

Abstract

Promotion and protection of foreign investment in Indonesia

In last few decades Indonesia became an important player on a field of international investment. Since the early Soeharto years Indonesia has enjoyed impressive economic growth and became an attraction for the foreign investors. Foreign investors are mainly attracted by the natural resources, low-cost labor market and large Indonesia's domestic market. The goal of my thesis is to analyze the security of the foreign investment in Indonesia and in case of the dispute the protection of foreign investment.

The introductory chapter deals briefly with the basic information about Indonesia and its history which influenced Indonesian law system during the past century. First chapter analyze the main issues which can be for foreign investors discouraging such as the legal uncertainty, corruption and untransparency of the law.

The second chapter compares the interpretation of the 'investment' term from the viewpoint of the economic science reading and the legal view. Furthermore, it analyzes the term in case law of ICSID, in Indonesia law system and in the bilateral investment treaty between Indonesia and Czech Republic.

The third chapter analyzes the multilateral and bilateral investment treaties by which Indonesia is bound and the Indonesian Investment law. Indonesia became a member of several important international institutions. Aside the membership in United Nations, the World Bank and the International Monetary Fund, in concern of international investment the most important the membership in ASEAN, WTO, MIGA and ICSID. The multilateral investment treaties represent for investors the basic and universal framework of the promotion and protection the international investment. However, the main treatment remains in the bilateral investment treaties which are the result of the negotiations and requirements between the two individual countries. They contain the security of the fair and equitable treatment, the protection of the investment and the settlement of the potential investment dispute.

Fourth chapter deals with the treatment of the international investment in Indonesia. Specific rights and responsibilities of the investors in Indonesia are analyzed according to the Indonesian Investment law. Moreover, based on the presidential decree No. 39/2014 some sectors are for foreign investors closed or open with only after accomplishing specific conditions. This can be perceived as a discrimination of the foreign investors which does not meet the WTO commitments. Furthermore, the issue of ownership of the immovable property

by the foreign investors and the possibilities of starting the business in Indonesia are described as well.

Last chapter of the thesis analyzes the settlement of the potential dispute and the possibility of the protection of the foreign investment. Aside the domestic judiciary foreign investor has options to settle the dispute either by the ad hoc arbitration or by the institutional arbitration. ICSID is the most important institution and represents the independent and impartial judicial guarantee. Therefore its organizational structure and the arbitration mechanism are analyzed in detail. Indonesia became a party to the dispute in five cases which are described in detail as well in order to demonstrate the case law of the ICSID.