Political Strategies of TNCs for Corporate Interest in Indonesian Public Interest Litigation: Lessons for Developing Countries Hosting FDis

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INTRODUCTION

The pursuit of corporate profit maximisation from their foreign direct investment (FDI) in host countries often leads transnational corporations (TNCs) to go beyond their commercial to non-commercial strategies. Among these strategies, resort to political influence appears to be prominent in Indonesia, a developing country and an important destination of TNCs with their FDis. TNCs conduct their business operation in Indonesia mostly by establishing a subsidiary company under a joint venture or operation agreement with domestic enterprises on specific business projects, or simply by opening branch offices. The involvement of local stakeholders inevitably requires TNCs and their subsidiaries to deal with local court settlements in disputes arising out of their multiple forms of business operations, especially when court clarification on TNCs’ rights and obligations is needed, or when TNCs have no other option except to respond to legal actions brought against them under the local laws. Under the Indonesian law of civil procedures, TNCs as legal entities doing business in Indonesia can sue and be sued in civil courts. But most foreign investors find civil court proceedings cumbersome. Their main concern is the alleged discrimination against them in Indonesian courts. TNCs are likely to have confidence in an independent and credible judiciary in host countries to guarantee commercial certainty by protecting their property rights. In the absence of such a judiciary, TNCs tend to use various non-commercial strategies to influence the end result of their disputes in favor of corporate interests. The fact that Indonesia still lacks a credible and effective judiciary encourages TNCs to apply political strategies to influence government policies to protect their interest against possible unfavorable judgments in Indonesian courts. To this end, the three distinct political strategies that are usually used include: (1) exit threat, (2) home government pressure, and (3) local political partnership.

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This article examines the extent to which TNCs in Indonesia resort to political strategies to indirectly influence judicial decisions in cases where corporate and public interests are in conflict. The examination of pertinent cases suggests that TNCs actively apply political strategies to influence government policies impacting on the judicial decisions of these cases. It identifies factors and conditions that serve as conduits between the government policies and TNCs' interests and how they work together to influence judicial decisions. The judicial power sharing with Parliament and circumscribed by the government, judicial unaccountability, and vested interests of ruling elites afford opportunities for TNCs to use political leverages on the government policy making process that sways judicial decisions often in favour of corporate interest regardless of their marginalising effects on the public interest. The Indonesian parameters are likely to have parallels in other developing countries. For the benefit of these countries, this article draws from the Indonesian experience some lessons worthy of wider adoption. In recognition of FDis as an economic survival and development imperative in these countries, as is the case in Indonesia, it purports to strike a balance between competing corporate and public interests. It suggests legislative and judicial reforms for an FDI-friendly environment to restore TNCs' confidence in the legal system and judicial process in protecting all legitimate, whilst preventing any unethical and illegal, corporate activities, which will in turn safeguard the public interest in host countries.

SIGNIFICANCE OF FDIS FOR INDONESIA

Positive correlations between FDis and economic growth in host countries, however debatable, vary from economy to economy depending upon their individual circumstances at any given time. Indonesia is perhaps one of those host countries that have experienced this truth in the cycles of their economic development. In the context of Indonesia, the correlation between FDis and economic growth can be best explained by looking at its economic conditions following the Asian financial crisis in 1997. Its economic recovery was evidently slow compared with other Asian countries, like Thailand and South Korea, which were able to attract new FDis soon after the crisis. Without new FDI inflows, the Indonesian economy was worsening by a continuous capital withdrawal during 1998-2003. Only when foreign investors' confidence resuscitated and FDI inflows generating export of manufactured goods regained momentum in 2004 its economy started to recover and continued to experience a steady growth. Thus, it is evident that the lower investment activities amidst the Asian currency crisis significantly stultified the economic growth of Indonesia.

Empirical studies on FDI impacts on Indonesia found that FDis have been a major catalyst in bringing benefits essential for its economic growth. FDis significantly

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