Law and Investment

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Abstract. Law has a very close relationship with investment interests. In principle, investment law is a rule of law, both domestic investment and foreign investment. Investment law has a close relationship with the environment, agrarian, taxes and so on. And law enforcement is one of the main issues in investment, if one is violated, the investment permit is revoked by the authorized official. Even investors who violate laws and regulations in the field of environment or taxation can be punished or asked to pay compensation. The 1945 Constitution's Article 33 provisions are essentially referred to in the investment policy.

Keywords: UUD 1945, Law, Investment, Law Enforcement, Environment, Agrarian Affairs, Taxes

1 Preface

Understanding the legal principles of investment, which are one of the factors driving the process of strengthening the nation's economy, is necessary in order to comprehend the relationship between law and investment. As a result, there are several principles that must be applied in the context of investment activities, including: legal certainty, openness, accountability, fair treatment which cannot be seen due to country differences, independence, togetherness, sustainability, and there is a balance with the Indonesian economic unity.

According to Sudikno Mertokusumo, the increase in foreign investment in Indonesia does not come by itself. Naturally, this requires work in order to be able to foster an investment-friendly environment. One of the classic issues that is very significant in creating a conducive investment climate in Indonesia is the issue of law enforcement, in addition to other problems, such as limited infrastructure, security and political stability. Furthermore, in terms of law enforcement, there are three elements that must be considered, namely: legal certainty (rectssicherheit), benefits (zwechmassigkeit) and justice (gerechtigkeit) 1

If law enforcement only pays attention to legal certainty, then its implementation can ignore justice and its benefits in society, and vice versa if one of these elements is too prioritize, then its implementation can ignore other elements.

Prof. Dr. Soerdjono, S.H, M.A said that the factor of the availability of legislation that clearly regulates matters relating to foreign investment issues, both regulations issued by the central government and local governments, such as submission of in-

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vestment permits, incentives, and available facilities or regulation of prohibitions or restrictions on investment activities. For this reason, foreign investment are therefore required not only to be comprehensive, but also to be arranged systematically so that they will not cause overlapping or conflicting problems between each other.

The government is still confident that better regulations in the context of structural reforms, specifically with the existence of the Job Creation Law, will be the primary driver of economic growth in 2022. The Job Creation Law aims to expand the role of UMKM or MSME (Micro Small and Medium Enterprises) in addition to boosting investment. The government has made it simple to create a limited liability company, which can be registered through an online portal run by the Ministry of Law and Human Rights, in order to support the legality of UMKM/MSME. Increase in capital through the distribution of People's Business Credit (KUR), with a target of Rp373 trillion in 2022. KUR also receives a 3% interest subsidy from the government.

Additionally, the government has made it simpler to obtain business licenses through the Online Single Submission (OSS) System, which requires MSME actors to only register their commercial activities. Business licenses will be issued online through OSS for low- to medium-risk enterprises. According to the established NSPK (Standard Norms of Procedures and Criteria), the business license fulfills all other requirements, including the SNI (Indonesian National Standard) and distribution permit. The government continues to enhance service and the OS System and its supporters in order to support the implementation of the OSS Risk Based Approach (RBA). In addition, the government is working to increase human resource capacity at both the central and local levels so that the operation.

The Government and DPR RI (the Indonesian House of Representatives) have responded by including amendments to Law Number 12 of 2011 concerning the Establishment of Legislation and Law Number 11 Year 2020 concerning Job Creation in the National Legislation Program. This was done in response to the decision of the Constitutional Court (MK) on the Job Creation Law on November 25, 2022. The Second Amendment to Law Number 12 Year 2011 is currently being drafted by DPR RI (the Indonesian House of Representatives), and it incorporates the omnibus method for drafting laws and regulations as well as increasing public participation).

The Government and DPR RI (the Indonesian House of Representatives) will finalize the amendments to the Job Creation Law based on the amendments to Law Number 12 of 2011, which is anticipated to be finished before the implementation of G20," said Coordinating Minister Airlangga at the Law and Regulations Outlook 2022 event themed "Recovery in Business and Investment" held virtually by Dentons HPRP in Jakarta, on Wednesday (16/02).

It is apparent that in the World Economic Forum (WEF) report ranking of global competitiveness, Indonesia fell from position 45 out of 140 countries in 2018 to position 50 out of 140 countries in 2019. With the exception of the components of macroeconomic stability and economic size, Indonesia is still lagging behind Singapore, which holds the top spot in terms of global competitiveness. Indonesia is ranked fourth in ASEAN, behind Singapore (1), Malaysia (27) and Thailand (40). According to WEF's report, Indonesia's global competitiveness index could perform better in a number of areas, including the business dynamic pillar, which increased in 2019 from 69 points to 69.6 points, and a stable financial system.

Meanwhile, in the speed of legal framework in adapting digital business models, Indonesia ranks the 28th and has an average score above the global average of 38 points. Indonesia has improved its performance in global competitive in all its pillars in the last 5 years. But, according to the WEF report, Indonesia ranking in 2016-2017 is declined from rank 37 in 2015-2016 to rank 41 in 2016-2017 and then go up in 2017-2018 to rank 36. While in 2018 and 2019, the Indonesia's ranking in the global competitiveness index has again declined, which is rank 45 in 2018 and rank 50 in 2019.

In line with the competitiveness index above, the report from Doing Business (DB) 2020 which measures regulations in the business world and their enforcement shows Indonesia's position in the ease of doing business at rank 73 out of 190 countries. When compared to peer countries in the East Asia and Pacific region, Indonesia is ranked 9 out of 25 countries.5 As for the score obtained in DB 2020, Indonesia scores 69,6 points out of the full scale of 100, increase from DB 2019 of 68,2. It is not too surprising that Indonesia's ranking is 73 out of 190 countries. What is surprising is that the World Bank report on September 16, 2021 announced the termination of the next Doing Business project after the manipulation of Doing Business data in 2018 and 2020. Even though the ratings published in the annual report are often a 'trade' for countries to attract investors. Indonesia, for example, uses the data as the basis for improving the investment ecosystem, including drafting Law No.11/2020 concerning Job Creation. So do investors. They often use the Doing Business report as a reference for determining expansion steps abroad.

2 Research

Investment is a key driver of transformation as well as growth during the pandemic. The main role of the Investment Coordinating Board (BKPM) is to ensure the implementation of legal and administrative system reforms which are the precondition/prerequisite for the realization of a better investment climate. Innovation and quality improvement are basic elements that contribute to the realization of higher and sustainable economic growth as well a fair and equal.

Armed with this understanding, BKPM has established two policy directions. First, increasing innovation in order to achieve investment targets. Innovation needs to be carried out at the planning stage along with efforts to improve the investment climate. Innovation is also needed in the stages of collaboration, promotion, service, implementation control, and internal management. Second, improve the quality of investments made to realize inclusive and sustainable economic growth by encouraging investment that absorbs large numbers of workers and facilitates the transfer of knowledge and technology.

Furthermore, improving quality will increase competitiveness and access to markets. An example of a sector that will benefit from this development is the exportoriented industry and import substitution, considering that the utilization of natural resources as well as domestic production is becoming more optimal.

Economic transformation towards a knowledge-based economy is the key to realizing sustainable development and inclusive economic growth. Progressive policies are needed to ensure that knowledge and innovation ecosystems become a solid foundation for economic development. Previously, the investment target was not a top priority. Now, the government's efforts to prioritize investment are starting to pay off. New opportunities as well as regulations that support businesses make it easier for investors to contribute to national development plans. Meanwhile, simplified administrative processes will increase the competitive value. The Ministry provides more support in realizing the vision of President Joko Widodo towards economic transformation, and with all the current efforts, 2022 is projected to be a good year.

With the advancement of science and technology, investment has recently expanded quickly as a significant component of contemporary economic activity. To avoid breaking the law and harming themselves and other parties, investment actors or parties interested in participating in investment activities must properly understand it from a legal standpoint.

Investment law, as a rule of law, essentially examines all investments, domestic and foreign. From the perspectives of two distinct interests, namely those of countries that engage in capital export activities to be invested in other countries (capital exporting states) and those of countries that have an interest in luring foreign capital to be invested in the country (capital importing states / host states), one can view investment law. Investment law must take into account the interests of investors in capital exporting nations by protecting investors and stipulating obligations for host states to protect the capital invested in those states. In order to promote economic growth, investment law must include guidelines for controlling investment in the host states.

Investment regulation is the codification and administrative implementation of the national investment policy, as stated by Joseph Battat that: an investment law and its regulations are respectively the codification and adminstratifve of the national investment policy. And as a reflection of investment policy, investment law functions to translate policies into legal terms that can be translated (translate the plocy into legal term that are actionable). Because the Organization for Economic Cooperation and Development (OECD) states that the formulation of investment policies is a prerequisite to the drafting of investment legislation, investment policies must be clear in order to avoid impeding the process of establishing investment law regulations. The investment law is the basic legal framework which aim to regulate: First, types of investment transaction. Second, incentives and guarantees of investment. Third, regulation and supervision of investment and, fourth, related to the system that administere the investment process. The investment law was formed to fulfill two main objectives, namely: to regulate or control investment and to encourage the increase of investment activity.

2.1 Application of Dominant Theory to Boost Investment

One of the well-known theories about investment law that reflects legal stability, predictability, and calculability seems to be a special attraction and a consideration for investors when investing. The dominant Theory states that when the law is regarded as stable, accessible, and clear, investment law can be predicted (predictable): the state's limited power, including bureaucrats, is a matter of discretion (limited discretionary powers); low levels of corruption; and separation of state institutions, especially the judiciary in order to create judicial independence.

The investment law that is able to attract investment is an efficient law that is able to create investment mechanism to enforce the rights and obligations of investors more effectively. The enforcement of rights and obligations is considered effective if the quality of investment law from the host states is good and modern with a judiciary and bureaucracy that provides proper infrastructure, equipped with trained and competent law enforcement. The investment law can be considered effective in three ways, namely: efficiency in the law making process, the public administration, law enforcement and legal interpretation by court. This concept is in line with the Dominant Theory that, according to this theory, investors want efficiency and certainty as the dominant that can be offered by investment law.

Contrary to the World Bank's perspective, the predictability of its policies and rules, as well as the consistency with which they are implemented, may be just as crucial for luring in private investment as the actual content of the rules. This means that in order to draw in foreign investment, the legitimacy of the government, the predictability of its regulations and policies, as well as the consistency with which they are implemented and enforced, are crucial factors.

Since the investment law is a component of the creation and implementation of the national investment policy package, it contributes to the quality and characteristics of the investment climate, which is a very important function of the investment law in attracting investment. Second, it becomes a crucial factor in how the government treats investors and sets expectations for them. Third, because there are so many investment policies with legal foundations by organizing everything in one container that includes everything, the investment law is very important because the economy, legal system, as well as public and private institutions, are still developing in developing countries. Fourth, it shows that the government encourages investment and sets some of the desired criteria.

The purpose of the investment law is to plan, control, and promote investment activities that are influenced by each nation's ideology, political objectives, theories, and national interests. A very flexible country's law must permit the entry of capital, particularly foreign capital.

3 Conclusion

The author notes that the investment law during the six years of the leadership era of President Jokowi from 2014-2020, is marked by a series of issuances, change, and removals of regulations intended to attract foreign investors. Refor-mation of investment law was completed in the first five years, or the First Period of President Jokowi (2014–2019), with the issuance of two legal policy packages and sixteen economic policy packages, which together contained a sizable number of legal products, including 347 government regulations, 533 presidential regulations, and 434 subordinate regulations. The cumulative value of foreign investments increased significantly as a result of the legal reform and a number of policy packages, but the annual growth rate was not increased.

Additionally, the establishment of the Job Creation Law through the Omnibus Law Model in the past year, or the start of the second period (2019–2020), marked the beginning of legal reform in the Jokowi era. This law significantly changed various provisions in the 79 laws that were thought to discourage investment. Numerous provisions governed by sectoral laws have been changed, eliminated, or given new conditions by the Job Creation Law. On the other hand, there is hope that this Job Creation Law and the regulations that will be created to implement it will create an environment that is more favorable to foreign investment.

Due to its opaque formation process and substantive degradation of the interests of the larger community in favor of investor interests, it appears that the current legal reform will also encounter resistance from a variety of national constituents. Thus, various resistance movements that actually work against the goals of the aforementioned legal reform could interfere with its effectiveness during the Second Period (2021-2024).

President Jokowi guarantees the security and certainty of investments that have been, being, and will be processed after the Constitutional Court issued a ruling requiring the government to revise the Law Number 11 Year 2020 concerning Job Creation within two years. Business actors and investors don't need to worry. The president in a press statement at the Merdeka Palace, Jakarta, on Monday (29/11/2021) also provides certainty to business actors and investors from within or outside the country that the investments which are being or will be in process remain safe and secured. And the government guarantees the security and certainty of investment in Indonesia.

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