

Legal Implications of International Agreements in the Investment Sector for the Micro, Small and Medium Enterprises and Cooperatives

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Abstract—Investment law in Indonesia which is covered by Law Number 25 of 2007 concerning Investment (Investment Law) has undergone various evolutions which are influenced by the spiritual atmosphere of its formulator, namely so that Indonesia can compete with other countries in attracting investment. The purpose of this study is to identify and analyze the legal implications of international agreements in the investment sector for the Micro, Small and Medium Enterprises Cooperatives (UMKMK) sector. The research method used is normative juridical. The results of this study indicate that international agreements in the investment sector have implications for changes in the direction of policies for the protection and development of UMKMK, both positively and negatively. Thus, Indonesia needs to simultaneously evaluate the operation of all international agreements in the economic field to measure favorable international agreements and avoid losses from unfavorable international agreements.

Keywords—international agreements, investment, UMKMK

I. INTRODUCTION

Investment law in Indonesia which is covered by Law Number 25 of 2007 concerning Investment (Investment Law) has experienced various evolutions which are influenced by the mental state of its formulator, so that Indonesia can compete with other countries in attracting investment. On the other hand, the mental state atmosphere of its formulator has almost forgotten Indonesia's national interest as the host country of the investment.

Starting from this issue, the research team was intrigued to examine more deeply about the national interests that are accommodated in the Investment Law and Investment Agreements which tend to be side-lined to realize the values contained in international agreements in the economic sector, both international investment and international trade. This is because the Investment Law is strongly influenced by the principles of international investment and international trade [1].

Some examples of international agreements that have been ratified by Indonesia in the economic sector related to investment are the ASEAN Comprehensive Investment Agreement and the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China. The principles contained in the two international agreements are economic liberalization in which in the investment sector member countries are required to create an investment regime that is liberal, facilitative, transparent, and competitive. Other international agreements that have also been ratified by Indonesia in the economic sector related to international trade, namely the General Agreement on Tariffs and Trade (GATT/General Agreement on Tariffs and Trade) and the General Agreement on Trade and Service (GATS/General Agreement on Trade and Services). The principle contained in the two international agreements is the principle of non-discrimination, which includes the most favored nation and national treatment.

One of the national interests that is often overlooked by the principles in the international agreement mentioned above in the Investment Law, namely the protection of Micro, Small and Medium Enterprises Cooperatives (UMKMK). The overriding of national interests is increasingly seen in the revision of the Investment Law in Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) which no longer regulates business fields that are open with conditions so that it will affect the existence of regulations related to reserved business fields and partnerships with UMKMK.

The purpose of this study is to identify and analyse the legal implications of international agreements in the investment sector for the Micro, Small and Medium Enterprises Cooperatives (UMKMK) sector. This research is expected would be able to contribute expand the ideas to ensure the protection of the national interest in the investment sector, especially for UMKMK. The reason lies behind is the enactment of the Employment Creation Act has shown indication as representation of economic liberalization which

will reduce the opportunity for UMKMK to develop. Whereas UMKMK plays very significant role in advancing the economy of Indonesia.

Based on our identification and analysis, several studies have been found that discuss international agreements and their impact on UMKMK, but there is no specific research discussing the legal implications of international agreements in the investment sector for UMKMK. This study also focuses on investment law, both the Investment Law and investment agreements, which greatly affect UMKMK sector.

II. RESEARCH METHODS

The research method used is normative juridical. Normative juridical research is legal research that uses secondary data sources by compiling a conceptual framework, formulating provisions contained in the laws and regulations that form the basis of research [2]. The nature of the research used in this research is descriptive-analytical. Descriptive-analytical research, namely research that describes the event being studied and then analyses it based on facts in the form of secondary data obtained from primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto, 2006). The analysis in this study was only carried out to the level of description, namely analyzing, and presenting facts systematically so that it could be easier to understand and conclude. In this study, the researcher will describe the legal implications of international agreements in the investment sector for the Micro, Small and Medium Enterprises Cooperatives (UMKMK) sector as well as the juridical constraints that hinder the development of UMKMK in the context of investment agreements in the economic sector.

Secondary data collection techniques include (1) primary legal materials; (2) secondary legal materials; and (3) tertiary legal materials are carried out by literature study, while primary data collection as supporting data is carried out by field studies through unstructured interviews with government authorities in the fields of investment, foreign cooperation, and UMKMK.

III. RESEARCH RESULTS AND DISCUSSION

The government for the past few years has been intensively implementing/conducting international agreements in the economic field in 2020, there are at least 7 achievements made by the Ministry of Trade in the field of international trade cooperation. This year, there are trade agreements that are starting to be implemented, some are being ratified, and some have just been signed. A total of 3 agreements come into force in 2020, namely ASEAN-Hong Kong, China Free Trade Agreement (AHKFTA) and ASEAN-Hong Kong, China Investment Agreement (AHKIA) on July 4, 2020. As well as the Comprehensive Economic Partnership Agreement between Indonesia and Australia (Indonesia-Australia). Comprehensive Economic Partnership Agreement/IA-CEPA) on 5 July 2020. On the other hand, there is the Protocol to Amend the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) and the

Indonesia-Mozambique Preferential Trade (IM-PTA) which have been decided to be ratified by Presidential Regulation (Perpres). And there is the Indonesia-Korea Comprehensive Economic Partnership Agreement (IK-CEPA) and the Regional Comprehensive Economic Partnership (RCEP) which were recently signed by Indonesia [3].

With the intensity and dynamics of international agreements in the economic field carried out by the government, it will certainly have a significant impact, both positively and negatively. It has a positive impact if Indonesia in this case can take advantage of its comparative advantage in maximizing the international market niche, on the one hand, on the other hand, it has a negative impact if it is not able to maximize all its potential. Therefore, Indonesia needs to simultaneously evaluate the operation of all international agreements in the economic field to measure favourable international agreements and avoid losses from unfavourable international agreements.

The implication of the foregoing is that currently the government has terminated several international agreements in the investment sector. Most of the international agreements are bilateral (bilateral investment treaties). Meanwhile, during this termination period, the government will review all agreements. The review of investment agreements is carried out as a step to balance the protection interests of foreign investors. He said the interest to protect the sovereignty and independence of the national economy must always be considered. What's more, the free markets of countries in the Southeast Asia region are already open [4].

There are various factors that have prompted the administration of President Joko Widodo to pay greater attention to international agreements, especially in trade and investment. First, in recent years Indonesia has experienced a trade balance deficit which in turn has led to the depreciation of the rupiah, which has led to rising inflation. Second, the uncertain economic recovery from the crisis that hit the European Union and the United States (US) as well as declining economic growth in China and India has pushed Indonesia to optimize non-traditional markets which also means increasing Indonesia's competitiveness. Third, five years after the implementation of the ASEAN-China Free Trade Agreement (ACFTA) in 2010, Indonesia continues to experience a trade balance deficit with China. Thus, raising the question of whether Indonesia does have a clear strategy in increasing international trade, especially about increasing regional integration in Southeast and East Asia. Fourth, the establishment of the Asian Economic Community or AEC at the end of 2015 in which the Southeast Asia region became a single market with the principle of free flow of factors of production, to awaken the government and business actors in Indonesia to anticipate the impact on international trade and investment in Indonesia. In this context the question that will arise is whether the AEC has an impact on trade creation for Indonesia [5]. Fourth, the establishment of the Asian Economic Community or AEC at the end of 2015 in which the Southeast Asia region became a single market with the principle of free

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The current government has also paid attention to the national interest in the fields of international trade and investment through the Nawa Cita Program, namely 9 (nine) priority programs of President Joko Widodo to realize a Sovereign, Independent Indonesia. And Personality based on "Gotong Royong". In terms of international trade and investment, the Nawa Cita program prioritizes increasing people's productivity and competitiveness in international markets. So that the Indonesian nation can advance and rise with other Asian nations and realize economic independence by promoting strategic sectors of the domestic economy [6].

Furthermore, trade and investment programs in Nawa Cita are described in more detail in the 2015-2019 National Medium-Term Development Plan (RPJM 2015-2019), which is the Government's strategic plan from 2015 to 2019 which will focus on food security, local industry and investment to realize high economic growth, thus advancing and prospering for the country.

On November 15, Indonesia and 14 other countries consisting of 9 ASEAN countries, China, Japan, South Korea, Australia, and New Zealand signed a Regional Comprehensive Economic Partnership (RCEP) trade agreement. RCEP is the world's second largest trade partnership after the WTO in which the RCEP's total Gross Domestic Product (GDP) reaches 30.2 percent of world GDP; Foreign Direct Investment (FDI) 29.8 percent; population 29.6 percent; and trading 27.4 percent. With the integration of Indonesia in this trading block, there will be a new oasis that will contribute to national economic growth [7].

However, this agreement does not fully bring benefits to Indonesia. Theoretically, in international relations, the national interests of the participating countries will always be tucked away, whether in military, economic or cultural terms. This national interest is closely related to power, whether it is a goal or an instrument to achieve the national interest. Thus, when the orientation has led to the use of power and aims for power, the consequences are competition, balance of power, conflict, and war. Perhaps it was this rationale that made India later withdraw from RCEP after calculating the pros and cons of the agreement [7].

The implementation of RCEP as an instrument of international agreement that regulates UMKMK needs to be viewed objectively not only as an opportunity for UMKMK to

expand the market but can also be a threat if all infrastructure and superstructures that support UMKMK in Indonesia are not prepared. The orientation of RCEP which positions UMKMK to be integrated in the Global Value Chain (GVC) to expand the reach of UMKMK selling their products to various countries at once does look very interesting, but it needs to be seen if the internal conditions of UMKMK in Indonesia as the largest contributor to the Indonesian economy have some complicated problems. The problem is the competitiveness of the industry which is still weak and limited production capacity.

This agreement is expected to encourage the growth of FDI in new industrial sectors that have the potential to take advantage of the RCEP area which has a population of 2.2 billion people and furthermore has the potential to become a global region (domestic and global supply chains). If you only rely on the existing industry and businesspeople, it is impossible for RCEP to take full advantage of the opportunities. For this reason, countries that will be able to take advantage of this opportunity are countries that have an investment regime and availability/support of infrastructure that is more profitable for investors. When it comes to recent industrial developments leading to automation and the Industrial Revolution 4.0, especially after experiencing the Covid-19 pandemic which has not yet ended.

Rashmi Banga is of the view that ASEAN has opportunities in the digital industry sector, so efforts to increase competitiveness can maximize the benefits of RCEP. As agreed in the Electronic Commerce Chapter, the government still has room to manage this industrial development policy, especially when it comes to the public sector. The country's success in developing a digital economy that also provides opportunities for UMKMK (small businesses, agricultural businesses, creative individuals from remote areas) and for the development of a factory sharing economy, will enable a country like Indonesia to supply the needs of the RCEP market with a population of 2.25 billion people. 2020).

A study conducted by Rashmi Banga using the SMART Simulations in World Integrated Trade Solutions model by the World Bank and UNCTAD. The study concludes that the benefits of RCEP for ASEAN member countries are not too significant compared to that which will be obtained by Partner countries, because market opening has been carried out in ASEAN+1 FTAs. The results of the analysis show that when RCEP begins to be implemented, most ASEAN member countries, especially Cambodia, Malaysia, Myanmar, Thailand, Vietnam, and Laos will experience a surge in imports which will result in a large trade deficit (especially for Malaysia, Cambodia, and Vietnam). Therefore, additional benefits for ASEAN member countries are only from the use of the Domestic Value Chain which will of course be connected to the Global Value Chain [8].

The big homework for Indonesia currently is how to improve the quality and production capacity and build efficient and effective producer and exporter relationships to market

Indonesian products. This must be done through the formulation of policies that involve not only stakeholders but all elements of Indonesian society. The objective is how to create independence and increase national competitiveness in the policy framework.

IV. CONCLUSION

Based on the discussion above, it can be concluded that international agreements in the field of investment or investment have both positive and negative implications for changes in the direction of the protection and development of UMKMK policies, which in general the UMKMK protection and development policies must be in line with efforts to develop the investment climate in Indonesia. The efforts to protect and develop UMKMK are not generally eliminated because in this case there are also international agreements that focus on the protection of UMKMK, such as the Regional Comprehensive Economic Partnership (RCEP). However, this ratified international agreement cannot be separated from the national interests of each member country. So that the Government must also think about ways to improve the quality and production capacity as well as build efficient and effective producer and exporter relationships to market Indonesian UMKMK products. Thus, Indonesia needs to simultaneously evaluate the course of all international agreements in the economic field to measure the beneficial international

agreements and avoid the disadvantages of unfavorable international agreements.

REFERENCES

- [1] B. M. Hasibuan, "Investment Protection (Notes at the request of United Arab Emirates)," [Online] retrieved from: www.business-law.binus.ac.id.
- [2] R. H. Soemitro, *Legal Research Methodology and Jurimetry* (Ghalia Indonesia, Jakarta, 1990).
- [3] Anonymous. "Indonesia Incessantly Signs International Free Trade Agreement," [Online] retrieved from: <https://money.kompas.com/read/2020/12/30/070200426/kaleidoskop-2020--incessant-indonesia-teken-percepatan-perdagangan-bebas?page=all>.
- [4] Anonymous. "International Agreements in the Field of Investment will be Review," [Online] retrieved from: <https://www.Hukumonline.com/berita/baca/lt54bf82b18794b/percepataninternasional-di-dunia-investasi-akan-revisited>
- [5] BPPK-Ministry of Foreign Affairs and FISIP Pelita Harapan University. *Economic Diplomacy: Evaluation of Trade and Investment Agreements* (P2K-OI Research Cooperation Center. Jakarta. 2015).
- [6] A. Gultom, "This is Nawa Cita, Nine Priority Agendas for Jokowi-Jk" [Online] from retrieved from: <http://politik.rmol.co/read/2014/05/211156040/Inilah-Nawa-Cita, Nine-AgendaPrioritas-Jokowi-JK>
- [7] R. Gizind, "UMKMK are looking at RCEP," [Online] from retrieved from: <https://news.detik.com/kolom/d-5279517/umkm-menatap-rcep>
- [8] R. Banga, *RCEP: Economic Implications for the ASEAN Countries*. Unit on Economic Cooperation and Integration among Developing Countries (ECIDC) (GDS, UNCTAD, 2020).