



ANALYSIS OF LEGAL PROTECTION REGARDING THE COMPANY'S LARGE PROJECT ON FOREIGN DIRECT INVESTMENT IN INDONESIA

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| Article | Abstract |
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| <p>Keywords:</p> <p>Foreign investment; Investment Law; Legal Protection;</p> <p>Article History Received: Jan.15,2023; Reviewed: Jan.18,2023; Accepted: Jan.21,2023; Published: Feb.10, 2023</p> | <p>Foreign investment is necessary to support the growth and development of the national economy in Indonesia. One of the main resources to support national development is foreign capital payments. There are many factors that foreign investors must consider before investing in Indonesia. The first is the legal protection imposed by the government on foreign investors. According to Law Number 25 of 2007 concerning Investment</p> <p>This research aims to analyze the relationship between foreign investment in Indonesia. This research uses a normative approach, meaning the aim is to measure or evaluate something based on existing standards or norms, in this case legal norms. The statutory regulatory approach method is different from the approach that uses law as the main tool to analyze a particular issue or problem.</p> <p>This transfer of knowledge and technology also benefits a lot from foreign investors, namely increasing state income or foreign exchange in the investor's home country (Harjono, 2016). Legal protection is one component that supports the growth of foreign investment businesses in Indonesia.</p> |

1. INTRODUCTION

Foreign Capital Investment is the activity of inputting real or intangible capital from one country to another with business activities or managing company operations with the aim of generating profits under the supervision of capital owners either in total or in part with the provision that the percentage of shares owned by foreign investors is a maximum of 95% and domestic investors is 5%.¹

¹ Riadi, Muchlisin. (2020). Penanaman Modal Asing (PMA) - Pengertian, Tujuan, Bentuk dan Faktor yang Berpengaruh. Diakses pada 2/26/2024

Foreign direct investment ("PMA") must be in the form of a limited liability company ("PT") under Indonesian law and domiciled in Indonesia, unless otherwise stipulated by law. Thus, the rules for establishing PT PMA in Indonesia refer to the provisions in the Limited Liability Company Law as amended, deleted, and/or contained in new provisions by the Job Creation Perppu. PMA itself can only carry out business activities in large businesses, so it can only be established in the form of a capital partnership PT. In addition, it is also necessary to pay attention to risk-based business licensing in the business activities carried out ²

According to Law Number 25 of 2007 concerning Investment, the definition of Foreign Capital Investment (PMA) is an investment activity to do business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use fully foreign capital and those who are joint ventures with domestic investors. Furthermore, it is explained that foreign capital is capital owned by foreign countries, foreign individuals, foreign business entities, foreign legal entities, and/or Indonesian legal entities whose capital is partly or fully owned by foreign parties.³

Foreign Direct Investment ("PMA ") is an investment activity to do business in Indonesian territory carried out by foreign investors, both those who use fully foreign capital and those who are joint ventures with domestic investors. Meanwhile, foreign investors are foreign individuals, foreign business entities, and/or foreign governments that invest in Indonesian territory.⁴

Foreign Direct Investment can be used by large businesses, but cannot be used by micro, macro, and/or small businesses because they have a lot of resources, capital, and networks to expand their business. They also have greater access to financial markets to obtain inventions. However, small businesses will face more obstacles in attracting capital due to limited resources and a higher risk

² Permatasari, Erizka. (2023). *Ini Aturan Pendirian PT PMA di Indonesia*. Hukum Online. Diakses pada 27/2/2024

³ Riadi, Muchlisin. (2020). *Penanaman Modal Asing (PMA) - Pengertian, Tujuan, Bentuk dan Faktor yang Berpengaruh*. Diakses pada 26/2/2024

⁴ Permatasari, Erizka. (2023). *Ini Aturan Pendirian PT PMA di Indonesia*. Hukum Online. Diakses pada 27/2/2024

profile. So with the legal protection, big businesses get security for the development of what they get from Foreign Investment.

Some regulations to regulate Foreign Direct Investment (PMA) in Indonesia, such as Law No.25 of 2007 concerning Investment, is the main law governing all aspects of investment in Indonesia, including Foreign Investment.⁵⁶ Law No.12 of 1970 concerning Amendments and Supplements to Law No.6 of 1968 concerning Domestic Investment.⁷ Law No.1 of 1967 concerning Foreign Investment.⁸

Despite not explicitly regulating foreign direct investment (FDI), Law Number 18 of 2017 on Cooperation Agreements (PPP) provides a framework for agreements between the Indonesian government and private parties, including foreign corporations. Micro, Small, and Medium-Sized Enterprises (MSMEs) are governed under Law Number 20 of 2008, this regulation also affects foreign direct investment (FDI), particularly when it comes to partnerships or investments with MSMEs in Indonesia. Law No. 39 of 2009 concerning State Ministries, creates ministries in charge of several areas of the economy, including investment, even if it does not directly control FDI.

Furthermore, other regulations govern specific aspects of FDI in Indonesia, such as Government Regulations, BKPM Regulations, and other regulations issued by associated bodies. The Investment Law, Government Regulations, and Presidential Regulations pertaining to foreign investment are just a few of the laws and rules that control legal protection against foreign investment in Indonesia. Legal protection encompasses various issues, such as, The first is Investment Law, which ensures investors' rights to legal clarity, justice, and protection while also providing a legal foundation for both foreign and domestic investment in Indonesia. The second, Investment Protection and Guarantee Agreements (IPPA), to safeguard foreign investment, Indonesia has negotiated bilateral and multilateral agreements with other nations.

⁵ - (2008). “UU No.25 Tahun 2007, Penanaman Modal”. Peraturan.bpk.go.id. Accessed on 2/27/24.

⁶- (2007).”Regulasi terkait lainnya, Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal.” ojk.go.id.accessed on 2/27/24.

⁷ - (2008). “UU No.25 Tahun 2007, Penanaman Modal”. Peraturan.bpk.go.id. Accessed on 2/27/24.

⁸(-). “UU No.1 tahun 1967”. bpk.go.id. accessed on 2/26/2

These agreements offer assurances for the safety, defense, and resolution of investment disputes. The third is that the Government of Indonesia offers a range of facilities and incentives, such as tax breaks, simplified licensing procedures, and other support, in an effort to draw in international investment. The fourth is dispute settlement to promote fair and transparent dispute settlement. Indonesia has implemented an investment dispute resolution process that includes courts, national and international arbitration. Political, legal, and economic dangers are all part of the package when it comes to foreign investment in Indonesia, just like they are in other nations. Foreign investors must therefore be aware of Indonesia's laws and business climate and take the appropriate precautions to safeguard their capital.

Foreign investors that make Foreign Direct Investment (PMA) in Indonesia can use multiple channels to get legal protection from their home country such as multilateral and bilateral agreements, Indonesia and many other nations have multilateral or bilateral investment protection agreements. This agreement gives guarantees and dispute resolution methods to foreign investors in that country. Political Insurance, some nations have political insurance agencies that safeguard foreign corporations from political risks such as undesirable changes in government policies or political conflicts. Contract Provision for Investment Protection, when agreeing with the Indonesian government or business associates, foreign investors may incorporate a provision for investment protection. This type of clause might offer further security against potential threats. Foreign investors that encounter legal or other issues in the country of investment destination can receive assistance and advocacy from international business and organization associations, business associations, or international organizations. Parties to a PMA may incorporate arbitration agreement terms in their contracts to settle disagreements outside of national courts. The process of resolving disputes through international arbitration may be quicker and more impartial. The Government of Origin Offers Protection and assurances, through organizations like export insurance companies or the Ministry of Trade, certain countries offer assistance and assurances to foreign businesses that make investments overseas.

In accordance with their investment criteria and risk tolerance, foreign investors must assess appropriate strategies and be aware of the legal protections that are in place.

2. RESEARCH METHODOLOGY

This research uses a normative approach, which means this research aims to assess or publish something based on existing standards or norms, in this case, legal norms. The statutory-regulatory approach method refers to an approach that uses law as the main frame of reference for analyzing a topic or problem.

The data used in this research is secondary data, which means the data was not obtained directly from the field through primary research, but rather existed previously and was processed for the purposes of this research. Secondary data includes primary legal materials, such as Law Number 25 of 2007 concerning Capital Investment, as well as other sources such as textbooks, journals and other documents.

The data collection technique used in this research is literature study. This means that researchers collect information and data from various literature sources that are relevant to the research topic. The data analysis technique used is descriptive qualitative, which focuses on explaining or interpreting data without using numbers or statistics, but rather is based on the qualitative characteristics of the data.⁹

⁹ Research Methodology

Sitompul, Rifqi Ananda Gelora. 2023. “ *Perlindungan Hukum Terhadap Penanam Modal Asing Dalam Menanamkan Modalnya Di Indonesia Menurut Undang -Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal.* ” jurnal anfa. accessed on 2/26/24.

<https://jurnal.anfa.co.id/index.php/civilia/article/view/399>

Wicaksono, Try Ananto Djoko. 2021. “ *Analisis Perbandingan Hukum Penanaman Modal Asing Antara Indonesia Dengan Vietnam.* ” Jurnal Al-Azhar Indonesia. accessed on 2/26/24.

https://www.researchgate.net/publication/349639701_Analisis_Perbandingan_Hukum_Penanaman_Modal_Asing_Antara_Indonesia_Dengan_Vietnam_Tinjauan_Dari_Undang_-_Undang_No_25_Tahun_2007_Tentang_Penanaman_Modal_dan_Law_No_672014QH13_On_Investment

3. DISCUSSION

3.1 Legal Protection Against Foreign Investment

Law Number 1 of 1967 concerning Domestic Investment regulated foreign investment policies in Indonesia before Law Number 25 of 2007 concerning Investment. This law strengthens Indonesia's investment laws and eliminates legal inequalities in terms of foreign and domestic investment. The reference and framework for investment development in Indonesia regulates this investment. The government's aim through policies stipulated in Law Number 25 of 2007 is to create a business climate that supports the investment system throughout the country with the aim of increasing the competitiveness of the national economy and accelerating capital investment. The basic policy of the government should definitely be to treat foreign and domestic investors in the same way. The government tries to provide legal protection and guarantees for every investor, starting from investment permits, the investment process, to investment agreements (Tindangen, 2016).

According to the Investment Law, the government must treat foreign and domestic investors in the same way. This is in accordance with Article 4 paragraph 2 letter (a) of the Investment Law, and then in letter (b), which states that the government must ensure legal certainty, business certainty and business security for investors from the licensing process until the end of investment activities. . Article 6 then emphasizes equal treatment for all investors, stating that in all situations, the government must ensure that legal certainty, business certainty and business security for foreign investors who previously had a special agreement between the government and the investor are threatened by these provisions.

In terms of guarantees given by the government of the country receiving capital to foreign investors so that they no longer experience doubts before investing their money in Indonesia, legal security is an important factor. Investors, both foreign and domestic, are legally guaranteed by Law Number 25 of 2007 concerning Capital Investment. In addition, the law regulates regulations on nationalization and compensation, as well as regulations on the transfer,

transfer and repatriation of assets in foreign currency. However, investors who previously had or had special agreements between the Indonesian government and foreign investors are not included in this provision. Such agreements include common markets, free trade areas, monetary unions, customs, and bilateral agreements between the Indonesian government and foreign governments.¹⁰

In Article 6 the UUPM has described the contents of the treatment applied by the Indonesian government to investors in Indonesia, both foreign investors and domestic investors. This article answers the public's assumption that the Indonesian government treats domestic investors and foreign investors in different ways, such as provisions regarding tax holidays and stricter investment regulations. Article 6 of the UUPM describes the treatment applied by the Indonesian government to investors in Indonesia, both foreign investors and domestic investors. This article answers the public's assumption that the Indonesian government treats domestic investors and foreign investors in different ways, such as provisions regarding tax holidays and stricter investment regulations (Effendy, 2017)

Indonesian nationalization is currently increasingly tightening. So, a company must be able to meet the statutory requirements to be nationalized by the government. This policy shows the good faith of the Indonesian government towards foreign investors by trying to create equal working conditions between Indonesia and investors from other countries. If the Indonesian government and foreign investors do not reach an agreement on the amount, type and method of payment, arbitration can also be carried out between them. One of the internationally recognized policies is nationalization. However, still follow the applicable laws and regulations. If a country wants to nationalize investment contracts, such actions must be recognized and approved internationally as well.

¹⁰ 3.1 Kelana, Dewa Sukma. 2022. "Perindungan Hukum Bagi Investor Asing." <https://ejournal.stih-painan.ac.id/index.php/jihk/article/view/187/135>

3.2 Implications of Legal Protection for Foreign Investors for the Country

Indonesia is one of the countries that does not fully support foreign investors. This is due to the many investment challenges that investors face before they decide to use their capital in Indonesia. Legal certainty is the main problem faced by foreign investors. Therefore, the government created Law Number 25 of 2007 concerning Investment to provide legal protection for every investor, both foreign and domestic investors. In addition, international law determines the terms of investment. Indonesia's involvement as a member of the Multilateral Investment Guarantee Agency (MIGA) Convention aims to encourage more foreign investment. It is clear that foreign investment will really help the Indonesian economy and development. For example, in a situation where a country's exports have decreased, investment is made as a way to earn foreign exchange for the country. Foreign investment participates in procuring capital in the form of funds to finance various development projects. In short, the increase and economic growth in Indonesia has benefited from foreign investment. Foreign investment also involves the transfer of knowledge and technology, which allows Indonesia to apply industrial or development technology from the investor's home country. Many foreign investors also benefit from this transfer of knowledge and technology, namely increasing state income or foreign exchange in the investor's country of origin (Harjono, 2016). Rapidly growing international trade increases competition. Therefore, legal protection is one of the components that supports the growth of foreign investment businesses in Indonesia. Apart from influencing international and national trade, foreign investment also influences the business or trade growth of small and medium enterprises. The development of free trade provides opportunities for SMEs to participate in exports.¹¹

¹¹ 3.2 Winata, Agung Sudjati. 2018. "Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal". e-jurnal.lppm.unsera.org. accessed on 2/26/24.
<https://e-jurnal.lppmunsera.org/index.php/ajudikasi/article/download/902/pdf>

3.3 National Relevance of Foreign Investment

In Article 7 of Law No. 25 of 2007 concerning Capital Investment, the contents of which are:

- (1) The government will not take action to nationalize or take over the ownership rights of investors, except by law.
- (2) In the event that the Government takes action to nationalize or take over ownership rights as intended in paragraph (1), the Government will provide approval for an amount determined based on market prices.
- (3) If an agreement cannot be reached between the two parties regarding settlement or compensation as intended in paragraph (2), the settlement shall be carried out through arbitration.¹²

The government will not carry out nationalization except by law, as stated in Article 7. Nationalization is regulated in Law Number 25 of 2007 in two ways. First, letter b of the consideration section "Considering" outlines the purpose of making this law, namely to accelerate the country's economic development and strengthen political sovereignty. Second, in the General Explanation of Law Number 25 of 2007, it is emphasized that the 1945 Constitution stipulates that the country's economic development must be accelerated. According to article 33 of the 1945 Constitution, paragraphs (2) and (3) state that: (2) Production branches which are important for the state and which affect the lives of many people are controlled by the state. (3) The earth, air and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people.

3.4 Important Changes In Investment Law

The aim of changing the Investment Law is to make investment regulations clearer. It is hoped that Investment Law Number. 25 of 2007 will attract investors with various incentives, services and guarantees. Of the 40 (forty)Articles of the Investment Law Number 25 of 2007, most regulate the provisionof facilities or guarantees of business certainty to investors. The very important change in the Investment Law, the provision of these facilities, is expected to

¹² 3.3 Rosmayanti, Maya. (2023). “*Kedudukan Penanaman Modal Asing.*” e-journal unikama. accessed on 2/26/24.<https://ejournal.unikama.ac.id/index.php/jph/article/view/8500>

attract investors. Investment is an important component in a country's development. Investment, both domestic and foreign, can encourage a country's economic growth (Yuliana, 2010). So, the state must plan as best as possible so that investment grows and has a positive impact on society, the state and the country. Due to the complexity of investment and the impact on many things, such as land, labor, capital, taxation, and many more, the state is responsible for regulating investment. One of the breakthrough laws to create many laws is the Job Creation Law Number 11 of 2020 (Prasetyo, 2022). The Omnibus Law method resulted in 78 Laws and more than 1200 Articles being revised together into one Job Creation Law which regulates various sectors which are divided into eleven groups.

One of the impacts of the Job Creation Law is improving the investment ecosystem and business activities, increasing worker protection and welfare, increasing convenience, empowerment and protection of Cooperatives and MSMEs, and accelerating government investment and national strategic projects. Indonesia, which is rich in natural potential and is being targeted by the global market. This developing country really needs help from foreign investors in terms of funding and technology management because it has abundant natural resources that can be used to improve its economy. Indonesia must create a comfortable environment for foreign investors to attract their attention. The government must create policies that attract foreign investors to invest because they do not want to take risks and are very sensitive to legal and political stability issues. Not influenced by political members who are responsible for the state legislature in the policy-making process.

This legal policy must be able to meet the requirements of a country to meet the needs of its citizens in addition to being able to meet the needs of foreign investors. When foreign investors come, the laws and politics in this country are very influential. The policies and legal products that are made are strongly influenced by politics which is more independent of the law. Punishment results from current politics. It cannot be denied that a lot of capital is needed to carry out development in a country. If we only depend on the capital provided by the government, we will almost certainly not be able to achieve the goals desired by

the founders of the Indonesian state. To achieve this, additional funds must be obtained through investment, both from domestic and foreign investors. To achieve this, regulations need to be created that provide legal protection to investors. In this case, the DPR RI has passed what is called the Omnibuslaw or Job Creation Law. Many countries around the world are competing to invite foreign investors because of the very important role of investment in developing the economy. to invest capital in the country. From an investor's perspective, because markets are opening up in the era of globalization, they also want toinvest their capital in developing countries with the aim of making a profit.Meanwhile, developing countries hope for the arrival of capital from these investors to encourage economic growth.

The inclusion of foreign investors who invest their capital in developing countries interact with each other. Tools are needed to accommodate both interests within a clear standard considering these differences of opinion. A similar proposal was proposed by an expert named Sumantoro who stated that: the motivation of investors is to gain profits with the aim of receiving capital, namely efforts to achieve national development goals. The government must providefacilities and infrastructure, as well as other facilities, so that investors want to build capital. To achieve national progress goals, the government must plan carefully, including creating strong implementation and monitoring policies. Withthis method, the role of investors can focus on development priorities.¹³

3.5 The Influence of Law and Politics in foreign investment

Developing countries that carry out development in all fields can be considered good development countries if they carry out development without achieving certain goals. Apart from economic growth, the human rights of citizens must be protected in the constitution of the country concerned. In this way, development will be able to encourage community participation in development. There are five legal qualities where this aspect really supports development planning and implementation:

¹³ 3.4 Harjono, Dr Dhaniswara K. (2012). “ *Hukum Penanaman Modal.*” Repository UKI. accessed on 2/26/24.<http://repository.uki.ac.id/1026/1/Hukum%20Penanaman%20Modal.pdf>

Stability (stability), predictability (prediction), fairness (fairness), education (education), and legal professional development skills.

According to Satjipto Rahardjo, because the law functions to protect human interests, the law must be implemented. Ronny Hanitidjo, following Talcott Parsons' opinion, stated that the main task of law is to carry out integration, which means reducing conflict and speeding up the process of interaction in social interactions. The function of internal law itself has a major impact on human life, especially in economic terms. In this case, Thomas Aquinas¹⁴ stated that the function of law is sought for the welfare of all mankind. One of the factors driving the scientific shift between the fields of law and economics is economic globalization. Therefore, talking about the legal approach to economics or the legal approach to economics, which is also known as economic analysis of law, is very important when talking about the role and progress of law in the economic development of a country.

In the future stage of national legislation, the function and role of law in development must be prioritized in laws relating to capital accumulation, economic democratization and development financing, to achieve efficiency and fulfill the law's function as a business facilitator. Therefore, legal experts who work as legislators must be able to thoroughly combine legal studies with other scientific disciplines to ensure the social order necessary for the functioning of the law. This is because social changes and the relationship between society, the state and the state at the national, regional and international levels can change in accordance with the principles contained in the law.

¹⁴ 3.5 Fernando, Adrian. 2022. "Politik dan Hukum peningkatan Investasi." Journal Islamic Indonesia University. accessed on 2/26/24.
<https://journal.uii.ac.id/Lex-Renaissance/article/download/21926/pdf/64109>

Fitri, Anjani Hernawan Santosa Furry Dhismayana Masa Ganta Ratna. 2017. "Pengaruh Hukum Dan Politik." *neliti.com*. accessed on 2/26/24.
<https://www.neliti.com/publications/163525/pengaruh-hukum-dan-politik-terhadap-perkembangan-investasi-asing-di-indonesia>

4. CONCLUSION

Foreign capital Refers to capital owned by foreign countries, individual foreign citizens, foreign companies, and foreign legal entities. Similar legal protection for foreign investment has been regulated in Law Number 25 of 2007 concerning investment. This law has provided information and effective protection to foreign investors against various risks in their investments in Indonesia. Indonesia is one of the countries that does not fully support foreign investors. Legal certainty is the main problem faced by foreign investors. Legal security is an important factor in terms of guarantees given by the government of the country receiving capital to foreign investors so that they no longer experienced doubts before investing their money in Indonesia. However, investors who previously had special agreements between the Indonesian government and foreign investors are not included in this provision.

Based on the results of this research, Indonesia is very fortunate because of the presence of many foreign companies which can bring a number of benefits and impacts, especially in terms of the Indonesian economy and development as well as in the field of technology. Foreign investment will really help the Indonesian economy and development. This collaboration is inseparable from existing political activities and foreign investment participation in procuring capital in the form of funds to finance various development projects, increasing and increasing economic growth in Indonesia which benefits from foreign investment.¹⁵

¹⁵ Conclusion

Riadi, Muchlisin. 2020. “*Penanaman Modal Asing*”

[https://www.kajianpustaka.com/2020/10/penanaman-modal-asing-](https://www.kajianpustaka.com/2020/10/penanaman-modal-asing-PMA.html)

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Try Ananto, Djoko Wicaksono. 2021. "Analisis Perbandingan Hukum Penanaman Modal Asing Antara Indonesia Dengan Vietnam (Tinjauan Dari Undang - Undang No. 25 Tahun 2007 Tentang Penanaman Modal dan Law No. 67/2014/QH13 On Investment)." *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 2(1).

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(BPK, Undang-undang (UU) Nomor 39 Tahun 2009 tentang Kawasan Ekonomi Khusus, 2009)

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[http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%201%20of%201967%20on%20Foreign%20Investment%20\(BI\).pdf](http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%201%20of%201967%20on%20Foreign%20Investment%20(BI).pdf)

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