

THE URGENCY OF HARMONIZING CONTRADICTIONARY REGIONAL REGULATIONS THAT HINDERS THE INVESTOR INTEREST ON INVESTMENT

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ABSTRACT: Indonesia as a developing country needs investors in developing natural resource potential and national development. The main source of national development funds in Indonesia can be domestic funds. However, the amount of available domestic funds is very limited, so the government uses funds from abroad. One source of funds from abroad that can be used to finance Indonesia's development is foreign investment or investment. Investors in investing have several wrong considerations. only one is the regulations that apply in that country. The existence of regional regulations that are contradictory to the central regulations in the investment sector has made foreign investors less interested in controlling Indonesia, therefore urging the government to take action in overcoming this problem by realizing harmonization between regional and central regulations.

Keywords: Harmonizing; Investment Law; Regional Regulations

INTRODUCTION

Investment has a very important role to drive and spur economic growth of a country or region. Almost all economists argue that investment is the driving force of every economic development process, because its ability can drive other aspects of development such as capital sources, technology sources, expanding employment opportunities and others. In this context, the faster the elimination of the rules of law on counter-productive capital, the better the attractiveness to mobilize capital resources for the purpose of investment (easy of entry and easy of resources mobilization). This is important to improve the investment climate, which benefits not only companies, but also provides maximum benefits for the community. Investment, both foreign investment (PMA) and domestic investment (PMDN) in Indonesia, especially in the region can only be increased by the existence of a solid legal basis of investment, namely assuming, if the law of strong substance can play a role in regulating and encouraging investors to invest. Therefore, efforts to improve the investment climate in Indonesia must be supported by the legal basis of investment that is prepared based on the legal principles of foreign capital investment. The minimum requirements for achieving a climate of useful investment for anyone are: (i) the principle of benefiting the people, (ii) the principle of national economic non-reliance of foreign capital, (iii) the principle of incentives, and (iv) the principle of guaranteeing investment.

The fundamental thing to note is the application of fair and equitable principles. This basic principle is seen as attracting foreign and domestic investors or companies to invest in Indonesia. This principle is a framework of reference and affirmation to realize the most favorable nation for foreign investors and domestic investors. Investors who will invest in Indonesia, generally expect the rule of law that provides convenience, smoothness, and protection of property rights. Therefore, departing from the description above, the urgency of harmonization ranging from higher regulations to lower regulations is indispensable. This harmonization will create synergy that is expected to be a solution for investors and or entrepreneurs in investing their capital.

The urgency of harmonization is actually inseparable from the 'main problem' that covers the investment climate, especially in the region, among others, the absence of legal certainty and certainty of trying for investors. This condition, should actually be seated and used as one aspect of consideration in the framework of the preparation of regional regulations of investment conducted by the provincial government, districts or cities throughout Indonesia. Therefore, with the birth of Law No. 25 of 2007 on Investment and Government Regulation No. 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Government, and District/Municipal Government, the harmonization of the conception of material content of local regulations will be carefully formulated.

In harmonizing, in addition to the conception aspect of the content material, no less important is the technical aspect of drafting legislation. As one type of legislation, local regulations must be prepared following the techniques of drafting legislation stipulated in Law No. 10 of 2004 concerning the Establishment of Legislation. Therefore, referring to the structure of systematic thinking above, the harmonization of legislation in the field of investment is necessary in preventing the occurrence of regulatory dualism that will certainly have negative implications for investors. With the hope that, the legislation in the field of investment that has been harmonized is expected to provide concrete solutions in addressing something that becomes a big problem for investors and at the same time can increase the level of community welfare as the noble ideals contained in Law No. 25 of 2007 regarding Investment.

PROBLEMS

From the background that has been written, the author decided to focus on 2 problems formulations that arise from the urgency of harmonizing regional regulations regarding investment in Indonesia, are as follows:

1. What is the Urgency of the Harmonizing the Regional Regulations that hinders investment Regarding to Increase the Interest of Investors to Invest in Indonesia?

2. What actions the government has taken to address overlapping regulatory issues in the investment sector?

RESEARCH METHOD

This research uses normative legal research. This research is research focused on a rule of law or rules that are then linked to the reality that exists in the field.¹ In this study used secondary data. Secondary data includes data obtained from literature materials consisting of primary legal materials. In the legal system, namely Law No. 25 of 2007 on Investment, while Secondary Legal Materials are Materials that provide information or matters related to the content of primary sources and their implementation. Secondary legal materials used in this study include books, thesis, and articles both from print and electronic media. In this study, the tool used in data collection is library research, which is data collection conducted through written data.

DISCUSSION

A. The Urgency of the Harmonizing Regional Regulations that hinders Investment Regarding to Increase the Interest of Investor to Invest in Indonesia

Indonesia is one of the countries that enforces regional autonomy policies. In this case, each region is given the authority to regulate the government and the interests of the community in the area. However, the regulation of each region still refers to central government regulations that are more general and comprehensive.² With the authority based on the principle of autonomy, the district/city government has the flexibility to plan and manage the potential, resources and human resources in the region.

In its implementation, there are certainly regional autonomy objectives that must be achieved by each government. The purpose of regional autonomy is nothing but to improve the welfare of the community, public services for the community, to the competitiveness of the region by increasing the existing potential. Some of the objectives of regional autonomy can be achieved easily if the government and the community support each other to make it happen.

To realize the purpose of regional autonomy, the government is given several rights that can be exercised. Starting from arranging government arrangements, choosing regional leaders, managing regional apparatus, managing regional wealth, to obtaining other legitimate sources of income, one of the sources of the income is from Investment. Since the regional autonomy has the rights to rule the district and government, and making their regulations, including the

¹ Amirudin and Zainal Asikin, 2004. Introduction to Legal Research Method, Raja Grafindo Persada, Jakarta, p.118

² Tripa, S., 2019. Diskursus Metode dalam Penelitian Hukum. Bandar Publishing, p.23

regulations about the investment that will held in their regions. In its development, the Government has made a regulations Law in the matter of investment including Law No. 1 of 1967 jo. Law No. 11 of 1970 on Foreign Investment, Law No. 6 of 1968 Jo. Law No. 12 of 1970 on Domestic Investment, then amended by Law No. 25 of 2007 on Investment, but also regulated in some of sectoral regulations in every region/district, this does not rule out the possibility of overlapping or conflicting (out of sync) regulations.

According to P. Agung Pambudhi³ that one of the causes of stalled investment in the region is the issue of regulation. Regulation, in this case ranging from central, provincial and regional regulations (PERDA), is considered a major problem for investors in making investments in the region. The number of overlapping investment laws, especially in the field of levy and licensing, becomes a concrete picture of how important harmonization of the legislation is. In the fact of its implementation in response to the study conducted by the Regional Autonomy Implementation Monitoring Committee (KPPOD) related to Regional Regulations which prohibits investments including in six regions, namely DKI Jakarta, Depok Bogor, Bekasi Regency, Kulonprogo Regency and Sidoarjo Regency. The results of the study stated that there are still many regional regulations (Perda) that are problematic and hinder investment. There are 1,109 regulation related to investments and business activities reviewed by KPPOD, there are 347 Regional Regulations that are considered to hinder investment. In the rapid study, KPPOD researchers found types of local regulations that hinder investment, namely those related to business licensing, tax collection, user fees, labor, and local regulations for non-smoking areas.⁴

Since regional autonomy was implemented on January 1, 2001, various regional regulations have been born. This local regulation should be able to spur economic growth and increase regional revenues, but similarly, local regulations tend to make people and businesses harmed. As has happened in Bekasi , where the Bekasi District Regulation No. 40 of 2001 concerning Trade Business License Levy. The problem of this regulation is that there is no mention of the period of exit of SIUP after the file is received completely and correctly by the Head of Service. this is actually a proof that there is a overlapping or conflicting (out of sync) regulations in Central and Regions, that caused a Legal Certainty.

In investment investors will conduct feasibility studies on the prospects of the businesses they will run, including matters to be examined, including the provisions of legislation related to

³ Satjipto Rahardjo, Hukum, 1981, Masyarakat & Pembangunan, Alumni, Bandung, p. 29.

⁴ Nidia, Zuraya (2019, November 20). KPPOD: Ratusan Perda Menghambat Investasi. [Web Page]. Retrieved from <https://www.republika.co.id/berita/q19b91383/kppod-ratusan-perda-menghambat-investasi>

investment.⁵ One day this will be a problem for investors if the losses incurred are not due to mismanagement of the company, but there is no legal protection, either against the invested capital or the goods to be produced.⁶ Investors need legal certainty in running a business, meaning investors need one measure that becomes a handle in conducting their investment activities. This measure is called a rule made by the party that has the authority for it, because legal certainty is one of the imperatives for the arrival of foreign capital to a country.⁷

The urgency of this harmonizing in Regional regulations is to increase the percentage of investment in Indonesia, boost economic growth and increase regional revenues, in addition to provoking investors to invest in the territory of the Republic of Indonesia and also in addition to realizing the objectives of investment in accordance with Article 3 Paragraph 2, Law No. 25 Year 2007 regarding Investment, The purpose of organizing investment, among others, to: a. increase national economic growth; b. create jobs; c. improve sustainable economic development; d. improve the competitiveness capability of the national business world; e. increase the capacity and capability of national technology; f. encourage the development of populist economy; g. process the potential economy into a real economic power by using funds derived, both from within the country and from abroad; and h. improving the welfare of the community.⁸

With the harmonization and synchronization between central and regional regulations on investment will create a regulation that guarantees the existence of Legal Certainty, in the form of regulations from the receiving country of investment imposed for investors, which provide legal protection against invested capital, to investors and investor's business activities, in accordance with the principle of organizing investment in Article 3 paragraph 1 (a) Law No. 25 Year 2007 regarding Investment, that states Investment is carried out based on the principles of: a. legal certainty.⁹

If the government wants to achieve the goal of benefiting through direct investment and foreign investment, government must firmly provide protection and legal certainty, especially to the investors and foreign investors who are investing in Indonesia considering the track record of investors in a country is a consideration of other investors to invest in the country.

⁵ Budiman Ginting, 2008, *Kepastian Hukum dan Implikasinya Terhadap Pertumbuhan Investasi di Indonesia*, Pidato Pengukuhan Jabatan Guru Tetap dalam Bidang Ilmu Hukum Investasi pada Fakultas Hukum Universitas Sumatera Utara, p. 10-12

⁶ Sentosa Sembiring, 2010, *Hukum Investasi*, CV. Nuansa Aulia, Bandung, p. 70

⁷ Suparji, 2008, *Penanaman Modal Asing di Indonesia "Insentif v. Pembatasan"*, FH Universitas Al-zhar Indonesia, Jakarta, p. 22

⁸ Law No. 25 Year 2007 concerning Investment

⁹ Sembiring, S., 2010. *Hukum investasi pembahasan dilengkapi dengan UU No. 25 tahun 2007 tentang penanaman modal*. Nuansa Aulia, p. 14

B. Actions the government has taken to address overlapping regulatory issues in the investment sector

Polemic that occurs related to the overlap of regulations governing investment that also affects the country's economy as well as the percentage and interest of investors in investing in Indonesia encourages the Government to create, design, ratify and implement regulations that can be a breakthrough and simplification of various regulations, one of which is in terms of investment.

The government has tried to create a good investment climate in Indonesia through various regulatory instruments, be it PP, Perpres or Perda. The spread of these arrangements makes it unassuming and the absence of legal unity. In addition, it does not cover the possibility of legal disharmony both vertically and horizontally. This needs to be the awareness of the government and legislators in order to create a complete, simple, efficient and effective investment law in creating a good investment climate in Indonesia.

The importance of creating a conducive investment climate and providing supporting facilities will increase investment in Indonesia. The instrument for creating such a conducive climate is the law. A law (in this case law/regulation) is required that can accommodate the wishes of investors but not ignore the national interest. The government has tried by issuing various PP, Perpres and Permen to accelerate investment growth in Indonesia. But that alone is not enough, there needs to be an integrated arrangement that provides legal certainty and avoids regulatory disharmony in the future.

In response to the facts of the disharmony of the Law on investment and the difficult level of ease of doing business in Indonesia, the government has made various efforts to overcome it. One of them with the regulations issued by the Government in aligning the law with the regulations in the region is the ratification of the Omnibus Law.

Currently the government continues to try to encourage the entry of foreign investors into the country, this can be seen from the incessant actions of the government, including regulations and policies Omnibus Law. Omnibus Law is known in Indonesia after the President of the Republic of Indonesia delivered it in a state speech at his inauguration as President before the MPR session on October 20, 2019. Omnibus law is the focus of the president with the aim of solving the problem of overlapping regulations and bureaucracy. Hopefully with the omnibus law can provide good service for the community and attract foreign investors to invest in Indonesia.

Omnibus law or often referred to as omnibus bill is: “1. A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor

provisions or to veto the major provisions. 2. A bill that deals with all proposals relating to a particular subject, such as an 'omnibus judgeship bill' covering all proposals for new judgeships or an 'omnibus crime bill' dealing with different subjects such as new crimes and grams to states for crime control.”¹⁰

Simply it can be translated that omnibus law or omnibus bill is one law that can change many laws. Jimly Asshiddiqie presented three circumstances to practice the omnibus law, namely the Law to be changed directly, the Law to be changed not directly related, and the Law to be changed not related but in the practice of tangent. Indonesia by adopting omnibus law will create investment legal instruments that can increase investment interest in Indonesia. This is because the problems stipulated in investment law are very complex. Not only the issue of investors coming and investing, but closely related to various aspects such as employment, infrastructure, fiscal and non-fiscal incentives and so on. The complexity of this problem is that it has not been regulated by the Investment Law.¹¹

Omnibus law as a new law that regulates a wide variety of substances and various subjects for the step of simplification of some laws that are still in force.¹² Omnibus Law is often equated with the Umbrella Law (*raamwet, basiswet, moederwet*) or is the parent law of other laws, whose position is higher than the law of his son.¹³ There are many conveniences contained in the Omnibus Law related to investment. The most commonly highlighted convenience is the ease of managing business permits. If all this time taking care of licensing trying to be identical to the complicated and time-consuming process, Ciptaker makes the complexity of the business license application process much shorter and simpler. One of the real evidence is with the implementation of risk-based RBA OSS rather than regulation as it has been.

With the ease of business license management, it is expected that the investment climate in Indonesia will improve. Both local and foreign investors will be interested in investing in the country. New job opening opportunities are also increasingly open to various sectors. With the omnibus law arrangements somehow provide legal certainty from the perspective of the arrangement, but not necessarily provide legal certainty from the perspective of law enforcement.

¹⁰ Bryan A. Garner, 2004, ed., *Black's Law Dictionary*, West Publishing Co, p.175

¹¹ Hernawati, R. A. S., and Joko Trio Suroso. "KEPASTIAN HUKUM DALAM HUKUM INVESTASI DI INDONESIA MELALUI OMNIBUS LAW." *Jurnal Ilmiah MEA (Manajemen, Ekonomi, & Akuntansi)* 4, no. 1 (2020): 392-408.

¹² A'la, Muhammad Amiril, and Aditya Prastian Supriyadi. "Omnibus Law Sebagai Reformasi Hukum Investasi di Indonesia Berdasarkan Asas Hirarki Peraturan Perundang-Undangan." *Al-Huquq: Journal of Indonesian Islamic Economic Law* 2, no. 2 (2020): 133-159.

¹³ Prof. Maria Farida Indrati's article entitled "Omnibus Law, Uu Sapu Jagat?" was published by *Harian Kompas*, Saturday, January 4, 2020.

CONCLUSION

The urgency of the above problems for economic actors (business people / investors), is very important, because the social and economic reality shows that business people or investors who have been and will invest in the regions always make aspects of security guarantees and legal certainty become one of the main consideration factors. The benchmark to see whether or not there is a guarantee of security and legal certainty, lies in the extent to which the substance of the Regulation, the process of making and application has heeded the two main prerequisites for investment opportunities. In essence legal certainty becomes very important in attracting foreign investors to invest. Because, legal certainty can convince and guarantee the business continuity of investors in Indonesia.

Ratification and application of omnibus law that combines number of rules into one Law as an umbrella of new laws related to investment licensing is considered to provided legal certainty to investors. Because it is worth acknowledging, currently the rules related to licensing that have not been aligned From the side of omnibus law aligned for example in terms of licensing, when investors want to invest, then investors must take care of licensing first, investors must obtain a license that comes from the central government, some are submitted to the local government. If the regulations related to licensing are not aligned between the central government and local government, then investors who want to invest in the country will experience obstacles, but through the omnibus law all authority related to investment licensing will be granted by the President through the Presidential Regulation (Perpres) so that other officials such as ministers, dpr, and local governments no longer have authority in regulating it.

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