

Legal Review on Foreign Investment In Indonesia

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Abstract : *Law Number 25 Year 2007 is the investment law of Indonesia which replaces Law Number 1 year 1967 on Foreign Investment and Law Number 5 year 1968 on Domestic Investment. This new law no longer distinguishes foreign and domestic investment. The formation of law Number 25 Year 2007 is the commitment of Indonesia upon ratification of the (WTO Agreement). Government policy in regulation of capital investment and investment in Indonesia is more important to increase investor interest in Indonesia. Because of this law, capital market development required in order to realiting legal certainly investment. Legal certainty can be realized through a regulation of good and clear, so that will be clear also its application*

Keywords : *legal certainty, investment law.*

1. INTRODUCTION

Indonesia, as a country which hopefully want to create a welfare and justice society must develop various fields, one of them is economics development. In Article 33 The Constitution of Republic of Indonesia of 1945 represents constitution mandate which underly the establishment of all regulation in economics field. The constitution mandated that the development of national economic must be based on principles of democracy which enable to create the sovereignty of Indonesian economics.

The region of Republic of Indonesia has high potential namely: wide range area which high fertility for nature resource, low laborer wages; very big market; strategic location; the exsistance of the government to foster healty investment; no limitation for foreign exchange, includes capital and profit, and so forth. ⁱ

As we know that there are two kinds of invesments, namely: foreign investment and domestic investment. Foreign invesment constitutes the flow of investment from one country to other country, it is aimed to reach high profit, under the fund owner supervision. Those flow investment can be physical property as direct investment and flow investment to buy shares in other

countries which constitute form of portofolio investment.ⁱⁱ So that, investment constitute the source of agent for economics development towards sustainable development in global era.

Invesment of a country come from various sources, either from foreign country and also domestic (foreign investment)ⁱⁱⁱ. For foreign investor, law and regulation become one of standart to determine the climate inversment of a certain country. Infrastructure of law for foreign investors

become an important instrument for them. For investor, law give them security, certainty and predictability for their investment. The better condition, law and constitution which protect their investment, the more recognition for condusive investment climate of the country. ^{iv}

In effort to increase capital investment activities and create capital investment condusive climate so various ways were implemented, one of them is law adjustment in accordance to capital investment, giving insentive for permission and non permission, as well as eliminating law and non law obtacles in capital investment represents some efforts that must be conducted contenuously to maximize opportunities optimally, considering a certain developed country need capital investment especially foreign investment.

Some of the intended steps were implemented already, those were seen with the existence of law product which guarantee healthy investment climate, for example Regulation Number 4 the year of 1998 about The Government Determination of Regulation Substitute number 1 Year 1998 about The Revision On bankrupt assets Regulation becomes Number 5 year 1999 about Prohibition for Monopoly Practices and Unhealthy Competition, Law Number. 8 Year 1999 about Customer Protection, Law Number. 30 year 1999 about Arbitrase and dispute settlement. The President Decision number 183 year 1998 about Capital Investment Coordination Agency , and Law Number. 25 Year 2007 about Capital investment.

Law number 25 year 2007 about Capital Investment is a regulation about investment in Indonesia which replaces Law number 1 year 1967 about foreign investment and Law Number 5 Year 1968 about Domestic Investment. Law of Capital Investment to accomodate all the previous regulation, such as Law Number 1 Year 1967 Jo Law No 11 Year 1970 about Foreign Investment and Law Number 6 Year 1968 Jo Law No 12 Year 1970 about Domestic Capital Investment. These do not differetiate between foreign investment and domestics investment anymore.

The formulation of Law Number 25 Year 2007 about Capital Investment can not be separated from the participation of Indonesian Country as the member of World Trade Organization (WTO), in which Indonesia already verified the agreement of WTO through those law.

It is the Indonesia comitment as the verification of *Agreement Establishing the World Trade Organiza_on* (WTO *Agreement*) Article XVI, Paragraph 4 from those *Agreement* obligate all the countries member to adjust regulation or their trade law toward regulation in *Annex* in *WTO Agreement*.

The principles of WTO that already implemented on Capital Investment, namely:

- 1) The principle of (*Most-Favoured-Na_on*) in Article 1 paragraph (1), Aricle 3 paragraph (1), Article 4

paragraph (2), and Article 6 paragraph (1);

- 2) The principle *Na_onal Treatment* in Article 6 paragraph (1);
- 3) The principle of Quantitative Restriction Prohibition can be found in Article 8;
- 4) The principle of Protection though tarrifs which is found implicitly at the justice effeciency principle in Article 3 paragraph (1) and Article 14;
- 5) The principle of Resiprocity can be found in Article 7 and Article 32.
- 6) The principle of Special Treatment for Developing countries was regulated in article 13.

This article foccused and studied from law number 25 year 2007 about Foreign Investment by seeing the background, the government policy and goals in regulating foreign investment in Indonesia

2. DISCUSSION

Law number 25 Year 2007 about Foreign Investment at general rules Chapter I Article 1 paragapgh (1) defined Capital Investment as : “ all kind of capital investment activities, either foreign investment or domestic capital investment to conduct business in territory of Republic of Indonesia.” In explanation of Article 2 Law Number 25 Year 2007 about Capital Investment mentioned that capital investment is direct capital investment and do not include undirect capital investment or portofolio because as a part of Capital Market Law.

Direct investment done by all the capital owner by formatting their own company, supplying fund, and operating those company, meanwhile undirect investment were done by buying shares or obligation which were produced by company or government unit. . Second, those two kind of capital invetsment were needed in national development because it is mutual. If sometime the amount of direct capital investment do not develop significantly, the need of capital in supporting national development can be filled by those undirect investment.

The basis of capital investment law in Indonesia was regulated in regulation and other decrees which follow them. Some of them are Law No.1 Year 1967 about Foreign capital Investment jo Law No. 11 year 1970, Law No. 6 Year 1968 jo Law No. 12 Year 1970 about Domestic Investment , then they were amandement with Law No. 25 Year 2007 about Capital Investment. The regulation of Capital Investment in Law No 25 Year 2007 about capital investment, and others regulations which regulated investor for Indonesian citizen and other countries (foreign capital investment).

The Goals of Capital Investment

According to Article 4 on Law of capital Investment, government already determined basic policy about capital investment in Indonesia which aimed at: to foster the establishment of conducive climate for national business for foreign investor, as well as to reinforce national economics competition, hopefully acceleration and enhancement in capital investment in Indonesia will be gained. Those policy becomes the basis to renew foreign capital investment, or basically to attract foreign investor to invest their capital in Indonesia. So, it can explained that the goals in establishing capital investment are to: :

- a. increase national economic development
- b. create employment
- c. increase sustainable economic development
- d. increase the ability of national business competitiveness
- e. increase capacity and ability national technology
- f. foster citizen economic development
- g. Cultivate potential economic become real economic strength by using fund which come from intern country and foreign country, and
- h. Increase society welfare

Basic Policy for Capital Investment

Government decides basic policy for capital investment which completely holistic, they includes:

- a. Give equal treatment for domestic investor and foreign investor with striuctly considering national interest.
- b. Guarantee certainty of law, business certainty, and security for investor.
- c. Open opportunities for development and give protection for micro business, small, midle, and cooperation.

Principles in Capital Investment.

The ten principles in capital investment as regulated in Article 3 paragraph (1) includes law certainty, transparancy, accountability, equal treatment and do not differentiate national orginity, togatherness, justice effeciency, sustainability, enviroment insight, autonomy, and balance development and national economic unity. The existance of capital investment principles are development of previous law (UUPMA and UUPMDN) since these differ from previous rules, which do not regulate capital investment.

Related to the basic of capital investment, so the main principle of capital investment in Law of Capital Investment (UUPM) is legal certainty or certainty of law. According to Didik J Rachbini legal certainty principle becomes the main principle because its position as the basis of play rules for investation activity and other economics activities, in which its substance exist in Law of Capital Investment. ^v in the explanation of article 3 paragraph (1) letter a, the intended legal certainty is principle in country of law which puts law and regulation as the basic principles in every policy and treatment in capital investment field.

For investor, Legal certainty itself become the basis to calculate risk, how to handle risk and how to reinforce toward risk. If law reinforcement is unbelievable for the investor, so it can be claimed that they will not put their investment in uncertainty.

Law number 25 year 2007 decided that every capital investment has the right for legal certainty, certainty of right, law protection, open information about business which have been or being operating, right of service and other various convenience facilities. For domestic capital investment,

the government also decided that all kind of business are stated openness, except those are stated closed already.

The decision of all kind of closed business field for both capital investment and foreign investment was conducted based on determined criteria, such as healthy, moral, culture, living environment, and national security and . meanwhile, the detrmnination of open business with certain requirements was done based on national interest, namely nature resources conservation, protection and development of micro business, small, midle and cooperation, increasing technology capacity, and cooperation between business agency which is determined by government.

There are some basic law in capital investment as discussed above, as well as some basic rules which become standard in operating activities, either in business field and also other aspects, such as labor agency, law protection and so on. It is important to comprehend basic rules in capital investment, in order to get clear understanding in implementing the related rules and able to invest the capital correctly.

Types of Capital Investment

Based on its subject, capital ivestment can be devided into three types, namely:

- a. Personal Investment
- b. Interprise Investment, and
- c. Public Investment.

Based on its type, capital investment can be devided into three types, namely:

- a. Direct Investment /
- b. Port Folio Investment
- c. Indirect Investment.

Based on national originity, capital investment can be devided into two, namely:

- a. Foreign Investment
- b. Domestic Investment

Legality, Licensing and Procedures of PMDN were regulated in in Aricle 25 paragraph (4) UUPM, capital investment agency, belong to PMDN, all of the agency which want to operate business must get license related to the rules from authorized institution. Thiose license as gained thourgh one door integrated service. This aimed to help investor to get convenience services,

fical facilities, and information about capital investment, either domestic investment or foireign investment.

ⁱ Ana Rokhmatussa'diyah and Suratman, Investation Law and capital Market, Jakarta, Sinar Grafika, 2010, Page . 56.

ⁱⁱ M Sornarajah, The

ⁱⁱⁱ Lyuba Zarsky

^{iv} Hikmawanto, Juwana,tt, Policy on Law Development in Economic Field and Investation, Paper,(Jakarta Badan Pembinaan Hukum Nsional) Page10 - 11

^v Didik J Rachbini, Indonesian Investation Law Engineering (Political Economic Anlysis), Jakarta: PT Indeks, 2008 page 23