

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Particular Aspects of Law Number 25 of 2007 Concerning Capital Investment

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Abstract. *This legal writing discusses the partiality of Law Number 25 of 2007 towards small, micro and medium businesses in the economy. In writing this law, it uses a type of normative legal research, with a statutory approach and a conceptual approach. The legal materials used are primary legal materials, namely Law Number 25 of 2007 concerning Capital Investment. The results of this research are that the passing of the investment law has indeed reaped many pros and cons from various parties. On the one hand, this law is considered to adhere to the ideology of economic liberalization and is no longer in accordance with the constitution, but on the other hand, this law was created as an effort to attract investors to improve the economy. From this discussion, the investment law tries to accommodate the interests of foreign investors and investors while still protecting and developing micro, small, medium and cooperative businesses and protecting the interests of Indonesian workers.*

Keywords: Aspect; Capital; Particular.

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1. Introduction

Investment is a familiar activity in building National Economic Growth. Before being regulated in one complete regulation in Law number 25 of 2007 concerning Capital Investment (PM), for approximately 40 years Indonesia adhered to the separation of regulations for two types of capital investment, namely Law Number 1 of 1967 concerning Foreign Investment (PMA).) and Law number 6 of 1968 concerning Domestic Investment (PMDN).

This combination of two types of investment is considered by several parties as liberalization of investment in Indonesia. This refers to the government's obligation to provide equal treatment to investors. This liberalization concept is considered inappropriate if it is adopted in Economic Regulations in Indonesia on the grounds that in current conditions there is still a need for protection of domestic industry.

The pros and cons that arise between various legal and economic experts are normal considering that Indonesia is faced with two big choices in realizing national goals as stated in Paragraph 4 of the Preamble to the 1945 Constitution. On the one hand, the state is obliged to participate in implementing world order, but on the other hand Other countries are also obliged to promote general welfare.

In terms of implementing world order, currently the principle of trade liberalization is increasingly being developed which has been pursued jointly by countries in the world in the form of regional economic cooperation, such as North American Free Trade (NAFTA), Single European Market (SEM).), European Free Trade Agreement (EFTA), Australian-New Zealand Closer Economic Relations and

Trade Agreement (ANCERTA), ASEAN Free Trade Area (AFTA), Asia Pacific

Economic Cooperation (APEC), and World Trade Organization (WTO).

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Indonesia is one of 81 countries which on January 1 1995 officially became an "Original Member" of the WTO. A reflection of the acceptance of the results of the Uruguay Round by the Indonesian people was the ratification of Indonesia's participation in the WTO with the issuance of Law no. 7 of 1994 concerning Ratification of the Agreement on the Establishment of the World Trade Organization on November 2 1994.¹

Along with Indonesia's participation in GATT/WTO, the rationale underlying the current investment climate regarding restrictions for foreign investors must be opened wide. Because one of the materials in the GATT/WTO includes trade related investment measures (TRIMs)²

One of the things that is always highlighted in relation to agreements regarding investment in TRIMs is the provision that each country signing the TRIMs agreement must not differentiate between domestic capital and foreign capital. This means that investment laws in each participating country may no longer differentiate between foreign capital and domestic capital. This provision is known as the National Treatment Principle or the principle of equal treatment that does not differentiate between countries of origin. This principle is regulated in Article 2 TRIMs which states:

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIMs that is inconsistent with the provisions of Article III or Article XI of GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national

treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions. provided for in

paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

As a member of a civilized international community, Indonesia has an obligation to harmonize its laws and regulations with the international obligations

it has agreed to. As a consequence of this, the Investment Law adheres to the principle of equal treatment and does not differentiate between countries of origin

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¹ Normin S. Pakpahan & Peter Mahmud, *Pemikiran Ke Arah Pembaharuan Undang-Undang Penanaman Modal Indonesia*, (Jakarta: ELIPS, 1997), p. 5.

² Taryana Sunandar, *GATT Dan WTO Tantangan Bagi Indonesia*, (Jakarta: BPHN Departemen Kehakiman, 1994), p.1-2.

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as in Article 3 letter d

In the aspect of advancing general welfare, Indonesia is required to run the economy under the umbrella of Pancasila and the 1945 Constitution based on economic democracy as stated in article 33.

1. The economy is structured as a joint effort based on the principle of kinship
2. 2. Production branches that are important for the country and affect the livelihoods of many people are controlled by the state
3. The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people
4. The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence and by maintaining a balance of progress and unity of the national economy
5. Further provisions regarding the implementation of this article are regulated in law

The provisions in this article hold a very deep meaning as envisioned by the founding fathers of the nation. This is a quote from Mohammad Hatta's speech in commemoration of cooperative day 12 July 1977.³

The ideal embedded in Article 33 of the 1945 Constitution is that as large a production as possible be carried out by the government with the help of borrowed capital from outside. If this strategy does not work, it is also necessary to give foreign authorities the opportunity to invest their capital in Indonesia under conditions determined by the government.

³ Mohammad Hatta, Cita-cita koperasi dalam pasal 33 UUD 1945, Pidato Hari Koperasi 12 Juli 1977, dalam Sri- Edi Swasono, Sistem Ekonomi dan Demokrasi Ekonomi, 1987, Universitas Indonesia (UI-Press):Jakarta p. 19

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That is the way that was previously thought to carry out economic development. Mainly mobilized by weak Indonesian workers through cooperation, then given the opportunity to the private sector to hand over jobs and national capital. If national energy and national capital are not sufficient, we borrow foreign energy and foreign capital to launch production. If foreign nations are not willing to lend their capital, then they are given the opportunity to invest their capital in our homeland under conditions determined by the Indonesian government itself..

The specified conditions primarily ensure that natural resources such as forests and the fertility of the homeland are maintained. The advantage for us of working with them is that our workers who are unemployed or have not worked get jobs, our fertile land is maintained and its fertility increases, and forests that are cut down are renewed by planting in their place.

This basis can be held continuously for the present and the future. With the awareness among the young generation of Indonesia that in the development of the country and society, the share of workers and national capital becomes larger and larger, the assistance of neighboring countries and foreign capital, after reaching a certain level, decreases over time. Rent and installments from foreign capital that must be repaid must be generated entirely from the proceeds obtained from the project built with the borrowed capital. And don't pay rent and installments on foreign capital to become a tax burden for future Indonesian generations.

Apart from the various views and contradictions that exist, it is interesting to observe what was put forward by Didik J. Rachbini as chairman of the special committee in the discussion of the Investment Bill.

“In this law we try to accommodate various interests, besides that it also acts fairly for investors but without compromising national interests

This opinion must of course be a guide because if you only focus on one point of view, while global flows are moving so fast, the wise choice is how to unite these various interests in one legal norm that can be used as a guide for all parties related to investment.⁴

Even though the legislators have tried hard to unite various interests in the investment law, of course every legal product is born from politics, as politics takes sides, the law also takes sides. There is giving more rights to one party and on the other hand there is even a party whose rights are violated. From this, the author intends to explain the Partisanship of the Investment Law.

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2. Research Methods

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a case approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

3. Results and Discussion

The birth of Law number 25 of 2007 was motivated by Law number 1 of 1967 concerning foreign investment as amended by Law number 11 of 1970 and Law number 6 of 1968 concerning domestic investment as amended by Law 12 of 1970 which were deemed no longer appropriate. with the need to accelerate the development of national law, especially in the field of investment.

Apart from that, the government has a big goal of accelerating national development and realizing Indonesian political and economic sovereignty using domestic and foreign capital. This is also accompanied by global economic growth and Indonesia's participation in various international collaborations, so it is necessary to create an investment climate that is conducive, promotive, provides legal certainty, justice and efficiency while still paying attention to national economic interests.

Different from previous laws and regulations, this law defines investment as including domestic investors and foreign investors to carry out business in the territory of the Republic of Indonesia. Domestic investors include individual Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or regions. Foreign investors include individual foreign citizens, foreign business entities and/or foreign governments.

Another interesting thing about the investment law is that it accommodates the values that live in Indonesian society combined with universal values that are accommodated in national law. One of these values is the principle of equal treatment and not discriminating against national origin or better known as the principle of non-discrimination. The purpose of this

⁴ Sentosa Sembiring, Hukum Investasi, CV Nuansa Aulia, Bandung 2010, p. 128

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principle is the principle of non-discriminatory service treatment based on statutory provisions, both between domestic investors and foreign investors as well as between investors from one foreign country and investors from another foreign country.

Providing equal treatment to all investors, both foreign investors and domestic investors, is a consequence of the ratification of TRIMs by the Indonesian government. TRIMs contain the principle of National Treatment which requires that there be no acts of discrimination for investors in GATT member countries and the General principle. Elimination of Quantitative Restrictions, which does not justify prohibitions or other trade barriers except through tariffs. However, there are still differences in treatment between foreign investors and domestic investors in Law Number 25 of 2007 concerning Investment, such as in terms of the form of business entities and business fields that are closed and those that are open with conditions. The existence of this kind of principle is certainly very attractive for foreign investors to be able to invest their capital in Indonesia, but on the other hand it poses a risk for local industrial industries which, with limited technological mastery, will be unable to compete with foreign industrial industries.

Through the Investment Law, the Government is required to provide facilities to investors. This facility can also be obtained for foreign investors as

the name of this law adheres to the principle of non-discrimination. These facilities include:

1. Income tax through a reduction in net income up to a certain level for the number of investors made within a certain time
2. Exemption or relief from import duties on imports of capital goods, machinery or equipment for production purposes that cannot be produced domestically
3. Exemption or relief from import duties on raw materials or auxiliary materials for production purposes for a certain period of time and certain requirements
4. Exemption or suspension of value added tax on imports of capital goods or machinery or equipment for production purposes that cannot be produced domestically for a certain period of time
5. Accelerated depreciation or amortization.

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6. Land and building tax relief, especially for certain business fields, in certain regions or regions.

Apart from these facilities, the government also provides easy services and/or permits for investment companies to obtain capital

1. Land rights
2. Immigration service facilities, and
3. Import licensing facilities

What is often debated is that land rights licensing as referred to in article

21 letter a can be granted and extended in advance and can be renewed again at the request of the investor, in the form of

- a. Cultivation Rights can be granted for 95 years by granting and extending them in advance for 60 years and can be renewed for 35 years.
- b. Building use rights can be granted for 80 years by granting and extending them in advance for 50 years and can be renewed for 30 years.
- c. The right to use can be granted for a total of 70 years by granting and extending it in advance for 45 years and can be renewed for 25 years.

Basically, not all investment companies can be given land rights. To be able to obtain this facility, investment companies must fulfill the requirements

specified in article 22 paragraph (2). There are 5 requirements for granting land

rights that can be granted and extended in advance at the same time, namely capital investment:

1. Which is carried out in the long term and is related to changes in the structure of the Indonesian economy to make it more competitive

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2. With the level of investment risk that requires a return on capital in the long term in accordance with the type of investment activity carried out,

the risk of returning the investment over a long period of time

3. Does not require a large area

4. Use state land rights

5. Does not disturb the community's sense of justice and does not harm the public interest.

This facility for land rights is intended to make it easier for investors to invest in Indonesia. However, in certain cases, this provision has been declared

non-binding by the Constitutional Court in decision No. 21-22/PUU/2007, dated March 25 2007, which in its decision is of the opinion that the words "in advance at once" and "at the same time in advance" have no force. binding law.

However, even though a judicial review has been submitted, the inclusion of regulations regarding land rights in the Investment Law is considered to overlap with the Basic Agrarian Law number 5 of 1960. Moreover, this Law contains the principle of non-discrimination so that both foreign investors and domestic investors can access all facilities provided by the government, including land rights. On the other hand, the Basic Agrarian Law provides freedom of land rights for domestic investors to access Cultivation Rights, Building Use Rights, or Use Rights, whereas foreign investors are only given access to use rights.

Even though it adheres to the principle of non-discrimination, the Investment Law still gives priority to domestic human resources, business fields specifically managed by the nation's children and favors the micro, small and medium business sectors. In the field of employment, the law requires every investor to prioritize Indonesian citizen workers. Investors are also required to improve workforce competency through various types of training. In the event that investors use foreign workers, they are required to provide training and technology transfer. This is done solely to increase Indonesian human resources so that they are independent and no longer dependent on foreign workers.

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Regarding business fields, there are businesses that are closed to investors and business fields that are open with requirements as referred to in Presidential Decree 77 of 2007 concerning the list of closed business fields and

business fields that are open with requirements in the investment sector. In accordance with these regulations, there are 25 business fields that are closed to capital investors, 43 business fields that are reserved for MSMEs, 36 business fields that are open on condition of partnership between MSMEs and large businesses accompanied by business guidance and development by large businesses, 120 business fields that are open with the condition that the maximum foreign capital ownership limit is in the highest range of 99% and the lowest 49%, 19 business fields are open with certain location requirements, 25 business fields are open with special licensing requirements, 48 business fields are open only with 100% capital in country, 17 business fields that are open with conditions regarding foreign capital ownership and location, 4 business fields that are open with special licensing requirements and limits on foreign capital ownership, and 1 business field that is open with 100% domestic capital and special permits. These restrictions are a method used by the government to protect business branches that are important for the state and/or that affect the lives of many people so that they remain under state control.

The Investment Law also provides support for micro, small, medium and cooperative businesses as outlined in Article 13. For this reason, the government has reserved 43 business fields reserved for MSMEs and 36 business fields that are open to the condition of partnerships between MSMEs and large businesses accompanied by with business coaching and development by large businesses. The government is also obliged to foster and develop micro, small, medium and cooperative businesses through partnership programs, increasing competitiveness, encouraging innovation and market expansion, as well as disseminating information as widely as possible.

4. Conclusion

The enactment of the investment law has indeed reaped many pros and cons from various parties. On the one hand, this law is considered to adhere to the ideology of economic liberalization and is no longer in accordance with the constitution, but on the other hand, this law was created as an effort to attract investors to improve the economy. From this discussion, the investment law tries to accommodate the interests of foreign investors and capital investors while still protecting and developing micro, small, medium and cooperative businesses and

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protecting the interests of Indonesian workers. However, of all these interests, of course there are interests that are the most priority in this legislation. Investors have received great benefits from the passing of this law both in terms of legal certainty, protection and the facilities provided by the state. The employment and MSME elements are only involved to be able to go hand in hand with the progress of capital investment in order to create an independent and competitive Indonesian economy. Domestic investors seem to be the ones who benefit the most from the presence of this law because almost most of the facilities and business fields offered by the investment law can be accessed by domestic investors. However, foreign investors also get more convenience when compared to previous regulations. This investment law provides a lot of stimulants by providing convenience and facilities and guaranteeing equal treatment for both foreign investors and domestic investors.

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