

Arrangement of Foreign Capital Investment in Industrial Development Based on Social Capital

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Abstract--Indonesia is a developing country that strives to realize social welfare with justice. Investment is a means used in realizing social welfare with justice. This study aims to determine foreign capital investment arrangements in Indonesia. The problems in this study are (1) Why does foreign capital investment in the industrial sector in Indonesia not involve the participation of the local community? (2) What are the arrangements for foreign capital investment in the development of social capital-based industries? The method of approach uses socio-legal juridical approach to the legislation and case approach, the Law approach and the comparison of laws in various countries. Research results show that foreign investment in Indonesia is often rejected by the community, besides that foreign investment does not involve community participation because the surrounding community must be given knowledge to improve human resources, Foreign Capital Investment Arrangements are regulated in Law Number 25 Year 2007 concerning Investment, besides Article 15 letter d regulates the social responsibility of the corporation from the investor.

Keywords: investment, foreign capital, social capital

I. INTRODUCTION

The Republic of Indonesia as a democratic rule of law based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, aims to create a state of life that is prosperous, safe, secure, and orderly that guarantees the equality of citizens. One effort to realize social welfare is to develop the national economy through investment. Investment has a positive impact in the form of economic growth that increases state income measured by the value of Gross Domestic Product (GDP) or Gross Regional Domestic Product (GRDP) to measure regional domestic income. The positive impact of investment in the social sector is the opening of employment opportunities that can reduce unemployment and poverty.

This encourages the government to increase direct investment through foreign investment (PMA) and domestic investment (PMDN) to finance sustainable development. Investment in the manufacturing industry sector is believed to be a sector that can lead other sectors in a democratic economy organized by the principles stipulated in Article 33 paragraph (4) of the 1945 Constitution, namely "togetherness, equitable efficiency, sustainable, environmentally sound, independence, and by

maintaining a balance of progress and national economic unity"

Investment is closely related to good governance. The government has implemented bureaucratic reforms to simplify and streamline licensing service procedures that satisfy investors. Government policy in an effort to encourage investment development is realized through a set of regulations to regulate the implementation of investment in Indonesia. In the past (1967-1998), the intended set of regulations included, among others:

- 1) Law Number 1 of 1967 concerning Foreign Investment (PMA);
- 2) Law Number. 6 of 1968 concerning Domestic Investment (PMDN);
- 3) Law Number 11 of 1970 and Law Number 12 of 1970;
- 4) Deregulation policies in the investment sector such as: Package 6 May 1986, Pact 1993; and
- 5) Government Regulation Number 20 of 1994.

After the reformation in 1999, the government made a regulation on foreign investment (PMA) which will enter Indonesia by issuing Law Number 25 of 2007 concerning Foreign Investment (PMA) as an update to Law No. PMA. 1/1967 which was judged to be out of line with the needs and development of the situation. The new PMA law is expected to provide investors with greater certainty and legal protection, as well as ease of licensing in investing for local and foreign investors.

In addition, the government also provides guidelines or restrictions on investors, including regulation of investment as regulated in Article 16 letter c of Law Number 25 Year 2007 concerning Investment, which states that "Every investor is responsible for creating climate fair competition, prevent monopolistic practices, and other things that harm the country."

Based on Article 16 letter d of Law Number 25 Year 2007 concerning Investment reads, "Every investor is responsible for protecting the environment". If an Investment does not perform its obligations, administrative sanctions may be regulated in Article 34 of Law Number 25 Year 2007 concerning Investment, namely:

- a) Written warning;
- b) Limitation of business activities;
- c) Freezing of business activities and/or investment facilities; or
- d) Revocation of business activities and/or investment facilities.

These regulations are signs that must be considered for the government in issuing permits for investment and investors in their business operations. In the midst of the difficulty of increasing investment, the regulation has not yet been tested, to what extent it can pose obstacles in its application to increase investment. Since 2007 until now there has been no change regarding the foreign investment law.

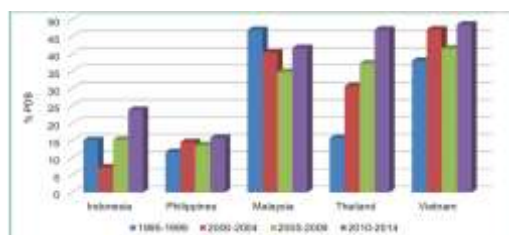
From the perspective of Law Number 25 Year 2007 Concerning Foreign Investment (hereinafter referred to as the PMA Law), it becomes clear that PMA is a complex and multi-dimensional phenomenon that includes four dimensions of development, namely: economic, social, environmental, and cultural appropriate studied in depth. The social and cultural dimensions are clearly stated in Article 15 letter b regarding "Corporate Social Responsibility (CSR) of investors, and Article 15 letter d concerning" investor obligations to respect the cultural traditions of the communities around the investment location".

The study of PMA phenomena is needed in order to reconstruct investment regulations in the industrial sector at present (*das sein*) which according to ontological assumptions developed by researchers are not in accordance with what they should (*das sollen*). Most developing countries including Indonesia require direct investment in the form of Foreign Direct Investment (FDI) or Foreign Direct Investment (FDI) to drive domestic economic growth and finance development. PMA plays an important role in filling the gap between domestic savings and development investment needs, which in 2014 the investment gap was 3.1% of the Gross Domestic Product (GDP).[1]

PMA is clearly a positive influence in driving the domestic economic growth of recipient countries. The *host positive* influence of PMA is a key factor for efforts to build capital markets in host countries. The presence of the capital market will reduce the risks inherent in domestic investment related to the adoption and transfer of new technology.[2]

In addition, FDI is relatively more stable against the effects of the global economic crisis compared to portfolio investment. These things make FDI a necessity that cannot be denied by developing countries, including Indonesia. The effect of FDI on economic growth and the development performance of a host country can be measured by the percentage ratio of its contribution to the host country's GDP. Comparative data on the contribution of FDI to the GDP of ASEAN member countries are as follows:[3]

Figure. Comparison of Foreign Investment Ratios To GDP of 5 ASEAN Countries



Compared to Malaysia, Thailand and Vietnam, the ratio of FDI contributions to Indonesia's GDP is still far behind. This reality reflects that when compared to the three countries, the inflow of foreign direct investment is much smaller due to the low attractiveness of Indonesia in the eyes of foreign investors. The issue of foreign investment is not limited to the issue of attractiveness, but also involves factors: investment and business climate, legal certainty and security guarantees against investment risks, supporting infrastructure, regulations and conducive bureaucracy.[4]

In its implementation, there are many investment regulations that are contrary to the law above. This has resulted in several PMA projects being stopped due to disharmony in laws and regulations or being rejected by the community. One of them is the investment project for the construction of a cement factory in Rembang which has stalled. due to public rejection. This situation has implications for the emergence of various obstacles that affect the realization of domestic investment and FDI. Realization of investment becomes unstable and always fluctuates from time to time.

Deregulation is still a sign of the ongoing ambivalent paradigm of government in formulating policies and administering the country. Characteristics and partial reactive oriented toward short-term interests are still apparent. DNI policy is clear evidence of PMA protection and restriction in order to protect the interests of domestic business actors. The DNI formulation often reflects the interests of a group of business actors in certain sectors rather than the interests of the economy as a whole.

DNI is apparently not the only reference in PMA regulations in Indonesia. There are quite a lot of production sectors that are not regulated in DNI but are regulated in other laws and regulations. Often these arrangements overlap or even conflict, both among fellow central government regulations or between central regulations and regional regulations (*perda*), even though there have been fundamental changes to the PMA Law No. 25 of 2007, especially regarding the equal treatment of foreign and domestic investors, as well as guarantees of certainty and legal protection of investments, but in practice there are still many obstacles that hamper FDI inflows into Indonesia.

One of them is PMA regulation through Presidential Regulation (*Perpres*) whose substance contains the Negative Investment List (DNI). At the same time DNI contains two elements, namely: (i) restrictions (restrictions) on business sectors that may or may not be entered by the PMA; and (ii) protection of strategic business fields to be managed by the state or domestic investors. The restriction is based on the political will or policy of the country host to protect (protect) domestic investment. In the perspective of a free market economy, restrictions, protection, and subsidies are conditions that are not preferred and avoided as far as possible by foreign investors because they are considered to disturb the market balance that can threaten the interests of investment and business.

II. RESEARCH METHODS

This type of research is a normative-empirical legal research with descriptive analytical research specifications, namely describing or depicting current events. Descriptive research is studying the problems in society, as well as the procedures that apply in society and certain situations, including the relationship of activities, attitudes, views and processes that are ongoing and the influence of phenomena.[5]

III. FINDINGS AND DISCUSSION

1. *Implementation of Foreign Capital Investment in the Industrial Sector in Indonesia*

In Indonesia PMA has been known since the Dutch colonial era when the Dutch East Indies government opened the opportunity for European companies to invest their capital in the field of plantation business. Pasca Proclamation of Indonesian independence, policies regarding foreign investment experienced high tide and retroactively follows political and economic developments.

The PMA regulation was first regulated by Law Number 78 of 1958 concerning Foreign Investment which was later amended by Law No. 15 Prp. 1960 and was in turn repealed by Law No. 16 of 1965. After two years without a law regulating PMA, was born Law No. 1 of 1967 concerning Foreign Investment which was later amended and supplemented by Law No. 11 of 1970.

The first policy in foreign investment after the proclamation of independence was Law No. 78 of 1958. This law was issued after Indonesia unilaterally canceled the Hague Agreement. The Hague Agreement of November 2, 1949 as a result of the Round Table Conference, which was ratified by the Republic of Indonesia on December 14, 1949 and by the Kingdom of the Netherlands on December 21, 1949, officially ended the Dutch sovereignty over Indonesia and reawakened foreign capital activities which had stalled because of World War II and the Indonesian revolution/war of independence.[6]

Economic development in Indonesia has been running for about 46 years since it was launched by the New Order government in 1970. Over the past half a century has brought changes in Indonesian society driven by economic development with various escalations and dynamics.[7]

The need for Foreign capital is indeed a heavy consideration for developing countries, because foreign capital still contains risks that will be faced by countries receiving foreign capital.

The philosophy behind the policy in PMA is that foreign capital is needed to supplement inadequate domestic capital to turn the wheels of a country's economy. But when foreign capital then becomes the main driver of the country's economy, and even causes economic dependence, hostility often arises PMA. This unfriendly attitude can be realized in a

political decision to nationalize or take over foreign capital.

In Indonesia, there are still constraints on the implementation of foreign capital, namely the rejection of the surrounding community. Research conducted by the author in 4 (four) places as follows:

a) Indonesian Cement Factory in Rembang

The construction of the Indonesian Cement Factory is the construction of a cement factory which is a government-owned red plate. The construction of this factory is motivated by the projection of national cement supply-demand. This is because the government has a duty and target to maintain the stability of cement in Indonesia, especially on the island of Java. Cement consumption on the island of Java continues to increase, so we need a factory located in the middle of the island of Java, so that the supply-demand and distribution on the island of Java is controlled so that the price of cement on the market is stable. PT. Semen Indonesia also has a plan to expand the capacity of the Semen Indonesia Group which is one of the reasons why the establishment of a cement factory and the utilization of the Indonesia Group's cement plant. Plans to expand the capacity of competitors, both existing players and new entrance, both global (foreign) and private players.

But in reality development which should have reached 90% received resistance and resistance from the surrounding community. The rejection seen from the outermost point is the issue of environmental permits, in which the community and Non-Governmental Organizations (NGOs) along with the Kendeng Mountain Concerned Community Network refuse because they are concerned that water sources in the factory area will be lost and will result in continued drought and extreme loss of resources. water in the Kendeng mountain region.

Looking further and deeper, it can be seen that the problems that arise are not only environmental problems, but further at the economic level, where before the factory PT. Semen Indonesia first had illegal limestone miners, where the miners were threatened by the presence of the Factory would disrupt the daily livelihood of miners. Juridical problems were also found that in the in kracht van gewijsde decision the Supreme Court ordered in ruling number 99/PK/TUN/2016 states that cancel the environmental permit and revoke the environmental permit.

b) Eastern O'Green Tires Factory in Karawang

Eastern O'Green Tires Factory located in Permai Permai-Sugiarto Region KM. 68 Kalihurip-Cikampek, West Java, Karawang, Indonesia. Eastern O'Green Tire Factory is a

collaborative project between Shandong O'green Tire, Co.Ltd Group and PT. Vorich Wealth Indo for which the cooperation is worth an investment of 500 million USD which is equivalent to Rp. 4.4 Trillion in which the composition of shares is 75%: 25%.

The Ministry of Industry welcomed the investment made by Chinese investor, Shandong Group by cooperating with a domestic company, PT. Vorich Wealth Indo, to open a tire factory in Karawang. A large investment value reaches 4.5 Trillion Rupiah. The factory began construction in November 2012, in an area of 23 hectares in Karawang. At present the project has not been able to run well, because many encountered obstacles in the field at the time the project was established. Although all the permission and support from the government has been bagged, but it is not spared from that, the role of the community is very important too.

According to the Project Manager that we met, Ms. Tia, there were so many obstacles and the succession of people and groups of people came and went. Difficult understanding of the importance of investment and the benefits to be gained by the surrounding community also raises a problem of its own. The form of the problems faced such as the difficulty of understanding the surrounding community there will be company activities, the concern of the surrounding community will be the impact of company activities such as water source pollution, waste pollution, pollution, operational activities and others, education and outreach to the community will not positive things that will be felt by the surrounding community, such as employment, business fields and others, growing doubts about the sweet promises of employers for the welfare that will be provided by the company to the surrounding community, as well as the validity of customary laws/regulations made by the local environment (coral cadets/local mass organizations), for example, must buy raw materials from local residents where prices and quality do not support, and are obliged to employ local residents while education and experience do not meet the requirements.

- c) Plastic Factory PT. Polidayaguna Perkasa at Merak Mati Regency. Semarang

PT. Polidayaguna Perkasa, which manufactures OPP plastic films, will expand its factory in the Merak Mati area. The land used as location has fulfilled the requirements of the National Land Agency (BPN) which is land intended for industrial areas. The company's direct approach to the community has been carried out, it is estimated that the project requires an area of 5 hectares and added with new highway access.

Like the project in Karawang, the investment project in the MerakMati area is hampered by the culture of the local community. At the beginning of the project, the local community, through the village head, Bp. Sujarwo, responded well to this investment being held in their area. Price negotiations for the transfer of ownership of land have reached an agreement between the company and the affected people (as shown in the figure, the green area). But when they were about to carry out the buying and selling process, local people suddenly competed to raise the price of land from the original price.

According to Mrs. RR.Arumdati, as a PPAT notary who had been appointed by the company, all the documents for buying and selling had been prepared. There are 78 certificates and involved 34 residents in the process of land acquisition. The cancellation of this process also occurred after residents raised prices than previously agreed. Some residents said they were traumatized by a similar project like the Toll Road project a few years earlier, where landowners received very little compensation.

- d) PLTU in Batang Regency

One evidence of conflict between central government regulations and local government regulations occurred in the investment of the PLTU Batang project in Batang Regency, Central Java Province. The Batang Steam Power Plant (PLTU) Project is a Public Private Partnership (KPS) project with an investment of 38 trillion rupiah. This project aims to develop the infrastructure of Central Java Province to accelerate regional economic development.

In this context, the Central Government and the Regional Government are both core stakeholders who must coordinate synergistically based on the division of tasks in deconcentration and assistance as regulated in Article 4 paragraph (1) Government Regulation (PP) No. 38 of 2007 concerning Division of Government Affairs between the Government, Provincial Governments and Regency/City Governments. Based on Article 4 paragraph (1) PP No. 38/2007 is as follows:

"The division of government affairs as referred to in Article 2 paragraph (4) is based on the criteria of externality, accountability and efficiency by taking into account the harmony of relations between levels and/or composition of government".

The Batang PLTU project contract agreement which was signed by the parties and has already begun to be implemented, has been terminated and has been delayed for quite a long time due to the Decree of the Regent of Batang No. 523/306/2011 as an amendment to the Decree of the Batang Regent Regent Number

523/283/2005 Concerning the Determination of Marine Conservation Areas Ujungnegoro-Roban Coastal Area, Batang Regency. Regardless of what interests lay behind the decision of the Batang Regent, the decree was contrary to Article 4 paragraph (1) PP No. 38/2007 concerning criteria for externality, accountability, and efficiency as well as the need to pay attention to the harmony of relations between levels and/or the composition of government.

Regent Decree No. 523/306/2011 also contradicts District Regulation No. Batang. 07 of 2011 concerning the Batang Regency RTRW, and Central Java Regional Regulation No. 06 of 2010 concerning Central Java RTRW 2009-2029. Although it clearly contradicts three types of regulations with different levels of hierarchy, the Regent's decree still cannot be ruled out because of the regent's autonomous rights as Head of Government in his area. It stems from the unclear construction of the authority hierarchy, whether the authority and legal position of the Regent's decision are higher than the authority and legal position of the Central Government in the context of the central project held in the regions.

2. *The Implementation Implementation of Foreign Capital Investment in the Industrial Sector Involving Community Participation*

Investment is defined as any form of investment, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia. The source of investment consists of two, namely in country and foreign. The definition of investment or investment in Webster's Universal College Dictionary, stated "Invest, to put money to use, by purchase or expenditure, in something offering potentials profitable returns or use money, as in accumulating something; to invest large achieve something"[8].

Investments are carried out based on the principles of legal certainty, openness, accountability, equal treatment and do not differentiate between country of origin, togetherness, fair efficiency, sustainable, environmentally friendly, independence, and balance of progress and national economic unity. The investment itself has the aim to increase national economic growth, create jobs, increase sustainable economic development, enhance the competitiveness of the national business world, encourage the development of a people's economy, process potential economies into real economic strength by using funds from domestic and foreign sources, the country, and improve the welfare of the people.[9]

Investment based on the country of origin of investment is divided into 2 (two), namely:

- 1) Foreign Investment/ Foreign Investment
Foreign investors are foreign citizens, foreign business entities, and / or foreign governments that make investments in the territory of the Republic of the Republic Indonesia.
- 2) Domestic Investment Domestic Investment
Domestic/ investors are Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or regions that make investments in the territory of the Republic of Indonesia. [10]

The government is currently actively seeking to increase investment, one of which is by issuing a policy package. However, in the midst of efforts by the government there are actually obstacles with the many regional-level regulations that are suspected as one of the obstacles to increasing investment in the region. This can be caused by interpreting Law Number 23 of 2014 concerning Regional Autonomy by each region in which regions can make their own regulations both in the form of Regional Regulations and Decrees of Governors / Mayors / Regents.

Instead of encouraging investment acceleration to the regions, the fact is that the regional government actually creates a regional regulation which in substance is burdensome for business actors or investors who are trying to expand the business. On one hand, local governments are encouraged to further increase Regional Original Revenue (PAD) which mainly comes from regional taxes and regional levies. Local government efforts to increase PAD precisely by making policies that 'lock' businesses through obligations that are economically very burdensome. Not to mention, most of the regulations made do not have a strong legal basis and are often made overlapping with rules that are on a national scale at the level of the law.

Business circles still complain about the process of obtaining permits and services in several areas that have not experienced significant changes. Complaints and dissatisfaction in the business world at this time have not been completely resolved, especially complaints related to high costs and legal uncertainty for entrepreneurs. with the regional government.

The following is a description of the findings of problems in the regions that make it difficult for the business community to make investments, among others:

- a) Investment policy and implementation
- b) Bureaucratic problems and obstacles.
- c) Uncertainty in the interpretation and implementation of regional autonomy.
- d) Human resources and labor policy issues
- e) High level of corruption
- f) Lack of tax and non-tax incentives
- g) Low guarantee and investment protection
- h) Weak enforcement and legal certainty
- i) Weak coordination between institutions

j) Other problems.[11]

Based on the description above, it turns out there are still many obstacles faced by investors if they want to invest in Indonesia, one of the main things is the regulations in the regions that are considered to be hindering the licensing process. That is due to the existence of regional autonomy where the regions are given the authority to regulate all activities carried out in their respective regions. Therefore the regional government in making regulations in the regions should make regulations that are in line with its parent investment regulations, especially Law Number 25 Year 2007 concerning Investment. Because in the Investment Law it has been clearly regulated investment facilities and facilities obtained by investors.

Besides relying on foreign investment to support economic equality in all regions of Indonesia, the government should immediately fix the following matters so that the welfare of the Indonesian people can be maintained, namely: a) Infrastructure, b) Agriculture, Fisheries, Rumpun Laut, 3) Alternative energy, Human Resource Development (HR)

In other words, globalization which is supported by rapid science and technology has made the world transparent without recognizing national boundaries. With the rapid development of technology, the world community, especially the people of Indonesia continue to change in line with technological developments, from agricultural societies to industrial societies and continue to post-industrial societies that are all technological. Achievement of objectives in the political, economic, socio-cultural and defense and security fields tends to be increasingly determined by the mastery of technology and information, although the quality of human resources (HR) is still the main.

According to Samiun, community participation strongly supports the sustainability of foreign capital investment in Indonesia. This is related to patterns of customs, culture and noble values that exist in the community. Community participation needs to be included in investment activities to facilitate and expedite the investment effort, so that the rejection that usually occurs in the community can be minimized.

Based on the results of research conducted by the author in three factories which contain foreign capital investment, there are obstacles that can be seen that there is business competition that occurs in the community where economic factors are very influential. In addition there are Juridical aspects where there are overlapping regulations, where there are differences in implementation, namely between the center and the regions. The sociological and cultural factors of the community are also very influential on the presence of new factories to be built in an area besides the classic reasons for refusing to

establish factories, namely the problem of nature and the environment.

There are several factors that influence the high and low flow of FDI entering the host country. These factors include: a) Macroeconomic Factors, Infrastructure, Institutional Institutional; Malpractice and Medical Risk.

factors concern the capacity and capability of central and local governments in carrying out government functions to deliver public services, allocate resources for utilization and management. Institutional elements that influence FDI inflows include:

- a) Bureaucratic Services
- b) Regional Regulation
- c) Socio-Political

As we know, two elements of regional government that play a major role in the course of development in the regions are the DPRD as the legislative element and the local government as the executive element. If there is a conflict between these two elements, it will greatly affect the service of the bureaucracy to business actors, and social culture is seen from how much openness the community accepts the business world which is generally carried out by migrants from other regions, how the work ethic of the local community is different from the workforce performance migrants, how easy it is to obtain land tenure rights and how big is the potential for conflict in the community that can disrupt the activities of business actors.

Robert B. Seidman and William J. Chambliss (1982) formulated the concept of the operation of law in the community where the operation of foreign investment law (PMA) works through three domains, namely:

- a) Domain of the regulatory body (President & DPR);
- b) Domain of Sanction Imposing Institutions (BI, OJK, IDX, Related Ministries & Institutions; Judicial Bodies); and
- c) Role Occupant in this case the investor.

HLA Hart,[12] in his book *The Concept of Law* states that: "a legal system is the union of primary and secondary rules", which means "The legal system is a combination of primary rules and secondary rules. Primary rules govern human behavior to do or not do, while secondary rules are rules aimed at officials and are set to regulate how the procedures or procedures implement primary rules "The law is run through primary norms (primary rules), namely: PMA Law No. 25/2007, and secondary rules in the form of: Government Regulations (PP) and / or other relevant regulations. The target of applying primary norms is foreign investors or role holders (Role Occupants), while the targets of secondary norms are law enforcement officers. The validity or validity of a legal norm lies in the secondary rules. These

secondary rules determine when and by whom primary rules are formed, recognized, modified, or revoked. A ruling order can be considered valid as a law, if it fulfills the requirements based on secondary rules.

Penterjemah M. Khozim, Cet. II, Bandung, Nusa Media, 2010, hlm. 124-126.

IV. CONCLUSION

Based on the results of the discussion it can be concluded that foreign capital investment in the industrial sector in Indonesia does not yet involve the participation of local communities due to the main cause of the inadequate local community resources around foreign capital investment. The minimal resources cause investors to choose resources that are reliable and capable in their fields, this is because Foreign Investors will look at the efficiency factor of the use of funds in managing their foreign capital. Another factor obtained based on the results of this study is the legal factor, which has not been regulated in Law Number 25 of 2007 concerning Foreign Investment regarding the participation of local communities in investment and has not been regulated regarding respect for local cultural traditions that have resulted in numerous objections by residents in investments made by foreign investors.

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