

ARBITRATION AND JUSTICE DENIAL ON FOREIGN DIRECT INVESTMENT

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Abstract

The economic growth in Indonesia is thrive. The Economic growth can not be separate of the role of investment in Indonesia. The population in Indonesia very much and also the location of the Indonesian state strategic pretty much made Indonesia enjoyed by citizens of Indonesia itself and also foreign nationals who wish to also invest in Indonesia. In Indonesia there is a domestic investment and foreign investment. In this paper will be devoted to foreign investment. Foreign investment that currently exist in Indonesia has a sizeable amount and spread from Sabang to Merauke, and also has a fairly diverse business fields. The investors who come in and make an investment in Indonesia is sometimes caused the dispute. Dispute occurs either the foreign investment by government or also foreign investment with other parties outside the government well with other foreign investment, and also in the company itself. Foreign investment dispute settlement is not only done through the court owned by the government, but there are also ways of alternative dispute resolution outside the court . One of the alternative dispute resolution outside the court is Arbitration. Arbitration carried out as part of efforts to achieve settlement of the problem in terms of investment activity . Arbitration itself is set in the legislation applicable investment in Indonesia . The parties in capital investment may create a separate section in the agreement governing the settlement of disputes in the case of investments completed by Arbitration. In the event that the parties have arranged to settle the case with Arbitration, then the court is not allowed to try again or to interfere in the decision Arbitration. Arbitration is one of the solutions if justice denial occur in the settlement of foreign direct investment issue.

Keywords : Arbitration, Foreign Direct Investment, Alternative

I. INTRODUCTION

Projections for 2015 and 2016 assume that the new government's reform momentum can survive, and the government to follow up the momentum by policies to accelerate infrastructure development, improving the investment climate, lower logistics costs, and encourage the uptake of the budget. On this basis, the growth of gross domestic product (GDP)¹ is expected to improve to 5.5% this year and 6.0% in 2016.²

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¹ Menurut <https://id.wikipedia.org/> produk domestik bruto (PDB) adalah nilai pasar semua barang dan jasa yang diproduksi oleh suatu negara pada periode tertentu. PDB merupakan salah satu metode untuk menghitung pendapatan nasional.

² <http://www.adb.org/id/indonesia/economy> diakses 5 Agustus 2015

Indonesia's economy as measured by the amount of the Gross Domestic Product (GDP) at current prices the first quarter of 2015 to reach Rp2.724,7 trillion and at constant prices of 2010 reached Rp2.157,5 trillion. Indonesian economy first quarter of 2015 to the first quarter of 2014 grew 4.71 percent (y-on-y) slowed down compared to the same period in 2014 by 5.14 percent. In terms of production, the highest growth by Business Sector Information and Communications by 10.53 percent. Components of the Expenditures by Household Consumption Expenditure which grew 5.01 percent.

Indonesian economy first quarter of 2015 against the previous quarter fell by 0.18 percent (q-to-q). From the production side, growth is characterized by seasonal factors in the Industrial Agriculture, Forestry, and Fisheries, which grew 14.63 percent. In terms of spending more due to the investment performance (minus 4.72 percent) and exports (minus 5.98 percent).³

This increased revenue is not far away is the role of economic activity that is very good in 2015, although economic activity slowed taken into account but economic activity remains said to be good because it is still positive economic growth figures. Economic activities one of which is the presence of capital investment. Indonesia has also a variety of natural resources also serve as a lure to be investment in Indonesia. Capital investment is divided into two, namely investment in domestic and foreign investment. Foreign investment has enormous appeal.

Head of the Investment Coordinating Board (BKPM) Sibarani Franky said, Indonesia has appeal and charm in the eyes of foreign investors despite the economic growth of only 4.7% in the first quarter / 2015. He said that, in the eyes of foreign investors are now seen to have great potential when the ASEAN Economic Community (AEC) was adopted because it supported a large population. Potential residents of Indonesia, he explained, for investors it is interesting to employment when they invest in Indonesia. In addition, Frank added, the country is also bidding to become the industrial base ASEAN market share of 40% and 60% of the nine other countries. While in terms of politics and security, according to him, Indonesia could be said to be stable

³ <http://www.bps.go.id/brs/view/id/1143> diakses 5 agustus 2015

compared to other countries plus a large market share.⁴

Foreign investment can provide substantial profits to the national economy, for example: creating jobs for the residents of the host so as to improve the income and living standards, creating opportunities in collaboration with local companies so that they can share the benefits, increase exports thus increasing foreign exchange reserves and produce transfer of technology.⁵

It is interesting to study, because the wisdom of foreign capital is to increase the potential for export and import substitution, so that occurs the transfer of technology and knowledge transfer that can accelerate the pace of Indonesia's development, creating jobs and employment, can create demand for domestic products as raw materials, can increase the state income tax sector, can increase capital accumulation, giving birth to new experts, improving the quality of human resources and increase knowledge and open access to global markets. Seen from this perspective it appears that the presence of foreign investors is quite a role in the economic development of a country.⁶

Some countries that have an interest in attracting investors such as China, Vietnam, India and several ASEAN countries (Malaysia, Thailand and the Philippines) and the countries of Latin America also has many advantages, even beyond Indonesia, as labor is cheaper in India, Vietnam and the PRC. -Mainstay was further weakened due to the fact that world markets become more open and more advanced international trade negotiations and incessant efforts to repeal various protection systems.⁷

II. FOREIGN DIRECT INVESTMENT

In the era of trade liberalization characterized by mega competition, investors are increasingly flexible in investing. For the capital recipient

⁴<http://ekbis.sindonews.com/read/1022347/34/alasan-investor-asing-terpesona-investasi-di-indonesia-1436508905>

⁵ Suparji, *Penanaman Modal Asing Di Indonesia Insentif Versus Pembatasan* (Jakarta: Universitas Al-Azhar, 2008), p. 1.

⁶ *Ibid.*

⁷ Hilman Panjaitan dan Anner Mangatur Sianipar, *Hukum Penanaman Modal Asing* (Jakarta: CV. INDHILL CO, 2008), p. 17.

must prepare a variety of means to attract investors. As is known, in the seventies, motivated foreign investors to invest in various areas is to obtain natural resources and produce from a cheaper location. However, in the era of the eighties, motivation relocation becomes more important. This is because, due to the higher production costs. More important is the transnational corporations have globalized, so they started creating a network of production between different locations based on natural resources and labor as well as technological capabilities, production processes that can be shared between locations different. Production network is formed, generally the final product is exported to other countries. The pattern has created a link between trade and investment in the various regions and the demands of the integration process that is driven by market demands.⁸

National law in order to always be able to adjust the development of the situation, then he should open up, receive elements from outside that can facilitate national development that is being done by this nation. Thus, if you want to compete with other countries in the capture potential investors, the provisions relating to investment should be adapted to the present conditions. As noted by the research team of National Legal Development Agency :⁹

“Efforts to create a conducive investment climate is becoming increasingly necessary to remember that in order to attract investment, Indonesia is faced with the challenge of an increasingly large and complex, and increasingly keen competition both among developing and developed countries, especially in attracting foreign capital. Increased capital investment can be done through increasing active role of public investment, business opportunities widely open. Indonesia’s participation in various forums bilateral, regional and multilateral on the basis of national interests lead to consequences that must be faced and adhered to. “

Indonesia is a country that is building and for it to carry out the construction required the investment of capital or huge. Investment activities in Indonesia started in 1967 with the issuance of Act 1 of 1967 on Foreign Direct Investment (FDI) JO Law No. 11 Year 1970

⁸ Sentosa Sembiring, Hukum Investasi (Bandung: Nuansa Aulia, 2010), p. 59.

⁹ Badan Pembinaan Hukum Nasional (BPHN) Departemen Kehakiman dan HAM RI, Perumusan Harmonisasi Hukum Bidang Penanaman Modal (Jakarta: Juli 2003), p. 66-67.

on changes and additions to Law No. 1 of 1967 concerning Foreign Investment and the Law 6 of 1968 concerning domestic investment. One of the possibilities for economic growth of a country is the influx of foreign capital, particularly investment both domestic and foreign capital. With the entry of foreign capital and domestic capital in investment has accelerated modernization in Indonesia.¹⁰

Indonesia's membership in the World Trade Organization (WTO) has led to the reform law by issuing the Indonesian Investment Law Number 25 Year 2007 regarding Investment to replace Law No. 1 of 1967. With the enactment of the new legislation is expected to provide legal certainty (legal certainty) to attract more foreign capital. In addition, factors opportunity economy (economic benefits) and political stability (political stability) is also crucial in bringing foreign capital into the country.¹¹

In macro-economic literature, foreign investment can be done in the form, ie portfolio investment and direct investment or foreign direct investment (FDI). Portfolio investment is done through capital market instruments securities such as stocks and bonds, while direct investment, known as foreign investment (PMA) is a form of investment by building, buying or acquiring company's total.¹²

The entry of foreign companies in investment activity in Indonesia is intended as a complement to fill the business sectors and industries that have not been fully implemented by the national private sector, both for reasons of technology, management, and capital reasons. Foreign capital is also expected to directly or indirectly can be more stimulating and exciting business climate or life, and can be used as an attempt to penetrate the international marketing network through the network they have. Furthermore, direct foreign investment is expected to accelerate

¹⁰ http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCgQFjACahUKEwihlZib6dzHAhVCi5QKHxEwCF0&url=http%3A%2F%2Frepo.unsrat.ac.id%2F397%2F1%2FTANGGUNG_JAWAB_INVESTOR_DALAM_PENANAMAN_MODAL_DI_INDONESIA.pdf&usg=AFQjCNEjysrdF5xSSqAwa7fWKDr6K9f6AQ&sig2=-cV8osa1scqatmBgUSz6dw

¹¹ Suparji, Op. Cit., p. 5.

¹² Gunarto Suhardi, *Beberapa Elemen Penting dalam Hukum Perdagangan Internasional* (Yogyakarta: Universitas Atmajaya, 2004) p. 45.

the process of economic development of Indonesia.¹³

Investment both domestic investment and foreign investment in Indonesia listed in Law No. 25 of 2007 on Investment (hereinafter referred to as the Capital Market Law). In this Act referred to the Foreign Investment is investment activity to conduct business in the territory of the Republic of Indonesia, made by a foreign investor, either using foreign capital and joint venture with domestic investors.

Investment types distinguished by direct investment and portfolio investment. Foreign direct investment is usually considered another form of transfer of capital carried out by the company of people in a country in economic activity of other countries that involve some form of participation in the field of venture capital they invest. Direct investment means the company from an investor country *de facto* and *de jure* supervise the asset are grown in the state capital by investing storage.¹⁴

Compared with portfolio investment, Foreign Direct Investment (FDI) has advantages such as more permanent (long-term), much to contribute to the transfer of technology, transfer of management skills, create new jobs. Employment is very important for developing countries given the limited ability of the government to the provision of employment, while in the investment portfolio, the funds go to the company that issued the securities (issuer), not necessarily create new jobs.¹⁵

According Nindyo Pramono that direct investment investor management control, is usually carried out by transnational corporations and the long period of time because it involves goods. Direct investment capital is more interested in the big and the market growth rate, labor and production costs as well as infrastructure. While on the investment portfolio, the investor only provide financial capital and is not involved in management. Investors are institutional investors, short-term and easily liquidated by selling shares purchased.¹⁶

¹³ Dirdjosisworo Soedjono, *Hukum Perusahaan Mengenai Penanaman Modal di Indonesia* (Jakarta: CV. Mandar Maju, 1999), p. 23.

¹⁴ Suratman, *Hukum Investasi dan Pasar Modal* (Jakarta: Sinar Grafika, 2009), p. 4.

¹⁵ Dirdjosisworo Soedjono, *Op. Cit.*, p. 25

¹⁶ Hartono, Sri Redjeki, *Hukum Ekonomi Indonesia*, cetakan Pertama, (Malang:

III. ARBITRATION AND JUSTICE DENIAL ON FOREIGN DIRECT INVESTMENT

Access to justice is «the right of every person to have a forum in which to assert the right that she considers to be assisted and to obtain the satisfaction of it». We can then clearly distinguish the two major components of the notion: the right of access to the courts and the right to a fair and equitable procedure.¹⁷ In the matter of foreign investment, the denial of justice must then be understood as «any failure of the State concerning its duty to organize and to exercise the judicial function, in order to ensure [foreign investors] minimal judicial protection»¹⁸ The fairness inherent to courts and the fair and equitable procedure, to which every person is entitled to, become worthless if the possibility of access to those courts is not guaranteed¹⁹

The first example is the case that confronted the Iranian society NIOC with Israel. When a dispute arose between them, the State of Israel refused to choose an arbitrator to hear the case (situation not covered by the arbitration clause), thereby preventing the investor the possibility to access arbitral justice. In addition, to make it worse for the investor, we must remember that after the *Manbar*²⁰ case, NIOC society was in total inability to access any type of jurisdiction, Iranian, Israeli and even international²¹

Next case, In accordance with the investment contract, *Saipem* filed a petition for arbitration before the ICC. The state-owned *Petrobangla* opposed it before the domestic courts of Bangladesh, arguing that the ICC had no jurisdiction in this matter. The legal basis would be in

Penerbit Bayumedia Publishing, 2007), p. 13.

¹⁷ J. Marabotto, «Un derecho humano esencial: el acceso a la justicia», *Anuario de Derecho Constitucional Mexicano*, 2003, p. 291.

¹⁸ G. Cornu, *Vocabulaire Juridique*, PUF, 2009, Paris, p. 291

¹⁹ R. Pelloux, «L'arrêt Golder de la Cour européenne des Droits de l'homme», *Annuaire Français de Droit International*, Vol. 21, 1975, p. 336

²⁰ This judgment considered Iran as an enemy State, preventing the Israeli courts to recognize or enforce any ruling issued by Iranian courts. In addition, from that moment, no Israeli court could process any request filed by an Iranian citizen. F. Kahn «Investissements internationaux et droits de l'homme», en F. Horchani, *Où va le droit de l'investissement ? Désordre normatif et recherche d'équilibre*, p. 99

²¹ Carlos Andrés Hecker Padilla, *DENIAL OF JUSTICE TO FOREIGN INVESTORS*, *Cuadernos de Derecho Transnacional* (Marzo 2011), Vol. 3, N° 1, pp. 296-331

Article 5 of the Bangladesh Arbitration Act from 1940²², which would give domestic courts priority over international jurisdiction. Under the terms of the Court of Appeal of Dhaka, the arbitral tribunal would have clearly ignored the law²³, causing the Supreme Court of Bangladesh to consider the ICC tribunal's ruling to be void. This led *Saipem* to search for ICSID protection, under the BIT signed between Italy and Bangladesh. In Indonesia alone is never a case of justice denial regarding which cases AMCO (Kartika Plaza), Himpurna cases, and cases Loewen.

Although the case brought before the ICSID is mainly about the expropriation of the investment, what is really interesting for our analysis, is the court's conclusion concerning the obstacles Bangladesh came up with to prevent *Saipem* from accessing the arbitral justice. The reasoning was developed based on the notion of abuse of rights. In this regard, the tribunal recognized that the authority of an arbitrator can be challenged in absence or misapplication of the law; however, none of these circumstances took place. According to the tribunal, to arbitrarily prevent the investor's access to a court, through the misuse of States judicial control power is contrary to the internationally accepted principle that prohibits the abuse of rights²⁴.

The *culpa lata* or gross negligence, however, might make us hesitate, given that it involves extremely careless actions or omissions, which are almost always equivalent to the fraud: *Culpa lata dolo æquiparatur*. In this regard, it seems impossible to us that in a procedure, all the domestic instances would make mistakes of this magnitude without a prior agreement, in order to harm the party. Thus, only the fraud can be considered as a source of denial of justice.²⁵

²² Art. 5: «The authority of the appointed Arbitrator or umpire shall not be revocable except by leave of the court, unless a contrary intention is expressed in the arbitration agreement»

²³ *Saipem S.p.A. v. Bangladesh*, ICSID ARB/05/7, award (June 30, 2009) §155 <http://ita.law.uvic.ca/>

²⁴ «In conclusion, the Tribunal is of the opinion that the Bangladeshi courts exercised their supervisory jurisdiction for an end which was different from that for which it was instituted and thus violated the internationally accepted principle of prohibition of abuse of rights», *Saipem v. Bangladesh*, *Ibid.* §160

²⁵ Carlos Andrés Hecker Padilla, DENIAL OF JUSTICE TO FOREIGN INVESTORS, Cuadernos de Derecho Transnacional (Marzo 2011), Vol. 3, N° 1, p. 296-331

Investment activity is always associated with the likelihood of risks that can result in a reduction or even loss of capital value. Therefore, before making investment need to consider several factors to minimize the loss as follows: ²⁶

1. The political and economic system of the country concerned;
2. The attitude of the people and the government against foreigners and foreign capital;
3. Political stability, economic and financial;
4. The number and the purchasing power of the population as potential customers;
5. The existence of raw materials and supporting materials;
6. The existence of cheap labor;
7. Land for business premises;
8. The structure of taxation, customs and excise;
9. Legislation and legal support for the creation of business assurance justice denial

Justice as part of a denial of justice desired by foreign investors in Indonesia sometimes be difficult to obtain. This result again that the lack of confidence in the ability of the court to give a ruling so that an investor or investors wanting to come to arbitration in order to obtain results that better reflect fairness.

Zephaniah B.P. Naidoo, proposed a simple definition as the emergence of state responsibility in international law if the country does not meet certain standards in carrying out justice against foreigners. In essence, the denial of justice is a concept of protection for investors, which is based on three elements, namely foreigners, the state responsibility under international law, and how unfair in holding the judiciary. Investors have invested large amounts of money at risk is not small, so that he felt the need to protect themselves. During this time, which is used diplomatic protection. But over time was used because investors can directly resolve the dispute with the country in which the investment. Denial of justice is considered important and central concept in international minimum standards. The concept of denial of justice increasingly widespread and growing, both in the forum and resource

²⁶ Soedjono Dirdjosisworo, 1999, *Hukum Perusahaan mengenai Kegiatan Menanam Modal di Indonesia*, Mandar Maju, Bandung, p.226

handling. Forum increasingly diverse investment dispute settlement, regulation of these concepts are also increasingly being used.²⁷

Article 11 (2a) ASEAN Comprehensive Investment Agreement stated that *fair and equitable treatment requires each Member State not to deny justice in any legal or administrative proceedings in accordance with the principle of due process.*

The things that cause justice denial above causes a lot of foreign investment due to run at arbitration considered more representative of justice. In Article 4 paragraph (2) of Law No. 4 of 2004 on Judicial Power explained that “Justice is done with a simple, fast and low cost.” According to M. Yahya Harahap, experiences and observations have proved, settlement of disputes through the courts is relatively slow because²⁸ :

1. formality,
2. open appeals, appeals and reconsideration so that the course of the settlement process, can be tortuous and takes a very long time. Can say years, even decades,
3. not to mention the emergence of various interventions or resistance from third parties (*derden verzet*), led to the completion of increasingly complex and lengthy.

Therefore, the parties prefer to use the judicial settlement of disputes outside the public / non-litigation to resolve his case, either by way of mediation, negotiation, conciliation or arbitration. This non-litigation paradigm in achieving justice prefers a consensus approach and tried to reconcile the interests of the parties to the dispute and aims to get the dispute settlement towards a win-win solution.²⁹

The existence of arbitration as an alternative dispute resolution institutions in the field of trade is indispensable. In Indonesia, arbitration position strengthened with the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The reason why choose arbitration as an alternative dispute resolution, among others:

²⁷ Zefanya B.P. Samosir, *Konsep Denial of Justice dalam Arbitrase Internasional*, CV Keni Media, Bandung, 2015., p 3-5

²⁸ M. Yahya Harahap. 1991. *Arbitrase*. Jakarta : Pustaka Kartini, p. 232.

²⁹ *ibid*, p. 139

1. Characteristically secret (confidential), thus ensuring the confidentiality of the parties.
2. The procedure is simple and quick
 - a. A maximum of 180 days / 6 months, if it exceeds 180 days or for an extended time then examined according to the agreement
 - b. *win-lose solution are minimized.*
3. The parties to the dispute may choose the person / institution (arbitrator) which will resolve the dispute.
4. Its decision is final, binding and has forced.

In addition, there are still some advantages chosen arbitration as an alternative dispute resolution, namely business³⁰ :

1. The parties may choose arbitrators who he believes have the knowledge, experience and adequate background on the issues in dispute and fair.
2. The parties may determine the choice of law to resolve the problem, process, and venue for the arbitration.

In foreign investment, it is likely there is a dispute or a dispute between the foreign investor with national. Dispute parties or the dispute should get settlement. The dispute settlement according to Richard L. Abel are "public statements regarding the demands that are incompatible (inconsistent claim) against something valuable ".³¹ To anticipate the occurrence of a dispute between national parties with foreign parties in the field of capital investment, the Indonesian Government has ratified the International Convention on the Settlement of Dispute (ICSID) through Law No. 5 of 1968 concerning the settlement of disputes between states and foreign nationals regarding investments.³²

ICSID Convention recognizes the right of individuals to be parties before the arbitration ICSID. But only to disputes in the field of investment and the state of the individual concerned has been a member of the ICSID Convention (Washington Convention 1965).³³ According to article 1, paragraph 1 of Law 30 of 2009 on arbitration

³⁰ Suyud Margono. 2000. ADR Alternatif Disputes Resolution dan Arbitrase Proses Pelembagaan dan Aspek Hukum. Bogor : Ghalia Indonesia, p. 2.

³¹ Dalam Friedman, 2001

³² Ikarini Dani Widiyanti, Tinjauan Yuridis penanaman Modal Indonesia,

³³ Huala Adolf, 2005, Hukum Perdagangan Internasional, Raja Grafindo Persada, Jakarta, p.69

and Alternative Dispute settlement arbitration interpreted as a way of solving civil disputes outside the courts of general jurisdiction based on the arbitration agreement made in writing by the parties to the dispute. Where the decision of this arbitration dispute cannot be tried again in court.

In Article 32 of Law No. 25 of 2007 on Investment stated regarding the settlement of disputes in the field of investment. In the article it is stated that the settlement of disputes in capital investment are:

1. the event of a dispute in the field of investment between the Government and investors, the parties must first resolve the dispute through consultation and consensus.
2. In the event of dispute settlement is not reached, the dispute resolution can be made through arbitration or alternative dispute resolution or a court in accordance with the provisions of the legislation.
3. In the event of a dispute in the field of investment between the Government and domestic investors, the parties can resolve the dispute through arbitration by agreement of the parties, and if the settlement of disputes through arbitration is not agreed upon, the settlement of the dispute will be conducted in court.
4. In the event of a dispute in the field of investment between the Government and foreign investors, the parties will resolve the dispute through international arbitration that must be agreed upon by the parties.

In addition to ICSID Arbitration, Arbitration ICC (International Chamber of Commerce) also may be an option. Indonesia itself has ratified the New York Convention on the Recognition and enforcement of Foreign Arbitral Award of 1958. Meanwhile, the settlement through BANI (Indonesian National Board of Arbitration) may also be done. In order to resolve the dispute through arbitration, the parties usually formulate the arbitration clause in the agreement which they are made, whether in the form *pactum de compromitendo* or in the form of a deed of compromise.³⁴

The legal consequences of denial of justice is a state should be responsible for either restitution or compensation. Restitution (returns

³⁴ Dhaniswara K.Hardjono,op cit,p.270

to its original state) is not considered sufficient, so that the country is still burdened compensation. The amount of compensation to be paid has long been problematic because of the debate, for example, about the suitability of the compensation given to replace the loss of business reputation, non-material losses, indirect losses or loss of earnings potential in the future.³⁵

IV. CONCLUSION

Access to justice is one of the most important human rights that a person can have. This is why it is recognized as a fundamental right and therefore constitutionally protected in almost every domestic legal system, and in international law³⁶ However, the obligations not only burden on public servants, but on everyone who presents itself before them asking to exercise their authority. In this sense, the investor is forced to accept decisions legitimately taken by these authorities, and if he considers that his right to access justice has been maliciously hindered, bad faith must be duly proven. Otherwise, the arbitral justice would end up being used as a «third instance» by investors, in order to obtain a review of the facts, every time they would obtain an unfavourable decision from domestic courts³⁷.

The justice denial make the foreign direct investment moves slower. The investor choose a private arbitraion that the national court. The goverment shoul take action on the justice denial occur in the court.

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³⁵ Zefanya B.P. Samosir, op.cit., p 49.

³⁶ C. Hecker, «El acceso a la justicia y la inversión extranjera», *Actualidad Jurídica, Revista de Derecho de la Universidad del Desarrollo*, year XI, n°22, july 2010, pp. 205-209

³⁷ I. Knoll-Tudor, op. cit. n°12 p. 323

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