



# FGD CROSS-CUTTING ISSUES INVESTMENT & SERVICES CHAPTER PADA FTA/EPA/CEPA

BADAN KOORDINASI PENANAMAN MODAL

# PERMASALAHAN

- Isu-isu apa sajakah yang saling bersinggungan?
- Dalam hal terjadi perbedaan pengaturan atas isu-isu yang bersinggungan, ketentuan dalam Chapter mana yang berlaku?
- Bagaimanakah posisi Indonesia dalam hal Chapter Investment mengatur cakupan berlakunya terhadap investasi di sektor jasa (commercial presence)?

# Provisions issue

- **Chapter Investment**

Dampak pengaturan “protection of investment” sebagaimana dimaksud dalam Chapter on Investment terhadap terhadap sektor jasa yang di komitmenkan dibawah Chapter Trade in Services

- **Chapter Trade in Services**

Dampak ketentuan dan prinsip GATS yang menjadi acuan Chapter Trade in Services terhadap Chapter on Investment

- **Klausula Linkage Chapter Investment dan Services**

Bagaimana penafsirannya?



# LINKAGE CHAPTER INVESTMENT DAN SERVICES

## Contoh: IK-CEPA

### Paragraph 7.2.5

5. Notwithstanding paragraph 4(e) of this Article, [ROK: **Article [7.6] (Minimum Standard of Treatment)**] [INA : General Treatment of Investment], [ROK : **Article [7.11] (Transfer)**], **Article [7.12] (Expropriation and Compensation)**, **Article [7.7] (Compensation for Losses)**, **Article [7.13] (Subrogation)**, and [ROK : **Article [7.17] (Investor-State Dispute Settlement)**] of this Chapter shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to the provisions of the Chapter [Six] (Trade in Services), only to the extent that they relate to a covered investment.]

### Paragraph 7.2.4(e) Scope and Coverage

This Chapter **does not apply** to (e) measures adopted or maintained by a Party to the extent that they are **covered by the Chapter [Six] (Trade in Services)**

### Article 7.3: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, **the other Chapter shall prevail** to the extent of the inconsistency.
2. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by the Chapter [INA : Annex][XX] (Financial Services).]

# LINKAGE CHAPTER INVESTMENT DAN SERVICES

## Contoh: IJEPA

CHAPTER  
INVESTMENT

- General Treatment, NT, MFN
- Transfer
- Expropriation and Compensation
- Investor-State Dispute Settlement

CHAPTER  
TRADE IN  
SERVICES

# Protection of Investment in Services

## TRANSFER

| INVESTMENT   | SERVICES   |
|--|--|
| <p>Article 67</p> <p>1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include those of:</p> | <p>Article 87 (Payments and Transfer)</p> <p>1. Except under the circumstances envisaged in Article 88, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.</p> |

# Protection of Investment in Services

## NATIONAL TREATMENT (NT)

| INVESTMENT  | SERVICES  |
|---|---|
| <p data-bbox="102 525 285 561">Article 59</p> <ol style="list-style-type: none"><li data-bbox="102 639 929 1018">1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to investment activities.</li></ol> | <p data-bbox="996 525 1180 561">Article 79</p> <ol style="list-style-type: none"><li data-bbox="996 639 1823 1196">1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.</li></ol> |

# Protection of Investment in Services

## MOST FAVOURED NATION (MFN)

| INVESTMENT   | SERVICES   |
|--|--|
| <p data-bbox="100 539 291 578">Article 60</p> <ol data-bbox="100 654 954 1039" style="list-style-type: none"><li>1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to investors of a non-Party and to their investments with respect to investment activities.</li></ol> | <p data-bbox="996 539 1188 578">Article 82</p> <ol data-bbox="996 654 1835 925" style="list-style-type: none"><li>1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.</li></ol> |



# Protection of Investment in Services

## GENERAL TREATMENT

| INVESTMENT | SERVICES       |
|------------|----------------|
| Article 61 | Tidak mengatur |

## EXPROPRIATION AND COMPENSATION

| INVESTMENT | SERVICES       |
|------------|----------------|
| Article 65 | Tidak mengatur |

## INVESTOR STATE DISPUTE

| INVESTMENT | SERVICES   |
|------------|--|
| Article 69 | Tidak mengatur, Dispute yang dikenal dalam Regime Services adalah State to State dispute |

CHAPTER  
INVESTMENT



INCONSISTENT

CHAPTER /ANNEX  
FINANCIAL SERVICES  
MOVEMENT OF  
NATURAL PERSON,  
etc

CHAPTER  
TRADE IN SERVICES

# Thank You

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