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An Executive Law Review of Paid-Up Capital Regulations for Foreign Investment Limited Liability Companies as a Mechanism of Legal Protection for the Indonesian Public

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Abstract. *Foreign Direct Investment (FDI) through the establishment of Limited Liability Companies (PT PMA) plays a strategic role in driving national economic development. However, weak regulation and supervision of minimum paid-up capital requirements have triggered various legal issues, including fictitious capital injections, unfair business competition, and threats to public interests. This study aims to examine the effectiveness of paid-up capital regulations in PT PMA through an executive law review approach and to identify legal loopholes that allow regulatory deviations. The research adopts a normative juridical method with statutory, conceptual, and non-judicial case study approaches. The findings reveal fundamental weaknesses in the current regulatory framework, including the absence of independent verification mechanisms, overly permissive norms, and weak administrative sanctions. Accordingly, regulatory reform is necessary by introducing sector-based capital thresholds, mandatory external audits, and strengthening cross-sectoral supervision. Improved regulatory governance is expected to enhance legal protection for the public and ensure that foreign investment delivers tangible and sustainable contributions to the national economy.*

Keywords*: Executive Law Review; Foreign Investment; Liability Company; Limited Legal Protection; Paid-Up Capital.*

1. Introduction

Foreign Investment or Capital Investment is the activity of utilizing funds with the purpose of investing them in productive businesses or projects, either directly or indirectly, to obtain future profits. In Indonesia, investment plays a crucial role as the driving force for sustainable economic development and can be conducted by both domestic and foreign investors. Capital investment must at least refer to the meaning stipulated in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that the national economy is organized based on economic democracy with principles of justice, efficiency, sustainability, environmental insight, independence, as well as maintaining the balance of progress and national economic unity.

To encourage investment growth, the Indonesian Government has established a series of interrelated legal frameworks and regulations, including Law No. 25 of 2007 concerning Investment, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, Presidential Regulation Number 10 of 2021 on Investment Business Fields, BKPM Regulation Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities, as well as Ministry of Law and Human Rights Regulation Number 21 of 2021 on Requirements and Procedures for the Registration, Amendment, and Dissolution of Limited Liability Companies. These regulations aim to provide legal certainty and ease of investment while simultaneously promoting job creation and economic growth in Indonesia. In practice, despite the existence of these regulations, legal loopholes still persist. These loopholes in foreign investment regulations have led to the emergence of fictitious companies employing fictitious capital deposit mechanisms. This phenomenon results in negative impacts such as unfair competition with local business actors, reduction of tax revenue, and minimal job creation, which should be the main objectives of investment.

From a juridical perspective, the main issue is the absence of clear provisions regarding the obligation for real capital deposit certainty and its supervision. Sociologically, these loopholes affect the national economy and local communities and fail to guarantee protection and legal certainty to Indonesian society, particularly in Bali. Socially and economically, it creates risks such as unfair competition with local MSMEs, loss of potential state tax revenues, and minimal job creation for local communities. Philosophically, the objectives of capital investment have not been adequately realized. The essence or purpose of capital investment, which is to enhance the economy, state revenue, job creation, competitiveness, welfare, and prosperity for the people—especially the people of Bali—has yet to be effectively implemented or produce tangible outcomes.

Several cases have shown that foreign nationals have exploited these loopholes by establishing fictitious companies solely to obtain investor residence permits (KITAS) without engaging in genuine capital investment activities. For example, two Chinese nationals were deported from Bali for establishing companies without actual business operations (Antaranews, 2023). In another case, fictitious companies in Bali were used to facilitate cross-border money laundering involving the illegal transfer of approximately IDR 19 billion from a Russian corporation (Suaradewata, 2024). These cases demonstrate the need for stronger legal regulations concerning capital deposits for foreign investment companies.

2. Research Methods

This study adopts a normative legal research method (doctrinal legal research), focusing on the analysis of legal norms and statutory provisions related to paid-up capital requirements in Foreign Direct Investment Limited Liability Companies (PT PMA) in Indonesia. The aim is to identify regulatory loopholes and propose reform strategies to enhance legal protection for society. A multidisciplinary approach is employed by integrating economic perspectives to assess the impact of capital regulations on national development and public welfare. The research uses a nonjudicial case study approach to examine real-world legal phenomena—particularly the emergence of fictitious PT PMA entities—which demonstrate the disparity between regulatory frameworks and their implementation, without involving judicial intervention.

Data were collected through library research and document review, including primary legal materials (laws, presidential regulations, and government regulations), secondary legal materials (textbooks, scholarly articles, expert opinions), and tertiary sources (legal dictionaries, interviews). To complement the normative findings, the researcher conducted semi-structured interviews using purposive sampling with key stakeholders such as notaries, legal consultants, government officials from the Investment Coordinating Board (BKPM) and the Bali Investment and One-Stop Integrated Service Agency (DPMPTSP).

The data were analysed using qualitative descriptive methods, mapping legal texts and field realities through the lenses of legal protection theory, progressive legal theory, and the economic analysis of law. This interpretive approach is directed toward constructing systematic legal arguments and evidence-based policy recommendations aimed at reinforcing legal certainty, economic justice, and sustainable investment, particularly in Bali's tourism sector.

3. Results and Discussion

3.1. The Fundamental Nature of Paid-Up Capital in Foreign Investment Limited Liability Companies (PT PMA) In Indonesia

One of Indonesia's key efforts to promote public welfare is the advancement of national economic growth through trade. In executing trade activities, several legal entities can be utilized, one of which is the *Perseroan Terbatas* (PT), or Limited Liability Company (LLC). As a business entity within the economic landscape, the PT holds a strategic role in the national economic system. As an independent legal subject, it offers legal certainty, limited liability to shareholders, and a professional organizational structure.

By definition, a PT must meet specific legal criteria: it is a capital-based partnership established by agreement, engaged in business activities, and established through a legal process culminating in governmental approval (Yohana, 2015). According to Law No. 25 of 2007 on Investment, capital in a PT is classified into two categories: Domestic Investment (PMDN) and Foreign Investment (PMA). In the context of Foreign

Investment (PMA), the PT serves as the primary legal vehicle for facilitating investment, creating employment opportunities, and enabling technology transfer. To operate effectively in trade, a PT requires sufficient capital.

Philosophically, capital in a Foreign Investment PT (PT PMA) is not merely a tool for generating profit; it also embodies a commitment to social and economic justice. Capital should be ethically managed to promote collective welfare, with consideration of social and environmental impacts. This ethical approach aligns with the principles of Corporate Social Responsibility (CSR), which emphasize corporate accountability to the broader society (Rawls, 1971). The capital of a PT PMA must be grounded in the noble values enshrined in the 1945 Constitution of the Republic of Indonesia, particularly in upholding social justice and shared prosperity. Therefore, capital should serve the public interest rather than solely individual or corporate gain.

From a legal standpoint, the capital structure of a PT is regulated under Law No. 40 of 2007 on Limited Liability Companies. Capital is categorized into authorized capital, issued capital, and paid-in capital. In the context of foreign investment, paid-in capital functions not only as a legal prerequisite but also as an instrument of accountability and long-term financial commitment. Paid-in capital refers to the amount contributed by shareholders in fulfillment of the shares they have subscribed to, as part of the company's issued capital derived from its authorized capital (Harahap, 2009).

In practice, the implementation of PT PMA in Indonesia demonstrates that paid-in capital serves as a preventive legal mechanism, in line with Philipus M. Hadjon's theory of preventive legal protection. According to Hadjon, paid-in capital aims to prevent fictitious investments and ensure compliance with obligations to the host country (Hadjon, 1987). Repressive legal protection, on the other hand, is provided post-violation, through mechanisms such as administrative sanctions, license revocations, or dispute resolution. These enforcement mechanisms correct actions that deviate from legal norms and safeguard the rights of citizens (Hadjon, 1987). Adequate paid-in capital directly influences business operations and continuity, serving as a preventive measure against future legal risks (Yohanes, 2017).

In essence, when analyzed through the lens of the Economic Analysis of Law (EAL) doctrine, paid-in capital should yield benefits that support the realization of justice and the maximization of societal welfare (Marciano, 2009). Regulations governing PT PMA paid-in capital must be based on three core elements: value, utility, and efficiency. The researcher finds that the effectiveness of PT PMA paid-in capital depends heavily on adherence to the founding principles, particularly regarding the legitimacy and realization of paid-in capital. Paid-in capital should not be viewed as a mere administrative formality; rather, it represents the founders' financial commitment and legal responsibility. Legal loopholes in the formation and supervision of PT PMA capital—especially the occurrence of fictitious capital contributions—highlight the current regulatory weaknesses and allow room for manipulation of corporate legality.

3.2. Regulation of Paid-in Capital in Foreign Investment Limited Liability Companies (PT PMA) as a Means of Providing Protection to the Indonesian Public

The capital of a Limited Liability Company (PT) is a vital instrument for driving sustainable economic development in Indonesia. Capital plays a significant role in financing business activities, generating employment, and strengthening national competitiveness. Consequently, the government and business actors continuously seek to foster a sound investment and capital environment. In the context of PTs with Foreign Direct Investment (PT PMA), paid-in capital not only reflects the economic capacity of the business entity but also serves as an initial form of legal accountability, contributing to both national economic growth and public welfare.

In practice, however, the capital contribution process still contains regulatory loopholes in the procedures for establishing PT PMAs, which can be exploited by investors for personal gain. The current mechanism for recognizing paid-in capital is declarative in nature and lacks material verification. As a result, numerous shell companies emerge, undermining the socio-economic conditions of the public. This loophole stems from the absence of explicit legal provisions that require verifiable evidence of actual capital realization, as well as the lack of integrated systems among key regulatory stakeholders.

During the PT PMA establishment process, a notary is authorized to draft the deed of incorporation and register it through the Ministry of Law and Human Rights' General Legal Administration (AHU) system, provided that all substantive requirements are met. However, the notary has no authority to verify whether the business capital has been prepared, deposited, or fulfilled. At this stage, the investor can merely submit a Capital Contribution Statement Letter, as permitted by Article 6 of Ministerial Regulation No. 21 of 2021 on the Requirements and Procedures for the Registration of Incorporation, Amendment, and Dissolution of Limited Liability Companies. Notaries are not mandated to conduct financial verification and do not have system access to do so, which weakens their systemic role in safeguarding the integrity of capital. As confirmed in an interview with a notary, the primary duty of a notary is to record the intentions of the parties, as long as the submitted documents are substantively complete and in compliance with the law (Andy, 2025).

Once the deed of establishment and the approval letter from the Ministry are obtained, the PT PMA is required to register for a Taxpayer Identification Number (NPWP) and obtain a Business Identification Number (NIB) along with a Business License through the OSS-RBA system. These registrations are based on self-declared data entered by the business actor, and once completed, the company can then open a corporate bank account for the capital deposit. However, no verification is required at this stage. The researcher emphasizes that this phase introduces a critical legal loophole that allows investors to falsify their capital contributions.

Some common fraudulent practices include:

1. Declaration Only
   The shareholder issues a statement claiming the capital has been deposited, although no funds were ever transferred.

2. Deposit-Transfer-Withdraw
   Funds are temporarily deposited into a company account to create proof of deposit, but are immediately withdrawn afterward.
3. No Bank Account
   The company's deed is approved even before a corporate bank account is opened.

The discrepancy between legal norms and field practices creates formal legal loopholes that allow investors to establish PT PMAs without truly realizing their stated capital. While the current regulations do address capital requirements, the lack of stringent enforcement creates opportunities for abuse. Therefore, this study argues that it is necessary to evaluate, revise, and reinforce regulations by explicitly mandating deadlines for capital realization, a minimum holding period for deposited funds, and documentary proof of capital transfer in each stakeholder system. Mechanisms should be enhanced through digital integration among the relevant authorities and the imposition of strict legal sanctions against fictitious capital contributions.

Fictitious capital contributions violate the principles of legal justice and legal certainty. Legal protection for stakeholders—especially honest investors, the state, and the general public—is weakened when legal compliance is reduced to mere formalities, such as submitting fabricated deposit evidence without substantive verification. Legal protection must provide a sense of security by recognizing and safeguarding the rights of all parties, both through preventive and repressive measures (Hadjon, 1987).

From the perspective of the Economic Analysis of Law (EAL), law is considered efficient when it optimally allocates resources and risk (Posner, 2011). EAL highlights the inextricable link between law and economics, emphasizing that paid-in capital should not be seen as a mere administrative requirement but rather as a vital contributor to national and societal economic development, in accordance with the spirit of Indonesia's 1945 Constitution.

Strengthening the regulation of paid-in capital to close legal loopholes will enhance the legitimacy of PT PMAs as accountable legal entities. This, in turn, will ensure alignment between ease of doing business and legal certainty, while supporting sustainable national economic development.

3.3. The Urgency of Executive Law Review by the National Legal Development Agency (BPHN) in Addressing Loopholes in Paid-Up Capital Regulations for Foreign Direct Investment (FDI)

As part of Indonesia's strategy to attract Foreign Direct Investment (FDI), regulations concerning paid-in capital have become a central pillar in investment governance. Officially, every Limited Liability Company with foreign capital (PT PMA) is required to have a minimum paid-in capital of IDR 10 billion, as stipulated in BKPM Regulation No. 4 of 2021. However, numerous legal loopholes in its implementation enable investors to circumvent this obligation, thereby undermining the regulatory framework and threatening economic justice and legal certainty.

These regulatory loopholes have led to the proliferation of "paper companies" legal entities with no real economic activity which contributes to legal uncertainty, tax evasion, and the risk of corruption. In response, an Executive Law Review (ELR) has become critically necessary. ELR, as an evaluative instrument in modern legal systems, plays a key role in ensuring the sustainability and adaptability of laws in response to economic and social change (Setiawan, 2020). In the FDI context particularly regarding paid-in capital for PT PMA ELR serves as a principal mechanism to ensure that investment policies are consistent with legal certainty and deliver optimal benefits.

Regular assessments of the effectiveness of such regulations, especially concerning capital commitment by foreign investors, can help prevent regulatory capture, enhance investor confidence, and ensure that incoming investments bring tangible benefits to both national and local economies (Hidayat, 2021). However, the effectiveness of ELR is heavily dependent on coordinated action among technical agencies such as the Directorate General of General Legal Administration (AHU), the OSS-RBA system, the Indonesia Investment Coordinating Board (BKPM), financial institutions, and the accountable role of notaries in corporate legalization.

The core solution proposed is the implementation of Executive Law Review by BPHN, accompanied by regulatory reform and oversight enhancement to ensure that PT PMAs fulfill their economic functions responsibly, fairly, and in alignment with national sustainable development goals. Strengthening the ELR mechanism in this regard will improve transparency, accountability, and investment integrity further enhancing Indonesia’s position in the global economy in accordance with Ease of Doing Business principles rooted in good governance.

Executive Law Review refers to the review and evaluation of legal regulations conducted by executive institutions to assess the effectiveness, consistency, and reform needs of statutory instruments. The National Legal Development Agency (BPHN), a first echelon unit under the Ministry of Law and Human Rights, is the primary institution mandated to conduct ELR. BPHN is tasked with developing an integrated and comprehensive National Legal System from planning to analyzing and evaluating legislation. As such, BPHN is responsible for ensuring that laws function properly and equitably, providing access to justice and legal certainty for all (BPHN, 2021).

In the context of FDI, BPHN plays a strategic role in evaluating the substantive content of legal regulations related to paid-in capital. Through its national regulation harmonization program, BPHN has identified fragmentation in investment law spanning the Investment Law, Company Law, OSS regulations, and BKPM's technical rules (BPHN, 2022).

This study argues that BPHN must evaluate and reform the regulatory loopholes related to FDI capital contributions. To prevent fictitious capital, revisions are proposed to the Investment Law and implementing regulations, namely:

1. Capital retention requirement: Paid-in capital must remain in the company’s bank account for at least one year, or, if used for business operations, must be accompanied by verifiable expenditure reports.

2. Stipulated deposit deadline: Companies should be mandated to deposit at least 50% of the required capital or the full amount within one year of incorporation. Given the IDR 10 billion minimum capital requirement, it is reasonable that foreign investors would need sufficient time to transfer such funds.

The Executive Law Review mechanism is crucial to reviewing, evaluating, and reforming regulations related to PT PMA capital. This process involves identifying legal loopholes, harmonizing legal texts with real-world practice, and revising technical policies to reinforce capital verification through digital integration with banking systems and relevant agencies. This includes reviewing the impact of the Omnibus Law to ensure that regulatory simplification does not increase opportunities for abuse.

From the perspective of Progressive Legal Theory, the law must serve the people and evolve with social needs. Law should not merely legitimize capital or political power but should protect the most vulnerable by ensuring substantive legal justice (S. Rahardjo, 2009). Therefore, the ELR by BPHN should go beyond formal enforcement and actively promote equitable, transparent, and competitive investment conditions. In doing so, BPHN ensures consistency across legal instruments—particularly between the Investment Law, Company Law, and BKPM's technical regulations—while upholding good governance principles (BPHN, 2024).

Based on insights gathered for this study, including direct discussions with business actors, the researcher emphasizes BPHN's role in issuing legal policy recommendations to the Executive Branch to close regulatory loopholes—especially those concerning capital verification and the integration of reporting systems across OSS, financial institutions, and AHU. Furthermore, new legal norms should be established to impose strict sanctions for violations of paid-in capital requirements, thereby enhancing regulatory effectiveness and cross-sector supervision.

This ELR approach aligns with legal protection theory, which emphasizes the state's role in preventing harm from predatory investment practices, and with Economic Analysis of Law (EAL), which stresses the need for regulations to deliver measurable economic value and reduce asymmetry of information (Posner, 2011). Accordingly, BPHN's findings must be followed up with legal reforms and stronger enforcement to create a transparent, fair, and efficient investment climate while preserving the integrity of Indonesia's legal system and safeguarding national interests in foreign investment.

Finally, this study highlights that if regulatory loopholes are not urgently addressed, they may harm national sovereignty, deter legitimate investors, disadvantage local businesses, and erode public trust in Indonesia's legal system. Executive Law Review, therefore, acts not only as a legal safeguard but also as a modern legal development instrument essential for maintaining integrity in foreign capital governance (BPHN, 2024).

4. Conclusion

The findings of this study reveal legal loopholes in the regulation of paid-up capital in Foreign Direct Investment Companies (PT PMA) in Indonesia. As a legal entity, the limited liability company (PT) plays a strategic role in national economic development, particularly in attracting foreign investment. However, the effectiveness of PT as an investment vehicle is hindered by weak enforcement of capital requirements, especially the absence of strict verification mechanisms for paid-up capital at the time of incorporation. The lack of integration between regulatory systems (AHU, OSS, BKPM, and financial institutions) and the limited authority of notaries further exacerbate this issue, enabling the proliferation of fictitious companies operating without any real economic substance. To address these problems, this study proposes comprehensive reforms through the strengthening of the Executive Law Review mechanism. These measures include enhancing institutional coordination, implementing blocking accounts for capital verification, and integrating digital systems to ensure transparency and legal compliance. This review should be conducted by the National Legal Development Agency (BPHN) in collaboration with relevant stakeholders. Implementing these reforms is crucial to restoring the credibility of PT PMA as legally responsible and economically functional entities. Furthermore, these steps align with broader objectives of legal certainty, public protection, and sustainable economic growth, particularly in key sectors such as tourism in Bali. By reinforcing the Executive Law Review process, Indonesia's legal system can better ensure good governance, increase transparency, and support national competitiveness in the global investment climate, while remaining consistent with the principles of Ease of Doing Business.

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