

ABSTRACT

Investment activities among states have grown rapidly. The flows of Foreign Direct Investment (FDI) reach higher level year per year. These activities are beneficial for either the investors or the host states. Interdependency and competition then come up as result of the investment growth. In order to cover these investment developments, many multilateral and bilateral investment treaties are concluded, in which one main legal source is Trade-Related Investment Measures (TRIMs). One of the most affecting principles under this Agreement, the national treatment generates challenges to the application of the discussed principle. Neither TRIMs as refer to General Agreement on Tariffs and Trade (GATT) nor any other International Investment Agreements (IIAs) and Bilateral Investment Treaties (BITs) provides the clear standard measure on how to apply national treatment. This will cause an open interpretation to the national treatment clauses. In this condition, Indonesia as developing country shall take careful steps in order to, *inter alia*, protect national interest. Even though FDI offers many benefit to Indonesia, the protection of national interest should be taken into account on policy-making. Due to the binding nature of national treatment to Indonesia, the State shall provide treatment no less favourable to the aliens compared to nationals. By this circumstance, the obligation to protect national interest and grant national treatment are being contested. The question is whether national treatment is significant to Indonesia. The research is a normative legal research, where statute and case approach are chosen. The legal materials will be analyzed and synchronized using deductive-syllogism method. The materials are the Act Number 25 Year 2007 on Investment Law, TRIMs, GATT, Awards of ICSID Arbitral Tribunal, IIAs, BITs Model, and other related. The data collecting method is library research method and the result of the research is in descriptive explanation of the object of research. This research concludes that there are at least two main standard measures to apply national treatment: the “likeness of circumstances” and the “favourableness of treatment” between aliens and the nationals. In facing the vague standard of national treatment, the government should take a careful concern in national treatment clause in any BITs, FIPA, other related laws and regulations.

Keywords: investment, investor, national treatment.