Juridical Review on Foreign Investment Conducted Using the Nominee Shareholders Method as Fulfillment of Foreign Investment Terms and Conditions in Conditional Open Business Sector in Indonesia

Daniel Daniel[1,*] Ariawan Ariawan[1]

[1]*Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia*
**Corresponding author. Email: liedanieldjugo@gmail.com*

ABSTRACT
The nominee agreement is an agreement that was born based on article 1319 of the Civil Code as this provision states that there are two types of agreements, namely: named agreements and unnamed agreements wherein this anonymous agreement is still recognized as long as it respects the provisions in force in the law. Civil law, as stipulated in the 1320 Civil Code, and recognized under Article 1338 of the Civil Code as an agreement that binds the parties so that the parties are obliged to heed this agreement in good faith. Investments carried out using the nominee method are not expressly and clearly prohibited because there are two recognized types of ownership, namely: Legal Owner or legal owner and beneficial owner as a settlor or arguably as Principal investor where the capital invested in a company comes from the settlor. as beneficiary owner. legally the name of the nominee is recorded in the articles of association of a company as the real owner before the law while the principal investor is the controller of the nominee. So it is difficult to deny that this method is one way for principal investors to circumvent the provisions and restrictions given by the government for them to control a certain number of shares. So that in its existence this type of agreement still exists and is still developing in the legal ecosystem in Indonesia.

Keywords: *Nominee share arrangement, investment, loophole of limitation investment business field.*

1. INTRODUCTION

In interactions between individuals, there are legal norms which aim to regulate each individual to interact with other individuals in social life in order to create an orderly and peaceful society. To achieve this goal, the government creates those that regulate the interactions between these individuals, both in terms of buying and selling, leasing, debts and receivables, profit sharing agreements and so on. This is further stated in the Civil Code.
With the limitations set by the government as stated in a statutory provision, it certainly causes certain individuals who are very firm in their stance to find a way out by giving birth to new concepts, one of which is the Nominee concept. This concept is one of the reasons that underlie the use of the nominee concept in the legal system in Indonesia. The nominee concept is not yet known in the Continental European legal system currently in force in Indonesia.
The definition of nominee according to Black's Law Dictionary is as follows:

1. "A person who proposed for an office, membership, award or like title, or status. An individual seeking nomination, election or appointment is a candidate. A candidate for election becomes a nominee after being formally nominated".
2. "A person designated to act in place of another usually in a very limited way".
3. "A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others".[1]

The definition of nominee trust is:

1. "A trust which the beneficiaries have the power to direct the trustee's actions regarding the trust property.
2. "An arrangement for holding title to real property under which one or more persons or corporations, under a written declaration of trust, declare that they will hold any property that they acquire as trustees for one or more undisclosed beneficiary. Also termed realty trust".[1]

The explanation of the nominees above, literally, has two different meanings. First, nominee refers to a proposal, or nomination of a candidate or candidate to occupy a certain position, to obtain a certain award, or for other types of candidacy. Second, the nominee provides an understanding as someone who represents the interests of other parties.

This second definition distinguishes a nominee from an attorney, in a situation where the nominee becomes the owner of an object, including interests or rights born of an engagement, which is under its management, while the power of attorney is never the owner of the object, including , which is taken care of by this nominee.[2]

In the concept of the explanation of the nominee above, literally, it has two different meanings. First, a nominee is a proposal, or nomination of a candidate or candidates to occupy a certain position or to obtain a certain award, or other types of nominations. The two nominees provide an understanding as someone who represents the interests of other parties. in this case distinguishes a nominee from an attorney, with the situation where the nominee becomes the owner of a Trust Corpus/an object, the impact of rights or interests born in an agreement made by the Trustee or the person who lends his name for a certain thing.

There are two types of nominee ownership, namely the nominee who is registered and legally recognized as the owner/owner and the foreign investor as the actual owner/or settlor, the party who enjoys the benefits as well as losses arising from the object/goods/Trust corpus owned by Nominee, De Jure Nominee is the holder of the legal right to a certain object, which of course has the right to be able to transfer, sell, encumber, guarantee and take any action on the object in question, while the De Facto investor is not recognized as the owner of the right to the object. the object is legally, and the formation of a nominee can be done in 2 (two) ways, namely:

1.1. Nominee Directly (Direct Nominee)

Nominee formation is directly formed by making and signing a Nominee Agreement between foreign investors and nominees in an agreement. The agreement explicitly and clearly stipulates the granting of trust, authority and obligations from investors/investors to nominees to carry out certain business or business activities on the orders and interests of investors/investors.

As a result of the use of the name and identity of the nominee as the party representing the Settlor may provide compensation for the name-borrowing agreement, the compensation provided by the investor/investor varies and the amount of the compensation depends on the agreement/agreement made by the Settlor Party with the nominee, and the amount of compensation. The nominee agreement is then stated in the form of a written agreement signed by the Nominee with the depositor/settlor as a form of agreement, and the nominee agreement also regulates the provisions that require and/or prohibit the Nominee from doing anything related to the use of the nominee concept.

1.2. Nominee Indirectly (Indirect Nominee)

This type of nominee is not formed from the Nominee Agreement which expressly and clearly gives the nominee the trust and authority of the investor/capital custodian. There are several agreements and powers, in addition to the nominee agreement, which are usually signed by the nominee with the custodian of capital/investor as a supporting component of the agreement and such power of attorney is needed to guarantee, protect and provide certainty to the Investor/capital custodian as the actual owner of the shares owned by nominee legally/legally. It is this agreement which, when linked to one another, will result in a nominee of shares, which is then called a nominee share arrangement.

Where investors/investors can control the nominees. to carry out certain business actions or activities on the orders and interests of the custodians of capital by using deed made notarial or underhanded, such as: Deed of Credit Agreement (Loan Agreement), Pledge of Share Agreement, Cessi Agreement on Dividends , Absolute Power of Attorney for the GMS, Absolute Power of Attorney to Sell Shares on behalf of the Nominee.

Nominee agreements in Indonesia usually use the Nominee share arrangement method which is carried out with a set of documents and agreements known in the Indonesian Civil Law Institution. The nominee share arrangement was born from the principle of freedom of contract in Indonesian law which is strengthened in article 1338 of the Civil Code.

The Nominee Agreement is an agreement where the party depositing funds or what can be referred to as the Beneficiary Owner. Entrusting and entrusting objects (Trust Corpus) that the Beneficiary Owner has to be controlled and quasi-owned before the law by the Trustee/Nominee/legal owner. Trustee/Nominee/legal owner is the owner legally and by agreement and agreement of the parties between the parties.

The agreement used is a Nominee agreement where this type of agreement is a layered type of agreement, this we recognize and based on article 1338 of the Civil Code there is the principle of freedom of the parties to contract (Autonomical Party) which has 3 principles, namely: an agreement made in accordance with the applicable law as law for the parties making it; the agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law; approval must be in good faith. So with the above arguments, the nominee share arrangement agreement should be made and not an act of legal smuggling because there are no rules governing this matter.

The formation of a nominee agreement in practice can be categorized into the formation of a direct nominee agreement, namely by directly making an agreement between which confirms that the ownership of shares in a limited liability company is for and on behalf of another person and the formation of an indirect nominee, namely by making several layers of agreements with the aim of so that the beneficiary can control, receive benefits and indirectly own the shares. Second, the position of the nominee agreement in the rule of law in Indonesia has actually been prohibited from its existence in Article 33 paragraphs (1) and (2) of Law Number 25 of 2007. There is no explicit prohibition in Law Number 40 of 2007 concerning the prohibition of shareholder nominees. make the practice of nominee agreements develop by forming nominees with indirect nominees or simulation agreements that make the nominees difficult to identify and prove.

Based on the description of the background above, the writer is interested in conducting further studies and putting it in the form of a scientific paper with the title "JURIDIC REVIEW OF FOREIGN INVESTMENT DONE USING THE NOMINEE SHAREHOLDERS METHOD AS FULFILLMENT OF FOREIGN CAPITAL INVESTMENT CONDITIONS IN CONDITIONAL OPEN BUSINESS".

2. METHOD

2.1. Type of Research

2.1.1. Research Methodology

Peter Mahmud Marzuki explained that legal research is a process or way to find the rule of law, legal principles that aim to answer the legal issues faced [3]. Literally, the method is defined as the path taken so that the investigation or research takes place according to a certain plan [4]. Basically, the legal research method is a scientific activity based on certain methods, systematics and thinking, which has the aim of studying certain legal phenomena by analyzing the problem [5].

2.1.2. Type of research

The type of research is divided into 2 (two), namely normative legal research and empirical legal research. The type of research used by the author is a normative or doctrinal legal research method. Normative legal research is research conducted to collect and analyze secondary data. In normative legal research, only secondary data sources are used, namely books, diaries, statutory regulations, court decisions, legal theories and opinions of leading legal scholars [3].

2.1.3. Nature of Research

This research is descriptive. Descriptive research means research that aims to describe a symptom, event, event that occurs now or in the past [6]. study objectives, values of justice, validity of the rule of law, legal concepts, and legal norms.

2.1.4. Types and Legal Materials

In general, data sources in research are usually divided into 2 (two), namely data obtained directly from the community (empirical data) and data derived from library materials (normative data). This study uses secondary data sources where the data obtained from normative data. So that the data sources used in this study are:

2.1.4.1. Primary Data

Primary data is data obtained from Authentic and Verified sources where the source is a source with legal force, whether it is the Constitution, Decrees of the People's Consultative Assembly, Laws/Regulations in Lieu of Laws, Government Regulations, Presidential Regulations , Ministerial Regulations, Provincial Regulations, Regency/City Regional Regulations. The Primary Legal Materials that the author uses are as follows:

- Code of Civil law;
- Law Number 25 of 2007 concerning Investment
- Law Number 40 of 2007 concerning Limited Liability Companies
- Presidential Regulation No. 10/2021 concerning Investment Business Sector.

2.1.4.2. Secondary Data

Secondary Data is data obtained from other documents, and in this case the author does not directly take his own data in other words based on data obtained/obtained from other parties or created by parties that have been previously researched including: Legal products, Books, Articles, Journals.

2.1.4.3. Non-Legal Data

Non-Legal data are Legal Materials that can provide explanations for Primary legal materials and/or secondary Legal materials, such as Judicial Reviews, Dictionaries, Encyclopedias.

2.1.5. Data Collection Techniques

Data collection in this study was carried out to solve existing problems so that the materials must be truly reliable and accurate. The method used by the author to collect primary and secondary data is literature study. This literature study was carried out by the author directly and online.

2.1.6. Data Analysis Techniques

The data analysis technique used is a qualitative analysis method, namely all secondary data collected will be analyzed systematically and classified into patterns and themes, then categorized and classified between one data and other data which will then be interpreted to understand the meaning of the data in social situations, and interpretation is carried out from the researcher's perspective after understanding the overall quality of the data.[7]

2.1.7. Research Approach

The approach used in answering the problems that have been formulated is to use a statutory approach and a conceptual approach. The statute approach is carried out by reviewing the regulations, both laws and regulations related to the legal issues being handled. For research for practical activities, the approach of this Law will open up opportunities for researchers to study whether there is consistency and classification for the application of the applicable law. The result of the study is an argument to solve an issue at hand.
Conceptual Approach (Conceptual Approach) originated from the views and doctrines that developed in a science of law. By studying the views and doctrines in legal science, you will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues at hand. The understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issues at hand.

3. DISCUSSION

3.1. Existence of Nominee Agreement in Positive Law in Indonesia

From the results of the research that the author went through regarding the existence of a nominee agreement, it lives and develops in positive law in Indonesia. Indeed, there are no strict and clear prohibitions enshrined in the law, both the Investment Law, in this case the type of investment is a type of foreign investment, as well as the Limited Liability Company law.
As an agreement is the beginning of the existence of a legal action, in this case it is an engagement, which includes two or more parties and subsequently gives birth to rights and obligations or can be called an achievement between the parties contained and agreed to the agreement.
There are several elements of the agreement that cannot be ignored or cannot be ruled out, including:

1. The existence of a rule of agreement, both written (written Agreement) and unwritten (Unwritten agreement)
2. There is a subject who is a supporter of the emergence of the exchange of rights and obligations.
3. There are types of achievements as regulated in Article 1234 of the Civil Code, namely: giving something, doing something, and not doing something.
4. There is an agreement between the parties to the agreement.
5. There are legal consequences arising from legal acts of the agreement in the form of rights and obligations. The right is an enjoyment that can be obtained by the parties, while the obligation is a reward for the rights for the parties. In order to fulfill the terms of the agreement.

The difference in the type of agreement arises from the principle of freedom of contract which is facilitated by the civil law code as stipulated in article 1319 of the civil law code which facilitates two types of agreements, namely: agreements that have a special name and agreements that are not named or not named by a specific name. An agreement that has a specific name is known as a Nominaat agreement, while an unnamed agreement is known as an Innominaat agreement. Innominaat agreement is an agreement that is born, grows and develops in life or it can be said that in practice it exists but is not yet known when the Civil Code is enacted. The nominee agreement is one of the innominate agreements.Article 1319 of the Civil Code stipulates that all agreements are subject to the general rules contained in chapters one and two, book III of the Civil Code. Thus, although the Innominaat agreement is not known in the Civil Code, in its implementation the Innominaat agreement must also be recognized and must also be subject to the provisions in Book III of the Civil Code including the principles contained in the Civil Code. book of civil law laws relating to contract law.
The Innominat Agreement as a type of agreement regulated in Article 1319 of the Civil Code has the following elements:

1. The existence of elements of the rule of law, both written and unwritten;
2. The existence of elements of legal subjects, namely the parties to the agreement;
3. There is an element of legal object, namely the principal achievement in the agreement;
4. There is an element of agreement which is an agreement with the statement of the will of the parties regarding the substance and object of the agreement;
5. There are elements of rights and obligations for the parties as a result of the law arising from the agreement.

The non-regulation of the Innominaat agreement by the civil law code causes the provisions contained in the Innominaat agreement to be regulated by the parties themselves based on a mutual agreement, by sticking to the principles that apply in the principle of freedom of contract. If in its implementation in the future it is found things that are not specifically regulated, the provisions in the civil law book regarding agreements apply.
The Nominee Agreement can be categorized as a form of Innominaat type agreement because this agreement does not yet exist in a specific setting and is not explicitly stated in the articles of the Civil Code. If it only focuses on fulfilling the achievements of the parties involved in the agreement, the Nominee agreement can actually be included in the type of agreement at expense.
In the European continental legal system as adopted as the Indonesian legal system, the nominee agreement is a form of the Innominaat agreement as facilitated by the civil law code. and this Innominaat agreement is not explicitly and/or specifically regulated, but in practice many parties use the Nominee method to invest in Indonesia. In other words, a Nominee is a person or legal entity who lends his name and acts on his own behalf for the benefit of the Beneficiary Owner in a limited sense as agreed.
In essence, the Nominee agreement contained in Indonesia is not a form of agreement that violates the provisions of the

contract law as stipulated in the civil law code, although it has not been regulated explicitly and clearly. However, if there are materials or objects agreed upon by the parties that are not in accordance with the provisions of the laws and regulations in force in Indonesia, then this can cause legal problems in the future. Especially if one of the parties defaults on the mutual agreement as contained in the agreement in question.

Implicitly, a nominee agreement has the following elements:

1. There is a trust agreement from the Beneficiary Owner to the Nominee.
2. The agreement is specific and with a limited type of legal action.
3. The nominee acts as if (as-if) as a representative of the beneficiary owner before the law.

At first glance, the Nominee agreement is similar to but not the same as the granting of power both in general and in particular, this only appears when we look closely, both have differences in their nature, the nominee agreement is a reciprocal agreement, where the parties have an obligation to fulfill achievements to each other. - each party whose names are listed in this agreement. This is because the power contained in the Nominee agreement is more of a last-ditch nature, where the power given emphasizes more on giving the burden of command to the recipient of the power of attorney to carry out the agreed performance. While the power of attorney is generally made based on a unilateral agreement that is volmacht because it only gives the authority to the recipient of the power to represent the giver of the power of attorney. In addition, in granting a volmacht power of attorney, the power of attorney can revoke his power of attorney at any time by referring to articles 1813-article 1819 of the Civil Code. so that it can be understood that the nominee share arrangement or nominee share agreement is an agreement in which the nominee agrees to do certain things for the benefit of and/or with the direction of the Beneficiary Owner.

So that the nominee agreement is one of the existing legal institutions that live and develop in the legal ecosystem in Indonesia. its existence is recognized by the Civil Code as an innominate agreement.

3.2. The use of the Nominee for the purpose of investing in certain business fields is prohibited

From the results of the research that the author went through regarding investment using the Nominee shareholder method

In addressing the development of the investment world in Indonesia, in 2007 Law No. 25 of 2007 concerning Investment (UUPM) was issued which replaced Law No. 1 of 1967 concerning Foreign Investment and Law No. 6 of 1968 concerning Domestic Investment. State, this law is based on four important values/reasons [8]:

1. Legal Certainty or legal certainty is one of the must to create a good and conducive investment climate, in addition to the factors of Economy Opportunity and political stability.
2. The legal system consists of substance, apparatus and legal culture. These three elements have the same role in creating predictability, stability, and fairness.
3. Indonesia's membership in the World Trade Organization (WTO) has led to the renewal of Indonesia's investment law.
4. The substance of the Capital Market Law and its implementation must be comparable to the investment laws in Indonesia's competitor countries in terms of attracting funds to create interest and a conducive situation for foreign investors.

The existence of the law on investment is now better than the previous law because there are several new substances regulated in it, which include the same treatment for investors, both domestic investors and foreign investors, the responsibility of investors capital investment, and sanctions for investors as stipulated in Article 6 paragraph (1) of the Investment Law which states that the government provides equal treatment to all investors from any country conducting investment activities in Indonesia in accordance with legislation. Furthermore, in article 6 paragraph (2) which states that such treatment does not apply to investors from a country that obtains special rights based on an agreement with Indonesia. The provisions are adopted and in accordance with the principles adopted by the WTO's Trade Related Investment Measures (TRIMs).

The substance of this investment law is in line with the WTO principle, namely the most favored nations, namely that a provision imposed by a country must also be applied to all WTO member countries. These provisions are to uphold the principle of non-discrimination adopted by the WTO [9].

In addition to the limitations provided by the government, of course there must be sanctions that follow, the provisions of sanctions in the investment law regulates sanctions contained in article 33 and article 34 of the investment law, where article 33 paragraph (1) states that investment in Domestic and foreign investors investing in the form of a limited liability company are prohibited from entering into agreements and/or statements confirming that share ownership in a limited liability company is for and on behalf of another person. Then in article 33 paragraph (2) which states that in the event that domestic investors and foreign investors make an agreement and/or statement as referred to in paragraph (1), the agreement and/or statement is declared null and void.

The nominee concept is basically an agreement that is not recognized by the continental European legal system that applies in Indonesia. Law in Indonesia is new to the nominee concept and has often used it in several legal transactions since the increase in the number of foreign investment in the 90s. Foreign investors are interested in investing in Indonesia based on the consideration of several advantages, which include abundant natural resources and relatively cheap human resources.

Restrictions by the Indonesian government on investment by foreign parties are one of the backgrounds for the

emergence of the Nominee concept in share ownership, which is widely known as the nominee shareholder. This can be done and can be divided into two, namely the nominee share arrangement and nominee agreement, but in Indonesia more use the practice of nominee share arrangement where the proof of this action can be said to be difficult. eliminating affiliation between one company and another company that already exists or has been established previously. This is because foreign investors generally choose a limited liability company as a form of legal entity that is a forum for their investment activities in Indonesia directly (Foreign Direct Investment). As for the establishment of a limited liability company according to law number 40 of 2007 concerning Limited Liability Companies, it can only be established by two or more people, with a notarial deed drawn up using the Indonesian language, both Indonesian citizens and foreign nationals or Indonesian legal entities or legal entities. foreign. with this condition is the trigger or one of the reasons for the birth of the nominee agreement concept.

But what if we review it based on article 1 paragraph (4) of the government regulation of the republic of Indonesia number 24 of 2018 concerning electronically integrated business licensing services, which reads:

"Business Licensing is a registration given to Business Actors to start and run a business and/or activity and is given in the form of approval as outlined in the form of a letter/decision or fulfillment of requirements and/or commitments."

In this article, we can see that business licenses are permits given to business actors, in order to start and run their business, we can underline that they are given to business actors, business actors are individuals or non-individuals who carry out business and/or activities in certain fields. .

Article 1 paragraph (6) of the government regulation of the republic of Indonesia number 24 of 2018 concerning electronically integrated business licensing services, which reads:

"Business actors are individuals or non-individuals who carry out business and/or activities in certain fields."

In this article, we can understand that business actors are private individuals or natural persons and/or non-individuals, whether in the form of limited liability companies, public companies, regional public companies, other legal entities. So what if we refer to this article business licenses/licenses are given to business actors, both legal entities and individuals. There are various legal entities, but we only focus on limited liability companies with foreign investment using the foreign direct investment method and the Nominee share arrangement method. In this type of foreign investment company, there are restrictions given to maintain domestic economic stability and protect domestic entrepreneurs. The existence of this agreement is certainly not easy to prove because and the existence of this agreement is legal according to the Civil Code, besides that there are several strategies by business actors using share pledge agreements or absolute power of attorney over shares. So that in its Legal Capacity, the Beneficiary owner is the party who has control over the shares that have been entrusted to the Nominee and is the party that limits the actions of the Nominee. And in fact, it is still possible and there is still the practice of using nominees to invest in certain business fields which are limited by the presidential regulation. Legally the agreement or legal action is not prohibited by the civil law code and can be said to be valid because there is no clear and clear prohibition on this action.

4. CONCLUSION

After analyzing the use and presence of nominees in the Indonesian legal system in terms of share ownership by foreign parties. The nominee agreement is an agreement facilitated by article 1319 of the civil law code which implies the existence of two types of agreements recognized by civil law, namely named agreements whose names have been known and have been regulated in the civil law code of conduct and unnamed agreements. or an agreement whose name is not / not yet known by the civil law book but by observing the terms and conditions as stipulated in the civil law book, book 1, book 2, book 3 and book 4. Nominee agreements can be categorized as an agreement that is not named or can be referred to as an innominate agreement, this is because this nominee agreement is an agreement created by the parties by taking into account the 1320 books of civil law which reads as follows:

"In order for a valid agreement to take place, four conditions need to be met;

1. The agreement of those who bind themselves;
2. The ability to make an engagement;
3. A certain subject matter;
4. A cause that is not forbidden".

So that if we refer to this article, this nominee agreement is certainly valid and binding on the parties as stated in Article 1338 of the Civil Code which reads as follows:

"All agreements made in accordance with the law apply as law to those who make them. the agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith.". From this article it can be seen that the agreement or agreement applies as law for the parties who agree to make it. so that such agreement or agreement must be executed in good faith.

We can see this in the indirect Nominee concept mechanism which uses the nominee share arrangement method where the beneficiary owner can control the nominee to carry out certain actions or business activities on the orders and interests of the beneficiary owner by using a deed made privately or notarized, such as:

1. Deed of credit agreement between the principal investor or Beneficiary owner as creditor and nominee shareholder as debtor, in which the loan is used by the debtor to pay the share capital deposit in the company in question.
2. Share pledge agreement between the principal investor or the beneficiary owner as the recipient of the pledge (pledgee) and the nominee shareholder (pledgor), where the shares issued are derived from the money of the

recipient of the pledge which is then pledged to the principal investor or beneficiary owner
3. Cassie agreement on dividends between the principal investor or beneficiary owner and nominee shareholder, in which the rights to dividends are distributed by the company to the nominee shareholder as the shareholder which is then transferred to the principal investor or beneficiary owner.
4. Power of attorney to sell shares granted by the nominee shareholder to the principal investor or beneficiary owner. to be able to sell or transfer shares on behalf of the nominee shareholder.

So, hereby the prohibited nominee agreement is in the form of direct nominee agreement or direct nominee, but it is still possible to practice indirect nominee agreement with indirect nominee as mentioned above. This is possible because of the difficulty of proving this action and this action cannot be categorized as an act of legal smuggling, this is because there is no explicit and clear prohibition on indirect nominees. Therefore, if the act is not prohibited in this case, it is the process of the birth of this agreement. then the agreement can be said to be valid, as mentioned above, there are four conditions for the validity of the agreement and if the conditions for the validity of an agreement are fulfilled then the agreement can be declared valid and born. If we look at the practice, the government still has difficulty tracking this, this is because the government to issue permits only looks at the capacity of legal entities, namely shareholders or in other words only looks at the formal factors, as stated in the articles of association of a limited liability company. and did not see or research more deeply about the source of the funds whether it was really from within the country or from abroad.

REFERENCES

[1] Bryan A, Garner, *Black's Law Dictionary*, Seventh Edition, West group, St. Paul, 1999.

[2] Widjaja, Gunawan, Nominee Shareholders Dalam Perspektif UU Perseroan Terbatas Baru, 2008.

[3] Marzuki, Peter Mahmud, "Penelitian Hukum", (Jakarta: Kencana, 2005).

[4] Ibrahim, Johny, "Teori dan Metodologi Penelitian Hukum Normatif", (Malang: Bayu Publishing, 2006). Pasar Modal Volume III Edisi 4.

[5] Agus Budiono, "Slide Kuliah Metode Penelitian Hukum di Magister Kenotariatan Universitas Pelita Harapan", (Jakarta: Universitas Pelita Harapan, 2016).

[6] A Furchan, *Pengantar Penelitian Dalam Pendidikan*, (Yogyakarta: Pustaka Pelajar Offset, 2004).

[7] Diantha, I Made Pasek, Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum, Jakarta: Kencana- Prenada Media Group, 2016.

[8] Suparji, Penanaman Modal asing di Indonesia-insentif vs. Pembatasan, Cet.1, (Jakarta: Fakultas Hukum Universitas Al-Azhar Indonesia, 2008).

[9] J.H. Jack, *International Competition in services*: *A Constitutional framework*, (Washington DC: American Institute For Public Policy Research, 1988).

[10] The Civil Code STAATSBLAD 1847 NUMBER 23.

[11] Law Number 40 of 2007 concerning Limited Liability Companies. (State Gazette of the Republic of Indonesia of 2007 Number 106. Supplement to the State Gazette of the Republic of Indonesia Number 4756).

[12] Law Number 25 of 2007 concerning Investment. (State Gazette of the Republic of Indonesia of 2007 Number 67. Supplement to the State Gazette of the Republic of Indonesia Number 4724).

[13] Bank Indonesia Regulation Number 14/17/PBI/2012 concerning Bank Business Activities in the Form of Trust (State Gazette of the Republic of Indonesia Year 2012 Number 260. SUPPLEMENT TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 5368).

[14] Bank Indonesia Regulation Number 14/17/PBI/2012 concerning Bank Business Activities in the Form of Trusteeship (State Gazette of the Republic of Indonesia Year 2012 number 260 DPNP).

[15] Presidential Regulation Number 44 of 2016 concerning the List of Negative Investments (State Gazette of the Republic of Indonesia of 2016 Number 97).

[16] Government Regulation no. 9 of 2016 concerning income tax facilities for investment in certain business fields and/or in certain areas (State Gazette of the Republic of Indonesia of 2016 Number 72).

[17] Presidential Regulation No. 10/2021 concerning the Investment Business Sector (State Gazette of the Republic of Indonesia Year 2021 number 61).