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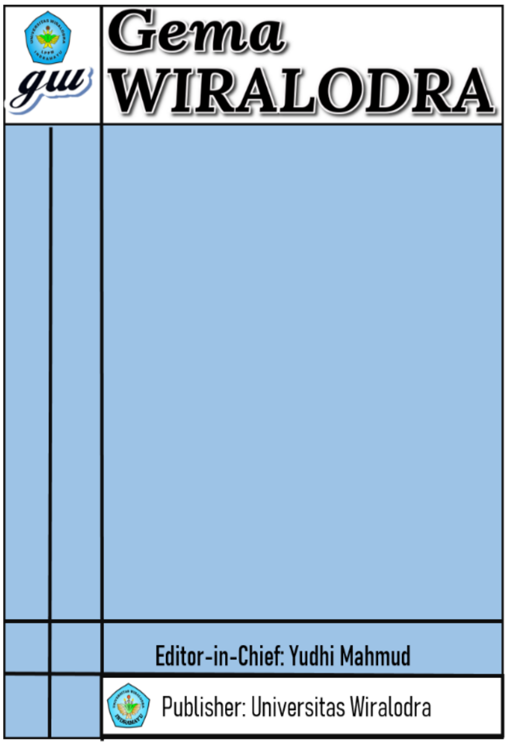

Implementation of direct investment law in Indonesia

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Orginal Article

Implementation of direct investment law in Indonesia

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Abstract
By making the best use of investment and utilization of domestic and foreign capital, which is primarily directed at rehabilitation, renewal, expansion and development of new developments in the field of production of goods and services, our nation will be able to obtain the capital needed for economic development through investment. As a result, public capital is fully mobilized. The following are the objectives of this research: (1) To find out how the Investment Law is implemented in Indonesia; (2) To find out what obstacles the Indonesian Investment Law faces in its implementation; (3) To learn how to deal with the challenges posed by the implementation of Indonesia's Direct Investment Law. A qualitative normative juridical approach using primary data and secondary data is a research method. Article 2 of Law no. 25 of 2007 reflects the research findings: The provisions of this Law apply to all investments made within the territory of the Unitary State of the Republic of Indonesia. Weaknesses of legal institutions that become obstacles; in the legal system. Commitment to creating legal certainty through public information disclosure, while still paying attention to the interests of the community, is an effort that can be made to overcome this problem.
Keywords: Law, Implementation, Investment

1. Introduction

The ability of the economy to increase income equitably significantly impacts the community's social welfare. According to the Presidential Decree (2005), although macroeconomic stability was relatively normal before 2004, the increase in economic development and stability was not enough to improve the welfare of citizens. Capital, especially capital from productive projects, is needed to accelerate economic development towards stability and growth. Because foreign aid is minimal, and one must be careful when only anticipating capital. This is because the interests of one country are undoubtedly different from those of other countries, so our foreign policy differs. According to Kartasapoetra (1985), geographical location, population, wealth of natural resources, history of the struggle for independence, national interests at a certain period, and the international political situation are differentiating factors. By making the best use of Investment and utilization of capital within and outside the country, which is most importantly shown in efforts to rehabilitate, update, expand, and develop new developments in the field of creating goods and services, our nation will be able to obtain the capital needed for economic development through Investment. As a result, all public capital is mobilized. Our nation will be able to obtain the capital needed for economic development through Investment. As a result, all public capital is mobilized. Our nation will be able to obtain the capital needed for economic development through Investment. As a result, all public capital is mobilized.

Regarding efforts to raise capital through Investment, between 2001 and 2003, investment incentives to create capital in economic development only increased by 3.5 percent and 2.1 percent per year, and the investment rate only reached 69.2 percent until 2003. Compared to the amount invested in 1997 (Perpres, 2005). Investment is a way of accumulating capital that significantly impacts Indonesia's economic growth. However, it is estimated that economic growth in the next five years will be 6.3% to 6.8% and will continue to increase to 7% or more if global economic recovery can be achieved faster. Despite the reality that Investment

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significantly impacts economic development, investment development in the future will experience quite heavy external obstacles. One of them is the trend of shrinking global investment inflows.

Meanwhile, China, Vietnam, Thailand, and Malaysia compete with Indonesia and are more attractive investment destinations (Roshidah, 2014). Even though Indonesia has enormous capital, a rich culture, natural energy resources, and people with unlimited creative abilities who acquire better learning over time, crises and challenges have turned into opportunities and possibilities (Attachment to Presidential Decree, 2010). Moreover, Malaysia, which is entirely competitive with Indonesia, is a more attractive investment destination (Rosyidah, 2014). Even though Indonesia has enormous capital, cultural wealth, natural resources, and people with unlimited creative abilities who get better learning from time to time, crises and challenges have turned into opportunities and opportunities (Appendix to Perpres, 2010). Moreover, Malaysia, which is entirely competitive with Indonesia, is a more attractive investment destination (Rosyidah, 2014). Even though Indonesia has enormous capital, cultural wealth, natural resources, and people with unlimited creative abilities who get better learning from time to time, crises and challenges have turned into opportunities and opportunities (Appendix to Perpres, 2010).

Investment objectives can be achieved if the supporting factors limiting Investment can be overcome, including through Investment to increase national economic development, generate jobs, and stimulate the people's economy. Investment is part of the implementation of the national economy. Legal certainty in the field of Investment, a very competitive economic economy, a conducive business atmosphere in the field of employment, and business security are the benefits of increased coordination between central and regional government institutions (Rahayu, 2019). According to Hulman (2017), several aspects influence Investment, including:

1. Political elements

When investors put their money into something, this is one of the determining aspects. A conducive business atmosphere for investment efforts, especially foreign Investment, is determined by this aspect. The political atmosphere in Indonesia, which has recently been less than usual and uncertain, has reduced investor enthusiasm

2. Financial Factors.

The investors' desire to invest is also strongly influenced by economic factors. Economic and political factors will have a significant impact on each other. The country's tense political climate will negatively affect business conditions and economic results. Consequently, investors will naturally be apprehensive about investing their capital in a country whose economy is declining. The monetary aspect of the economy also has a significant impact on the desire of investors to invest their capital.

3. Legal aspect.

Investors also consider legal or juridical factors, which are significant. This relates to the protection of government investment activities. A decline will influence investors' desire to invest capital in domestic legal authority. The enforced legal system must create predictability, fairness, and efficiency to attract investors to invest their capital.

The importance of Investment is growing in the era of globalization, especially for developing countries like Indonesia, due to increasingly fierce and competitive investment competition (Dawam, 1995). The need for large development capital is often a significant problem in every developing country, including Indonesia. When this capital cannot be obtained domestically, it can be obtained through Investment and foreign debt from other countries or international organizations. As development capital, Indonesia is very dependent on foreign debt; up to the third quarter of 2006, the debt amounted to US$ 128.36 billion. Meanwhile, serious problems still need to be solved in the investment industry. The decline in investment

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growth since 2005 indicates poor investment performance. Whereas negative growth of fixed capital in GDP during the third and fourth quarters of 2006 indicates investment performance. Investment realization decreased by 47.6% for PMA and 18.57% for PMDN, respectively, indicating a decline in investment performance. According to information provided by the Investment Coordinating Board (BKPM), the realization of capital investment in 2006 was still being determined, with the realization of domestic investment (Perseveral Business License) reaching IDR 13.55 trillion in January 2006, or down 18.57 percent from the same period in 2006. 2005. Realized foreign Investment shrank by 47.6%.

According to Media Harian (2006), a linear correlation exists between opening new jobs and a decrease in realization. Although investment conditions are said to have improved, a closer look shows that in 2005, 8.55 billion US dollars were invested in 785 projects by foreign investors. In addition, foreign Investment increased by 4.48 billion from January to October 2006, investing in 770 projects. However, this amount is insignificant compared to the amount of Investment received by Indonesia before the crisis, when the country's economy was still in its prime, with an average development rate of 7.5%. Various aspects, including one support this tremendous economic development) support for trade and investment deregulation policies, 2) areas that make it easier for businesses to proliferate, and 3) international confidence in the expertise of domestic economic actors to carry out various joint ventures. The facts mentioned above have made Indonesian people more aware of the typical logic of business people. According to Aditiawan (2017), they prefer countries that make it easier to do business there and guarantee investors that the money they invest will be returned with increased profits.

According to Sarbini (2018), referring to Reilly & Brown's definition of Investment, Investment plays a very strategic role in the economy. Consequently, high economic growth cannot be anticipated without adequate Investment, and economic prosperity can never be more significant. Investment, according to Reilly and Brown, is a commitment to hold current assets for the next several years in order to obtain income that can replace the sacrifice of investors in the form of 1) assets at a particular time, 2) inflation rate, and 3) Uncertainty of future earnings.

The following problem formulations were derived from the background presented: 1) how is the investment law implemented in Indonesia? 2) What obstacles hinder the implementation of the direct investment law in Indonesia? 3) What is the strategy for dealing with the challenges posed by implementing the Direct Investment Law in Indonesia? These issues have led to the following objectives: 1) To study the implementation of the Direct Investment Law in Indonesia; 2) To find out what obstacles are faced by the Indonesian Investment Law in its implementation; 3) To learn how to deal with the challenges posed by the implementation of Indonesia's Direct Investment Law.

2. Methods

The research method uses a normative juridical approach, which examines theories, concepts, legal principles, and relevant laws and regulations based on primary legal materials. The library approach is another name for this method, which involves studying relevant books, laws, and other documents. Primary legal materials, secondary legal materials, and tertiary legal materials collected through library research are the secondary data used. After that, the data was edited and processed through data entry, then analyzed qualitatively. The selection of high-quality data for the purpose of providing answers to the questions posed is the goal of qualitative data processing methods. The presentation is done by using descriptive analysis.

3. Results and Discussion

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The reflection provided by investment in this country can be compared with that of foreign investment. The difference lies in the domestic investors who have capital, while foreign investors have more. Consequently, regulatory policy is analogous to a stepchild in which the government prioritizes foreign investors rather than local ones. If we look at how appropriate the government's policy regarding joint venture rights between local entrepreneurs and foreign entrepreneurs is not explicitly stated, then in general, we can see that the Law is clear and firm because local interests take precedence over foreign interests to transfer technology, data, professionalism, as well as managerial skills.

In previous regulations, there is a mechanism for regulating share ownership of national industries and ownership of most foreign industries. It needs to be clarified from the latest PMDN how many shares are owned by locals or foreign investors. Investors are welcome to enter the business sector without restrictions for the common good. However, the latest regulations. Law No. 27 of 2007 regulates the principles of open and closed business, which apply both to investment within the country and abroad.

Therefore, there is no distinction between domestic and foreign investors in Law Number. 25 of 2007. Thus, there is no nationalization of local companies which are joint ventures with foreign companies, and the principles controlling foreign investment and investment in the country are the same in terms of business fields that are strictly regulated, open and closed, where time limits the business is not regulated strictly and necessarily. Even the mechanism for buying back capital and foreign exchange, concessions in business, mechanisms for regulating foreign workers, and other related terms and regulations are subject to government regulations.

The existence of the Indonesian nation during the colonial period of three and a half centuries and the success of the colonialists in the long term in building an economic structure that was in line with colonial interests cannot be separated from the historical context of article 33 of Law no. UUD 1945. With the expansion of trade in Central European countries and the principles of international capitalism, resources from various regions were extracted and then transferred to colonial countries in the colonial economy. Until now, this is happening. As a result, the structure of the Indonesian economy is understood by foreigners, Europeans, Easterners, and natives who are the lowest class.

Article 33 of the 1945 Constitution exemplifies the State's ability to intervene in economic development, reversing the previous economic structure. Jukia observes historical evidence that shows that Investment Law No. All of them wanted equal rights in territorial aspects and the revival of the social structure of society as if deliberately intended to deny the State's right to correct the colonial economic structure. Suppose it is legal, no. UU no. 1 of 1967 laid the foundation for a return to colonialism. The procedure was refined by Law 25 of 2007.

Applying Article 33 of the 1945 Constitution offers a solution to this nation's problems if implemented correctly. As a model for interpreting Article 33 paragraph (2) 1945, one option is to dissolve the BUMN ministry and instead form an independent BUMN development agency. Therefore, state-owned enterprises must be organized into independent bodies to develop BUMN if the State wants to manage production branches that affect the people's ability to earn a living. If new investment regulations are implemented, the macroeconomic system will be damaged.

UU no. Because it is a model of neo-colonial economic colonialism that contradicts Article 33 of the 1945 Constitution, Law No. 25 of 2007 may not be implemented in its entirety. UU no. 25 of 2007 was born when the domestic and foreign national investment declined, and unemployment was at an all-time high. The lack of attention to Indonesia as an investment destination and declining national investment support the urgent need for highly transparent laws and incentives for foreign capital to invest in Indonesia.

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The government's low credibility among investors in overcoming investment obstacles, such as infrastructure, energy, and bureaucratic obstacles, is one of the leading causes of the decline in national investment. This regulation is supposed to serve regulatory or regulatory purposes, but in its current form, it combines promotion and regulation. This Law expresses a strong desire to open up to foreign investors. This exemplifies the government's panic over the deteriorating quality of economic development and bureaucratic decisions that should be effective, clean, and progressive. The Washington Consensus emphasized budget discipline, liberalization of interest rates and exchange rates, trade liberalization, liberalization of foreign investment, privatization, and reduction of the position of government, which has guided Indonesia's economic development so far. Economic inequality is severe as a result of this development model.

The pyramidal structure of the national economy has developed due to the Washington development model. A small number of large businesses, both conglomerates and multinational corporations, top the pyramid. This big business is semi-monopolistic and oligopolistic and has very high barriers such as capital, privileges, licenses, etc. The relationship between big businesses at the top of the pyramid and small businesses at the bottom of the pyramid is unfair. Large entrepreneurs have exploited the small and medium enterprises under them because of their great bargaining power, capital strength, and ownership of licenses. It is too arrogant to believe that if the business of large entrepreneurs develops and is followed by small and medium entrepreneurs, it will not align with the facts.

Solutions to poverty and unemployment that have been proposed so far have yet to be successful. Fundamentally, trade policies, industry, and investment arrangements are related to poverty and unemployment. The government believes that the inflow of investment will reduce poverty and unemployment. According to the facts, more than 54% of the unemployed have no formal education and only have junior high school education. From an Indonesian socio-economic perspective, the new Investment Law cannot answer the problems currently facing the country, and it is even feared that it will worsen the problems that have already arisen. This Law has many shortcomings, so that it can become a problem for the national economy.

Based on the results of the literature study carried out, research results were obtained to answer the problem formulation:

Implementation of Direct Investment Law in Indonesia

In direct investment legislation in Indonesia, the following policy instruments are used to regulate controls or restrictions:

1. Capital restrictions and foreign business entry
2. Limitation on the number of foreign shareholdings.
3. Special treatment for investors from abroad
4. Operational restrictions include minimum export obligations and the amount of domestic materials used (local content requirements).
5. Incentives for investment, such as tax breaks;
6. Article 2 Law no. 25 of 2007: Investment in any sector within the territory of the Republic of Indonesia is subject to the provisions of this Law.

To determine whether it still meets the latest requirements, the regulations and regulators that apply it must be reviewed occasionally. Outdated regulations that no longer meet current requirements should be designated as "sunset laws" and, as a logical next step, replaced with more appropriate regulations through some sunset mechanism. This is intended so that direct investment policies can follow the industrial policy model and efficiently and effectively achieve their goals. To national interests, policies can be implemented through regulations or vice versa through deregulation. Privatization of BUMN businesses regulated in PP No. 59 of 2009 reflects the globalization trend in direct investment and became a hot topic of national

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economics and politics in Indonesia at the end of the 20th century and continues to this day. As a sovereign country, Indonesia is free to regulate all aspects of incoming foreign capital, from entry to exit, including direct investment (also known as "hot investment") (Winata, 2018).

Obstacles faced in the implementation of the Direct Investment Law in Indonesia

In direct investment, the consistency of policy formulation and implementation must be guaranteed to provide certainty to investors. In addition, each policy and its amendments must be easily accessible by applicable laws and regulations regarding public data disclosure. Also, coordination is needed between the central and regional governments, especially in formulating these policies. To improve the performance and position of the Indonesian legal system, which faces several fundamental weaknesses, efforts to implement the policies above must be accompanied by appropriate legal arrangements.

The obstacles faced in implementing Direct Investment Law in Indonesia are 1) Weakness of human energy resources in the legal field, which includes moral integrity, reliable skills, intellectual maturity, and wisdom; 2) Weakness of the legal system; 3) Flaws in the legal system; and 4) Weaknesses of alternative dispute resolution. To produce a conducive and healthy investment atmosphere, immediate efforts are needed to change or reform all these aspects because there are several fundamental areas for improvement. The legal culture of society that was previously passive must be improved to support legal, regulatory, and policy reform efforts. This is due to the participation of citizens in the implementation of transparency as control from citizens to the government, which produces terms and policies in the investment sector (Melisa et al., 2017).

Strategy to deal with the obstacles encountered in the implementation of the Direct Investment Law in Indonesia

Legal, regulatory steps that can help create a conducive and healthy investment climate need to be directed or emphasized on: 1) aspects of legal culture and philosophy; 2) elements of material Law, whether written customary Law, jurisprudential or unwritten; 3) components of the legal system which include legal institutions, management and human resources (legal administration); 4) components of infrastructure and facilities needed. One of the provisions for increasing investment competitiveness is the completion of market-friendly and pro-market legal regulations, which include regulations regarding taxes, customs and excise, management of natural energy resources, employment security, heritage protection, and legal foreign ownership or formal and intellectual property rights. Also, the commitment to realizing legal certainty through openness and disclosure of public data and resolving disputes through legal and non-legal processes based on justice and legal certainty by always paying attention to the community's interests is no less significant. The efforts mentioned above are complicated because of the many challenges posed by both the legal culture of citizens and the legal culture of law enforcers and policymakers in implementing laws and regulations. (Harjono, 2012).

The following are examples of obstacles that can be identified: 1) a system of laws and regulations that are inconsistent with the national legislation program (prolegs), so that the Constitutional Court of the Republic of Indonesia must continue to examine them substantively; 2) The implementing apparatus is attached to the interest factor; Intervention occurred in the form of "pressure" on law enforcement officers; The souls of retired law enforcement officials are affected by collusion; Legal and regulatory defects are exploited; and third, the existence of a coordinated group of parties with special interests in direct investment. The systematic steps outlined below are necessary to build an excellent legal culture and a healthy investment environment:

Through programs and initiatives such as community development and cooperative social responsibility programs, policies and regulations are created to bring the business world closer to citizens (Melisa et al., 2017). This confirms that investment activities are not only focused on the interests of shareholders but also the interests of users (stakeholders). Because the enforcement of legal regulations depends on legal culture, it is hoped that the legal culture of citizens can be more global: the legal sub-culture of members of society is also influenced by various aspects, including economic interests, status and position, educational background, area, culture, religion, and even political interests. The behavior of citizens towards the Law and the legal system, beliefs, thoughts, thoughts, and expectations are also influenced by this matter.

4. Conclusion

An economic system that has embraced the ideology of economic liberalism in terms of the basics of the financial system illustrates the strength of international market liberalism. Because of its dependence on donor countries, Indonesia, like a typical developed country, inevitably has to lay the foundation for forming this liberal system in Indonesia. Meanwhile, there are many provisions in Law Number. 25 of 2007 which is contrary to the spirit contained in Article 33 of the 1945 Constitution, and one of them in Article 22 of Law Number. 25 of 2007, which has been partially annulled for reasons by the Constitutional Court (in Constitutional Court Decision Numbers 21 and 22/ PUU-V/ 2007, Tuesday 25 March 2008).

Similar to the regulations issued by the Truth and Reconciliation Commission (TRC), this regulation must be repealed. UUPM regulations will generally lead to conflicts between laws now and in the future. The legal and regulatory mechanism that covers various aspects reflects this. For example, agreements affect the legal body of investors, labour regulations, and division of work areas between central and regional governments, taxation, and other similar matters. Commitment to producing legal certainty through transparency and disclosure of public data and resolving disputes through legal and non-legal processes based on justice and legal certainty while always taking into account the interests of citizens is a strategy to overcome these obstacles.

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