

The Role of Legal Politics in Creating Legal Reform in Increasing Foreign Investment in Indonesia

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Abstract

Investment is currently regulated in the Job Creation Law. Still, previously, investment regulations were contained in Law Number 25 of 2007 concerning Capital Investment, whereas Law Number 25 of 2007 reflected that investment regulations had two sides. One side of investment will open up state income and so on. Meanwhile, on the other hand, by opening up investment opportunities, various facilities and conveniences will be offered to investors in order to attract investment interest in a country. This research aims to analyze the Ciptaker Law as a regulation that amends the Investment Law using a participatory paradigm so as to provide analysis regarding investment regulations in Indonesia. This research is a type of normative legal research that bases its approach on legislation and conceptualization. The results of this research conclude that the Job Creation Law related to investment aims to adjust various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by Pancasila ideology. Regarding these conditions, foreign investment can provide legal protection and legal certainty based on established law.

Keywords: Foreign investment, law reform, legal politics



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Introduction

Investment is the most critical factor in development, which aims to improve the economy and can provide a stimulus for increasing per capita, which can later become public consumption for the economic system expected to improve. Strengthening the country's economy can be done by implementing the mandate of Law Number 25 of 2007 concerning Capital Investment. The Capital Investment Law (UUPM) is a guideline that policymakers must implement to mobilize domestic investors and foreign investors who want to invest.

Investment or investment is an activity carried out by a person or legal entity by setting aside a portion of its income so that it can be used to carry out a business with the hope that, at a certain time, it will get results (profits). Investment positively impacts the country, namely the absorption of labor, transfer of technology, and income for the country. Investment has a contribution as a lever for a country's economic movement. When capital owners invest, capital will be set aside to buy a number of goods that are not for consumption but used for production by absorbing a lot of labor.¹

Indonesia is a rich country in natural potential and is a target for the world market. As a country that is developing and has abundant natural wealth that can be used as a source of funds to advance its economy, it really needs help from foreign investors both in terms of funding and management technology. Indonesia must create a comfortable climate for foreign investors in attracting foreign investors. Because these foreign investors are sensitive to legal and political stability issues and do not want to take risks, the government needs to make policies that make them willing and comfortable to invest their capital. When investing, investors choose a location that provides legal and business certainty. Countries as locations or destinations for investment must improve their appearance to attract investors to invest their capital. The state offers various luxurious facilities to entertain investors who wish to invest their capital in Indonesia.²

So far, investment in Law Number 25 of 2007 concerning Capital Investment is regulated. However, this law is considered liberal and capitalist. 2020, the government passed an Omnibus Law Number 11 2020. The aforementioned legislation, formally enacted on November 2, 2020, is recognized as Law of the Republic of Indonesia Number 11 of 2020 on Job Creation.³ This law then revoked investment regulations in the capital investment law. For foreign investment, law is the priority and most relevant factor for investment and economic growth. The legal environment is among various factors that influence companies and plays a significant role in the business environment.⁴ The essence of legal reform is to eliminate, or at least reduce, barriers to the entry of investment, especially foreign investment, using deregulation and de-

¹ Nurul Fibrianti et al., "Undang Undang Cipta Kerja Klaster Investasi Telaah Paradigma Participatory," *Pandecta Research Law Journal* 16, no. 2 (December 29, 2021): 346, <https://doi.org/10.15294/PANDECTA.V16I2.32146>.

² Fibrianti et al., 347.

³ Zaid Zaid, Farouk Aisha Dawaki, and Sabit Kazeem Ololade, "Should the State Control Tariffs?," *Journal of Governance and Public Policy* 8, no. 1 (February 23, 2021): 22-36, <https://doi.org/10.18196/JGPP.811340>.

⁴ Paulina Nogal-Meger, "The Quality of Business Legal Environment and Its Relation with Business Freedom," *International Journal of Contemporary Management* 2018, no. Issue 17(2) (July 19, 2018): 111, <https://doi.org/10.4467/24498939IJCM.18.021.8545>.

bureaucratization through simplifying licensing requirements and procedures and providing incentives, including tax incentives.

Through legal politics, the state creates a design and plan for developing national law in Indonesia. Achieving legal development will encourage the achievement of legal goals, which will then lead to the creation of state goals. The aim of law to create justice, benefit, order, and legal certainty cannot easily be fulfilled if every existing law contains the state's goals. Achieving legal objectives will lead or lead to the achievement of state objectives. To attain state goals, the legal goals must be achieved first to realize the state's goals nicely. Legal politics is an official line or policy regarding laws that must or should not be applied to achieve the state's goals. Legal politics aims to create a legal system that is desired by both the government and society at large. One form of legal political product is legislation. There are two forms of legal, political products, namely, conservative legal products, namely laws and regulations formed by the government to create a legal system that the government desires and make the law a "tool of social engineering." Second, responsive legal products, the content of which is based on social reality and changes occurring in society.⁵

Foreign capital does all this because the population has a small scale, so investors invest in businesses that are entirely developed compared to urban areas. Advancing a region depends on existing resources. Foreign investment is utilized to achieve growth and prosperity. If the population is small, it will result in increased income. As a result, foreign investment invested in a country will not make a profit.⁶ The profits obtained from foreign investment will fluctuate over time, in line with the coronavirus pandemic. Economic growth continues to decline due to the limited resources available, seen from the development of the population, and the existing workforce is insufficient. For this reason, the government must take firm steps/policies to overcome the increasing number of workers and unemployment. Therefore, foreign investment can have the capacity to accommodate skilled and skilled labor.⁷

Foreign Direct Investment (PMA) in Indonesia is a form of interest and hope from investors regarding Indonesia's future growth and development. These investors' favorable view of Indonesia is realized by investing in sectors that are considered productive, which will undoubtedly increase the overall cycle of economic activity. Based on this, we observed foreign investment entering Indonesia from 2004 to 2019. During this period, Indonesia's economic conditions fluctuated, and it is known that several times, there was an economic slowdown due to the global financial crisis and other events related to social, political, and cultural issues. Hard work is needed to increase investment in Indonesia to create a conducive investment climate. In Indonesia, the main problem faced is creating a conducive investment climate through law enforcement, social and political security, stability, and improving infrastructure.

Based on the description explained above, in this article, the author will discuss further "The role of legal politics in creating legal reform in increasing foreign investment in Indonesia."

METHOD

⁵ Hikmahanto Juwana, "Politik Hukum UU Bidang Ekonomi Di Indonesia," *Jurnal Hukum* 1, no. 1 (2005): 24.

⁶ Amiruddin Ilmar, *Hukum Penanaman Modal Di Indonesia* (Jakarta: Kencana, 2007), 184.

⁷ Juwana, "Politik Hukum UU Bidang Ekonomi Di Indonesia," 24.

This research is a type of normative legal research that bases its analysis on statutory regulations related to the research problem being studied. The approach used in this research is a statutory approach and a conceptual approach, namely reviewing all of the issues examined based on a study of legal concepts in theory or doctrine. The data used in this research is secondary data consisting of primary legal materials, namely legal materials originating from official documents of the 1945 Constitution, Law Number 25 of 2007 concerning Capital Investment, General Agreement on Tariffs and Trade (GATT), as well as secondary legal materials consisting of books relevant to research, journals, information media via the internet, and other sources related and related to the problems studied.

The data collection method collects primary and secondary legal materials using library study techniques. Then, it will be presented by describing the data and legal materials. Data collection will also be complemented by conducting document studies of other documents related to this research. Looking at the nature of research that uses a doctrinal approach, the heart of the analysis is descriptive with a content analysis model, which will outline and organize the concepts and regulations regarding investment law that apply in Indonesia so that the answers to the problems studied will be clear as a conclusion. this research.

RESULT AND DISCUSSION

Discussions about legal politics must first know what legal politics is. An explanation regarding the meaning of legal politics is "legal policy or the official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, to achieve state goals." Thus, legal politics is a choice about laws that will be enforced as well as options about laws that will be revoked or not implemented, all of which are intended to achieve the goals of the State as stated in the preamble to the 1945 Constitution.⁸

In relation to investment and capital investment, in public language, the words investment or capital investment are terms known in daily business activities and statutory language. Investment is a popular term in the business world, while capital investment is commonly used in legislation. However, these two terms have the same meaning.⁹ Investment is a sum of funds or other resources made at this time to obtain a number of benefits in the future. Investment can also be defined as postponing current consumption to be used in efficient production over a certain period of time in the hope of providing income or profits. According to Kasmir and Jakfar, the definition of investment is an investment in an activity that has a relatively long period in various business fields. The capital investment takes the form of specific physical or non-physical projects.

According to Sornarajah "*Foreign investment involves the transfer of tangible or intangible assets from one country into another country for the purpose of their use in that country to generate wealth under the total or partial control of the owner of the assets*".¹⁰ This definition explains that foreign investment includes and involves movable and immovable assets that are used within a particular country's territory to generate wealth through total or partial control of the asset owner. Ida Bagus Wyasa Putra stated, "the meaning of investment law, which is defined as legal norms regarding the

⁸ Moh Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Raja Grafindo Persada, 2012), 1.

⁹ Ida Bagus Rachmadi Supancana, *Kerangka Hukum Dan Kebijakan Investasi Langsung Di Indonesia* (Jakarta: Ghalia Indonesia, 2006), 1.

¹⁰ M. Sornarajah, *Internasional Investment Law* (Cambridge: Cambridge University Press, 2004), 7.

possibility of investment, investment conditions, protection and most importantly directing that investment can create prosperity for the people."¹¹

Matters regulated in investment law are the relationship between investors and capital receipts. Investor status can be classified into two types: foreign and domestic. Foreign investors are investments from abroad, while domestic investors are from within the country. The business sector is a field of activity where investment is permitted or permissible. Procedures and conditions are procedures that must be fulfilled by investors when investing. The country is the country where the investment is made. Usually, the countries that receive investment are developing countries.¹²

The government needs to carry out an innovation to attract investors. So far, the government has simplified and streamlined regulations through the omnibus law method. With so many laws and regulations that are complicated and long and contradict each other, the concept of omnibus law has arisen.¹³

Economic growth is greatly helped by investors who invest their capital to create all aspects of a particular field. Regional conditions greatly determine the entry and exit of foreign investors who wish to invest their capital in all fields. For this reason, the government directs its investors to have strategic areas so that growth is evenly distributed throughout Indonesia.

The hope is that if investment in Indonesia increases, opportunities will open up to create new community activity fields. It is hoped that the large number of manufacturing factory developments resulting from investment coming into Indonesia can also reform the industry in Indonesia. Suppose Indonesia produces more products and exports more goods, not just raw goods. In that case, it will undoubtedly strengthen the value of Indonesia's exports in the long term and ultimately help enhance the value of the rupiah.¹⁴

Although there are many objections from the public regarding the omnibus law, which can be seen from the behavior of conveying opinions to the authorities, in total, the existence of this omnibus law can provide relief in the licensing process and make the investment climate in Indonesia continue to be good and improve the nation's economy.¹⁵ Foreign investment is regulated in the UUPM and is changing because it is not in accordance with economic needs or increasing trends. Therefore, the government has made regulations regarding investment abroad and within the country. So that there are no misunderstandings and disputes among investors. This does not need to happen between investors because there are government regulations. If foreign investment enters Indonesia, the investment law will open the door to opportunities for investors to invest their capital in Indonesia. In this way, it provides benefits for Indonesia to accept foreign investors into the country. It also creates jobs for the community if foreign investors

¹¹ Salim H.S. and Budi Sutrisno, *Hukum Investasi Di Indonesia* (Jakarta: Rajawali Press, 2008), 9.

¹² H.S. and Sutrisno, 21.

¹³ Bobi Yusuf Noor Fajar and Zaid Zaid, "A Critical Review on The Job Creation Omnibus Law-Forming Process," *Syiah Kuala Law Journal* 5, no. 2 (August 30, 2021): 195-211, <https://doi.org/10.24815/SKLJ.V5I2.21605>.

¹⁴ Stefanus Adrian Chandra Wijaya, "Dampak Omnibus Law Terhadap Iklim Investasi Indonesia," 2020, https://www.poems.co.id/htm/Freeducation/LPNNewsletter/v90/vol90_omnibuslawterhadapinvestasi.html.

¹⁵ Wijaya.

enter various sectors. The government's role is vital in advancing the economic growth of a region and, at the same time, realizing the acceleration of long-term and short-term development.

The aim of structuring regulations with an omnibus law is to eliminate overlaps between laws and regulations, make the process of changing/revoking laws and regulations efficient, and eliminate sectoral egos.¹⁶ Eliminating overlaps between laws and regulations through omnibus law can be done because, with omnibus law, all laws that are related or have the potential to regulate the same object are reviewed and reviewed for structuring. The process of changing/revoking statutory regulations with an omnibus law is more efficient because changes/revocations are carried out by simply making one law by changing/repealing the old law. Apart from that, the omnibus law can eliminate sectoral egos between government agencies, because before the omnibus law legislation is born, there must first be a joint discussion between sectors. Apart from that, the omnibus law can unite the views of various stakeholders. The aim of the Job Creation Law related to investment is to adjust various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by the ideology of Pancasila. Regarding these conditions, foreign investment can provide legal protection and legal certainty based on established law.¹⁷

In the era of globalization and the era of free markets that will invade every part of the world, including Indonesia, the most important thing is the spirit of state administrators to carry out intensive and strict control, both through institutions and in the form of regulations. If this is the case, then the worries of government officials and members of the DPR will not happen that foreign investors will again swallow up local entrepreneurs, which might happen in this era of globalization. Whoever has a lot of capital will be the winner. This is a consequence of market mechanisms.¹⁸ Entrepreneurs encouraged them to recruit investors abroad to provide benefits to society so that they could help workers. Apart from that, the private sector and government are also strengthening the various sectors they invest in to accelerate development. The use of foreign investment will increase the rate of economic development evenly and have a positive impact on society.¹⁹

The hope is that if investment in Indonesia increases, opportunities will open up to create new community activity fields. It is hoped that the large number of manufacturing factory developments resulting from investment coming into Indonesia can reform the industry in Indonesia as well. Suppose Indonesia produces more products and exports more goods, not just

¹⁶ Muhammad Insa Ansari, "Omnibus Law Untuk Menata Regulasi Penanaman Modal," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (April 27, 2020): 77, <https://doi.org/10.33331/RECHTSVINDING.V9I1.378>.

¹⁷ M. AUFAR SAPUTRA PRATAMA ERWAN, ZAID ZAID, and DEWI NURUL MUSTJARI, "Optimalisasi Undang-Undang Cipta Kerja Pada Koperasi Syariah Dalam Mewujudkan Kesejahteraan Masyarakat," *JURNAL RECHTENS* 10, no. 1 (June 29, 2021): 59-74, <https://doi.org/10.36835/RECHTENS.V10I1.1016>.

¹⁸ Bewa Dangu Wole, Annisa Purwatiningsih, and Kamaluddin Kamaluddin, "Iklim Investasi Dalam Penyelesaiannya Penerapan Omnibus Law," *Jurnal Inovasi Ilmu Sosial Dan Politik (JISoP)* 3, no. 2 (November 10, 2021): 118-27, <https://doi.org/10.33474/JISOP.V3I2.10989>.

¹⁹ M.L. Jhingan, *Ekonomi Pembangunan Dan Perencanaan: Edisi Pertama* (Jakarta: Rajawali Press, 2010), 483.

raw goods. In that case, it will undoubtedly strengthen the value of Indonesia's exports in the long term and ultimately help enhance the value of the rupiah.²⁰

CONCLUSION

Through legal politics, the state creates a design and plan for developing national law in Indonesia. Achieving legal development will encourage the achievement of legal goals, which will then lead to the creation of state goals. Through legal politics, the state creates a design and plan for developing national law in Indonesia. Achieving legal development will encourage the achievement of legal goals, which will then lead to the creation of state goals. The aim of the Job Creation Law related to investment is to adjust various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by the ideology of Pancasila. Regarding these conditions, foreign investment can provide legal protection and legal certainty on the basis of established law.

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²⁰ Wijaya, "Dampak Omnibus Law Terhadap Iklim Investasi Indonesia."

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