foreign elements of the Tort can bring into question regarding which law should be applied and also which court that has the authority to examine it. In this thesis, a research will be conducted with normative juridical legal methods to examine Indonesian Court's authority to solve tort lawsuits in the case between Tan Beng Phiau Dick vs Nava Bharat (Singapore) Pte Limited, dkk and the case between Mitomo Shoji vs Aim Holding, dkk. Based on this research, it is found that Indonesian Court has an authority to examine and adjudicate the case between Tan Beng Phiau Dick vs Nava Bharat (Singapore) Pte Limited. Whereas for the case between Mitomo Shoji vs Aim Holding, dkk, Indonesian Court has no authority because this lawsuit is not tort, but a default based on agreement that contains choice of forum in

Tokyo District Court.