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Implications of Foreign Investment on Economic Development Growth Post-Job Creation Act

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Abstract

This article discusses the implications of Foreign Investment on the growth of economic development in Indonesia. The legal basis for foreign investment is Law 1 of 1967 concerning Foreign Investment which was updated to Law No. 25 of 2007 concerning Investment and structuring through Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation. The implications that occur in Indonesia for foreign investment have positive and negative impacts. This study aims to identify and analyze the implications of foreign investment on the growth of economic development in Indonesia and the legal protection of foreign investors who invest in Indonesia. This research is a normative research with a statutory approach and a conceptual approach. The technique of collecting legal materials used in this research is a library study. The results of the study indicate that the government has a very large role in the development of foreign investment in Indonesia. In achieving this role, legal certainty is needed from a regulatory perspective. The Investment Law has provided protection for foreign investors so that it can encourage many foreign investors to invest in Indonesia.

Keywords: *Foreign Investment; Legal Protection; Investment Implications*

Introduction

The expansion of market share carried out by some developed countries into developing countries has various forms. One of the most common examples in Indonesia is the flood of imported products in the national market and the large number of foreign investment entering Indonesia. These two things when analyzed create positive and negative impacts. The positive impact of foreign investment is the entry of new capital for development, technology transfer, employment, increased Regional Original Income (PAD), increased work productivity, good business management shifts from developed countries, foreign exchange gains for the country, investment Permanent and long-term foreign exchange can provide very significant benefits for national economic growth. In addition, foreign investment for developing countries such as Indonesia is a demand for conditions to improve the economy. In an effort to maintain national economic stability, Indonesia must carry out economic equality by developing various aspects that aim to attract investors, especially foreign investors to invest in areas that have potential as objects of investment.

In making investments, the term Easy of Doing Business (EoDB) is also known or commonly referred to as the ease of doing business index. Several things need to be considered, such as the optimal level of social protection. In addition, the duration of the applicable court procedures is also necessary, because this is also related to business operations. Further business growth in Indonesia is also not limited. With the increase in business and the country's economy, it is hoped that investment will also increase. Empowerment of all the potential that exists in the country is also increasingly being improved so that all aspects of the life of the Indonesian people can experience improvement. In the end, EoDB also has an effect on the economy of the people in a country, including Indonesia.

There are several things that can hinder the realization of EoDB in a country. Generally, these obstacles are the index of starting a business, regulations and policies, bureaucracy. Similar to investment in Indonesia, there are obstacles or obstacles that occur. The negative impact of foreign investment is profit sharing that is not balanced with natural damage, foreign companies often take as much profit as possible to be brought to their country, salary discrimination between foreign and local employees and foreign companies dominate in controlling the market so that domestic companies lose competitiveness. Foreign Investment is included in the category of private Foreign Investment. If the government's investment capacity is very limited, then investment becomes important. Together with domestic capital, adequate foreign investment is expected to be able to lift economic activity from sluggishness. There are two obstacles faced in mobilizing investment in Indonesia, namely internal constraints and external constraints. Internal constraints include the company's difficulty in obtaining suitable land for the planned project, difficulty in obtaining raw materials, funding difficulties, marketing difficulties and disputes or disputes between shareholders in a company. Then external constraints consist of factors that do not support the business environment and the government provides incentives that are less attractive, legal uncertainty and insecurity.

Based on Article 33 Paragraph (4) of the 1945 Constitution, it is stated that the Indonesian economy is a national economy organized based on economic democracy with the principles of togetherness, environmental insight, independence, and by maintaining a balance of progress and national economic unity. The independence mandate stated in the 1945 Constitution characterizes every five-year development plan drawn up by the government. Foreign Investment is a transfer of capital, both tangible and intangible, from one country to another with the aim of making a profit.

The understanding and existence of investment is closely related to the theory adopted by the recipient country of capital. There is a basic theory related to the relationship between capital recipient countries and investors, especially foreign investment, one of which is a realistic theory. This theory looks at the role of Foreign Investment in the traditional economy and its real implications. This theory relies its analysis on real conditions, where foreign investment can have an influence on the development and modernization of the economy of foreign capital recipient countries. The presence or absence of arrangements and facilities provided by the recipient country of capital is not a problem that has a significant influence on the development of foreign capital. The pioneers of this school were Raymond Vermon and Charles P. Kindleberger.

The legal basis for Foreign Investment is Law Number 1 of 1967 concerning Foreign Investment, while the legal basis for Domestic Investment is Law Number 6 of 1968 concerning Domestic Investment. However, in 2007, the government issued a new policy, namely changing the entire legislation regarding Investment to Law Number 25 of 2007 concerning Investment. In Law Number 1 of 1967 it is stated that "under this principle, to base on one's own abilities and abilities, there must be no reluctance to take advantage of the potentials of technological capital and skills available abroad, as long as everything is truly devoted to people's economic interests without causing dependence on foreign countries. During the administration period of President Joko Widodo and Vice President Ma'ruf Amin issued Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation or better known as the omnibus law. From this law, it is clear that our country does not prohibit foreign investment from entering to help development and develop the people's economic potential. However, we also cannot depend on foreign countries.

In this case, there are several factors that are considered by investment before making or not investing in a country or region, namely the risks faced in the country (Country Risk), long bureaucracy (Rd Tape), transparency and legal certainty, transfer provisions. technology, guarantee and protection. Based on the description above, the problems in this research are: a. What is the Legal Protection for Foreign Investors Who Make Investments in Indonesia? and b. What are the implications of Foreign Investment on economic development in Indonesia after the Job Creation Act?.

Research Methods

This paper focuses on normative research, because in this legal research, law is conceptualized as what is written in laws and regulations (law inbooks) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate. This research uses a statutory approach and a conceptual approach. The legal approach referred to by the author in this research is to examine the laws concerning the implications of Foreign Investment that occurred in Indonesia on the growth of economic development. While the conceptual approach departs from the views and doctrines in legal science, research will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues at hand. The understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issues studied.

A. Discussion

1. How is Legal Protection Against Foreign Investors Who Make Investments in Indonesia

Many factors influence the interest of foreign investors to invest in a country. One of the pull factors in capital recipient countries is related to the policy of providing incentives in the field of taxation, the availability of adequate infrastructure, and the availability of a skilled and disciplined workforce. In addition to these factors, the main factor considered by investors before investing is the legal certainty factor which of course is related to political stability and security in the recipient country. The attractiveness of foreign investors to invest in Indonesia will depend on the legal system applied. The legal system must be able to create certainty, justice and efficiency.

The factor of legal certainty is closely related to the issue of guarantees provided by the government of the recipient country to foreign investors so that these investors do not hesitate to invest their capital. In this regard, one of the commitments of the Government of Indonesia to provide guarantees and protection to foreign investors is the issuance of Law Number 25 of 2007 concerning Investment. In the law there are several provisions related to the protection of foreign investors, including provisions regarding the provision of equal treatment to all investors (Article 6), provisions regarding nationalization and compensation (Article 7) and provisions regarding asset transfer and transfers. and repatriation in foreign currency (Article 8 and Article 9).

Regarding equal treatment for all investors, Article 6 of the Capital Market Law states that the government shall provide equal treatment to all investors from any country conducting investment activities in Indonesia in accordance with the provisions of the legislation. The same treatment does not apply to investors from a country that obtains special rights based on an agreement with Indonesia. The privileges referred to include, among others, special rights related to customs unions, free trade areas, common markets, monetary units, similar institutions and bilateral, regional or multilateral agreements between foreign governments relating to certain privileges in the administration of investment. .

Article 6 of the Investment Law is a realization of the principle of equal treatment and does not differentiate the country of origin as stated in Article 3 paragraph (1) letter (d) of the Investment Law. This arrangement has been appropriate considering that there has been an assumption circulating in the community that there is a significant difference in treatment for fellow investors, both domestic investors and foreign investors, especially with the treatment for foreign investors in the form of tax holidays and tax concessions and reliefs. granted in connection with the foreign investment made. What is regulated in Article 6 paragraph (2) of the Investment Law is related to the existence of a number of bilateral international agreements between the Government of Indonesia and Foreign Governments in the form of Investment Guarantee Agreements (IGAs) relating to Foreign Investments carried out by the state and/or its citizens based on the Investment Law which has special rights.

Article 7 of the Investment Law concerning nationalization and compensation. It was said that the government would not take any nationalization or takeover of investors' ownership rights, except by law. In the event that the government takes nationalization actions or takes over ownership rights, the government will provide compensation, the amount of which is determined based on the market price. If the two parties do not reach an agreement on compensation or compensation, then the settlement is carried out through arbitration.

The regulation of the nationalization issue in the Investment Law is intended more as proof of the good faith of the Government of Indonesia to cooperate with other countries in the world. With the provisions regarding nationalization, the Government of Indonesia has voluntarily reduced its right to nationalize foreign companies, namely by tightening the conditions for nationalization which is considered the right of every sovereign country by international law. In addition, leaving the determination of the amount, type and method of compensation payments to the decisions reached in negotiations between the Government of Indonesia and foreign investors. If an agreement is not reached, it can be resolved through an arbitration forum.

Article 8 and Article 9 related to non-commercial risks also regulate the transfer of assets as well as transfer and repatriation rights in foreign currencies. Investors can transfer their assets to the desired party in accordance with the provisions of the legislation. Investors can also make transfers and repatriations in foreign currencies. The transfer in question is the transfer of profits in foreign currency or the original currency of capital based on the exchange rate to the country of origin, while repatriation is the return of things owned by investors from the country where they were domiciled to their country of origin. The transfer and repatriation rights include capital, profits, bank interest, dividends, other income and so on.

In addition to laws and regulations, protection for foreign investment is provided in multilateral agreements. One of them is an international agreement on investment guarantees (MIGA Convention). Even though there are protections in the Investment Law and bilateral protections regarding the protection of investors, foreign investors independently continue to strive to avoid losses that arise as a result of political risks or non-commercial risks, among others, by guaranteeing their investments to MIGA. Basically, MIGA provides guarantees against so-called non-commercial risks, such as risks to monetary transfers, acts of nationalization, breach of contracts and risks related to war or security disturbances.

2. Implications of Foreign Investment on Economic Development Development in Indonesia Post-Job Creation Act

Law No. 1/1967 confirms that the definition of Foreign Investment in Law No. 1/1967 only includes direct foreign investment that is carried out according to or based on the provisions of Law No. 1/1967 and is used to run a company in Indonesia. , in the sense that all risks from Investment are directly borne by the owner of the capital itself. The emergence of investment in the form of Foreign Investment in a number of countries basically has two contradictory impacts. One impact that if managed properly, foreign investment can generate economic growth, the other impact is foreign domination that can be excessive on the resources belonging to a country.

One of the important factors in the development of the country is the presence of Foreign Investment in Indonesia. Historically, foreign investment entered for the first time in the Suharto era. The crisis was the golden period for the growth of Foreign Investment in Indonesia, which occurred around the 80s (eighties) until 1997, which until now has not been achieved again. Even after the crisis, Indonesia is still one of the main destination countries for foreign investment with the position of 17 (seventeen) countries receiving the largest flow of foreign investment in the world. As a result, Indonesia experienced rapid economic growth during the New Order era, which was an average of 7-8% (seven to eight percent) per year..

During the reformation period which began in 1998 until now, there has been a very significant decline from year to year, both at the level of foreign and local investors. 1998 until now is a period of transition, from the new order to the reformation period. At this time there are often conflicts, the first is the beginning of President Soeharto as President of the Republic of Indonesia for approximately 32 years (thirty-two years), to be precise on May 21, 1998 (the twenty-first of May one thousand nine hundred and ninety-eight) as the beginning of momentum for the start of the reform era.

Judging from the development of direct investment into Indonesia after the crisis that occurred in the middle of 1997, it shows a fluctuating situation. An increase or decrease in the rate of economic growth implies the process of increasing or decreasing output in the long term. Economic growth will show how much the ability of the population in a country to produce output and can also show the breadth of the market. The next stage is an increase in people's income, so that people's purchasing power is high and vice versa.

Broadly speaking, the influence of Foreign Investment on development for the Indonesian state is 5 (five), including:

a. External funding sources (foreign capital) can be utilized by Indonesia to accelerate investment and economic growth.
b. Increased economic growth needs to be followed by a shift in the structure of production and trade.
c. Fund mobilization and structural changes are very important for foreign capital.
d. The need for foreign capital has decreased after structural changes have occurred, although foreign capital will be more productive in the future.
e. The development of heavy industry and strategic industry has begun to be carried out by a country, the presence of foreign capital will be very helpful to be able to establish steel factories, machine tools, electronics factories, basic chemical industries and so on.

In the development of foreign investment in Indonesia, many companies employ foreign workers to help develop the company's path towards a better direction. Foreign Workers are foreign citizens holding visas with the intention of working in the territory of Indonesia. In addition, the definition of a stay permit is a permit granted to a foreigner by an immigration officer to be in the territory of Indonesia. A foreigner is a person who is not an Indonesian citizen based on the laws and regulations. Visa is a written permit granted by the Head of Representative of the Republic of Indonesia which contains approval for foreigners to travel to the territory of Indonesia.

Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers states that in consideration of supporting the national economy and expanding job opportunities through increased investment, the government considers it necessary to re-regulate the licensing of the use of Foreign Workers. The issue of Foreign Workers is continuously reproduced with statistical frames packed with exaggerated narratives to ambivalent reductions to create as if the situation is in a dangerous condition. Even the issue of Foreign Workers is framed in a narrative of antagonism peppered with a chauvinistic view of nationalism that depicts Foreign Workers as the others who are not part of us, considered as enemies and threats facing national interests and indigenous peoples.

This issue does not lead the community to a national explanation, but instead intends to stimulate the emotional side of the community and create fear and unrest. Issues that often arise with foreign workers such as "foreign stooges", "pro-China", "China", to "PKI minions" actually prevent the public from understanding the problems of foreign workers in a rational and measured manner, which only stimulates sentiment and emotion. fear. The creation of this fear is nothing new. In political history, public fear has often been converted into electoral votes by a number of politicians to gain power. This is done with the aim that Indonesian citizens think that white people can be leaders in their country.

Foreign investment for developing countries has certain requirements which are not to hinder the trading activities of foreign investment companies, but to ensure a more efficient contribution of foreign capital to economic development, enhance and maximize employment opportunities, reduce industrial, economic and social losses from the regions. certain areas, reduce pressure on foreign currencies and make their use more efficient, enhance the contribution of foreign investors in the development of domestic technological capabilities and ensure more efficient use of natural resources to expand export markets.

Regulation of foreign share ownership in foreign investment companies in Indonesia in Article 8 paragraph 1 of Law Number 25 of 2007 concerning Investment, it is regulated that investors can transfer their assets to parties desired by investors in accordance with the provisions of laws and regulations. If the company whose shares will be sold is a Foreign Investment Company or a Domestic Investment Join Venture, the sale of these shares does not cause the shares owned by Indonesian Citizens or Indonesian Legal Entities to be less than 5% (five percent) of the total number of shares and buying and selling shares must obtain approval from the Minister of Investment or the Chairman of the Investment Coordinating Board (BKPM). The main requirement for the process of transferring shares of a foreign investment or domestic investment company is the approval of all shareholders to transfer or sell company shares to other parties which are recorded and then documented in the General Meeting of Shareholders (GMS).

Over time, there are several factors that affect the decline in foreign investment in Indonesia. This is very worrying for the Indonesian government because there is a decline in profits and can have a negative impact on economic development in Indonesia. Several external factors, both directly and indirectly, can affect the decline in foreign investment in Indonesia. The decline in special comparative advantage and can have a negative impact on national economic development makes the Indonesian government worried about this phenomenon.

The change in the structure of international funds has been an indirect factor in recent years. First, Equity gets the transfer of loan funds, Second, increasing the use of various traditional financial instruments as well as new forms, namely Portfolio Investment, Debt Equity Swap, Bons, Structure Project Finance, and others. In addition, there are several other internal factors, including:

a. Factors weak legal and regulatory instruments in Indonesia
   In general, the problem of very weak legal and regulatory instruments in Indonesia is the main factor causing the decline in foreign investment entering Indonesia.
b. Human Resources Quality Factor
   When you want to invest in a country, the Human Resources factor is seen from both quality and quantity. This plays a very important role in increasing business for foreign investors. Human Resources in Indonesia itself is often called cheap labor or skilled labor that is easily available.
c. High Cost Economic Factor
   High economic factors cover many aspects, namely high interest rates for bank loans, underdeveloped capital markets, overlapping procedures, bureaucratic corruption, inefficient financial facilities, low labor productivity.
d. Lack of Infrastructure
   Indonesia's national economic growth and also the increase in investment in Indonesia in the future are expected to be disrupted because the picture of infrastructure is still bleak and weak.

Investment in Indonesia also provides various advantages for foreign investors. The benefits of foreign investment include:

a. The production of several products that are needed by the people with the intention of being exported (with the use of raw materials that are generally found in our homeland) will greatly increase both in quality and quantity.
b. All risks will be borne by the Investor in Direct Investment or Joint Venture if the production has failed.
c. Gaining opportunities and being able to self-destruct with cutting-edge jobs (technologists) for workers in Indonesia.
d. When the contract agreement has expired, like it or not, all the equipment belongs to our company, so that a similar company will continue with 100% (one hundred percent) Indonesian management and utilization.
e. Workers can become pioneers implementing cutting-edge projects in regions in our country or updating national companies that already exist in the regions because they have gained enough experience and sufficient skills to build similar national companies to be better and more focused. to promote development in other areas.
f. The increase in the number of visas for our country, the increase in the income of the population per capita and the products needed by the people will be easily obtained in the market with higher quality.

In addition to having a positive impact, foreign investment can also have a negative impact. Therefore, all forms of supervision and statutory regulations need to be implemented in order to ensure the implementation of Foreign Investment. The negative impacts of foreign investment in Indonesia are as follows:

a. Abandonment of the Agricultural Sector
   Foreign investment is mostly carried out in the industrial sector, this has resulted in many workers entering the sector. In terms of income, there are several industrial sectors that are more promising, encouraging many workers to switch to the industrial sector.
b. Environmental damage

Environmental pollution is one that will appear in industrial activities. This pollution can be in the form of waste or air pollution. Waste production will increase along with the increasing number of foreign companies in Indonesia. Therefore, it is necessary to apply clear and firm rules regarding industrial waste management so as not to damage the environment.

c. Reduced Productive Land

Another negative impact of the development of foreign companies in Indonesia is the reduction of productive land. Because the existing land has been used up to build a factory. This is related to the reduced workforce in the Pertamina sector, due to the increasing number of workers entering the industrial sector. The land owner will use the location of his land for industrial purposes When the labor in agriculture is no longer available.

d. Overexploitation of Natural Resources

Some foreign companies over-exploit natural resources. This can result in the destruction of Natural Resources in Indonesia.

e. More business results are brought to their home country

In some foreign investments that are carried out often provide large profits to investors, but the results of these foreign investments are brought to the investor's country. For this reason, the government needs to consider the advantages and disadvantages carefully.

Foreign investment is indeed very profitable for Indonesia, but besides that, foreign investment has a negative impact on Indonesia. The search for maximum profit will eventually give birth to the following things:

a. The Host Country, which is a developing and underdeveloped country, experiences exploitation practices from foreign companies originating from developed countries.
b. Workers are given cheap wages, cheaper than investors, investors get a lot of benefits from dredging abundant natural resources, this can cause national losses and create market dependence for people in the host country are forms of this practice. exploitation. Communities in the host country are only users or lures, because policies are managed and determined by investors.
c. Foreign companies are managed by foreign parties, then the management policies are in accordance with the operations of foreign companies, the management policies are often contrary to domestic policies.
d. It is impossible to know if the company is in good health or not, because the financial management of foreign companies is closed.
e. Natural Resources Management which is managed by foreigners with rights and obligations as regulated by law, often causes environmental and social impacts where the new company will be established.
f. The damage that arises is not proportional to the existence of product sharing and the government or the community must bear it themselves. Investors often do not think about the consequences or damage caused by the existence of their company, but only think about the results they get.
g. Foreign companies seek maximum profits and these profits are brought to their countries, resulting in losses and disappointments for the community or local government.
h. Foreign employees and local employees receive income discrimination treatment. Even though they have the same skills, local income is cheaper than foreign employees.

Over time, during the administration of President Joko Widodo, the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation was issued. The law was issued to reorganize investment regulations in Indonesia. Structuring these regulations can take the form of trimming, simplifying and aligning existing laws.

The omnibus law exists as a regulatory reform strategy so that the arrangement is carried out simultaneously on many laws and regulations. The purpose of structuring regulations with omnibus law is to eliminate overlapping between laws and regulations, efficiency in the process of changing or revoking laws and regulations and eliminating sectoral egos. Eliminating the overlap between laws and regulations through omnibus law can be done, because with omnibus law all laws that are related or have the potential to regulate the same object are reviewed and reviewed for structuring. The process of changing or revoking statutory regulations with the omnibus law is more efficient, because changes or revocations are carried out simply by making one law by adding or revoking the old law. The Job Creation Act is one of the omnibus laws in the National Legislation Program for the 2020 Priority Bill to regulate investment regulations. Licensing arrangements as one of the problems in investment are the focus of the omnibus law on job creation. Prior to the UUPM, licensing arrangements only focused on licensing with one-stop services. Thus the omnibus law on job creation is an important breakthrough in structuring investment regulations in the country.

Conclusion

Foreign Investment in Indonesia has a very significant influence on the growth of economic development in the long term, but if the Indonesian government is not able to realize the existing Foreign Investment in Indonesia properly then foreign control can occur in Indonesia excessively on state-owned resources. Therefore, to increase investment growth in the future, legal certainty is needed which must be a priority for the government. With the presence of foreign investment in Indonesia, it is very helpful for the development of economic development in Indonesia, both in terms of infrastructure, economy and human resources, so the presence of these factors can increase per capita income in each region. Legal protection for foreign investment has been regulated in Law no. 25 of 2007 concerning Investment. This can be seen in several provisions of the law, namely through the regulation of the rights of foreign investors in Articles 6 to 9, namely about the guarantee of equal treatment for all investors as well as guarantees for nationalization and other measures.

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