

# The Effectiveness of the Presence of *Investment Management Agency* in Indonesia

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## ABSTRACT

The Indonesian government's strategy to deal with the drastic decline in the Indonesian economy is to increase investment and domestic consumption. One of government's modes to increase investment is that the government and Indonesian House of Representatives approve establishment of omnibus law, namely Law Number 11 in 2020 with regard to the creation of job. Foreign investors may not own more than 50% of shares because domestic or domestic investors have the authority and right to own more than 50% of capital. In running business activities, foreign also domestic investors must do their business with fair competition and healthy competition among fellow business actors. Healthy business competition is a very commendable thing. Business Competition in Indonesia is expected during the Pandemic Period to be carried out and run in a Competitive and Innovative manner. The role of Law and Business Competition Policy in encouraging the national economy is very much needed. Fostering great business climate with the role KPPU to supervise the implementation of Law Number 5 in 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition (UULPM) is expected well.

**Keywords:** *Domestic, Economy, Investment, Investment Management Institution.*

## 1. INTRODUCTION

Investment is one of the fundamental indicators that determine the economic growth and development of a country. Harrod-Domar's theory explains that investment holds 2 (two) essential factors for the economy. First, investment has a positive correlation with state income. Increased investment activity increases a country's revenue. Second, investment can intensify the production capacity of the economy through increasing the capital stock. These two things show that investment activities affect demand, supply, and production capacity.<sup>4</sup> increased investment is considered an essential factor in economic development. In addition, investment is one of the essential instruments of national income, gross domestic product (gdp), or pdb. investment increases, then gdp also increases, as well as if investment obeys, then gdp will also decrease.

Indonesia's economic growth year-on-year decreased to 5.02% from economic growth in 2018, which reached 5.17%.<sup>6</sup> one of the reasons is the declining investment performance. this is caused by several things such as too many regulatory problems in Indonesia, overlapping regulations, disharmony of laws between one sector and another, bureaucratic ambiguity, lengthy business licensing processes, and the tendency to deviate from the contents of the legislation. this causes investors from

abroad and domestic to be reluctant to invest in Indonesia. Regulatory ambiguity shows the absence of legal guarantees and certainty in Indonesia. As a result, investors decide to invest in other countries with clear regulations and legal certainty.

To deal with regulatory problems in Indonesia, president of Indonesia, Joko Widodo, from his state address on October 20<sup>th</sup>, 2019, conveyed establishment an omnibus law as the way to solve the problems of overlapping regulations and bureaucracy in Indonesia.<sup>7</sup> omnibus law is a concept that functions as a legal umbrella (umbrella act) to fix the problem of overregulated and overlapping regulations. the covid-19 virus, which is a pandemic by who, hit the world, and had big impact on the development of economic field of all countries in the world in early 2020. The government issued regulations on large-scale social restrictions (psbb) and social distancing arrangements enforced in early april 2020 and an interstate flight ban imposed in mid-february 2020 to deal with the covid-19 pandemic in Indonesia. The implementation of the psbb caused economic growth in Indonesia in the second quarter of 2020 to decline and contract by 5.32%, especially in terms of tourism where the number of tourists who came fell drastically, the number of air and rail passengers also grew negatively, and in terms of public consumption.

## 2. RESULT AND DISCUSSION

Indonesia's economic growth finally experienced retreat in the third quarter of 2020 due to COVID-19 pandemic, with economic growth recorded minus compared to quarter-on-quarter where the GDP figure in the third quarter of 2020 shrank by 3.49%. This situation is reflected in the weakening level of household consumption, declining manufacturing industry, declining trade sector, and declining tourism sector. Furthermore, the income of corporations and business actors also fell due to the decline in people's purchasing power. Several corporations and entrepreneurs ended up terminating their employees.

The Indonesian government's strategy to deal with the drastically declining Indonesian economy is to increase investment and domestic consumption. One of government's modes to increase the investment is that the government and Indonesian House of Representatives ratify the establishment of an omnibus law, that is Law Number 11 in 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law), on October 5<sup>th</sup>, 2020, and then announced on November 2<sup>nd</sup>, 2020. The Copyright Law Work has revised 79 old laws. The Job Creation Law regulates employment affairs, taxation, investment and government projects, simplification of licensing, land acquisition, ease of doing business, research and innovation support, economic zones, imposition of proportional sanctions, as well as facilitating the empowerment and protection of MSMEs and establishing a Lembaga Pengelola Investasi (LPI).

The Job Creation Law was established to attract foreign and also domestic investors to infuse in Indonesia by providing clarity and certainty of regulations, ease of business licensing, and land acquisition that the effectiveness and benefits of the presence of the Lembaga Pengelola Investasi (LPI) in economic development during the Covid 19 period in Indonesia is very supportive and valuable to support the improvement of the Indonesian economy.

The Job Creation Law regulates central government investment, specifically in Chapter X of Job Creation Law on Central Government Investment and Ease of National Strategic Projects by establishing a particular institution, namely the Investment Management Agency (hereinafter referred to as LPI). LPI aims to invite investment from other countries and the economy to support job creation in Indonesia. Each additional 1% of the investment will increase the economic growth by 0.3%, with average job creation of 0.16% and the absorption of 33 thousand workers in Indonesia.

LPI is an agency that has particular authority to carry out investment of central government. LPI is formed and managed by the central government and reports directly to the President. LPI was officially formed at the time of the creation of the Job Creation Law and was officially regulated in Government Regulation Number 73 of 2020 concerning Initial Capital for Lembaga Pengelola

Investasi (hereinafter referred to as PP 73/2020), Government Regulation Number 74 of 2020 concerning Lembaga Pengelola Investasi (hereinafter referred to as PP 74/2020). Government Regulation Number 49 of 2021 concerning Tax Treatment of Transactions Involving Lembaga Pengelola Investasi and/or Entities It Owns (hereinafter PP 49/2021). These three government regulations are derivative rules of the Job Creation Act. LPI as Indonesian Sovereign Wealth Fund regulates the investment and is tasked with planning, organizing, supervising, controlling, and evaluating all investment activities carried out by the central government.

Ida Bagus Wyasa Putra stated, "Investment law is legal norms regarding the possibilities for investment, investment conditions, protection and most importantly directs so that investment can create prosperity for the people." 16 He added that "investment or investment is an investment given by individuals or companies or organizations both domestically and abroad. Investment, in general, can be defined as an activity carried out either by an individual (natural person) or a legal entity (juridical person) to increase and/or maintain the value of its capital, whether in the form of cash, equipment, immovable assets, rights to intellectual property, as well as expertise."

Law Number 25 in 2007 concerning investment (hereinafter referred to law investment) states that "Investment is all forms of investment activity, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia."

Foreign investors may not own more than 50% of shares because domestic or domestic investors have the authority and right to own more than 50% of capital. In running business activities, foreign also domestic investors must do their business with fair competition and healthy competition among fellow business actors. Healthy business competition is a very commendable thing. Business Competition in Indonesia is expected during the Pandemic Period to be carried out and run in a Competitive and Innovative manner.

The role of Law and Business Competition Policy in encouraging the national economy is very much needed. Fostering great business climate by the role of KPPU in supervising the implementation of Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (UULPM) is expected to run well.

### Investment Purposes

The Investment Law contains the objectives of implementing capital investment, there are:20

- a. Increasing national economic growth;
- b. Creating the opportunities of employment;
- c. Encouraging the development of sustainable economic;
- d. Encouraging the capacity of national business for racing globally;

- e. Increasing the capacity of national technology;
- f. Increasing the economic development;
- g. Turning the economic potential into real economy strength by using domestic and foreign funds;
- h. Increasing the people prosperity.

Investment to improve the Indonesian economy by carrying out competitive business activities. The purpose of establishing Monopolistic Practices and Unfair Business Competition Law is used to shield the public interest, as we protect consumers; foster a healthy business climate; assure the certainty of equal business chances for everyone; prevent monopolistic practices and or unfair business competition caused by business actors; as well as creating effectiveness and efficiency in business activities in order to develop the usefulness of the national economy as one of the ways to increase the welfare of people.<sup>21</sup>

### ***2.1 Rights, Obligations, and Responsibilities of Investors***

The Investor Rights.

Every investor got certainty of rights, law, and protection;

Right certainty is a government guarantee that investors obtain rights since investors have conducted the specified obligations.

Legal certainty is government's guarantee to put the law and provisions of the legislation as primary basis in every action and policy to do investment.

Certainty of protection refers to government guarantee for the investors to get protection in conducting investment activities.

Transparent information of the business sectors being operated.

Rights to service; and facilities under prevailing the laws and regulations."

### ***2.2 The Obligation of Investors***

"Every investor has an obligation to apply the principles of great mutual governance; meet mutual social obligations; inform on the activities of capital investment also convey that to the Capital Investment Coordination Board; respect the traditions and culture of the society around where the capital investment activities are conducted; abide by all laws and regulations.

Investor has the responsibilities to:

- a. Ensure the availability of the capital provided from sources that fulfill with laws also regulations;
- b. Manage and settle the obligations and losses if the investor ends or abandons the business activities unilaterally, by-laws and also regulations;

- c. Build a healthy business competition climate, keep against monopolistic practices and the other activities that cause loss to the state.
- d. Defend the living environment;
- e. Build safety, health, comfort, and prosperity for workers; and
- f. Obey the laws and regulations.

### ***2.3 Investment Business Field***

Business activities are used for investment activities, except for business fields or the types of business that are declared closed and opened with certain conditions. Open business fields refer to business fields that are allowed to be invested, both of foreign investors and domestic investors. Closed business fields refer to the specific business fields that are prohibited from being conducted as investment activities. Types of businesses that are closed to foreign investors consist of:

- a. weapons, ammunition, explosives, and war device; and
- b. business sectors that are explicitly determined closed.

Opened business fields are as certain types of businesses that can be used for the investment activities with conditions, such as reserved for micro, small and medium enterprises as well as cooperatives, partnerships, capital ownership, specific locations, special permits, and investors from the Association of Southeast Asian Nations (ASEAN). It can be stated that the effectiveness and benefits of the Investment Management Institute (LPI) in the development of during the Covid-19 in Indonesia are very supportive and helpful to bolster the improvement of the Indonesian economic.

Presidential Decree Number 29 in 2004 with regard to the Implementation of Investment in the Context of Foreign Investment and Domestic Investment with the One-Stop Service System establishes that the implementation of investment in Indonesia is coordinated by the authorized official, namely the Investment Coordinating Board (BKPM). BKPM refers to the government agency that manages the activities of foreign and domestic investments.

### ***2.4 Domestic Investment***

The Investment Law states that "domestic investment (Penanaman Modal Asing/ PMDN is investment activity to run business in the territory of Indonesia carried out by the domestic investors using domestic capital." Domestic investors are individuals who come from Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or even the regions that create the investments in the territory of the Republic of Indonesia.

Parties that can apply for new investment for PMDN are:

- a. Limited Liability Company (PT);
- b. Commanditaire Vennootschap (CV);

- c. Firm (Fa);
- d. Cooperative business entity;
- e. State-owned enterprises;
- f. Regional owned enterprises;
- g. Individual.

The application for new investment for PMDN is submitted to the head of BKPM in duplicate using the Model I/PMDN form. BKPM has standardized the Model I/PMDN form. This is intended to make it easier for potential domestic investors to submit applications to BKPM. The things that potential investors must fill in the application include:

The applicant's information includes the applicant's name, Taxpayer Identification Number, deed of establishment and amendments (notary name, number, and date), endorsement by the Minister of Justice, and complete address.

The project plan includes the line of business, project location, production per year, marketing per year, required land area, human resources, investment plan, source of financing, company capital, project completion schedule, and statement.

### **2.5 Investment Management Agency**

The Investment Management Agency (LPI) was formed to improve the investment climate and ease of doing business to increase foreign direct investment (FDI) entering Indonesia. LPI is the institution that owns particular authority (*sui generis*) to regulate the central government investment. LPI is as the Indonesia Investment Authority (NIA) or the Indonesian Sovereign Wealth Fund (SWF). The presence of LPI is expected to function as a partner who can provide comfort to investors to invest in Indonesia.

There are 3 (three) legal products related to LPI that the government formed on December 15<sup>th</sup>, 2020, as a government effort to accelerate LPI operations, namely:

1. Government Regulation Number 73 in 2020 with regard to Initial Capital for LPI;
2. Government Regulation Number 74 in 2020 regarding LPI;
3. Presidential Decree Number 128/P in 2020 with regard to the Establishment of the Selection Committee for the Selection of Candidates for the LPI Supervisory Board from the Professional Element.

### **2.6 Objectives, Functions, Benefits, and Authority of Investment Management Agency**

LPI aims to improve and maximize the long-term investment value management to bolster sustainable development. LPI regulates the investment and tasked with planning, organizing, supervising, controlling, and evaluating investments.

Benefits of LPI:

- a. Providing economic benefits, social benefits, and/or other benefits
- b. Contribute to the development of the national economy in terms of general and state revenue. LPI can also encourage the economic growth to promote the general prosperity.
- c. Receiving benefits LPI in conducting the activities of asset management can be benefit from the investment returns.
- d. Organizing legal benefits and also creating the jobs the existence of LPI in Indonesia can encourage the foreign investment and open many new job opportunities since the sectors that are being developed will absorb many workers.

### **2.7 Implementation of Authority of Investment Management Agency**

LPI's authority is to put the funds in the instruments of financial and do the activities of asset management activities. Asset management can be in the form of acquisition, management, company restructuring (shares) or even fixed assets, divestment, which is conducted either alone or mutual with the cooperation through the third parties or the establishment of particular bodies both Indonesian and foreign legal entities.

Cooperating with the other parties, including trust fund entities.

Fund provider (the settlor) must authorize the trust fund entity to manage investment with LPI.

Determining potential investment partners

Determination of potential investment partners is carried out by appointing investment partners directly by considering internationally accepted business practices while maintaining good governance.

The criteria for prospective investment partners who can be appointed directly include having a good reputation, having the financial capacity to support their investment commitments, and/or having expertise in the investment field to collaborate.

Giving and receiving loans

LPI can give and receive loans by the provisions of the legislation. d. Managing assets” In doing its obligations, LPI can cooperate with investment partners, investment managers, BUMN, government agencies or institutions, and even the other entities.

Status, Capital, and Position of Investment Management Institutions LPI is an Indonesian legal entity wholly owned by the Indonesian government. LPI is liable to the President. LPI is domiciled and headquartered in Jakarta. LPI may have offices outside Jakarta and the territory of the Republic of Indonesia.

LPI's sources of capital are:

“State capital participation that can come from: cash fund; state property; state receivables from BUMN or limited liability companies; and/or state-owned shares in BUMN or limited liability companies. Other sources, including reserve capitalization, accumulated retained earnings, and asset revaluation gains.”

LPI's capital is set at IDR75,000,000,000,000.00 (seventy-five trillion rupiah) with the following details:48

“LPI's initial capital deposit is in the form of cash funds of at least IDR 15,000,000,000,000.00 (fifteen trillion rupiahs); and

The fulfillment of LPI's capital after the initial capital deposit is carried out in stages until 2021.”

### 3. CONCLUSION

Indonesia's economic growth year-on-year decreased to 5.02% from economic growth in 2018, which reached 5.17%. One of the reasons is the declining investment performance. This is caused by several things such as too many regulatory problems in Indonesia, overlapping regulations, disharmony of laws between one sector and another, bureaucratic ambiguity, lengthy business licensing processes, and the tendency to deviate from the contents of the legislation. This causes investors from abroad and domestic to be reluctant to invest in Indonesia. Regulatory ambiguity shows the absence of legal guarantees and certainty in Indonesia. As a result, investors decide to invest in other countries with clear regulations and legal certainty. The Indonesian government's strategy to deal with the drastic decline in the Indonesian economy is to increase investment and domestic consumption. One of the government's modes to increase investment is that the government and Indonesian House of Representatives validate the formation of an omnibus law, namely Law Number 11 of 2020 concerning Job Creation.

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