

ALSA FORUM 2023

ALSA INDONESIA SEMINAR MATERIAL SET

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TDG1-B:

THE ASIAN INVESTMENT REGIME AND REGULATIONS IN SRI LANKA

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I. General Information

In the landscape of finance and wealth accumulation, investment stands as the cornerstone of economic growth. The Asian investment regime has witnessed a remarkable transition, going from predominantly recognized for its labor-intensive industries to a worldwide economic powerhouse that draws both local and foreign money. Rapid industrialization, technological development, demographic changes, and government policies that support economic growth have all contributed to this transformation. As a result, Asia has become a key player in the global investment landscape, offering a variety of opportunities and challenges that influence the worldwide strategies of investors of all sizes.

This position paper concerns an analysis on the Asian Investment Regime and Regulations in the country of Sri Lanka. Sri Lanka, an island country in South Asia, has been plagued with an economic crisis, weak foreign investments and has also been met with political instability and corruption over the past few years.¹ The current economic crisis in Sri Lanka is said to have begun due to multiple compounding factors like tax cut, money creation, a nationwide policy to shift to organic or biological farming, the 2019 Sri Lanka Ester bombings and the impact of the COVID - 19 pandemic in Sri Lanka.

II. Case study of Sri Lanka

Before moving forward, it is important to acknowledge Sri Lanka's economic liberalization that occurred over three decades ago. The government has embraced several

policies that further welcome international investment. With that in mind, several of these policies include safety of foreign investment guaranteed by the constitution, bilateral investment

¹ Perera, Ayesha, "Sri Lanka: Why the Country is in an Economic Crisis?", BBC News, Mar. 29, 2023.

protection agreements have been signed with 28 countries, including double taxation avoidance agreements with 38 countries, and the fact that Sri Lanka is a founding member of the Multilateral Investment Guarantee Agency (MIGA); an investment guarantee agency of the World Bank. This provides a safeguard against expropriation and other non-commercial risks.²

Despite this, there are several problems that plague Sri Lanka's economy. Severe shortage of foreign exchange has caused Sri Lanka to be unable to import goods, resulting in a population that is facing a rising price of essential commodities. The statistics shows that the Sri Lankan Rupee has lost half of its value since 2022, defaulting on \$51 billion on external debt. With that, 500,000 Sri Lankans have fallen into poverty as of April 16, 2022.³ Hence, this shows the exacerbating issue at hand.

III. Steps taken by Sri Lanka to rectify the problems

There are several steps currently taken by Sri Lanka to rectify the problem at hand. Firstly, Sri Lanka has reached a staff-level agreement on a bailout package for Sri Lanka with the International Monetary Fund (IMF) to support Sri Lanka's Economy.⁴ With that in mind, Sri Lanka will have to implement significant reforms including reducing the budget deficit and increasing taxes. Furthermore, Sri Lanka has reached a common agreement on debt restructuring with countries such as Japan, India, and China as well as private creditors who have given loans.⁵ Those are two examples of what the government has done to try and solve the issue.

IV. Proposed Solutions

Keeping in mind the prevalence of the crisis, further solutions must be implemented to fully apprehend the aggravation of this issue. Several solutions that could be considered and implemented to tackle this issue includes having trade liberalization by export-focused foreign direct investment, increasing the number of foreign investment in the region; thus providing access to invest directly, and also other initiatives such as increasing transparency, fiscal and debt

²“Investing in Sri Lanka”,

<https://www.treasury.gov.lk/web/investing-in-sri-lanka/section/supportive%20government%20policies>³The World Bank in Sri Lanka,

<https://www.worldbank.org/en/country/srilanka/overview>⁴IMF Press Release No. 22/295

⁵Kihara, Leika, “Japan, India and France announce common platform for Sri Lanka creditors”, Reuters, Apr. 14, 2023.

sustainability, and create structural reforms which will refrain political authorities from changing their tax policies.

With that in mind, to briefly conclude the points brought throughout this position paper, the Asian investment regime has without a doubt transformed to a new level through industrialization and networking. This investment regime itself could be the solution for the economical crisis currently plaguing Sri Lanka.

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Chamber : Chamber 1

Country : China

Topic : Asian Investment Regime and Regulations

In the contemporary era, a nation's economic growth relies significantly on investments from both domestic and foreign sources. This raises the critical question of whether a country has established clear and transparent mechanisms to inspire confidence among investors in its various economic sectors. Investment regulations differ from one country to another, with some nations lacking a comprehensive framework. The presence of a well-defined investment regime and regulations is essential to protect both investors and the sectors they invest in. It is important to acknowledge that investment regulations and practices can change over time due to evolving economic priorities, geopolitical factors, and other influences.

Therefore, for up-to-date information on investment regulations in a specific country or region, it is advisable to consult government agencies, legal experts, or international business organizations. China, for example, has pursued a strategy involving Regional Trade Agreements and Multilateral treaties to engage in the global economic landscape. China

introduced the Foreign Investment Law on March 15, 2019, aiming to replace the Three Foreign-Invested Enterprise Laws governing Sino-foreign equity and cooperative joint ventures, wholly foreign-owned enterprises, and their operations in China. Complementing this law, China enacted the National Security Law and implemented the Measures for the Security Review of Foreign Investment on January 18, 2021.¹

The Security Review Measures outline the categories of foreign investments subject to security assessments, identify responsible organizations for conducting thorough security evaluations, detail the examination process, and provide comprehensive directives for managing exceptional cases.² Article 4 of China's Foreign Investment Law embodies the principle of granting equal national treatment to foreign investors during the pre-establishment phase, with a cautious examination known as the "Negative List."³ In the realm of safeguarding national security, China relies on foundational laws such as the National Security Law and the Foreign Investment Law. These are complemented by supplementary regulations and administrative documents.

China has attracted significant foreign investment over the years and has signed various treaties and conventions to govern foreign investments. One notable category is Bilateral Investment Treaties (BITs), which aim to protect and promote investment between China and its partner countries while providing legal guarantees and dispute resolution mechanisms. China's economic prowess in the Asian region is substantial, with the ASEAN and China Free Trade Area playing a dominant role in promoting trade and investment in Asia. Moreover, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, administered by the World Bank, serves as a forum for arbitration and settlement of investment disputes involving foreign investors.

In summary, these treaties and conventions create a legal framework that encourages

¹ *China overhauls its Foreign Investment Regulatory Regime* | *Global law firm*. (n.d.). Norton Rose Fulbright. Retrieved September 8, 2023, from <https://www.nortonrosefulbright.com/de-de/wissen/publications/a885f4c3/china-overhauls-its-foreign-investment-regulatory-regime>.

² Jacob Blacklock. (2022, November 30). *Foreign Direct Investment Regimes Laws and Regulations Report 2023 China*. ICLG.com. Retrieved September 8, 2023, from <https://iclg.com/practice-areas/foreign-direct-investment-regimes-laws-and-regulations/china>

³ *Ibid* footnote 1.

foreign investment in China, providing investors with predictability, transparency, and recourse in case of disputes. It is essential for the international community to address the challenges and opportunities associated with foreign investment in China by adopting robust business models, promoting collaboration on global issues, and ensuring compliance with international laws and treaties. This approach will contribute to sustainable and mutually beneficial investments in China's dynamic and evolving market.

ALSA FORUM LEGAL ESSAY

“Legal Process Outsourcing Trends in Indonesia as One of the Asia-Pacific Countries”

By Edward Jeremiah Maruli Sitorus / 2021 / ALSA LC Undip

1. Introduction

Globalization has affected and changed many aspects of the world. Business, economic strategies, technological innovation, communication, and even the legal profession changed time by time. Two major innovations appeared during the globalization era; the railroad and the telegraph. The Telegraph is the stepping stone of communication aspects in the world, which provided a near-instant ability to keep in contact with other related parties. JoAnne Yates stated in her book *Control Through Communication* (1980) that “the spread of the telegraph and railroads encouraged firms to serve larger regional and national markets while improvements in manufacturing technology created potential economies of scale.” In other aspects, globalization also impacted industrialization and modernization of developing nations. The connection between companies in one and other countries became more “global” and broad, which implies a tradition for local or multinational companies to seek foreign help (foreign workers) to cover their uncovered business sectors that they can't handle.

Many companies in different sectors (local, regional, or even multinational) tend to give their “unhandled” business to another company or another party. This activity is better known as “outsourcing.” Outsourcing is the act of obtaining semi-finished products, finished products, or services from an outside company if these activities were traditionally performed internally. In the previous sentence, the word ‘product’ may be replaced by ‘service.’ The company that outsources is called the ‘buyer,’ whereas the company that provides the service is known as the ‘vendor.’⁴ Outsourcing itself has been regulated in Indonesia, in Law No. 13

⁴<https://campusgaia.org/wisdomlibrary/wp-content/uploads/2021/10/ContentServer-2021-08-20T101631.050.pdf>

of 2003 concerning Manpower, which has been changed in Law No. 6 of 2023 concerning Stipulation of Government Regulation in place of Law Number 2 of 2022 concerning Job Creation to become Law. Outsourcing has become popular in the business sector in Indonesia, and even the law sector. However, some problems happened until the following day regarding the implementation

his essay will also explain how outsourcing impacted the legal professions in Indonesia.

Issues:

- Why did Law Process Outsourcing (LPO) impact the law professions in Indonesia? -
- What are the problems with outsourcing that occur these days in Indonesia? -
- Comparison between outsourcing in Indonesia and other countries in the Asia-Pacific Countries?

Regulations:

- Pasal 64 Bab IV Tentang Ketenagakerjaan UU No. 6 Tahun 2023
- Pasal 18 dan Pasal 19 PP No. 35/2021 Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja

Analysis:

So far, the practice of outsourcing has caused many problems. Some of these violation practices, for example, the case of outsourcing at Pertamina's Central Hospital, are clear examples of violations of the applicable labor regulations. Sutarman as the Court Judge in Jakarta assessed that there was a violation of the implementation of outsourcing, namely the absence of a written agreement between the hospital as a user and the RSPP employee cooperative as the agent. Another example of outsourcing irregularities occurs at the gate of the Jakarta Outer Ring Road (JORR) toll road. This practice can be seen from the majority of ticket officers at toll booths having the status of outsourcing employees. Even though the

general public can certainly judge that the job of guarding toll road gates is the core business of toll road administering companies. This means that it is not feasible if the worker is a contract or outsourcing employee. Rosmana as an employee of the Ministry of Manpower said that the implementation of legal protection for outsourcing workers of PT. Indah Karya Nuansa Indonesia (PT. INKANINDO) at PT. PERTAMINA (Persero) UP-VI Balongan, shows that in running the business of outsourcing the provision of routine inspection workforce NDT refinery equipment PT. PERTAMINA (Persero) UP-VI Balongan, PT. INKANINDO is not entirely following the applicable manpower regulations. Several things have not been fulfilled, namely, the violations committed, including the working hours imposed if the total is 45 hours in one week whereas in Article 77 paragraph

(2) the maximum working hours per week is 40 hours. Another violation is that overtime meal pay is not provided because it is less than 4 real hours on weekdays. This violates Article 77 Paragraph (2) which stipulates that the total real working hours in a week cannot be more than 40 hours, as well as the provisions of Overtime Working Time in Law Number 13 Year 2003 concerning Manpower Article 78 Paragraph (1) Letter b, namely can only be done a maximum of 3 hours in 1 day and 14 hours in 1 week. Likewise, the provision which states that specifically shift workers, do not receive an overtime meal allowance and overtime transport pay when working on official holidays, is not following the provisions of Overtime Working in Law No. 13 of 2003 concerning Manpower Article 78 Paragraph (2) which states that entrepreneurs who employ workers or laborers over the working hours as referred to in paragraph (1) are required to pay overtime wages. Thus this study concludes that the legal protection for routine inspection workers of refinery equipment (outsourcing workers) is still not optimal and is still very weak. The FSPMI-FES study (Viky et al., 2020) used a combination of survey methodology for 600 metal sector workers in 3 provinces in 7 districts or cities, namely the Riau Islands Province in Batam City, West Java Province in Bekasi Regency and Karawang Regency, and the Province East Java in Surabaya City, Sidoarjo Regency, Mojokerto Regency and Pasuruan Regency, shows that the impact of contract work practices and outsourcing is fragmentation, discriminatory, degradative and exploitative on workers. The practice of permanent and contract employment has created fragmentation or

grouping of workers based on their status at the factory level (Wibawa, 2016: 80). In this practice, in one factory there are 3 groups of workers, namely permanent workers, contract workers and outsourcing workers. This grouping is generally characterized by differences in the uniform colors worn by the three groups of workers and among the outsourced workers who come from different labor supply companies. Grouping based on the color of uniforms has the effect of stratification and social distance among permanent, contract, and outsourcing workers which has implications for solidarity and mutual awareness as workers. The practice of contract employment and outsourcing brings at least 3 forms of discrimination against workers, namely: a. discrimination on age and marital status, namely the follow-up policy applied by user companies to employ outsourced workers, which is to impose age limits and marital status for outsourced workers which have a discriminatory effect. Companies tend to employ young workers and for the recruitment of new outsourcing workers, it requires workers aged 18-24 years and single for reasons of productivity. Choosing a

worker with a single status has the effect of making it more difficult for workers with families to find work and earn income; b. wage discrimination, namely contract workers and outsourcing workers who do the same type of work in the same working hours as regular workers get different wages. The total wages of contract workers are 17% lower than the wages of permanent workers and the total wages of outsourcing workers are 26% lower than the wages of regular workers; c. unionized discrimination, namely contract workers and outsourcing are prohibited directly or indirectly from joining a particular union or with any union, and the possibility of not being extended the contract if joining a labor union. Agustina is an employee at PT. Bukit Asam Coal Mine (PTBA) Tbk. said that the implementation of outsourcing practices is very detrimental to outsourcing workers or laborers, even though the implementation of outsourcing has been regulated in Law No.13 of 2003 on Manpower. This is due to the unclear formulation of the working relationship between the employer, service provider, and outsourcing workers or laborers, plus the discovery of a written agreement between PTBA and KOPKAR PTBA, as well as the absence of a written work agreement between KOPKAR PTBA and workers or laborers. which was outsourced to PTBA. In

addition, the use of outsourcing workers also influences the affection of the outsourcing worker. This can be seen from the absence of (low) motivation. In general, the implementation of outsourcing has many problems. The first problem is that there is a negative impact on workers, namely the absence of certainty of job security for workers where with the outsourcing system to get cheap labor wages the employer closes the company for various reasons; decreasing welfare level and unable to answer daily needs, as evidenced by the March 2018 National Socio-Economic Survey by BPS where per capita income in urban areas is Rp. 158,799 per month, which means that in industrial areas the level of income has decreased and this has an impact on meeting the needs of life); the weakening of the strength of the labor union due to the reduction of members who have been laid off and the workers who are contracted do not dare to form an association due to the threat of layoffs so that the bargaining power of workers or workers becomes weak; and weak bargaining power due to individual work agreements and mostly only in oral form. This is very different, for example with the outsourcing system in Australia and America where the system is so fair for workers. In Australia, agency workers typically earn up to 20% higher wages than permanent workers. So they have no loss working with such a system because if it is calculated in total the same working hours per year, the gross income is almost the same. The difference is they do not get sick payments, holiday payments, or long service payments. The same thing is also stipulated in the United States that employees with such a system if they are retired, will still get social security, which means that their future is guaranteed (Widodo, 2012: 50). In line with the reform era, the protection policy for workers or laborers is no longer appropriate in its implementation, so it is necessary to reform the labor laws, which include stipulating the protection policy for workers or laborers in the implementation of outsourcing. Many things can be done by the management and trade or labor unions, including developing competition standards which include expertise, knowledge, and attitudes; increasing socio-economic needs, management and employees can make a concrete contribution to the stability of the company's economic and social growth; can meet the minimum social needs of workers; as well as providing a sense of security to workers, in line with the function of a trade union or laborer, namely

providing protection and improving the welfare of its members. The second problem is the determination of the outsourcing partner. As it is known that one of the keys to the success of outsourcing is the agreement to make long-term relationships not only short-term projects, because the outsourcing company must understand the business processes of the company. However, this is not easy to do in Indonesia. For example in government-owned institutions, ministries or nonministerial institutions, and State-Owned Enterprises, the selection of service providers must be done through a tender. As a result, the winning bidder is difficult to predict. Likewise, service extensions may have to be tendered again. Good relations between outsourcing service users and outsourcing service providers are difficult to occur. The third problem, although there are already regulations, there are still gaps in legal issues related to the implementation of outsourcing in Indonesia as follows: first, there is no indication of how the company classifies the main work and supporting work of the company which is the basis of outsourcing implementation; second, there is no clarity about the legal relationship between outsourcing employees and companies that use outsourcing services; third, there is no dispute resolution mechanism if there is an outsourcing employee who violates the work rules at the location of the employing company.

Conclusion:

Outsourcing has two types. First, outsourcing of work related to contracting work to another party, or defined as the transfer or delegation of several business processes to a service provider agency, where the service provider agency carries out administrative and management processes

based on definitions and criteria agreed upon by the parties. Second, human outsourcing, where this type of outsourcing is a practice that provides a certain level of efficiency in business operations, but seriously harms the interests of workers on the other hand. This second type of practice is opposed by the labor movement in Indonesia, especially after the passing of Law No. 13 of 2003 concerning Manpower. The practice of outsourcing in Indonesia, on the one hand, is widespread and has become a necessity that business actors cannot delay, but on the other hand, the existing regulations are not sufficiently adequate to

regulate ongoing outsourcing. So far, outsourcing is still being placed as the domain of labor policy in Indonesia as part of the labor market flexibility policy which emphasizes the freedom to recruit and fire workers according to the business situation to avoid losses. Judging from the implementation there are still many problems, especially outsourcing practices in businesses that can be categorized as core businesses. Another problem encountered is the issue of protection for agency workers, such as violations of workers' rights. In addition, an important issue is the occurrence of discriminatory treatment experienced by agency workers.

Position Paper

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Chamber : Chamber 1

Topic : Asian Investment Regime and Regulation

In the 21st century, Asia has risen to become the economic center of the world. As the world's markets become more interconnected, Asia's role as a vital trade and investment hub will become more pronounced. It is projected that by 2050, more than half of global gross domestic product (GDP) will come from Asian countries, making them dominant in the world economy.⁵ Asian countries such as China are projected to replace the US as the world's largest economy within 10 years. For Association of Southeast Asian Nations (ASEAN), which consists of 10 countries, it is also projected to become the fourth largest economy in the world. With its diversity in economies, cultures, and developmental stages, Asia offers a unique yet captivating tapestry of investment prospects. The allure of Asian markets is irresistible. From East Asia's robust economies to the emerging powerhouses in South Asia, the region has attracted many investors seeking to capitalize on its vast consumer base and human resources, technological advancements, and the tempting promise of returns. Yet, beneath the surface of this dynamic landscape lies complex regulatory frameworks, trade barriers, and policy divergences that pose both opportunities and challenges for the

⁵ Asia 2050: Realizing The Asian Century. (No Date). Asian Development Bank. Retrieved from <https://www.adb.org/sites/default/files/publication/28608/asia2050-executive-summary.pdf>.

investors.⁶

Therefore, investment regimes and regulations emerge as indispensable linchpins for fostering sustainable growth within the diverse region of Asia, encompassing not only the more developed economies but also the developing nations that make up the multifaceted Asian landscape. In the broad field of international economic law, these regulatory frameworks are designed to be its core. The intricacies of these investment regulations, woven into the fabric of each unique Asian socio-economic context will exert its profound influential role. They are designed to serve as the leading torches guiding Asia's path through the oftentimes turbulent global economics environment. These regulations, while different in form and character from each Asian country, will collaboratively shape the investment climate, wielding its significant influence over the strategic choices of both domestic and foreign investors alike.

Following the enactment of Indonesia's Omnibus Law (Law No. 11 of 2020 on Job Creation) in November 2020, the Indonesian Government has introduced numerous regulatory changes aimed at improving the ease of doing business across various sectors, covering manufacturing, agriculture, banking, fisheries, construction, broadcasting, mining, oil and gas, forestry, aviation, tourism, education, healthcare, telecommunications, and power. Notably, the law introduced risk-based licensing through Government Regulation No. 5/2021, categorizing business activities into four risk levels with varying licensing requirements. However, in November 2021, the Constitutional Court ruled that the Omnibus Law was conditionally unconstitutional, prompting a two-year period for lawmakers to revise the law while emphasizing public participation. These revisions may impact the existing foreign investment regulations in Indonesia.⁷In Malaysia, foreign investments are regulated through sector-specific policies and regulations rather than a centralized framework. The government imposes local participation requirements, such as equity ownership and board representation restrictions, in various sectors. These requirements aim to encourage the transfer of

⁶ OECD (2006), *Policy Framework for Investment: A Review of Good Practices*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264025875-en>.

⁷ Pardede et.al. Foreign Direct Investment Regimes: Indonesia. (November 30, 2022). International Comparative Legal Guides. Retrieved from <https://iclg.com/practice-areas/foreign-direct-investment-regimes-laws-and-regulations/indonesia>.

knowledge and technologies to local Malaysians and bumiputera individuals. While Malaysia generally welcomes foreign investors, there are some restrictions on conducting business with entities from specific countries, such as Israel. Additionally, currency control is exercised by the central bank, Bank Negara Malaysia, which issues foreign exchange notices governing the handling of the ringgit and foreign currencies. Regulatory authorities overseeing specific sectors are responsible for reviewing mergers and acquisitions for compliance with local requirements. The authorities often have broad discretion in approving or rejecting transactions without providing detailed reasons.⁸

Foreign Direct Investment in India is primarily regulated by the 1999 Foreign Exchange Management Act and related rules from the Reserve Bank of India, along with the Consolidated Policy on FDI issued by the Department for Promotion of Industry and Internal Trade. India's FDI policy classifies sectors into prohibited, automatic, and government approval routes, each with specific investment limits and conditions. Recent amendments mandate government approval for FDI from neighboring countries and further liberalize sectors like insurance, defense, telecoms, and oil and gas. Start-ups can issue convertible notes, and an angel tax exemption is available. Legal consequences for FDI violations fall under FEMA, with penalties related to the contravened amount. Government initiatives, such as the PM Gati Shakti Scheme, a single window clearance process, disinvestment plans, and the Production Linked Incentive scheme, aim to boost FDI inflows and promote India as an attractive investment destination supported by consistent FDI growth and economic resilience.⁹

In summary, addressing the challenges and opportunities presented by Asia's evolving investment landscape requires a combination of regulatory reforms, investor education, international collaboration and proactive government initiatives. Balancing the interests of both domestic and foreign investors is essential for sustainable economic growth

⁸ Yoshikazu Hasegawa. Snapshot: Foreign Investment Law and Policy in Malaysia. (January 23, 2023). Lexology. Retrieved from <https://www.lexology.com/library/detail.aspx?g=9fa1ba86-bf99-4ceb-84dc-22ce4a380b56>.

⁹ Gosh, Koshturi and Prasad, Aditya. Foreign Direct Investment in India. (June 7, 2023). Pinsent Masons. Retrieved from <https://www.pinsentmasons.com/out-law/guides/foreign-direct-investment-india>.

in the region.

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Topic : Asian Investment Regime and Regulations

1. General Information

Asian investment regime and regulations generally discusses on the policy which govern on the investments in various countries across Asia. It is a framework which helps to regulate how Asian countries manage investment made locally or internationally. The regime and regulations in investing established by the government of such countries to help in different path of investment which should be aligned with the structure of their economic, social and political views overall. The government would established specific laws that becomes an outline for the foreign investor to participate in the economy as well as what sector they may be allowed to invest in and sector that is prohibited.

Other than imposing strict regulations, there are also some regulations practice that provides benefit for the foreign investor to invest in the country by providing incentive to them. This would increase the possibility of investment coming in for international investor. Such regulations would put some leniency when facing with foreign investor to remove the bureaucracy that make them avoid to invest in such country. For example, the ASEAN Comprehensive Investment Agreement (ACIA) is one of the regulations agreement that promotes protection to the investor as they

adopt the Investor-State dispute settlement towards any loss or damage due to the breach of agreement. This is one of the regime which practices globally in Asia. With that, we can further our discussion in discussing on countries stance on such issue.

2. Country's Stance upon the Topic (Issue) and Existing Law

Malaysia is a multi-racial country and gained independency under British colonial rule on 31st August 1957. Since Malaysia is a diverse country with rich natural resources it has allows the country to have such progressive economic progress. Multiple sectors such as manufacturing, services as well and tourism have been growing progressively in Malaysia. This development has allowed Malaysia to undergo a reformation of its investment regime and regulations to attract many foreign investors and create a conducive business environment that would support growth.

A lot of policies has been implemented in Malaysia, One of the famous policy that brought Malaysia forward was the introduction of the Look East Policy. Such policy allows Malaysia to take an example of how South Korea and Japan are able to gain rapid economic growth within only a few years. Such policy is significant as it allows collaboration between Japan and Malaysia to share their expertise within the countries which led to industrialization growth in Malaysia.

Indonesia as a country participating in Asia Investment considers the importance of regional cooperation to support growth and encourage economic and social development in Asian economies and thereby contribute to regional resilience against potential financial crises shocks and other external factors in the context of globalization.

So that it has regulations and regulations regarding Asian investment, namely Presidential Regulation Number 171 of 2015 concerning the Ratification of the Asian Infrastructure Investment Bank Articles of Agreement (Article of Agreement for Asian Infrastructure Investment Banks) and Republic of Indonesia Government Regulation No. 10 of 2016 concerning capital participation in the Republic of

Indonesia at the Asian Infrastructure Future Investment Bank. With the existence of these regulations and regulations, Indonesia has guidelines for implementing state capital participation in Asia Infrastructure Investment Bank.

3. **Proposed Solution(s)/ Suggestion(s) in the International Community and Conclusions**

Improving the investment regime and regulations in Asia is a complex and multifaceted challenge. The international community can play a crucial role in fostering an environment that encourages foreign investment, promotes economic growth, and ensures fair and transparent regulations. Here are some proposed solutions and suggestions for the international community to consider: **Promotion of Bilateral and Multilateral Investment Agreements:** Encourage countries in Asia to enter into bilateral and multilateral investment treaties that provide protections for foreign investors, such as provisions on dispute resolution and fair treatment.

Capacity Building and Technical Assistance: Provide technical assistance and capacity building programs to help Asian countries develop robust regulatory frameworks and improve their legal and judicial systems to handle investment-related disputes.

Transparency and Regulatory Consistency: Advocate for transparency and predictability in regulatory processes to reduce uncertainty for investors. Promote the adoption of international best practices in regulatory consistency to ensure that regulations are fair and applied uniformly.

Investor-State Dispute Settlement (ISDS) Reform: Encourage a balanced approach to ISDS that safeguards the rights of investors while respecting the regulatory sovereignty of host countries. Consider alternative dispute resolution mechanisms.

Promote Investment Promotion Agencies (IPAs): Support the establishment and strengthening of Investment Promotion Agencies in Asian countries to facilitate and

promote foreign investment.

Capacity Building for Local Businesses: Provide training and support to local businesses to help them meet international standards and become more competitive, which can attract foreign investment.

Sustainable Investment: Promote sustainable investment practices and environmental, social, and governance (ESG) considerations to ensure that investments have a positive impact on communities and the environment.**Financial Sector Reforms:** Advocate for financial sector reforms that enhance access to capital for businesses, including small and medium-sized enterprises (SMEs), which are essential for economic growth.

Anti-Corruption Measures: Support anti-corruption initiatives and measures to combat bribery and corruption, as these factors can deter foreign investment.

Promote Public-Private Partnerships (PPPs): Encourage the development of PPP frameworks that promote private sector involvement in critical infrastructure projects.

Data and Information Sharing: Facilitate the exchange of investment-related data and information among Asian countries and the international community to enhance decision making and risk assessment for investors.

Investment Promotion and Facilitation: Collaborate on investment promotion initiatives to showcase investment opportunities in Asian countries and provide a platform for dialogue between investors and host governments.

Regular Review and Monitoring: Establish mechanisms for regular review and monitoring of investment regulations to identify and address obstacles to investment.

Promote Regional Integration: Encourage regional economic integration efforts,

such as the Association of Southeast Asian Nations (ASEAN) Economic Community, which can simplify investment rules and procedures.

International Investment Guidelines: Develop and promote international guidelines or best practices for investment regulations to serve as a reference point for countries in Asia.

Engage with International Financial Institutions: Collaborate with international financial institutions like the World Bank and the Asian Development Bank to support investment-related projects and initiatives in Asia.

It's important to note that the success of these solutions will depend on the willingness of individual countries in Asia to implement reforms and collaborate with the international community. Additionally, different Asian countries have varying levels of development and regulatory challenges, so a tailored approach to each country's specific needs and circumstances may be necessary.

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POSITION PAPER

I. Introduction

Asia, with its vast expanse and cultural diversity, holds a significant position on the global stage. When we turn our attention to Foreign Direct Investment (FDI) in Asia, we uncover the importance of understanding its intricate investment landscape. Foreign direct investment (FDI) is an ownership stake in a foreign company or project made by an investor, company, or government from another country.¹⁰ This exploration extends beyond academia, as it examines Asia's role in the global economic order.

Asia's allure to foreign investors stems from its immense market potential, growing middle class, and abundant natural resources. Governments in the region have implemented policies to attract FDI, fostering a competitive investment environment. However, FDI legitimacy in Asia is a central concern. Host nations question whether foreign investors truly contribute to local economies, and investors grapple with regulatory uncertainties and political risks. This legitimacy crisis highlights the need for mutually beneficial partnerships between host and investor nations.

¹⁰ H. Adam, 'Direct Foreign Investment (FDI): What It Is, Types, and Examples' <<https://www.investopedia.com/terms/f/fdi.asp>> accessed september 8th 2023.

II. Analysis

The legitimacy crisis surrounding Foreign Direct Investment (FDI) in Asia revolves around the question of how genuinely beneficial and fair foreign investments are for the host countries in the region. Policy changes and regulatory uncertainties in host countries, coupled with shifts in foreign investors' policies, contribute to investment unpredictability. Addressing the legitimacy crisis requires transparency, community involvement in decision-making, improved corporate social responsibility, and the implementation of more balanced policies to ensure that FDI delivers sustainable benefits for all stakeholders involved.

Several regulations related to the topic of Asian Investment Regime specifically Foreign Direct Investment is Regional Comprehensive Economic Partnership Agreement (RCEP), RCEP promises to deliver new business and employment opportunities, strengthen supply chains in the region, and promote the participation of micro, small and medium enterprises into the regional value chains and production hubs.¹¹ In RCEP agreement chapter 10 establishes that each party must provide fair and equitable treatment, as well as full protection and security, to covered investments in line with customary international law standards. It emphasizes access to justice and physical protection for investments.¹²

III. Conclusion

Strong regulation and oversight play a pivotal role in the context of Foreign Direct Investment (FDI). In the realm of FDI, robust and effective regulations are essential for several reasons. Firstly, they serve to safeguard the national interests of the host country. These regulations may include specific requirements or limitations that investors must adhere to, ensuring that the investment aligns with the nation's development and security strategies. strong regulations provide governments with the

¹¹ Asean Org, 'RCEP Agreement enters into force' <<https://asean.org/rcep-agreement-enters-into-force/>> accessed september 8th 2023.

¹² RCEP Agreement Chapter 10 About Investment.

tools needed to address or mitigate negative impacts of FDI, such as environmental pollution or labor exploitation.

In conclusion, robust regulation and oversight are critical components in ensuring that FDI delivers balanced benefits to both host nations and foreign investors. They contribute significantly to addressing the legitimacy crisis surrounding FDI by establishing a fair and sustainable framework for investment.

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RCEP Agreement Chapter 10 About Investment.

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Chamber : Chamber 2

Topic : Pros and Cons of AI in Legal Service

Artificial intelligence (AI) can increase efficiency and accuracy in the practice of law. One of the outcomes of this technology offers a number of additional benefits, such as case management, contract analysis, legal research, and decision-making processes. An AI-powered website called Lex Machina can analyze legal data and provide insights on lawyers, judges, parties, and other types of cases. This supports data-driven decision-making by legal professionals.¹³ However, it also creates new challenges and issues that should be taken into consideration when applying AI to the legal sector. Furthermore, since AI is not governed by any stringent regulations, there are no obvious restrictions on its use. Finding a balance between the assurance of greater efficacy and the maintenance of fundamental legal norms is a challenging undertaking that raises moral, societal, and practical challenges that demand careful thought.

A. International Legal Framework towards AI

There are currently few comprehensive laws pertaining to artificial intelligence (AI) on the international or national levels. Nevertheless, a huge number

¹³ LexNexis Company, (n.d), Lex Machina, Retrieved from <https://lexmachina.com/> ² Europe EU, (2023), EU AI Act: first regulation on artificial intelligence, Retrieved from <https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>

of nations or organizations had expressed interest in creating policies and plans to deal with the benefits and difficulties presented by AI. The EU has taken the lead in efforts to regulate AI. The EU introduced the "Artificial Intelligence Act" in April 2021 as proposed rules for AI. The concept suggests creating a legislative framework that protects high-risk AI applications in order to foster innovation. The Act includes provisions for risk assessment, data use, accountability, and transparency.¹⁴

B. Country Stance towards AI (Indonesia)

Indonesia has not yet implemented comprehensive regulations specifically focused on Artificial Intelligence (AI). AI is still regulated by Electronic Information and Transactions Law No. 11 of 2008 or its amendments, Law No. 19 of 2016.¹⁵ Article 1 number 8 of the ITE Law on the definition of electronic agents, which is the device of an electronic system made to act on certain electronic information automatically organized by people. People here as electronic system organizers consider *mutatis mutandis* as electronic agent organizers. And also, Indonesia had expressed its intention to develop a national AI strategy to guide the responsible development and deployment of AI technologies, by launching "National Strategy for Artificial Intelligence" on 10 August 2020 as a guideline to Indonesia's Government in developing AI between 2020 and 2045.¹⁶

C. Proposed Solution(s)/ Suggestion(s) in the International Community and Conclusion

A high risk of unanticipated results, such as bias in decision-making or confidentiality breach, arises in the absence of clear laws. We have some suggestions about how to use AI's transformative power while preserving the honesty and moral principles that underpin the judicial system:

¹⁴ Europe EU, (2023), EU AI Act: first regulation on artificial intelligence, Retrieved from <https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>

¹⁵ New Zealand Embassy in Jakarta, (2023), Indonesia's National Strategy for Artificial Intelligence - July 2023, Retrieved from <https://www.mfat.govt.nz/en/trade/mfat-market-reports/indonesias-national-strategy-for-artificial-intelligence-july-2023/>

¹⁶ *Ibid.*

1. Create a set of moral principles that spell out how to use AI in judicial processes responsibly. In these rules, transparency, accountability, and justice should come first.
2. Regulation addressing the framework of using AI, especially in legal provision, must be established immediately.
3. To enhance consistency and coherence across nations, particularly in cases involving cross-border legal difficulties, encourage international collaboration on AI regulation.

Position Papers

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Topic : Pros and Cons of AI in Legal Services

1. General Information

Artificial intelligence or AI is a machine that simulates human intelligence to carry out work or tasks that are usually done by humans. AI systems operate by processing substantial quantities of labeled training data, examining the data for correlations and patterns, and utilizing these patterns to make predictions. We can see that AI has been used effectively in many areas to automate human tasks, including customer service tasks, data authentication, etc.

AI is now entering into the legal matters, with the implementation of AI in the field of law can bring significant advantages in terms of efficiency and cost savings. It can automate repetitive tasks such as legal research, analysis, document management, and billing, making your workflow more streamlined.

AI technology can automate repetitive and time-consuming tasks such as legal research, document review, and contract analysis. This automation increases efficiency, saves time, and reduces costs, enabling lawyers to focus on higher-value work and providing better services to clients. Additionally it can also enhance legal research by quickly analyzing vast amounts of data, identifying relevant precedents, and extracting key information. This enables lawyers to provide more accurate and comprehensive advice to their clients. However, the use of AI in legal services also

raises concerns regarding data privacy, security, bias and ethical implications of AI decision-making that need to be addressed to ensure public trust and confidence in the technology.

2. Indonesia's Stance upon the Pros and Cons of AI in Legal Services and Existing Law.

The provisions of Artificial Intelligence in Indonesia are partially protected in 'Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions,' in Indonesia. Using the same example as above, it is consisted in ITE Law that the Artificial Intelligence are included into the term 'Electronic Agent', which means that every legal obligations and legal responsibilities are adhered to the provider of the agent. Article 21 of ITE Law mentioned that the electronic agents are responsible for their Artificial Intelligences outcomes. In the ITE Law, it is stated that the functionality of Artificial Intelligence can only be used by subjects of law, which also concludes that legal responsibilities are fully integrated to the electronic agent's provider. While internationally, the provisions of Artificial Intelligence are currently being developed in The AI Convention, which was developed by The Council of Europe Ad Hoc Committee on Artificial Intelligence (CAHAI). The CAHAI are drafting a regulation that could propose a design, development, and application of AI that have a major impact on human rights and the rule of law. Based on their draft, specifically the General Remarks, it is stated that The CAHAI observes that the application of artificial intelligence (AI) systems has the potential to promote human prosperity and individual and social well-being by enhancing progress and innovation, yet at the same time certain applications of AI systems give rise to concern, as they potentially pose risks to human rights, democracy and the rule of law.

3. Proposed Solution(s)/ Suggestion(s) in the International Community and Conclusion

AI provides many benefits to society. One of the advantages that AI offers is the efficient resolution of legal disputes. This is important, as booking a court is time-consuming and pricey, making it unaffordable for some individuals, particularly for those from different countries with different currencies. Hence, with the help of AI, the parties involved can save on court fees and expedite the resolution process. However, this can only be used depending on the situation. Additionally, legal firms can utilize the potential of AI by partnering with technology companies to develop AI tools for legal research and document translation. This could help lawyers improve work efficiency. Lastly, AI can help in legal education by customizing study plans for law students and professionals based on their experiences and requirements.

- **Conclusion**

Real-world problems often do not lend themselves to an algorithmic solution. Humans, however, cope with these problems despite their fallible problem solving techniques. Instead of trying to construct algorithms to solve problems AI researchers have concentrated on using the more successful methods used by humans. This paper reviews the area of problem solving in the field of Artificial Intelligence. This includes problem representation for computation, "weak" methods of searching for a problems solution, knowledge representations that facilitate more efficient search strategies and planning - an advanced problem solving technique.

So as per the ideas mentioned under the key points , it's obvious that AI not only affects the legal field it completely affects globally. According to the view of our team , it's the responsibility of the human resource to change the facilities in accordance with the positive way and without distracting into negative consequences. In the end humans are responsible for the development of the technology. The technology is in the hands of humans. It's our duty to mold it accordingly

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Chamber : Chamber 2

Topic : Pros and Cons of AI in Legal Services

I. Introduction

In the beginning of 2023, the internet is abuzz with new technology that can mimic the voices, images, or videos of famous figures using materials sourced from the internet. This phenomenon is known by the term Artificial Intelligence (AI). It can be concluded that AI is a field of science or a system assigned a task to work on something by interpreting and learning from provided data. The development of AI is indeed expected to balance human roles, namely creating robots or systems that can work and think like humans or even provide better outputs.

According to Rossi (2019), the development of AI has seen remarkable success, largely driven by the convergence of enhanced algorithms, substantial computational resources, and vast datasets. This convergence has empowered AI systems with human-like perceptual abilities, including converting speech to text, comprehending text, interpreting images, and more. This is just a small fraction of the vast opportunities presented by artificial intelligence.

II. Analysis

The utilisation of AI in the legal field in Indonesia is still not regulated. However, this does not rule out the possibility of its use in the profession of lawyers in Indonesia. Nevertheless, some law firms, such as UMBRA, have already started leveraging AI systems. AI systems, particularly Luminance AI, are employed, especially in the execution of due diligence. Nevertheless, in the practice of law in Indonesia, the use of AI has not been widely adopted as it has been in several neighbouring countries like Singapore and Thailand.

In response to the advent of AI technology capable of replicating voices, images, and videos of notable figures, the international community can take several measures to address this issue. Firstly, there is a pressing need to establish standardized regulations and guidelines governing AI usage across different sectors, including the legal profession. These regulations should encompass aspects like deepfake technology, data privacy, and ethical considerations to ensure the responsible deployment of AI. Secondly, fostering knowledge sharing and collaboration among countries and organizations is essential. International forums, conferences, and workshops can serve as platforms for exchanging best practices and experiences in implementing AI regulation. Thirdly, capacity-building initiatives should be extended to developing nations, including Indonesia, to help them build their AI expertise and regulatory frameworks effectively.

III. Conclusion

Additionally, the international community should champion the development and adoption of ethical AI guidelines that prioritize transparency, accountability, and fairness. Creating mechanisms for monitoring and reporting AI misuse, especially in sectors like law, is crucial. This could involve establishing reporting hotlines or platforms where AI-generated content can be identified and subjected to investigation. Encouraging countries to enter into international agreements addressing AI-related challenges, such as deepfake regulation, can promote common standards

and principles for responsible AI use. Public awareness campaigns and educational efforts should be promoted to inform individuals and organizations about the capabilities and limitations of AI, aiding in informed decision-making. Lastly, collaborative research initiatives should be encouraged to gain a deeper understanding of AI implications in various industries, including law, enabling policymakers to make well-informed decisions regarding AI regulation. In summary, addressing the challenges posed by AI in contexts like law requires concerted international efforts to establish regulations, share knowledge, build capacity, promote ethical practices, and ensure AI technologies benefit society while mitigating potential risks.

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Chamber 2

Pros and Cons of AI in Legal Services

I. General Information

AI is referred as the simulation of human intellect in computers that are designed to execute activities that would normally require human intelligence, such as interpreting natural language, thinking, learning, and problem-solving. In this matter, AI is profoundly impacting the law field. Although AI is deemed to be more likely to facilitate attorneys rather than replace them, AI is currently utilized for tasks such as reviewing contracts, finding relevant documents, and conducting legal research. The potential advantages of integrating AI into the legal system are significant. AI can enhance lawyers' productivity, prevent mistakes, and accelerate the legal process and decision-making process.

II. Hong Kong, Malaysia, Indonesia, and Cambodia's Stance upon the Issue

In the age of digitalization, information can be accessed at the tip of everyone's fingers. In Cambodia, technological advancement is one of the critical factors in the development of this era. However, people are still limited to the use of the internet, even with AI. More awareness on data protection needs to be enhanced. As for the legal services in Cambodia, law practitioners are still using the traditional way of book researching and have few encounters with AI. Although limited, most of the new regulations have been uploaded through online resources on each ministry's websites and social media platforms, which can keep law practitioners and citizens up to date.

In the case of Hong Kong, There are no official rules, or regulations regarding the use of AI. Therefore, it was drawn from the domains of other laws such as Constitution Law, Intellectual Property, and Competition Law.

On the other hand, Indonesia is currently in the early stages of adopting technology and is actively working to enhance digital connectivity inclusivity. Consequently, the country's proficiency in AI has not fully reached a fully mature or developed state. Currently, AI is not highly integrated into the lives of Indonesian citizens. There are no explicit regulations in Indonesian law that solely address the use of AI in Indonesia. However, this could create a forthcoming challenge for Indonesia's legal framework on an international scope. AI might become essential for legal practitioners. The lack of a particular regulation in Indonesia that focuses on AI, therefore it could be taken into consideration that the use of AI in Indonesia is still regulated by Electronic Information and Transaction Law No. 11 of 2018.

This differs with Malaysia where as of September 2021 Malaysia is actively adopting and exploring the use of AI. The Malaysian government is already looking into the help of organizations to advance their AI adoption with initiatives. AI can already be recognized in the daily lives of Malaysian citizens through the everyday use of helping us locate traffic, social media platforms, and banknotes.

III. Proposed Solutions and Conclusion

AI has the potential to provide various benefits to the legal service industry but also introduces certain drawbacks. One advantage of AI in Legal Services is it helps to enhance efficiency. AI as a machine learning algorithm, can do legal research, document analysis, and case briefs in an instance. This can free up valuable time for legal professionals to focus on higher-value work. Another significant aspect of AI is its potential to expand access to legal services, particularly for individuals or small businesses who cannot afford traditional legal assistance. AI can bridge the justice gap and give a fundamental path for them to follow by providing basic legal guidances, document-generating tools, and self-help resources. On the contrary, the

use of AI in legal services raises ethical concerns, such as data privacy, bias, and lack of transparency. Furthermore, the algorithms are only specialists with the data from which they learn, AI systems may struggle with complex legal matters that demand a profound understanding of the law interpretation. While AI can assist with legal research, the final decisions and judgments should still be made by human legal professionals and the interpersonal skills of a lawyer.

Overall, regardless of the application, it is critical to validate technological control and information utilization. Take AI as a productivity engine, but don't rely on it as your primary friend. Humans have emotional intelligence, which distinguishes us from all other living beings on the globe

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POSITION PAPER

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Chamber : Chamber 5

Topic : Pros and Cons of AI in Legal Services

Artificial Intelligence or AI is the simulation of the human intelligence that is processed by computers. Artificial Intelligence processes data that is imputed by humans and processes that data to be used to solve problems given to the AI. This allows the AI to be able to create a response to a request or problem similar to a human intelligence. Through the years artificial intelligence has been developed to a point that Artificial Intelligence can easily do tasks such as compiling data, creating contracts, analyzing data, and etc. Artificial Intelligence itself has replaced many jobs that humans used to do. Legal Professions is one of the many professions that is thought to be replaced by Artificial Intelligence.

Many people are worried about the application of AI in legal services due to concerns about access to justice, bias, and its ethical issues. However, if the legal profession is to be prioritized, concern must be directed toward job displacement. AI may result in a shift in the types of tasks performed by lawyers and paralegals.¹⁷ Firms will no longer be required to recruit fifty associates to review contracts and carry out legal research. The AI will maximize

¹⁷ Stepka, M. (2022, February 21). *Law bots: How ai is reshaping the legal profession*. Business Law Today from ABA. <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/>

the effectiveness of each research project, requiring firms to cut back on employing associates. This simply means that lawyers' roles are changing.¹⁸

A.I. will provide universal access to services that were previously only available through teams of highly qualified solicitors.¹⁹ Smaller firms are able to compete with larger firms. This may compel larger firms to modify their business model, primarily because it is no longer possible to charge clients outrageous amounts when they can go down the street to a smaller firm and get the same services for a lower price.

Similarly, client demands may shift. Clients will no longer pay six-figure fees for legal research. This is due, in part, to a rise in the number of highly technological clients. They do not believe that the old way of doing things is simply better and has begun to question traditional legal work methods.²⁰ Firms have to lower their rates and adjust to changing client expectations or risk losing a large amount of business.

However, AI helps to reduce Human Error in the legal system which can be considered as the most significant factor to enhance the reputation of the legal system. The mistakes are inevitable; however mistakes tend to be more costly for the clients and the organization when dealing with legal matters. Law professionals have to Perform Repetitive and boring tasks as part of daily work such as checking documents, mailing thank you notes, drafting etc. AI can be used for repetitive tasks such as scanning documents, in order to find information, can be used to sort and categorize documents and can also search for relevant documents. If a lawyer is spending a lot of time doing something that AI can do faster and better, then that lawyer has more time to do the things that only humans are capable of. Unbiased Decisions can be made through the AI tool as it is devoid of emotions and highly practical and rational in its approach. A huge advantage of Artificial Intelligence is that it doesn't have any biased views, which ensures more accurate decision-making. Faster decision-making is another benefit of AI. By automating certain tasks and providing real-time insights, AI can help lawyers, judges to make faster and more informed decisions.

¹⁸ Semmler, S., & Rose, Z. (2017-2018). Artificial Intelligence: Application Today and Implications Tomorrow. *Duke Law & Technology Review*, 16, (90).

¹⁹ Armour, J., & Sako, M. (2019). AI-enabled business models in legal services: From traditional law firms to next-generation law companies? *SSRN Electronic Journal*, (3).

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In conclusion, AI offers big help in the profession scope in the law area, but the person who is going to do the legal services must not be a machine since there are lots of aspects to consider beyond merely knowledge.

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Topic : Dispute Resolution and Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) practices have gained significant prominence on the global stage as efficient and flexible methods for resolving conflicts outside traditional court systems. These practices encompass a diverse range of approaches designed to facilitate dispute resolution, often with the aim of reducing the burden on overburdened court systems and offering parties more control over the resolution process. Globally, ADR methods include arbitration, mediation, negotiation, conciliation, and hybrid approaches, each tailored to specific needs and circumstances.²¹ ADR has become increasingly prevalent in both domestic and international contexts, offering parties in various sectors, from business and commerce to family and community matters, a means to address disputes swiftly, cost-effectively, and with greater autonomy. Understanding the diverse landscape of ADR practices worldwide is essential for individuals, organizations, and governments seeking effective alternatives to litigation and courtroom proceedings.²²

In Indonesia, the legal framework for Alternative Dispute Resolution (ADR) is well-established and robust. At the heart of this framework is the ADR Law, enacted under Law No. 30 of 1999. Drawing inspiration from the UNCITRAL Model Law on International Commercial Arbitration, it provides a structured and reliable framework for the resolution of commercial disputes through arbitration and mediation. While in Malaysia Arbitration Act 2005, which governs domestic and international arbitration. Additionally, the Malaysian Mediation Act 2012 regulates mediation proceedings. Lastly, Sri Lanka has recognized the

²¹ Wex Definition Team. (2021). Alternative Dispute Resolution. Cornell Law School's Website: Legal Information Institute https://www.law.cornell.edu/wex/alternative_dispute_resolution

²² Arun, C., Sze Ni, S. T., & Jie Ren, L. (2023). The Dispute Resolution Review: Malaysia. <https://thelawreviews.co.uk/title/the-dispute-resolution-review/malaysia>

value of ADR and has made legislation related to ADR, such as the Arbitration Act No. 11 of 1995, which governs arbitration proceedings, the Mediation Boards Act No. 27 of 1990 established mediation boards to facilitate the resolution of minor civil disputes at the local level.

Moreover, Indonesia recognizes the importance of ADR within its government institutions. Presidential Regulation No. 34 of 2018 outlines guidelines and procedures for implementing ADR mechanisms within these institutions. This initiative aims to promote the use of ADR in settling disputes involving government entities, demonstrating the government's commitment to efficient dispute resolution practices. The Supreme Court Regulation No. 1 of 2016 is another significant component of the legal framework, providing procedures for court-annexed mediation. This approach encourages parties to resolve disputes amicably before resorting to court litigation.

Additionally, the Indonesian National Board of Arbitration (BANI) plays a vital role in ADR. BANI administers arbitration proceedings and offers ADR services while adhering to the ADR Law, contributing to the nation's comprehensive ADR landscape. The similar institution also exist in Malaysia, Asian International Arbitration Centre (AIAC) (formerly known as the Kuala Lumpur Regional Centre for Arbitration or KLRCA) and the Bar Council of Malaysia, the Malaysian Mediation Centre (MMC) was established with objectives that include promoting mediation as an alternative dispute resolution process and also to provide a proper avenue for successful dispute resolutions²³. Also in Sri Lanka they named this type of institution as the Institute for the Development of Commercial Law and Practice (IDCLP), to facilitate commercial arbitration proceedings. These centers help promote arbitration as an effective means of resolving business disputes

To advance Alternative Dispute Resolution (ADR) in Asia on the international stage, several solutions can be proposed. These include developing standardized cross-border ADR frameworks, bolstering capacity building and training for ADR professionals, launching public awareness campaigns, fostering government collaboration to harmonize ADR practices, respecting cultural sensitivities, promoting Online Dispute Resolution (ODR) in the

²³ Kamaruddin, N., & Professional Indemnity Insurance Committee, Bar Council Malaysia. (2021). Mediation as An Alternative Dispute Resolution

digital age, establishing public-private partnerships, conducting research and data sharing, encouraging regional cooperation, and offering incentives for ADR adoption. These initiatives aim to enhance the effectiveness and accessibility of ADR methods, promote cross-border dispute resolution, and contribute to peace, stability, and economic growth in the region and beyond.

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Topic : Dispute Resolution Practices and Procedures in Asian Countries

Social and economic developments in Asia have led to an increasing number and variety of disputes to be resolved in court. The surge in caseloads has contributed to a slow dispute resolution process. Therefore, various countries in Asia have made changes, such as creating specialized courts separate from the general courts. These courts that exist in many Asian countries seek to improve the fairness and professionalism of the courts by specializing to increase the effectiveness, efficiency, and legal certainty especially in dispute resolution.²⁴In addition to specialized courts, there is out-of-court dispute resolution, namely alternative dispute resolution (“ADR”). These alternatives vary across Asian countries, but generally consist of negotiation, mediation, conciliation and arbitration. Local cultures in Asian countries, but generally consist of negotiation, mediation, conciliation and arbitration. Local cultures in Asian countries have a legal tradition to resolve disputes by consensus based on negotiation and mediation.²⁵

²⁴ Mellisa Crouch. (2021) The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia. (2021). *Constitutional Review*, 7 (1), page 2.

²⁵ M, Herliana. (2011). Designing Culturally Conscious Alternative Dispute Resolution To Foster Asian Economic Development. *Mimbar Hukum*, 23 (2), page 362.

In Indonesia, the legal system is a Civil Law system rather than a Common Law system. The system does not recognize the jury system and civil cases are heard and examined entirely by judges. Indonesia has three levels of courts, including district courts, high courts and the supreme court. For the district court, there are three proceedings including mediation/conciliation, hearing, and delivery of the judgment process. Then to the high court as a court of appeal up to the supreme court for cassation and judicial review.²⁶The procedures in Indonesia involve claimants must substantiate their claims with evidence, presented to both opposing parties and the panel of Judges during trials. Prior to filing a complaint, the initiating party must submit supporting evidence, followed by a warning letter and potential lawsuit if no dispute response is received within the stipulated time. Dispute resolution at the District Court takes a maximum of 5 months, and High Court appeals are resolved within 3 months, as per Circular Letter (Surat Edaran) No. 2 of 2004. Cases at Cassation level and Supreme Court judicial review must conclude within 250 days, as mandated by Chief of Supreme Court Decision Letter (SK-MA) No. 214/KMA/SK/XII/2014.²⁷Outside the litigation process, Indonesia also recognizes alternative dispute resolution. Under Arbitration and ADR Law (Law Number 30, 1999), forms of ADR include arbitration, negotiation, mediation, conciliation, and expert judgment. There is an institution for alternative dispute resolution in Indonesia, the Indonesian National Arbitration Board (“BANI”).²⁸

Apart from the commercial courts in India has also specialized courts such as Arbitration tribunal established for the purpose of arbitration in India at every level such as dist. Level, state level as well as national level tribunal. In India, one of the most popular modes of ADR is arbitration, conducted as per the provisions of the Arbitration and Conciliation Act, 1996. The Arbitration and Conciliation Act, 1996 has been amended in the years 2015 and 2019, to enable conduct of arbitration proceedings in India, to be time bound, efficacious and amenable to further litigation only on limited grounds.²⁹On the other hand

²⁶ Amir, S. P et al. (2021) *LexisNexis® Dispute Resolution Law Guide 2021*. New York: LexisNexis®, page 46.

²⁷ Ibid, page 47.

²⁸ Ibid, page 50.

²⁹ Retrieved September 8th, 2023, from https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf

Mediation Center at every level like at district level service authority (“DSLAs”), and at state level state legal service authority and also at national level for those dispute which is referred by the court. DSLA is established by the Arbitration and Conciliation Act 1996 and is implied at every district of the India. Also there are many private institutions established for this purpose for resolving the business disputes with their valid agreement between the parties.

Cambodia legal system is a civil law legal system based with two main substantive laws include the civil code and criminal code. The court system in Cambodia consists of two separate level include the lower court and higher court, lower court consists of the total of 25 courts according 25 administrative regions countrywide. Meanwhile, the higher court or upper court in Cambodia consists of the Court of Appeal (4 courts) and 1 Supreme Court. Arbitration, negotiation and mediation are the most common forms of ADR. In Cambodia, informal ADR has been practiced for centuries. However, until recently, ADR was never formally part of the official dispute resolution regime. Now, with a number of new laws passed, Cambodia has begun to incorporate ADR techniques into its legal system.³⁰ Negotiation, Mediation and Arbitration is the three most preferred ADR mechanism in Cambodia. Specifically, as part of the culture influence, the negotiation is still most preferred one among Cambodian, from daily matter to commercial conflict the mechanism of negotiation would be priority option to the parties. In Cambodia, a World Bank survey of small firms found that negotiation was the most preferred method of dispute resolution.³¹

If the parties successfully complete their negotiations, the settlement agreement can be treated as a judgment for enforcement purposes. The negotiated settlement agreement can be converted into a judicial compromise that is recorded in the court protocol (court record).³² Once all required steps are completed, this judicial compromise can be enforced like a court judgment. In Cambodia, mediation has always played an important role in society. For example, family disputes were historically mediated by other family members or

³⁰ Steven AUSTERMILLER, (2016) Cambodia Alternative Dispute Resolution, In *Introduction to Cambodia Law*, Hor Pheng. KONG Phallack. Jorg Monzel (Eds), (Konrad Adenauer Stiftung), page 183.

³¹ World Bank/IFC-MPDF and AusAid/The Asia Foundation, (2007) *The Provincial Business Environment Scorecard in Cambodia: A Measure of Economic Governance and Regulatory Policy*, page 40.

³² *Code of Civil Procedure of Kingdom of Cambodia*, article 222

respected local leaders. Today, mediation continues to play an important role in Cambodian dispute resolution. The same World Bank survey of small firms in Cambodia found that mediation was the most preferred method of dispute resolution after negotiation.

In most commercial case and labor dispute, arbitration is more common for both parties compared to the litigation. Two common arbitrations in Cambodia that are functioning for now include commercial arbitration and labor arbitration. The commercial arbitration mainly under the operation of the NCAC (National Commercial Arbitration Center). In 2006, Cambodia passed its second ADR law, the Law on Commercial Arbitration (LCA).⁴⁵ Cambodia was obligated to enact the LCA when it joined the World Trade Organization (“WTO”) in 2004. The labor arbitrator is handled by an independence council, the Arbitrator Council. As of 2021, the AC has handled a total of 2,992 cases affecting more than 1.16 million workers; its process is cost-free to the parties. The success rate of this labour dispute resolution process is 75%.

Many Asian countries have established specialized courts to handle specific cases, aiming to enhance the efficiency and effectiveness of dispute resolution. These courts focus on improving fairness and professionalism. ADR methods, including negotiation, mediation, conciliation, and arbitration, have been promoted and incorporated into legal systems across Asia. These methods align with local cultural traditions that emphasize consensus-based dispute resolution. Several countries, such as Indonesia, India, and Cambodia, have enacted legal reforms to streamline arbitration proceedings, making them more time-bound and efficacious. These reforms aim to expedite dispute resolution.

Therefore, due to the increasing caseloads, the international community recognizes the need for innovative approaches to dispute resolution in Asia. Specialized courts, alternative dispute resolution mechanisms, and legal reforms represent steps taken to meet these challenges and improve the region's overall quality of dispute resolution. These efforts aim to ensure fairness, efficiency, and legal certainty in resolving disputes arising from Asia's dynamic social and economic landscape.

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