

The Uncertainty Law on Authority Regulation of Investment Especially Foreign Investment in Indonesia

Isye Junita Melo ¹, Sudarsono ², Bambang Winarno ³, Iwan Permadi ⁴

E-mail of the corresponding author :

isye.ijm@gmail.com

Abstract:

The paradigm change of government implementation based on the large, real, and responsible region autonomy concept gives implication to the implementation of investment service which became the authority basis of the center government. Now it becomes the authority basis of province, or even district/regency. In this situation, the authority division between center government and district government as explained On Law 2004 No.32 on Region Government and Government Ordinance No. 38 on 2007 on the division of government affairs between the government and province government or even the district government/regency as the autonomy region can explain further the implementation of the investment service in Indonesia in the center and also region government. In fact, the problem is not as simple as that, because in fact the implementation of the regulation authority or the implementation of the investment in the form of the government affair division in the field of investment is entirely untouched by the government as stated in the conception of region autonomy and the regulation of Law No. 25 of 2007 on Investment. The unclearness of norm on investment law that is related to the authority especially the foreign investment can give the uncertainty law situation.

Keywords: Law certainty, Authority, Foreign investment.

I. Preface

The investment is the main sector that is relied by countries in the world to move their economics. In development, investment is divided into two parts. The domestic investment and foreign investment.

The foreign investment has an important role in building the economy. The foreign investment principally will increase the production, give the expansion of employment opportunities, and process the resources of domestic potential economy. The foreign investment hopefully can increase the prosperity of societies and also decrease the common economy development. The foreign investment is the advantage value for the Host State, because by the existence of this foreign investment, Country which use this foreign investment can guarantee and use the domestic asset for the public benefit.⁵

On Law 2007 No.25 Article 1 number 1 about Investment stated that investment is all of kind investment activities, both the domestic investment and foreign investment that is used to do business in the area of Constitution of Republic Indonesia. Furthermore, in Act 1 number 2 stated that the domestic investment is the investment activities in order to build business in the area of constitution of republic Indonesia that is done by the domestic investor by using the domestic asset. Then, On Law Article 1 No. 3 on Investment stated that the foreign investment is the investment activities in order to build business in the area of Constitutional of Republic Indonesia that is done by the foreign investor by using the foreign asset or even by using the fusion of foreign asset and domestic asset.

The investment, especially the foreign investment becomes one of important factors that move and push the economy development. By regarding the role of investment that is significant enough in building the economy, so it is not surprising if in these decades many countries both developed countries and developing countries try hard to be the target of the foreign investment. This investment activity is one of the economy implementation and it becomes the effort to increase the developing of national economy, to create the jobs, to increase the sustainable economic development, to increase the capacity and the ability of national technology, to push people economic development, and to create the society prosperity in one competitive economic system. In reformation era, the government affords to get the foreign investors as many as possible. This effort is done through many state visits to other countries, privatization of BUMN, the law enforcement, and also the revision to many Law in business and also in tax investment, and employment, etc. Those efforts are done to create the

¹Isye Junita Melo mahasiswa Program Doktor Ilmu Hukum Universitas Brawijaya Angkatan Tahun 2011-2012.

²Sudarsono Promotor dan Guru Besar di bidang Hukum Administrasi Negara Program Pascasarjana Fakultas Hukum Universitas Brawijaya Malang.

³Bambang Winarno Ko-Promotor, Dosen Program Pascasarjana Universitas Brawijaya Malang.

⁴Iwan Permadi Ko-Promotor, Dosen Program Pascasarjana Universitas Brawijaya Malang.

⁵An An Chandrawulan, *Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*, (Bandung: Alumni, 2011), hlm, 1.

domestic business situation that will be more conducive to create the capital inflow that is in turn can increase people's prosperity.¹

The step of Indonesia Government in utilizing the presence of investment, especially foreign investment in Indonesia is the right and strategy step. Because by inviting the investor to take a part in Indonesia it means that we have decided to be equal as other nations or other countries that have already developed because of the investment. *Skill, the management* of the investment, especially the foreign investment in managing the potential economic resource to be the riil economic. In other words, the strategic regulation will lead Indonesia to be equal with other nations or other countries in utilizing the investment potential of other countries.²

The regulation of investment on Law 2007 No.25 about investment emphasized and clarified that the regulation policy of investment in Indonesia. The regulation policy of investment becomes better as the implementation of decentralization policy in Indonesia through the implementation of regency autonomy that has been done since 2001.

Substantially, the regency autonomy policy that is applied in Indonesia can be understood as the region independence to apply the government function and the region development. The term of autonomy that we develop does not only focus on *political aspect*, but also focus on *economic aspect* as the basic or the foundation in taking care its own household. The main purpose of the region autonomy implementation is the existence of the free area to conduct its own government basaed on the creativity and also the active society role in developing and increasing its region.

The change of government implementation paradigm which is based on the large, real and responsible region autonomy concept also give implication to the investment service implementation that was the authority basic of central government becomes the authority basic of region government, both province and district/regency.³ But nevertheless, fact shows that central government still cannot give the whole authority of investment to the region government. It can be seen from the authority regulation in Law, both in law about investment and also in its implementing regulation.

Based on that background, the problem is formulated if Law 2007 No.25 on Investment has full filled the principle of legal certainty regarding the authority of the implementation of investment affairs, especially Foreign Investment?

II. Research Method

To answer that problem, a method or systematic research technique is needed to solve that problem. A research method is the procedure and the technique to solve the law issue as the problem that will be done by the researcher. The research types that were used by the researcher were the normative research, it is the law research process that is conducted to get the argumentation, theory, a new concept as the prescription to solve the law issue that is conducted by reviewing and analyzing the law provisions, court decisions and other legal materials. In other words, as the research type, the normative research is a research that basically analyzes based on law norms.⁴

In this research, the approach method that was used is adapted with the type of the research that was conducted. In fact, this research is the normative research (*legal research*),⁵

so the legal approach that was done based on the indicator contained in the title of this research and the kinds of approach method in legal research. Approach that was used in this research focused on for approach methods. Those are *statute approach*, *conceptual approach*, *Historical Approach*, and (*comparative approach*).⁶

Legal research is not included data. To solve the legal issue and give the prescription of its issue, the research resources are needed. The legal materials that were needed in this research is the legal material both are the primary law, the secondary law, or even tertiary law. The primary law covers the Constitution of the Republic of Indonesia 1945 and The Law provisions: Law 2007 No.25 on investment, Law 2004 No.32 on region government, government regulation No.38 on 2007 about the division of government authority, between the central government, province government, and regency/ district government, and the president regulation on 2009 No 27 about integrated service. Secondary law material is all of the legal publication that are not legal documents, as a text, legal dictionary, legal journals⁷ bachelors' opinion, legal cases, the result of research report, the result of seminar, workshops, symposia including material sources of law in the form of publications

¹<http://sarahnatasha58.blogspot.com/2012/03/penanaman-modal-asing-dalam-rangka.html>. diakses tgl 5 Desember 2012.

² *Ibid*, hlm. 57-58.

³ Aminuddin Ilmar, *Hukum Penanaman Modal Indonesia*, (Jakarta: Kencana, 2010), hlm.72

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Prenada Media, 2005), hlm.29 -36.

⁵ Peter Mahmud Marzuki. *Op.Cit*, hlm 93.

⁶ Bambang Sunggono, *Penelitian Hukum Normatif*, (Bandung, CV. Mandar Maju, 2000), hlm.76.

⁷ Peter Mahmud Marzuki, *Op.Cit*, hal. 141-163.

using the internet media related to dissertation research material. The legal materials that were used by the researcher were Big Indonesian Dictionary and Dictionary of Law.

In summary, the collected technique of the legal materials that were used in this research is *library research*. It means collecting, studying and reviewing the legal materials that is related by the issue that has been formulated, both to primary legal material, secondary legal material, or even tertiary legal materials.

III. Result and Discussion

Discussing the law certainty it means it cannot be separated from the actual aim of legal. The law certainty is one of the legal aim, besides its expediency and justice for all human beings as members of a pluralistic society in interaction with another human being without differ where he is from.¹

The law certainty as one of the law aim cannot be separated from its legal function. The most important legal function is to reach the regularity in human life among the society. This regularity can cause people life in the certainty. It means that people can differ some activities that are needed in social life because they can consider or predict what will happen or what that are expected. The regulations of investment in Indonesia are arranged in Law 2007 No.25 about investment. In article 3 clause 1 letter a, stated tht investment activities are conducted based on the principal of law certainty. While “the principle of law certainty” means the principle in the legal country that uses law and regulation provision of Law as the basic in every policy and act in the investment field.²

In this context, the law certainty is the existence of regulation consistency and the law enforcement in Indonesia. The regulation consistency is shown by the existence of the rules that do not contradict each other, and those rules can be the foundation for a long time, so it does not seem that in every official change is always followed by the change of the rules that contradict each other. In Indonesia, the investment activities both on the foreign investment (PMA) and domestic investment (PMDN) are conducted in order to increase the national economic development.³

Time by the time, the development of investment activities in Indonesia ups and down. Complicated investment problems emerged, those are the labor issues, the uncertainty law, defense and the implementation of region autonomy. The most serious problem that was complained by the investor was the law enforcement. The investor really need the certainty law that is applied through the existing investment regulation.

From the research result that has been conducted it can be concluded tha Law 2007 No.25 has not given the law certainty especially in the implementation of foreign investment. It is because some articles contain the unclear norms, even those articles cause the norm conflict.

In the Preamble of Law 2007 No.25 stated that the region government gets the authority as large as possible in conducting and taking care its own investment implementation, based on autonomy basic and co-administration. Explanation above gives the new view of foreign investment in Indonesia through the regulation contained in Law 2007 No.25 which is hoped that it can increase the investment in Indonesia. Law 2007 no.25 seems better than the previous law. It can be seen from the investment regulation, how the foreign investment gets into Indonesia, more foreign investors, the increasing of kinds of business fields that can be conducted by the foreign investment, and also the region role in inviting the foreign investment directly.

if analyzed furthermore, Law 2007 No.25 on investment(UUPM) can be said that it has already covered all of the important aspects, as; service, coordination, facilitation, right and responsibility of the investor, which are strongly related to the effort of investment developing form the government’s point of view an also the investment certainty from the businessman’s/investor’s point of view. But there are still of some articles that do not give the law certainty especially related to the region authority. For example, the articles 30 clause 3 stated that the government thing implementation in investment field is the responsibility of region government which is based on externality criteria, accountability criteria, and the efficiency of investment activity’s implementation. Although the referred criteria exists, but it is not explained in this law. This unclear criteria made the authority of region government in investment area became unclear, too.

¹ Mochtar Kusumaatmadja dan Arief B.Sidharta, *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Buku 1, (Bandung: Alumni, 2000) hlm. 49, bandingkan dengan Mertokusumo, Soedikno, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Liberty, 1988), hlm. 57.

² Pay attention to the explanation of Law 2007 No.25 Article 3 Clause 1 on investment. Besides the Law 2007 No.25 Article 3 Clause 1, it is also arranged the truth basic, accountability, the equal treatment and not differ the origin country, togetherness, justice efficiency, integrated, environmental knowledge, independency, and development balance and the unity of national economic.

³ Budiman Ginting, *Kepastian Hukum Dan Implikasinya Terhadap Pertumbuhan Investasi Di Indonesia*, Pidato Pengukuhan Jabatan Guru Besar Tetap dalam bidang ilmu hukum Investasi Pada Fakultas Hukum Universitas Sumatera Barat, 20 September 2008.

In government regulation 2007 No.38 on Affairs of Government with government, province region government, and regency/district¹ explained that there are 26 sectors of government affairs which are the obligatory of region government as has been arranged on article 7 clause 2 government regulation 2007 no. 38, where in one of those 26 sectors the obligatory of region government is about the investment. Thus, based on government regulation 2007 no. 38 it can be assumed that the foreign investment is one of the region government's authority, as explained that the foreign investment is included in investment.

This contradicts with the regulation of government authority based on Law 2007 No.25 article 30 clause 7 stated that one of central government's authority is the foreign investment (PMA). From the explanation above, it can be seen the norm conflict on both Law regulation that arrange the authority in foreign investment sector. In one view, the investment law stated that the foreign investment is its authority area, while on the other view the government regulation 2007 no.38 also stated that the investment including the foreign investment are the authority of region government. This case can emerge the uncertainty law.

As has been known that the decentralization implementation is basically the transfer of part of central government functions that can be handled by the Region Government.² However, not all of those functions can be transferred, some of them are only represented, or has to be handled directly by the central government.

Decentralization is always seen as the partial solution of the problems that are related to the stability and the economic development in a democracy nation. Decentralization is regarded as the effort to differ the current regime with the previous regime which is seen to be too centralism and did not give a chance to region government to develop. For nation with the various ethnics, decentralization is a good facility to unite all of difference.³

Therefore, based on Law 2004 no.32 on region government, the region government gets a big authority, real authority and to responsible, so it gives a chance to the region government to manage and conduct its authority on its own willing based on local society's need and its region's potential. However, based on Law of Region Government the article 10 clause 3 that authority is still limited. Those limitation are the limited authority on field of foreign policy, defense, security, justice, monetary and national fiscal and religion, remains under the authority of the Government.

Therefore, to conduct the region autonomy as has been determined on the applicable Law regulation, so the government authority which is given to region as the implementation of decentralization has to be followed by the assignment or the transfer of fund, infrastructure and human resources as the authority given.

Based on the Law of region government article 13 and article 14, the province authority, the regency authority and the district authority can be divided into the obligatory that is being the region government's authority and the government affair that is being optional. While those optional government affairs cover the government affairs that are real and have a potency to increase the social's wealth as the condition, the characteristic, and the potency of its region, as mining, fisheries, agriculture, plantations and forestry, as well as tourism.

Based on Law of region government article 13 clause 1, the obligatory that is being the province government's authority is affair in province scale, those are: Planning and development control; planning, utilization, and control layout; implementation of public order and public tranquility; provision of public facilities and infrastructure; handling of the health sector; providing education and allocation of human resources potential; overcoming social problems between the district / city; the employment services between districts / cities; cooperative development facilities, small businesses, and medium business, including inter-district / regency; environmental control; land services, including inter-district / regency; service population, and civil registration; general administration of government services; investment administration services, including inter-district / regency; implementation of other basic services which cannot be implemented by the district / regency; and other obligatory functions mandated by legislation.

Based on Law on region government article 14 clause 1, the authority of regency/district is the obligatory that is being the authority of region government for regency/district, and it is an affair in regency/district scale, those affairs are: planning and controlling of development; planning, utilization and the layout controlling; implementation of public order and public tranquility; provision of public facilities and infrastructure; handling of the health sector; providing education and allocation of human resources potential; overcoming social problems; the employment services; cooperative development facilities, small businesses, and

¹ This government regulation is the rule of the implementation as the mandate on Law 2007 No.25 article 30 clause 9 "the regulation of government affair division on the investment area which is arranged furthermore by the government regulation..."

² Juli Panglima Saragih, *Desentralisasi Fiskal dan Keuangan Daerah dalam Otonomi*, (Jakarta: Ghalia Indonesia, 2003), Hlm 39

³ Umar Juoro, *Desentralisasi, Demokrasi dan Pemulihan Ekonomi*, dalam Jurnal Demokrasi dan HAM, Vol. 2, No.2, 2002, hlm. 7

medium business; environmental control; land services; service population, and civil registration; general administration of government services; investment administration services; implementation of other basic services; and other obligatory functions mandated by legislation.

Explanation of Law on region government article 13 and article 14, it is clear that the autonomy region especially regency and district have an authority in investment affair. It means the regency/district government has an authority to take some investors to its region to see the investment opportunity in some prospect regions.

While according to Wimpy S. Tjetjep, the role of center government is hoped only on its regulation and its building of the business investment opportunity in some prospect areas, those are¹:

- a. The establishment of general policy in developing the fund resource opportunity and the business investment in national scale
- b. The establishment of national planning policy for the existence of the fund resource opportunity and the business investment in some areas.
- c. The regulation of regional and international collaboration policy to support the growing of fund resource opportunity and the business investment.
- d. The collaboration regulation inter province to develop the financing resource and the business investment.
- e. The developing of information system to get the financing resource opportunities and business investment in national scale.

Furthermore, Wimpy S. Tjetjep stated that the role of the province government in financing resource affair and the business investment are:

- a. The regulation of object management and the attraction to grow the financing resource and the business investment inter regency and district.
- b. The regulation of business sector management to support the development the financing resource opportunity and the business investment inter regency and district.
- c. The regulation of regional planning in financing resource area and the business investment.
- d. Facility and the promotion implementation to advance the growing of financing resource opportunity and the business investment inter region.

Hopefully the the regency /district government take a part in some areas. Those are: the allowance of permission (legalization), the direct management of financing resource and business investment, and also the maintainance and the developing of facility quality, supporter of financing resource service quality and business investment especially the prospect areas. Moreover, the regency/district government actually has a large authority in managing the national resource that exists in its region, and regency/district can directly make a collaboration with foreign institution which will give an advantage each other, including to take a loan from foreign resource², as long as still communicating each other with the government. Therefore, regency/district can conduct investment activities and the financing resources including the licensing/legalization which is done by region, it means that it is including regency/district government, the world of the business/businessman and the businessman's association in that region.

For Indonesia, one of the aims of the state government establishment is to develop the public's welfare as stated in the preamble of Constitution 1945. It stated ".....to establish a government of republic Indonesia which protect the whole Nation of Indonesia.... to develop public's welfare, to educate the whole nation, and to take a part in conducting the world order based on freedom, lasting peace and social justice...."³ mandate of the preamble of constitution 1945 as explained in article 33 on constitution 1945 stated:

¹ Tjetjep S. Wimpy, *Dari Gunung Api Hingga Otonomi Daerah*, (Jakarta: Yayasan Media Bhakti Tambang, 2002), hlm.269-270.

² *Ibid*

³ Preamble of constitution of republic 1945: whereas independence is the inalienable right of all nations, therefore, all colonialism must be abolished in this world as it is not in conformity with humanity and justice; And the moment of rejoicing has arrived in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence state of Indonesia which shall be independent, united, sovereign, just and prosperous; By the grace of God Almighty and motivated by the noble desire to live a free national life, the people of Indonesia hereby declare their independence. Subsequent therefore, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God, just and civilized humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia.

- (1) The economy is structured as a collective business based on the principle of kinship.
- (2) Branches of production which are important for state and controlling the welfare of the majority controlled by the state.
- (3) Earth, water and natural riches contained therein shall be controlled by the state and used as great as possible for the welfare of people.
- (4) The National economy is organized based on economic democracy with the principles of togetherness, efficiency of justice, sustainable, environmental concept, independence, and to maintain the development balance and the unity of national economic.
- (5) Further information related to the implementation of this Article is arranged on Law.

Connected to Article 33, if we relate to the region government authority on investment regulation based UUPD and government regulation 2007 No.38 which has an unclear law and it is still connected to the President regulation 2009 No.27, so that the government has effected an uncertainty law¹. The uncertainty law of the government in giving the authority on investment regulation especially the foreign investment regulation authority to the region government absolutely contradicts with the aim of the law itself. Roscoe Pound stated that the aims of Law are the ordinance to reach justice, the certainty of law, concord, and happiness. Jeremy Bentham stated that the aims of law have to be useful for people to reach the happiness as big as possible².

In constellation of modern nation, Law can be functioned as a tool of social engineering. Roscoe Pound emphasized the important meaning of law as the tool of social engineering, especially through the case solving mechanism by the justice institutions which will produce *jurisprudensi*. The social context of this theory is society and judiciary in United States.³ if we move from the theories of Roscoe Pound, Jeremy Bentham and Mochtar Kusumaatmadja, a change should be emerged in society based on the Law 2007 No.25 on Investment. It means when the investment authority is truly given to the region government, so that the society in that region will also take the advantages. Moreover they will get a good welfare, because the investors will directly invest to the target region. Investors do not have to connect with the central government, and it can decrease expenses. The government actually is only needed as the controller of the region government.⁴

The creation of investment Law hopefully can attract the investors to come in Indonesia. It is said like that because in this law, there is not a different treatment between the investors of foreign investment and the investors of domestic investment. It has a same concept as *Multilateral Agreement on Trade Related Investment Measures* (TRIMs) which forbids the discrimination of the domestic investors and foreign investors.⁵

Moreover, by the certainty from the government in giving the authority of investment implementation to the region government. Based on the dogmatik normative which is followed by John Austin and van Kan, regard that the law basic is only to create a law certainty. Law is something that has an autonomy characteristic and law is a written rule. It means that because the characteristics of law is autonomy so that the aim of law is only to create the certainty law in legalizing the right and responsibility of someone.⁶

It means the certainty law for the region government in conducting its right and its responsibility in giving the approval and licensing in its region is not run well as the mandate of region government Law. Moreover, Lawrence M. Friedman has an opinion that the successful of law provision shows that all of the law system substances works. The law system in Friedman's opinion consists of three substances. Those are *legal structure, legal substance, legal culture*. *Legal structure* in concept, foundation, a mortal form of system. *Legal substance* is rules, actual norms which are used by the institutions, reality, form of behavior and the actors that are observed by system. *Legal culture* is ideas, attitudes, faiths, hopes, and opinion of Law.⁷ On its development, Friedman⁸ added the fourth component, it is called as *legal impact*.

Besides Friedman's opinion, that the law substance that is being a rule, norm, and the real behavior pattern of human which is in that system itself, that the law substance which is the rule, norm, and the real behavior pattern of human that is in that system. Those are included in the understanding that this is also the form of the product produced by people on its law system, the decision that is made by them and the rules that

¹ Misahardi Wilamarta, *Ketidaksinkronan Kewenangan Pemberian Persetujuan Dan Perizinan Penanaman Modal Antara Pemerintah Pusat Dan Daerah Dalam Peraturan Penanaman Modal Di Indonesia*, [http://supremasihukumusahid.org/attachments/article/120/diakses tanggal 28 Agustus 2014](http://supremasihukumusahid.org/attachments/article/120/diakses%20tanggal%2028%20Agustus%202014).

² Salman H.R. Otje, *Filsafat Hukum (Perkembangan dan Dinamika Masalah)*, (Bandung: Reika Aditama, 2010), hlm. 8, 10.

³ Roscoe Pound dalam Lili Rasjidi, *Dasar-Dasar Filsafat Hukum*, (Bandung: Alumni, 1992), hlm. 43.

⁴ Misahardi Wilamarta, *Op.Cit*. Diakses tanggal 28 Agustus 2014.

⁵ Sentosa Sembiring, *Hukum Penanaman Modal: Pembahasan dilengkapi dengan Undang-undang Nomor 25 Tahun 2007 Tentang Penanaman Modal*. (Bandung: Nuansa Aulia, 2007), hlm.105.

⁶ Marwan Mas, *Pengantar Ilmu Hukum*, (Jakarta: Ghalia Indonesia, 2004), hlm. 74.

⁷ Lawrence M. Friedman, *American Law: An invaluable guide to the many faces of the law, and how it affects our daily lives*, (New York: W.W. Norton & Company, 1984), hlm. 6-7.

⁸ *Ibid*, hlm. 16.

are arranged by them.¹ if it is related to article 13 clause 1 letter n, and article 14 clause 1 letter n, the Law of region Government and article 7 clause 1 and clause 2 letter i on government regulation 2007 no.38 about the division of affair between government and government, region government and government, the province government, and regency/district government. Those already gave the whole opportunity for each region to attract the investors to its region. However, this authority becomes useless if it is considered with the president regulation 2009 no.27. It is because each approval, licensing, and the investment facility in the case of PMA (foreign investment) are still conducted by BKPM (Institution of investment coordination), so do the governor, regent or mayor. They can give the authority of service approval, the approval and the investment facility to BKPM (Institution of investment coordination) through the system of "one door". Law has to create a fair law, more useful and give the law certainty. Therefore, the law rules which are related to investment, especially for region, have not given the guarantee of law certainty. The law uncertainty that is conducted by government in giving the investment implementation authority to region government, can postpone the region development in the whole area of Indonesia.

IV. Conclusion

There are a lot factors that cause the uncertainty law in conducting the investment in post0 region autonomy. One of those problems is because the uncertainty law about the regulation of the central government authority, region government authority, and also inter region government authority that is related to the investment activities especially the foreign investment (PMA) does not exist. The different regulation of each Law for the same area can emerge the uncertainty law. This research has found an unclear norm on Law 2007 No.25 article 30 on Investment that is connected to Law 2204 no.32 on Region Government, and on Government regulation 2007 No.38 so it can be concluded that this investment law has not fulfilled the basic of law certainty about the authority in conducting the investment field especially the foreign investment.

V. Recommendation

1. Government has to revise regulation of investment area that is related to government authority and region government authority soon, so there will not be a double authority and an unclear authority that will obstruct the region development.
2. Government has to publish a clear government regulation that manage the investment activity which is being the central government authority by explanation of its each job desk, what areas that are conducted by the central government itself, and what areas that are conducted by the province government, and also what areas that are conducted by regency/district government, so that there will not be any norm conflicts or the uncertainty of law norms.

REFERENCE

- Chandrawulan An An, 2011. *Hukum Perusahaan Multinasional, Liberaralisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*, Bandung: Alumnus.
- Eman Suparman, "Persepsi Tentang Keadilan Dan Budaya Hukum Dalam Penyelesaian Sengketa", Makalah, 2010, diakses pada tanggal 12 September 2014.
- Ginting Budiman, *Kepastian Hukum Dan Implikasinya Terhadap Pertumbuhan Investasi Di Indonesia*, Pidato Pengukuhan Jabatan Guru Besar Tetap dalam bidang ilmu hukum Investasi Pada Fakultas Hukum Universitas Sumatera Barat, 20 September 2008.
- <http://sarahnatasha58.blogspot.com/2012/03/penanaman-modal-asing-dalamrangka.html>. diakses tgl 5 Desember 2012
- Ilmar Aminuddin, 2010, *Hukum Penanaman Modal Indonesia*, Kencana, Jakarta.
- Juoro Umar, 2002, "Desentralisasi, Demokrasi dan Pemulihan Ekonomi", dalam Jurnal Demokrasi dan Ham, Vol. 2, No. 2.
- Kusumaatmadja, Mochtar, 2002. *Konsep-Konsep Hukum Dalam Pembangunan (Kumpulan Karya Tulis)* Bandung: Alumnus.
- Lawrence M. Friedman, 1984, *American Law: An invaluable guide to the many faces of the law, and how it affects our daily lives*, New York: W.W. Norton & Company.
- Marzuki, Peter Mahmud, 2005. *Penelitian Hukum*. Jakarta: Prenada Media
- Marwan Mas, 2004, *Pengantar Ilmu Hukum*, Jakarta: Ghalia Indonesia.
- Misahardi Wilamarta, *Ketidaksinkronan Kewenangan Pemberian Persetujuan Dan Perizinan Penanaman Modal Antara Pemerintah Pusat Dan Daerah Dalam Peraturan Penanaman Modal Di Indonesia*, [http://supremasihukumusahid.org/attachments/article/120/diakses tanggal 28 Agustus 2014](http://supremasihukumusahid.org/attachments/article/120/diakses%20tanggal%2028%20Agustus%202014).
- Rasjidi Lili, 1992, *Dasar-Dasar Filsafat Hukum*, Bandung: Alumnus.
- Saragih Juli Panglima, 2003, *Desentralisasi Fiskal dan Keuangan Daerah Dalam Otonomi*, Jakarta: Ghalia Indonesia.

¹ Eman Suparman, "Persepsi Tentang Keadilan Dan Budaya Hukum Dalam Penyelesaian Sengketa", Makalah, 2010, diakses pada tanggal 12 September 2014.

- Sembiring Sentosa. 2007. *Hukum Penanaman Modal.: Pembahasan dilengkapi dengan Undang-undang Nomor 25 Tahun 2007 Tentang Penanaman Modal*. Bandung: Nuansa Aulia
- Salman H.R. Otje, 2010, *Filsafat Hukum (Perkembangan dan Dinamika Masalah)*, Bandung: Reika Aditama.
- Sunggono Bambang, 2000, *Penelitian Hukum Normatif*, Bandung, CV. Mandar Maju.
- Wimpy S. Tjetjep, 2002, *Dari Gunung Api Hingga Otonomi Daerah*, Jakarta: Yayasan Media Bhakti Tambang.
- Undang-undang Dasar 1945 dan Perubahannya.
- Undang-undang Nomor 25 Tahun 2007 Tentang Penanaman Modal.
- Undang-undang Nomor 32 tahun 2004 Tentang Pemerintahan Daerah.
- Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintahan Daerah Provinsi, dan Pemerintah Daerah Kabupaten/Kota.
- Peraturan Presiden Nomor 27 Tahun 2009 tentang Pelayanan Terpadu Satu Pintu di Bidang Penanaman Modal.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

