

**CHOICE OF LAW DALAM PUTUSAN ARBITRASE INTERNASIONAL  
TENTANG SENGKETA PANANAMAN MODAL ASING  
(Studi Putusan ICSID Case No. ARB/11/13)**

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**ABSTRAK**

Berdasarkan Pasal 32 ayat (4) Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal, sengketa penanaman modal asing (PMA) antara investor asing dan Pemerintah Republik Indonesia (RI) diselesaikan melalui lembaga arbitrase internasional. Salah satu lembaga arbitrase tersebut adalah *International Centre of Settlement Investment Disputes* (ICSID). Para pihak dalam Putusan ICSID Case No. ARB/11/13 yaitu Ravat Ali Rizvi, warga negara Inggris, menjadi Penggugat dan Pemerintah RI menjadi Tergugat. Indonesia digugat ke forum ICSID karena Pengugat merasa dirugikan akibat tindakan *bail out* terhadap investasinya, Bank Century. Tergugat mengajukan Keberatan Pendahuluan yaitu ICSID tidak berwenang memutus kasus tersebut. Permasalahan yang akan dibahas adalah penyelesaian kasus berdasarkan hukum Indonesia dan penerapan teori *choice of law*.

Metode pendekatan yang digunakan adalah metode penelitian yuridis normatif dengan menggunakan beberapa pendekatan masalah meliputi pendekatan perundang-undangan, pendekatan analitis, dan pendekatan kasus. Data yang digunakan adalah data sekunder yang berupa peraturan perundang-undangan, putusan arbitrase internasional, pustaka-pustaka ilmu hukum dan artikel-artikel ilmiah. Penelitian ini menjelaskan kajian pilihan hukum dalam Putusan *a quo* tidak berhenti ketika telah dipilih hukum yang hendak dipakai, namun juga melihat persoalan pendahuluan, konflik kualifikasi, dan ketertiban umum.

Kesimpulan dari penelitian ini yaitu *choice of law* adalah Hukum Indonesia. Terjadi konflik kualifikasi antara para pihak dalam persoalan pendahuluan walaupun telah jelas yang dipilih Hukum Indonesia. Hal ini menyebabkan perbedaan interpretasi bidang-bidang PMA menurut hukum Indonesia. Putusan Majelis Arbiter mengabulkan keberatan Tergugat, yaitu perkara *a quo* di luar yurisdiksi ICSID.

**Kata Kunci:** Pilihan hukum, putusan arbitrase internasional, penanaman modal asing.

**CHOICE OF LAW IN INTERNATIONAL ARBITRATION AWARD  
CONCERNING FOREIGN INVESTMENT DISPUTE  
(Award Study of ICSID Case No. ARB/11/13)**

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**ABSTRACT**

Pursuant to Article 32 paragraph (4) of Indonesian Investment Law No. 25 of 2007, disputed foreign direct investment between foreign investors and the Government of the Republic of Indonesia (RI) resolved through international arbitration institutions. One of the arbitral institution is International Centre of Settlement of Investment Disputes (ICSID). In Award of ICSID Case No. ARB/11/13 Ravat Ali Rizvi, a British citizen, became the Claimant and Government of Indonesia became the Respondent. Indonesia sued to ICSID forum because Claimant felt harmed by the bail out against his investment, Bank Century. Respondent filed Preliminary Objections that ICSID is not authorized to decided disputes *quo*. Analysis of this paper is settlement of dispute *quo* under Indonesian Law and application of the choice of law theory.

The method used is a normative juridical research method by using several issue approaches which is legislation approach, analytical approach, and case approach. The data used is secondary data in the form of legislation, international arbitration ruling, libraries jurisprudence and scholarly articles. This paper describes the study of choice of law in Award of ICSID Case No. ARB/11/13, does not stop when the law has been chosen, but also include preliminary question, qualification conflict, and the issue of public order after the Award was issued.

The conclusion of this study is the Preliminary Objection examination using Indonesian Law, because the BIT RI-English has expressly opted Indonesian Law applicable to the parties. A conflict between the Claimant's qualification, Respondent's qualification and Tribunal in the preliminary question has clearly chosen though Indonesian law. This qualification conflicts lead to differing interpretations Foreign Investment areas under Indonesian Law by the verdict of the Arbiter. Award of the Tribunal granted Respondent's objected, namely the case outside the jurisdiction of ICSID.

**Keywords:** Choice of law, international arbitration award, foreign investment.