

Licensing Issues as a Barrier to Investment: Learning from Indonesia

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Abstract

This paper will analyze the licensing problem which is a constraining factor for investment in Indonesia. This type of research is a normative legal research, using a conceptual approach and statute approach. The data used are secondary data consisting of primary legal materials and secondary legal materials. The collected data were then analyzed qualitatively. The results showed that the reality today is that many investors have very low confidence in the investment climate in Indonesia, this is because there are still a number of obstacles that RI needs to tackle. Licensing improvements with the Online Single Submission system and the provision of various tax incentives such as tax holidays and tax allowances are not sufficient. The government, needs to re-simplify procedures when investing, such as land acquisition and other licensing issues. Apart from these two obstacles, there are also other hindering factors. For example, inconsistent government policies, no central and regional coordination, as well as wages and labor issues. A good investment climate will certainly have a big impact on the investors who come. The investment climate which is considered conducive will indirectly also affect the services for these investors. The Job Creation Law is an effort that is considered to be able to improve the investment climate in Indonesia after the pandemic that occurred.

Keywords: barrier, Indonesia, investment, licensing.

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INTRODUCTION

The globalization including investment is unavoidable. In this era, transformation, penetration, modernization, and investment are the characteristic of the non-physical (territorial) boundaries as the main point of the era. It is also said that the presence of foreign investors is hard to avoid. Therefore, to deal with those issues of the era, the state officials (the government) must be prepared and integrated properly, including the strong leadership from the state officials (government) [1]. Countries in the world today seem to be connected to one another, not only country to state, but also countries with international organizations known as international relations [2]. Indonesia and countries in the Southeast Asia region have formed an integrated region known as the ASEAN Economic Community (AEC). AEC is a form of realization of the ultimate goal of economic integration in the Southeast Asian region. There are four things that will become the focus of the AEC in 2015 which can be used as a good momentum for Indonesia. First, the countries in the Southeast Asian region will become a unitary area of markets and production bases. With the creation of a unified market and production base, there will be no barriers to the flow of goods, services, investment, large

amounts of capital and skilled labor from one country to another in the Southeast Asian region. MEA will also be used as an area that has equitable economic development, by prioritizing Small and Medium Enterprises (SMEs). Fourth, the AEC will be fully integrated into the global economy [3]. Thus, the AEC is an important effort and step in carrying out economic competition among countries in the Southeast Asia Region.

Law requires various instruments with the aim that the law has a good performance which has compelling rules and if it is stated in a law, everyone must implement it [4], this is known as the rule of law. With the increasingly fierce competition as a result of the existence of a single market for the ASEAN Economic Community, it will be possible to have an impact on the survival of these SMEs, because there will be many imported products that will flood the domestic market [5], therefore, many regulations must then be harmonized in order to synergize with the laws in Indonesia.

According to Agus Riyanto [6], in Indonesia, national development cannot be separated from the role

of foreign investment. Foreign investment is very important, apart from being a provider of funds to be able to move the wheels of the economy, but also for the entry of foreign investors, it is hoped that technology transfer can improve the skills of Indonesian workers. To invite and attract foreign investors to invest, the Indonesian government always tries to create a conducive investment atmosphere. One of the concrete manifestations in the part of inviting foreign investors is by amending Law No. 1 Year 1967 concerning Foreign Investment (Law No. 1/1967) became Law No. 25 Year 2007 concerning Investment (Law No. 25/2007). Besides that, the substance and material of Law No. 1/1967 are no longer in accordance with the era, so that inevitably it must be amended by Law No. 25/2007 to be able to balance investment arrangements in Southeast Asian countries which are more competitive and open as wide as the spread of foreign investment to enter the country on the terms of its investment. This has been seen in recent years, such as in Myanmar, which has begun to open itself to foreign investment to emerge as a new vital center of growth and as a new competitor in investing. Even though, the changes in Indonesia took place after waiting for about forty years, but the will to move to change is the most important thing for him to admit.

Indonesia is the fourth most populous country in the world with a large workforce and abundant natural resources. This makes Indonesia one of the most promising countries for investment. Based on the 2015-2019 Investment Strategic Plan, the Government of Indonesia determines investment priority sectors, namely infrastructure, agriculture, industry, maritime, tourism, Special Economic Zones (Kawasan Ekonomi Khusus/KEK) and Industrial Estates, as well as the digital economy. These sectors are very open to Foreign Direct Investment (FDI), of course by paying attention to the investment guidelines listed in Presidential Regulation No. 44 Year 2016 concerning List of Closed Business Sectors and Open Business Sectors with Requirements in the Investment Sector. The Investment Coordinating Board (BKPM) is present as a Non-Ministerial Government Institution whose task is to coordinate policies and services in the investment sector based on the provisions of laws and regulations. BKPM has a mandate to encourage investment, both from within and outside the country [7]. The encouragement of foreign investment to enter Indonesia is an effort that has been emphasized by President Jokowi's government since he was first inaugurated in 2014.

There are many benefits that we can get from the entry of foreign investment into Indonesia. One of them is the entry of new capital to help fund various underfunded sectors. This foreign investment also opens up many new jobs so that the unemployment rate can be reduced. In addition, the entry of foreign investment is usually accompanied by technology transfer. They bring new technological knowledge to

Indonesia which will eventually be developed in Indonesia. It is also possible that foreign investors will cooperate with MSMEs (Micro, Small and Medium Enterprises). The involvement of MSMEs will certainly encourage the economic growth of the community. MSMEs or domestic companies also have the opportunity to market their products to international markets. The most tangible benefit of foreign investment is increasing state income through taxes. In addition, creating a more stable relationship within the economic sphere of the two countries [8]. However, the fact shows that the uncompetitive investment climate in Indonesia is caused by two factors, namely the problem of macroeconomic indicators that have not fully recovered (for example inflation, interest rates, exchange rates) and second is classic procedural and bureaucratic problems. However, the main reasons for foreign investors to leave Indonesia are the unfavorable investment climate in the country, weak competitiveness and legal certainty that has not been maximal. With this, the most important thing for investors in investing is investment regulation, where Indonesia has not been able to provide comfort in investing. In addition, the security aspect is also considered to be no less important in improving the investment climate because there is no guarantee of protection for investors, making it difficult to attract investors to invest in Indonesia. In addition, the most important consideration for investors, before deciding to invest in a country, is the issue of licensing services, where Indonesia has not been able to provide satisfactory services. Investment licensing looks like purely procedural, but behind it the seriousness to open oneself with open arms into a gamble to invest can be a benchmark for foreign investors whether or not they intend to invest in a country. This is because licensing can be an entry point for foreign investment or vice versa as an obstacle for owners of large, global class funds to invest in Indonesia [9]. This paper will analyze the licensing problem which is a constraining factor for investment in Indonesia.

RESEARCH METHOD

This type of research is a normative legal research [10], using a conceptual approach and statute approach [11]. The data used are secondary data consisting of primary legal materials and secondary legal materials. The collected data were then analyzed qualitatively [12].

RESULTS AND DISCUSSION

Investment Climate in Indonesia

Fekrsw [13] reported that not only had a bad impact on public health conditions, the plague that hit also had an impact on the economic sector in Indonesia. As is known, many parties are experiencing a crisis in the midst of the current pandemic. Areas such as investment have also been affected by this situation. When viewed from the current reality, there are many companies that are faltering due to the existing

pandemic. Not a few of the employees were laid off as a result behind it. The business sectors that experience this are also quite numerous. For example, in the industrial sector, which usually can absorb a lot of workforce in it. With this situation it can also have an impact on existing economic growth. Economic growth in a region can also be influenced by a variety of other things. For example, influenced by investment activities or investments carried out by people who have been involved in it. Under these circumstances, many related parties have tried to attract investors in an effort to develop the existing economy. Of course, the shock in the form of an epidemic has made changes to the investment activity. The strategy as an effort to increase investment flows has also been implemented by various parties. A good investment climate will certainly have a big impact on the investors who come. The investment climate which is considered conducive will indirectly also affect the services for these investors. It was known beforehand that the position held by Indonesia is currently at a disadvantage in terms of investment. This is because in the midst of the pandemic, many investors have very low confidence in the investment climate in Indonesia. When viewed firsthand, a pandemic in the form of an epidemic that has occurred has also caused market panic.

BKPM data shows that the growth trend of Chinese investors in the last three years has been fluctuating. In 2016, Chinese investment reached USD 2.7 billion. Furthermore, in 2017 it rose to USD 3.4 billion. In 2018 it decreased with an investment value of USD 2.4 billion. Meanwhile, during the first semester of 2019, Panda's domestic investment reached USD 2.3 billion. In fact, China is always included in the top ten of foreign investment (Penanaman Modal Asing/PMA). In the first half of this year, the first sectoral investment ranking came from the transportation, warehouse and telecommunication sectors as much as 17.2% or Rp 34.5 trillion. Second, the electricity, gas and water sector with a contribution of 11.8% or Rp 23.7 trillion. Meanwhile, the third sector was the food industry sector which contributed 8.6% or the equivalent of Rp. 17.2 trillion. Fourth, the food crop, plantation and livestock sector as much as 8.4% or around Rp. 16.9 trillion. Fifth, the mining sector with a contribution of 7.5% or as much as IDR 15.1 trillion. Meanwhile, investment realization throughout 2018 was only Rp. 721.3 trillion. Or an increase of 4.1 percent from 2017 which amounted to IDR 692.8 trillion. In percentage terms, the realization clearly decreased when compared to 2017, where growth could still reach double digits, namely 13.1 percent from the 2016 position of IDR 612.8 trillion. Domestic investment (Penanaman Modal Dalam Negeri/PMDN) grew by 25.3 percent from IDR 262.3 trillion to Rp. 324.8 trillion. Meanwhile, foreign investment plunged 8 percent from IDR 430.5 trillion to IDR 392.7 trillion. Deputy for Controlling Implementation of Investment at BKPM, Farah Ratnadewi Indriani, is still optimistic that investment

can be excited until the end of 2019. The target for the realization of foreign investment this year is IDR 483.7 trillion [14]. Therefore, unfair business competition needs to be addressed [15]. Thus, there is actually still great potential for improving the investment climate in Indonesia, but what needs to be remembered is how consistent the government is in overcoming any problems in investment.

Licensing Becomes the Main Problem

In a limited meeting with his ministers, President Joko Widodo complained about the situation where as many as 33 companies had relocated their factories from China to Southeast Asia, none of which stopped by Indonesia. "23 chose Vietnam, the other 10 went to Malaysia, Thailand and Cambodia. Nothing to us Please underline this", said Jokowi, opening a limited meeting at the Presidential Office in early September 2019. The trade war between America and China resulted in a number of industries in China relocating their factories from mainland China to Southeast Asia because they did not want to be affected. The problem is, of the dozens of factories that left China, none of them moved to Indonesia. Not only China, in fact Japanese and Korean companies are reluctant to look at Indonesia, or Malaysia. For example, electronic product manufacturer Foxconn has chosen to relocate its industry to Vietnam. Not only that, Vietnam is also being attracted by labor-intensive companies such as Xcel Brands and Man Wah Holding. Meanwhile, capital-intensive technology companies, such as Dell, have chosen to move to Taiwan. Actually, what was the reason why the company was reluctant to relocate its business to Indonesia? Research director at the Center of Reform on Economics (CORE) Indonesia Piter Abdullah Redjalam assessed that this happened because there were still a number of obstacles that needed to be addressed by RI. Licensing improvements with the Online Single Submission (OSS) system and the provision of various tax incentives such as tax holidays and tax allowances are not sufficient. The government, needs to re-simplify procedures when investing, such as land acquisition and other licensing issues. Apart from these two obstacles, there are also other hindering factors. For example, inconsistent government policies, no central and regional coordination, as well as wages and labor issues. Jokowi in a limited meeting in early September also said that the government needed to be careful in overcoming this problem.

According to him, one of the reasons Vietnam has become the main destination for foreign investors cannot be separated from a more concise regulatory model. "If you want to move to Vietnam, it only takes 2 months to complete. We can take years. The only reason is that", said Jokowi. Therefore, Jokowi instructed his ranks related to the economy to start an inventory of impeding regulations. Jokowi asked the ministers/heads of institutions to provide the best

service to investors. Meanwhile, Deputy for Controlling Implementation of Investment (BKPM), Farah Ratnadewi Indriani, said that many factors from other countries are more attractive as Chinese investment destinations. Farah views the tendency of foreign investors to relocate their business, first, because they see the availability of land that does not overlap and is easy to obtain. Second, the openness of a country in accepting the widest possible field of business. Comparative and competitive advantages are still a prerequisite for a country to become an attractive investment destination country [16]. This is certainly a challenge in itself for Indonesia, as a country that has its own appeal for investors, Indonesia has been able to solve any problems related to investment so far.

According to Fekrsw [17], the decline in confidence on the part of investors also occurred because of this. The impact can be said to have been felt globally or as a whole. However, for developing countries like Indonesia, this is considered to be getting worse from day to day. This was expressed by Shinta Kamdani as the vice chairman of KADIN (Chamber of Commerce and Industry). The ranking of ease of doing business or commonly known as the Easy of Doing Business owned by Indonesia is also lagging behind other countries in other ASEAN regions. For example, it is still under Singapore, Malaysia, Thailand, Brunei, and Vietnam. Another thing that also causes many investors to be reluctant is the issue of licensing. The problem in the form of licensing is a fairly classic problem and must be addressed as a whole. The timing of post-Covid-19 must also be carefully considered when viewed from economic growth and existing investment. It is necessary to take special steps so that the economic sector in the Indonesian territory can recover and grow back to normal.

Job Creation Law as a New Hope

Vesteden argues that supreme law implies that an action is only valid if it is carried out according to or based on certain laws (legality principle). Legal provisions can only be overridden in the event that the public interest really wants or the application of a rule of law will violate the principles of justice that apply in society (principles of natural justice), and there is a guarantee that protects the rights of every good person, human rights or those that are not basic from the actions of the government or other parties [18]. So that potential disputes can be avoided [19]. This is what will trigger the emergence of public trust in investing in Indonesia.

The Job Creation Law is an effort that is considered to be able to improve the investment climate in Indonesia after the pandemic that occurred. It is also hoped that the informal sector will also improve into the formal sector after all the current crises. The law is also considered to be a good start in regrowing the business climate and investment after the pandemic. Classic problems such as licensing can also be overcome by

implementing the Job Creation Law. With this, it is also hoped that it can help improve the economic welfare of various parties in Indonesia in the future. Another thing that can help restore the economic situation in Indonesia is about the opportunities that must be taken by the state. Because it is estimated that after Covid-19, many businessmen will begin to consider the problem of factory relocation to the Southeast Asian region. Because it can be seen that many countries have attempted to relocate their business from China to Southeast Asia. With this opportunity, this is one of the things that is considered to be able to restore the economic downturn that has occurred. If the Job Creation Law cannot be carried out in the aspect of licensing regulations and also investment, it is feared that it will make it difficult to attract interest from investors. Of course this will make the economic situation in Indonesia not improve quickly. These various efforts are also expected to have an impact on Indonesia's investment climate going forward. The impact that occurs due to the effects of this pandemic is quite large. The investment climate in this country is also affected by this. In an effort to rise to the better in the economic sector, comprehensive steps are needed by the government. For example, by improving the licensing system in accordance with the Job Creation Law with a variety of existing considerations [20]. With the improvement in the licensing system, Indonesia can of course be considered a friendly country for foreign investors who will invest in Indonesia.

The principles of legal certainty, orderly state administration, public interest, openness, proportionality, professionalism, and accountability are used as benchmarks in the implementation of government so that it can lead to Good Governance [21], because serving society both as an obligation and as an honor is the basis for the formation of a humane society [22]. Now the government is starting to clean up. In order to support increased competitiveness and investment, the government provides tax incentives through several instruments. Among other things, covering the expansion of the tax holiday, changes in tax allowance, investment allowance incentives, super-deduction incentives for the development of vocational and R&D activities as well as labor-intensive industries. But in truth, the investment trend is starting to shift. China seems to prefer capital-intensive over labor-intensive investment. To support the investment climate, the Coordinating Ministry for Economic Affairs chose to revise 72 laws that hinder investment. Later this revision will be contained in the omnibus law mandated by President Joko Widodo. Through the omnibus law, the government will reinforce the provisions regarding regional autonomy so that presidential directives regarding licensing can be immediately implemented by local governments. This is because, so far, investment tends to be hampered because the regional government has not immediately responded to the existing provisions at the center

regarding licensing. Also through the Omnibus Law, the process of issuing permits such as IMB will be regulated using specific and rigid standardization from the relevant ministries and institutions. Ministries and agencies need to update the NSPK (norms, standards, procedures, and criteria), so that they can actually be implemented operationally by the local government [23], including investment in Papua [24]. Thus, the omnibus law is a progressive step taken by the government in relation to improving licensing and other constraining factors for the investment climate in Indonesia.

Secretariat of the Cabinet of the Republic of Indonesia [25] reports that the investment climate in Indonesia has recently decreased due to the political turmoil that has occurred in Indonesia. The composite stock price index (IHSG) had experienced a decline in line with investors' concerns that the Joko Widodo-Jusuf Kalla government would not get support from parliament because the DPR was controlled by the Red and White Coalition. However, a glimmer of hope emerged in line with President-elect Joko Widodo's policy of inviting foreign investors to Indonesia. This was expressed by President Jokowi in his inaugural address to world CEOs at the APEC Summit forum which took place in Beijing on November 10, 2014. At the beginning of his speech, President Jokowi gave an overview of Indonesia, which has 17,000 islands with a population of around 240 million. inter-island connectivity has not been well developed so that there is a gap in the price of commodity goods between one island and another. He gave an example that the price of cement in Papua is 25 times higher than the price of cement in Java. Therefore, the sector being promoted is maritime by building a sea highway to reduce transportation costs. President Jokowi also explained a number of opportunities that exist in Indonesia. He wants a large investment in building transportation logistics, building airports and expanding 24 ports, rail mass transportation, and a 35,000 MW power plant. Industrial zone development in several locations will be carried out so that industry in Indonesia will develop. In addition, President Jokowi also explained that market conditions in Indonesia were more competitive to bring Indonesian industry to a better development. Especially for raw materials, President Jokowi explained that goods leaving Indonesia are semi-finished and finished goods, this is done so that the added value of these goods is in Indonesia. In addition to describing the opportunities that exist, President Jokowi revealed a number of problems hindering development in Indonesia, for example problems with permits and land acquisition. To facilitate licensing, all ministries dealing with investment will be in one building and build a licensing office. Meanwhile, in an effort to complete land acquisition, President Jokowi will involve Ministers, Governors and Mayors to participate in assisting land acquisition on projects that are in line

with Government policies and in accordance with applicable laws.

Indonesia is known as a country with a large mineral wealth and the world's leading exporter of tin, bauxite, nickel, copper, gold and coal. Indonesia has also been listed as the only member of the OPEC (Organization of Petroleum Exporting Countries) from Asia and for nearly three decades has become the largest LNG (liquefied natural gas) exporting country in the world. This Southeast Asian country sends LNG, oil and coal to be used as fuel for the economic growth of industrialized countries in East Asia (Japan, South Korea, Thailand) and recently China and India[26]. This is certainly interesting when Indonesia has begun to realize that it is lagging behind other countries in the Asian region.

President Jokowi also explained the improvement of import problems in the oil sector so that production lifting could increase immediately so that imports could be suppressed. The transfer of fuel subsidies will be diverted to productive things, including seeds and fertilizers for farmers, irrigation for villages, construction of reservoirs, infrastructure development, and engines for boats for fishermen. However, President Jokowi is trying to convince business people in Asia Pacific that these issues will be the focus of reforming his government. Concluding his speech, President Jokowi invited business people at the APEC forum to invest in development in Indonesia. President Jokowi's speech received a lot of praise and was considered by several international business people to bring bright hopes for investing in Indonesia. In addition, President Jokowi's speech was described as simple, concise, concrete, and realistic in achieving Indonesia's prosperity and of course the ease of investment for world citizens. Positive responses have also come from several Heads of State/Government, the President of Vietnam, the Prime Minister of Japan, the President of Russia, the President of the US and the President of China. The President of Vietnam sees Indonesia as a friend and will commit to encouraging cooperation between the two countries. The Japanese Prime Minister called Indonesia a strategic partner of Japan, and as a maritime country, the two parties must contribute to peace and justice. Through Japanese investment in Indonesia, the Japanese government wants to contribute to industry and human resource development through various collaborations in the creative industry and student exchange [27]. This is a motivation for Indonesia to continue to make improvements so that existing cooperation opportunities can be realized and maximized for the benefit of the community.

Meanwhile, the Russian President believes that the relations between the two countries as strategic partners will be better in the future. Chinese President Xi Jinping said the two countries would forge a very deep friendship with mutual respect as neighbors and

old friends. A similar response also came from the US President, Barack Obama, who was pleased to meet President Jokowi and hoped to strengthen cooperation. The increase in Indonesia's global competitiveness that occurred in the midst of a transitional period of government was a strong asset for the new government to determine the direction of Indonesia's economy going forward. Based on the World Economic Forum (WEF) report entitled Global Competitiveness Report 2014, Indonesia's economic competitiveness is ranked 34th out of 144 countries, up four places from the previous position at level 38. Thus, in order to increase Indonesia's global competitiveness, legal certainty is required for investors. Legal certainty is an important key that must be considered by the Government in order to create a good investment climate, for example in the case of statutory provisions there are still a number of laws and regulations that do not reflect legal certainty because several laws and regulations overlap, thus burdening investors. The existence of legal certainty guarantees in Indonesia for investors will have an impact on increasing the value of investment in the country. In addition, it is necessary to guarantee that the law enforcement process will be carried out indiscriminately. Quality and law enforcement are dominant and mutually influencing factors. On the other hand, weak law enforcement and legal certainty affect the lack of public trust, and lead to an investment climate and a decline in state revenues. Through this speech, many positive impacts will be felt for Indonesia, including increasing bilateral relations, both at regional and international levels, in particular developing cooperation in areas that are the priority of the Working Cabinet. Among these is infrastructure development and increase in the economy, trade and investment, including in the maritime sector, which will provide direct benefits to the improvement of the welfare of the Indonesian people. The matters conveyed by President Jokowi at the APEC meeting are in line with national interests and are expected to improve Indonesia's economic development in a better direction. Therefore, the relevant ministries need to immediately improve themselves in accepting foreign investors by handling trade, licensing and investment issues as well as other issues that have been described [28]. Thus, a glimmer of hope for the future investment climate in Indonesia will be realized.

CONCLUSION

The reality today is that many investors have very low confidence in the investment climate in Indonesia; this is because there are still a number of obstacles that RI needs to tackle. Licensing improvements with the Online Single Submission system and the provision of various tax incentives such as tax holidays and tax allowances are not sufficient. The government needs to re-simplify procedures when investing, such as land acquisition and other licensing issues. Apart from these two obstacles, there are also other hindering factors. For example, inconsistent

government policies, no central and regional coordination, as well as wages and labor issues. A good investment climate will certainly have a big impact on the investors who come. The investment climate which is considered conducive will indirectly also affects the services for these investors. The Job Creation Law is an effort that is considered to be able to improve the investment climate in Indonesia after the pandemic that occurred.

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