

ABSTRAK

Klausul arbitrase internasional merupakan ketentuan yang lazim dimuat dalam perjanjian investasi asing langsung sebagai mekanisme penyelesaian sengketa antara investor asing dan negara tuan rumah. Keberadaan klausul ini bertujuan untuk memberikan kepastian hukum dan perlindungan bagi investor, namun pada saat yang sama menimbulkan persoalan yuridis terkait kedaulatan regulasi hukum internal negara. Penelitian ini bertujuan untuk menganalisis pengaturan dan kedudukan klausul arbitrase internasional dalam perjanjian investasi asing langsung, menilai efektivitas penerapannya terhadap perlindungan kepentingan investor dan kepastian hukum penyelesaian sengketa, serta mengkaji implikasinya terhadap kewenangan regulasi hukum internal negara. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan analitis. Hasil penelitian menunjukkan bahwa klausul arbitrase internasional secara normatif diakui dalam sistem hukum investasi dan hukum perjanjian, serta efektif dalam memberikan kepastian hukum bagi investor asing. Namun demikian, penerapannya berpotensi membatasi ruang diskresi negara dalam menetapkan kebijakan publik, sehingga kedaulatan regulasi hukum internal mengalami pergeseran dari sifat absolut menjadi bersyarat. Oleh karena itu, penelitian ini menegaskan pentingnya perumusan klausul arbitrase internasional yang proporsional guna menjaga keseimbangan antara perlindungan investasi dan kepentingan nasional negara tuan rumah.

Kata Kunci: Arbitrase Internasional, Investasi Asing Langsung, Kedaulatan Regulasi, Kepastian Hukum.

ABSTRACT

International arbitration clauses are commonly incorporated into foreign direct investment agreements as a mechanism for resolving disputes between foreign investors and host states. The inclusion of such clauses aims to provide legal certainty and protection for investors; however, it simultaneously raises legal concerns regarding the sovereignty of a state's internal regulatory authority. This study aims to analyze the regulation and legal standing of international arbitration clauses in foreign direct investment agreements, assess their effectiveness in protecting investor interests and ensuring legal certainty in dispute resolution, and examine their implications for the state's internal regulatory sovereignty. This research employs a normative legal research method using statutory, conceptual, and analytical approaches. The findings indicate that international arbitration clauses are normatively recognized within the investment law regime and contract law framework and are effective in providing legal certainty for foreign investors. Nevertheless, their implementation may restrict the discretionary power of states in formulating and enforcing public policies, resulting in a shift of regulatory sovereignty from an absolute to a conditional character. Therefore, this study emphasizes the importance of formulating international arbitration clauses in a balanced and proportional manner to maintain equilibrium between investment protection and the host state's national interests.

Keywords: *International Arbitration, Foreign Direct Investment, Regulatory Sovereignty, Legal Certainty.*