

Development of Investment Laws in Improving Indonesia Capital Investments

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Abstract

Foreign investment has decisive role, given that developed countries still need capital, let alone a developing countries need it more.

District and city governments throughout Indonesia, explore the potential of their respective regions in order to carry out promotions, so that they will be able to attract in investment.

Following up on this eagerness, the District/City Government each issues a Regional Regulation (called Perda), in order to increase Local Income (PAD), regardless of the interests of the community and other impacts,

Target to increase PAD is the people and investors in general at the authority of the District / City, finally competing to issue regional regulations (Perda) without taking into account other aspects, which could hinder investment in their respective regions. Among others, regional regulations regarding parking fees, street lighting fees and licensing in the industrial trade and investment sectors.

Keywords: Investment Law Development, Improvement of Capital Investment

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A. INTRODUCTION

The New Order period started from 1967 to 1997. The aggregate of foreign investment invested by foreign investors, from 1967 to 1997 as many as US \$190,631.7 billion and the number of projects financed as many as 5,699 projects. The expanse of foreign investment invested by foreign investors in 1967 of US \$ 210.6 million, with a total of 13 projects. However, in its progress, number of investments that entered Indonesia, from year to year undergone a substantial improvement. Foreign investment that entered Indonesia during the New Order period, the most, which was in 1995, was US \$39,891.6 billion, with a total of 782 projects. Then, in 1997 it decreased by US \$6,102.8 billion. In 1997, the total investment was US \$33,788.8 billion, with a total of 781 projects. The reform period began from 1998 until now the amount of domestic investment invested by domestic investors was Rp. 416.17 trillion, and the projects volume it financed is 2,025 projects. Meanwhile, total foreign investment invested by foreign investors was US \$117.87 billion and sum of projects funded was 10,686 projects. Foreign investment and domestic investment invested in Indonesia have run into a sizeable decline from year to year. In 1997, the amount of foreign investment invested in Indonesia was US\$433.816 billion, and the number of projects it financed was 783 projects. While in 2006, the amount of foreign investment invested in Indonesia was US \$4.69 billion, and the number of projects it financed was 801 projects. When comparing the two data, it is clear that foreign investment invested by foreign investors has decreased by US \$29.126 billion. The amount of domestic investment invested by domestic investors in 1997 was Rp. 119,872 trillion, and the projects number financed by 717 projects. Meanwhile, in 2006, domestic investment amount be invested in Indonesia was Rp. 20.79 trillion, and the projects number financed by 145 projects. When compared to the two data, it is clear that domestic investment invested by domestic investors has decreased by Rp. 99,082 trillion.¹

Efforts to improve legal development in the investment sector are national legal programs, considering that the law in the investment sector is not only a government job, but all central and regional governments have a responsibility to jointly create a good legal culture and economic culture. The investment climate not only guarantees profits for entrepreneurs and the sustainability of the country's development, but more than that investment must have an impact on the community both economically, socially and culturally.

The District and City Governments want to attract more foreign investors to invest their capital in Indonesia, so the chain of bureaucracy must be shortened. Because, the length of the bureaucracy will be a high cost and not economical as well as time consuming, which in turn will weaken Indonesia's competitiveness in the global market. It is very reasonable, if we immediately fix this so that it is not left behind by neighboring countries. The government must be able to raise the confidence of prospective investors to invest their capital in Indonesia.

This trust is highly coveted by investors, especially foreign investors. Besides restoring this trust, the government must also complete the infrastructure. Because, the availability of infrastructure is also a requirement for creating investment. Another thing that is equally important is the issue of industrial relations or labor problems

¹Salim HS and Budi Sutrisno, *Hukum Investasi di Indonesia*, Jakarta, Penerbit PT. Raja Grafindo Persada, 2008, p.1-3.

which turns out to have high quality and legal certainty that protects the existence of investors. According to Indah Fitriani it was stated that:

The main problem in many permits complained by business actors mostly refers to the process of export and import of commodity goods, the process of managing business legality that requires numerous requirements with convoluted and bureaucratic procedures so that it takes a long time and requires no small cost. It does not stop there, often the form of licensing that is produced is not efficient because there are many overlapping regulations between central agencies and Regional Government Work Units (SKPD) and are not nationally applicable.¹

Discussing the above can be drawn the point that the law development of law of the investment field is a wearisome and convoluted thing, the vision as a great nation in terms of the utilization of natural resources and human resources that are more humane and justly absolute requires a law that is reconstructed with ideas and institutions so that they become a good and competitive legal system. Underlying the above is that the Development of Investment Laws in improving Investment in Indonesia Capital Investment was chosen as the title of this study.

B. STATEMENT OF THE PROBLEM

Constructed on the description of the background of the above problems, the legal issues expressed as follows:

1. What form of improvement in Indonesia investment law development compatible with the global order?
2. What are the obstacles to improving investment law development in an effort to implement a strategy to increase Indonesia investment?

C. METHODOLOGY

This study is normative legal research. Normative legal research is conducted to identify legal concepts and principles used to regulate the economy, particularly those used as a basic framework in investment regulation. Normative legal research is used to build a legal construction in terms of improving the development of investment law in increasing investment in Indonesia.

Analyzing a legal system is not easy, the use of legal logic in this study is a thing that must be done, namely directing focus of this study chiefly to compile a description, criteria for evaluating a correct argument about the law, in this case is the legislation about investment system. In this context, deductive logic is used. Deductive logic is used to draw inferences from customary things into individual cases.²

D. RESULTS AND DISCUSSION

1. Form of Improvement in the Development of Investment Law in the Field of Land Reserves and Utilization

Every investor who will invest in Indonesia will be given convenience. One of the facilities is the ease in providing services and / or licensing rights to land. Land covers the surface of the earth that is on land and the surface of the earth which is under water, including sea water. Land rights are rights to certain parts of the earth's surface, which are bounded, with dimensions of two in length and width. Land rights in the UUPA are divided into:

- a. Right of ownership;
- b. Cultivation Rights Title;
- c. Building rights;
- d. Right of Use;
- e. Lien;
- f. Right to Profit Sharing;
- g. Right to Pass;
- h. Rental Rights and others.³

In Article 22 of Law Number 25 of 2007 concerning Capital Investment, it is determined that investors are given the right to use land rights in the territory of Indonesia. Land rights that can be used by investors for investment activities are:

- a. Cultivation Rights Title (HGU);

¹Indah Fitriani, *MakalahEvaluasiAtas Hambatan Investasi*, Universitas Indonesia, be delivered as Internal Audit Unit Member, 26th February 2008, p. 5.

²Poedjawijatna, *Logika Filsafat Berfikir*, Jakarta, PT.Rineka Cipta, 2004, p. 35

³Salim HS and Budi Sutrisno, 2008, *Op. Cit*, p. 313

- b. Building Rights (HGB);
- c. Right of Use.¹

The rights to land can only be renewed after an evaluation is made that the land is still being used and cultivated properly suitable for the circumstances, nature and purpose of granting rights. The provisions of Article 22 paragraph (3) are in line with the land social function as stipulated in Article 15 of the Agrarian Basic Law, Law Number 5 Year 1960, namely that the land must be properly maintained so as to increase fertility and prevent damage.²

Fundamentally not all investment companies can be granted land rights, suitable for the above period, but investment companies that can be granted land rights must fulfill the conditions specified in Article 22 paragraph (2) of Law Number 25 Year 2007 concerning Capital Investment. There are five requirements for granting rights to land, which can be granted and extended in advance as well as for investment activities, namely investment:

- a. What is done in the long term and is related to changes in the Indonesian economy structure that is more competitive;
- b. With the investment risk level that requires the capital return in the long run in accordance with the investment activity type that carries out the risk of returning the old investment;
- c. Does not require a large area;
- d. Use rights to State land; and
- e. Does not interfere with the sense of justice of the community and does not harm the public interest.³

The provision of facilities for land rights is intended to provide convenience to investors to invest in Indonesia. The period of use of land rights is really very long. This is contrary to the period stipulated in Law Number 5 Year 1960 and Government Regulation Number 40 of 1996 concerning Right to Cultivate, Building Rights and Right to Use on Land. In both provisions, the period of use of land rights has been determined.

Improvement of Indonesia investment law development compatible with the global order is guided by Presidential Decree No. 29 of 2004 concerning the Implementation of Investment in the Context of Foreign Investment (PMA) and Domestic Investment (PMDN) through the One-Stop Service System and Law Number 25 In 2007 concerning Investment, and agencies authorized to coordinate implementation of investments in Indonesia were the Investment Coordinating Board (BKPM). The consideration of the appointment of BKPM as the only government agency that handles investment activities in the context of PMA and PMDN is to increase effectiveness in attracting investors to invest in Indonesia. Therefore, with the one-stop service, it is expected that the services to investors will be faster than the previous implementation. The One-Stop Service System means that the implementation of investment consists of investment development policies and planning, investment promotion and cooperation, approval services, licensing and investment facilities, controlling the implementation of investment, and managing investment information systems. Services for approval, licensing and investment facilities within the framework of PMA and PMDN are carried out by BKPM, based on the authority delegation from the Minister / Head of Non-Departmental Institutions that foster the fields of investment concerned through a one-stop service system.

2. Barriers or Constraints to Increasing Investment in Indonesia

Along with the regional autonomy principle, the implementation of regional autonomy must always be oriented towards improving the public welfare as well as the interests and aspirations that grow in society. In addition, the implementation of regional autonomy must also ensure the harmony of relations between the regions and other regions. This means that regions are able to improve joint welfare and prevent inequality between regions. No less important is that regional autonomy must also be able to maintain and maintain the integrity of the country's territory and the upholding of the Unitary State of the Republic of Indonesia in order to realize the country's goals.

The Central Government is deemed not serious in giving autonomy to the regions, because the central government does not provide enough guidance to the regions to carry out their autonomy, but on the contrary almost all local government revenues are withdrawn by the central government. The efforts of the regional government to promote investment are not proportional to the income earned. Most are withdrawn by the central government.

In the course of time there has been a development in which various laws and regulations that were originally intended to regulate various events and relations in the economic activities of the people turned out to create uncertainty in legislation, both in vertical and horizontal relations, especially in investment. The issuance

¹Article 22 Law Number 25 of 2007 on Capital Investment

²Dhaniswara K. Hardjono, *Hukum Penanaman Modal, Tinjauan Terhadap Pemberlakuan Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal*, Jakarta, PT Rajagrafindo Persada, 2007, p. 141

³Article 22 paragraph (2) Law Number 25 of 2007 of Capital Investment

of the Decree of the Minister of Investment / Head of the Investment Coordinating Board Number 37 / SK / 1999, then the authority delegation to grant approval and facilities as well as licensing for the implementation of investment to the Governor of the Province Article 2 states that the delegation of authority referred to in Article 1 paragraph (1) and paragraph (3), can be issued by the Minister of Investment / Head of BKPM or Governor of the Provincial, in the case this is the Chairman of the BKPM in accordance with the application submitted by the prospective investment to the State Minister of Investment / Head of BKPM or Chairman of the BKPM. So the authority is in the Provincial Government or the Chairman of the BKPM. In East Java, known as the Investment Board (BPM), this adheres to the principle of decentralization, which is in line with Law Number 23 of 2014 concerning Local Government. However, the Ministerial Decree is linked to the Presidential Decree of the Republic of Indonesia Number 29 of 2004 concerning the Implementation of Investment in the Context of Foreign Investment and Domestic Investment through a One-Stop Service System. In Article 3, the investment approval, licensing and facility services as referred to in Article 2 letter c in the context of Foreign Investment (PMA) and Domestic Investment (PMDN) are carried out by the Investment Coordinating Board (BKPM), based on delegation of authority from the Minister / Head of a Non-Departmental Government Institution that fosters the fields of investment business concerned through a one-stop service system. The authority to hold investments in both foreign investment and domestic investment is the Investment Coordinating Board (BKPM), which is a government agency that handles these activities, and can be delegated to the Governor / Regent / Mayor and even this authority can delegate service authority. approval, licensing and investment facilities to the Investment Coordinating Board (BKPM) through a one-stop service system. The Presidential Decree returned to the principle of centralization, meaning that all licensing, approval, and facility provision services in foreign investment and domestic investment were centralized to the central government / Chairman of the BKPM.¹

So the authority occurs vertically in legal obscurity in the field of investment, if it is linked between the Decree of the Minister of Investment / Head of the Investment Coordinating Board Number 37 / SK / 1999 concerning the delegation of authority to approve and facilities as well as licensing the implementation of investment to the Governor of the Province which is treated as decentralization, this is very contrary to Presidential Decree No. 29 of 2004 concerning the implementation of investment in the context of foreign investment and domestic investment through a one-stop service system, and this adheres to the principle of centralization because of the investment in investment foreign and domestic investment, with the authority of the central government carried out by the Investment Coordinating Board (BKPM). So in overcoming this by returning to the principle of Lex Superior DerogatLex Inferior, it means that the applicable law is higher ignoring lower laws. Then what applies is Presidential Decree Number 29 of 2004 concerning the Implementation of Investment in the context of foreign investment and domestic investment through a one-stop service system.

In each business activity, regional taxes and levies are imposed with the aim of merely increasing Local Revenue (PAD) in each District / City in their respective regional development, in addition there is a conflict between the provisions of the District / City one with the provisions of other District/ City. This relationship occurs horizontally, there is an unclear authority in the district/ city of local regulations whose equivalents are conflicting each other.

E. CONCLUSION

Based on the above depiction, it can be concluded as follows:

1. The form of improvement in the Indonesia investment law development that is in compatible to the global order begins with Law Number 1 of 1967 concerning Foreign Investment (PMA) and Law Number 6 of 1968 concerning Domestic Investment (PMDN), which then continues with the issuance of Presidential Decree Number 29 of 2004 concerning the Implementation of Investment in the Context of Foreign Investment (PMA) and Domestic Investment (PMDN) through the One-Stop Service System. The form of reconstruction of the capital investment law is the issuance of Law Number 25 of 2007 concerning Investment which regulates domestic investment and foreign investment. The agency authorized to coordinate the implementation of investment in Indonesia is the Investment Coordinating Board (BKPM). The consideration of the appointment of BKPM as the only government agency that handles investment activities in the context of PMA and PMDN is to increase effectiveness in attracting investors to invest in Indonesia. Therefore, with the one-stop service, it is expected that the services to investors will be faster than the previous implementation. The One-Stop Service System means that the implementation of investment consists of investment development policies and planning, investment promotion and cooperation, approval services, licensing and investment facilities, controlling the implementation of investment, and managing investment information systems. Services for approval, licensing and investment facilities within the framework of PMA and PMDN are carried out by BKPM, based on the authority delegation from the

¹Made Warka, *Ketidaksinkronan Hukum Menghambat Investasi*, Surabaya, Untag Press, 2007, p. 70

Minister / Head of Non-Departmental Institutions that foster the fields of investment concerned through a one-stop service system.

2. Along with the principle of regional autonomy, the implementation of regional autonomy must always be oriented towards improving the public welfare as well as the interests and aspirations that grow in the people. In addition, the implementation of regional autonomy must also ensure the harmony of relations between the regions and other regions. This means that regions are able to improve joint welfare and prevent inequality between regions. No less important is that regional autonomy must also be able to maintain and maintain the integrity of the country's territory and the upholding of the Unitary State of the Republic of Indonesia in order to realize the country's goals. The granting of broad authority will fail, if the District/ City Government solely competes to increase Local Income (PAD), regardless of other impacts, which often creates tensions in the management of their respective regions. The target of increased PAD is the community and investors in general. Based on the authority possessed by each District/ City regional government issues a Regional Regulation (Perda). In order to increase Local Income (PAD), such as in determining taxes and levies in the container of the Unitary State of the Republic of Indonesia, which is specifically in the authority of granting approvals and facilities as well as licensing the implementation of investment. With the authority of each District / City, the District/ City governments are competing to issue regional regulations (Perda) without taking into account other aspects, which can hinder investment in their respective regions. As with the existence of regional regulations governing parking fees, street lighting fees and licensing in the industrial trade and investment sectors.

F. Suggestions

1. So many obstacles that arise related to the investment application, especially foreign investment, provide a real illustration that is not easy to attract investors to invest in Indonesia. The availability of a variety of infrastructure that is sufficiently adequate is not the main guarantee to be able to attract the capital but also requires various incentives to encourage more investment applications to Indonesia. In other words, it is necessary to develop investment, especially foreign investment so that it can eliminate every obstacle that arises and becomes a limiting factor in attracting foreign capital to invest in Indonesia.
2. The flow of (foreign) investment into a country is usually strongly influenced by a fairly conducive investment climate such as political and security stability, abundant natural resources, skilled labor, open and market-oriented economic and financial policies. In addition to the issue of protection for the interests of foreign investors, is the crucial thing in creating a healthy (foreign) investment climate is the forms of promotion offered by the host country. The forms of promotion can also take various forms, both forms of tax and non-tax incentives. In practice bilateral agreements are carried out between countries regarding promotional efforts and protection of (foreign) investment activities. Indonesia itself needs to sign various bilateral agreements concerning promotion and protection in the field of investment with many countries.

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