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LICENSING ASPECTS TO ATTRACT FOREIGN INVESTMENT IN LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION

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Abstract
Foreign Direct Investment as part of economic activity that plays an important role in the life of the nation has encountered obstacles in its implementation practice, especially related to licensing regulations. Licensing bureaucracy which is considered complicated is one of the reasons why (foreign) investors are reluctant to invest in Indonesia. With these problems, the government issued the Job Creation Act as one of the solutions. This study seeks to discuss the application of the Job Creation Act to resolve licensing regulatory issues and their implications for foreign investment. The method used is normative juridical with sources on primary, secondary, and tertiary legal research materials. In this review, it is found that with the implementation of the Job Creation Law, efforts have also been made to reform licensing regulations, as well as their implications for aspects of licensing regulations that facilitate investment in Indonesia.

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A. Introduction

Investment has various benefits for a country, including obtaining new capital to help the government build infrastructure, opening up employment opportunities, progress in certain fields, increasing state revenue, and also protecting a country. The investment legal regime in a country can affect the flow of incoming investment considering that investors generally base their investment decisions on an evaluation of the existing legal framework (Rahmah, 2020). The existence of investment laws that reflect legal stability, predictability, and calculability is an attraction and the main consideration for investors when they want to invest in a country (Perry, 2020).

Previously, in the scope of investment law, the government separated investment into two groups, namely by issuing Law Number 1 of 1967 concerning Foreign Investment (PMA Law) and Law Number 6 of 1968 concerning Domestic Investment (PMDN Law). However, along with the development of the times, the government then issued Law Number 25 of 2007 concerning Investment, so that the PMA and PMDN Laws were declared invalid and merged into one unit in the Investment

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Law. However, the Investment Law is still considered insufficient to answer the problem of investing in Indonesia. Therefore, in 2020 the Government issued Law Number 11 of 2020 concerning Job Creation (Job Creation Law).

The urgency of issuing the Job Creation Law is the dynamics of global change that needs to be responded to quickly and appropriately so that various problems that arise related to investment, especially in this case the licensing aspect, can be resolved properly. Not only that, through the Job Creation Law, it is also hoped that there will be a change in the economic structure that can drive all sectors to encourage economic growth of 5.7% - 6%. This change can occur through the creation of quality jobs, increased investment so that it can increase income and purchasing power and encourage increased consumption and increased productivity which will be followed by increased wages so that it can increase purchasing power and consumption in people's lives.

To ensure that the Job Creation Law can be a solution to investment problems in Indonesia, this study will discuss investment, especially in terms of licensing. Thus, the formulation of the problem in this study is (1) How is the implementation of the Job Creation Law in the investment sector in resolving licensing regulation problems; and (2) What are the implications of the licensing aspect after the enactment of the Job Creation Law on foreign investment. From these two problem formulations, we will each know about the completion of licensing regulations with the implementation of the Job Creation Law and the implications of foreign investment licensing after the implementation of the law.

B. Method

This research is a normative legal research. Normative research is conducted by examining library materials consisting of primary, secondary, and tertiary legal materials through literature studies. In normative legal research that fully uses secondary data, the preparation of a tentative theoretical framework can be abandoned, but the preparation of a conceptual framework is absolutely necessary, so in preparing a conceptual framework, a formulation is needed that is contained in the laws and regulations (Soekanto, 1984). According to Peter Mahmud Marzuki, normative legal research is a step to find a legal rule, legal principles, or legal doctrines in order to answer the legal issues faced (Marzuki, 2005). Primary legal materials are in the form of applicable laws and regulations, namely the Law on Investment, its implementing regulations, and other regulations relevant to investment. Secondary legal materials include books, seminar results, papers, and articles related to the problems studied, as well as interviews with sources with legal substance. The methods used for the data collection process are literature study and document study of laws and regulations, literature and other documents related to investment or research materials and interviews with sources to support secondary data. The data obtained were analyzed normatively qualitatively. Furthermore, the results of this study are presented descriptively.

C. Result & Discussion

1. Implementation of the Job Creation Law in the Investment Sector in Resolving Licensing Regulation Problems

The basis for the formation of the Job Creation Law is to realize the objectives of the formation of the Government of the Republic of Indonesia and to realize a prosperous, just, and prosperous Indonesian society. Based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945), the state needs to make various efforts to fulfill the rights of citizens to work and a decent living for humanity through job creation. One of the latest regulations that can encourage increased foreign investment in Indonesia is job creation carried out through regulations related to increasing worker protection and welfare, at least containing regulations regarding: worker protection for workers with certain work period agreements, protection of employment relationships for outsourcing-based work, protection of decent work needs through minimum wages, protection of workers who experience termination of employment, and ease of licensing for foreign workers who have certain skills that are still needed for the production process of goods or services. As an activity, tourism creates demands (Marbun, 2020). The Job Creation Law is expected to be able to absorb the widest possible Indonesian workforce amidst increasingly competitive competition and the demands of economic globalization. To support job creation, it is necessary to adjust various aspects of regulations related to the facilitation, protection, and empowerment of cooperatives and micro, small, and medium enterprises, improving the investment ecosystem, and accelerating national strategic projects, including improving worker protection and welfare (Marbun, 2020).

The government as the state administrator has an important and strategic role in economic development which aims to improve the quality of life and welfare of all its citizens. Increasing public welfare is one of the goals of the Indonesian State, the affirmation of this is contained in the opening of the 1945 Constitution along with all the main ideas contained in the Body of the 1945 Constitution, namely that the state seeks to realize social justice for all people. The principles of economic democracy in Indonesia are translated in Article 33 paragraph (1) of the 1945 Constitution which reads "The economy is structured as a joint effort based on the principle of family". The substance of the omnibus law will later cross-sectoral legal fields. This is clearly contrary to the formation of laws in the civil law system which is firm and rigid, the substance of which is limited to the law. The omnibus law is a format for the formation of laws that are comprehensive by also regulating the material of other laws that are interrelated with the substance regulated by the law that is amended or formed.

One of the government's strategies in order to encourage economic growth through increased investment is to reform regulations in the field of business licensing. Reforms need to be carried out to resolve investment obstacles, namely the length of the bureaucratic chain, overlapping regulations, and the many regulations that are not harmonious, especially in central and regional regulations (hyper-regulation). Therefore, deregulation is needed regarding provisions regarding business licensing, investment requirements, employment, Micro, Small and Medium Enterprises (MSMEs), land acquisition, development of economic zones, project implementation.

2. Implications of Licensing Aspects After the Enactment of the Job Creation Law on Foreign Investment

Investment, in every development of a country is very important. Unfortunately, it is not easy to do it when viewed from each aspect. According to data from the Ease of Doing Business report 2020 issued by the World Bank, Indonesia is ranked 73 out of a total of 190 countries (Amin, 2020). This position is the same as in 2019 when Indonesia was also ranked 73. This shows that there is no increase in ease at all for foreign business people or investors in investing in Indonesia.

In looking at the problems above, at least a review of the aspects that play an important role in making capital investment is needed. There are several factors that influence investors to invest their capital in a country, including the following (Marbun, 2020):

a. Natural Resources.
b. Human Resources.
c. Political and economic stability.
d. Government policy.
e. Ease of licensing.

From the various factors above, the licensing factor is considered to be a factor that causes the difficulty of facilitating capital investment in Indonesia. However, the number of regulations is not a problem if the regulations have quality substance or material. However, if the existing laws and regulations are not of good quality, then quantity will only be a threat to quality (Mullye, 2004). Moreover, in reality, it is not only a problem of overregulation, but also there are still many regulations that overlap and are not synchronized with each other or overlapping. In responding to this, the government has made efforts through PP Number 91 of 2017 concerning the Acceleration of Business Implementation. However, both through these regulations and various other policy packages are considered still lacking in solving existing problems (Mayasari, 2020).

This is what then prompted the Government to make various further efforts to overcome the complexity of licensing regulations, one of which was by issuing the Job Creation Law based on the Omnibus Law method in 2020. This law is expected to be the answer to these problems and also improve the nation's economy, especially in the midst of the COVID-19 pandemic. With the Job Creation Law, one of the main points is to create ease of investment. In addition, it further provides a positive impact on the country, namely in the form of capital injections to carry out development, open up more jobs, advance certain fields, increase state revenues, and provide protection for the country (Kartiko, 2020).

Simplification of business sector licensing and simplification of investment requirements are regulated in Part Four of the Job Creation Law. The need for this simplification is considering that business sectors have their own characteristics and sectoral egos that require special treatment for each sector. As a result, it affects the management of investment permits that are not conducive to investors (Poerana, 2020). Changes in terms of investment in the Job Creation Law are at least in the form of several provisions such as, First, the existence of risk-based licensing which is measured by the level of risk and the ranking of the business scale seen from the assessment and its potential, such as taking into account the type, criteria, location, and limitations of business resources. Second, simplification of business licensing requirements, land acquisition, and land use in the form of suitability of space utilization activities, environmental approval, building approval, and certificates of functional feasibility. Third, simplification of business sector and investment requirements. Fourth, simplification of requirements in the form of capital issues and their mechanisms in certain sectors in investing such as banking, Islamic banking, and the press. Fifth, land acquisition for public interest and government priorities. Sixth, investment regulations in Special Economic Zones, Free Trade Zones and Free Ports, National Strategy Projects, and Investment Management Institutions.

With the changes regarding investment in the Job Creation Law, it was recorded by the Investment Coordinating Board (BKPM) that there were at least 153 companies that wanted to invest in Indonesia. Just a moment after the regulation was passed, companies from Korea, Taiwan, Japan, the United States, Thailand, and even European countries came to inject their capital (Prakoso, 2020). Then in 2021, BKPM set an investment target of IDR 900 trillion, which increased by 8.91 percent from the previous year. This target is expected to be achieved along with the completion of the derivative regulations of the Job Creation Law, both in the form of Government Regulations and Presidential Regulations. Of this number, there are at least 4 (four) derivative regulations regarding investment, namely PP Number 5 of 2021 concerning the Implementation of Risk-Based Licensing, PP Number 6 of 2021 concerning the Implementation of Business Licensing in Regions, PP Number 7 of 2021 concerning Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises, and Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (CNN Indonesia, 2021).

Increased investment is believed to be able to increase the economic development of a nation. In macroeconomics, investment also plays a role as one of the components of a country's national income. Investment has a positive relationship with national income, if investment increases, then national income will increase, and vice versa, when investment decreases, national income will decrease (Indriani, 2020). In this construction, the contribution of investment must be placed on efforts in organizing the national economy and increasing sustainable development. In addition, it must also be part of increasing national technological capacity and capabilities, people's development, and realizing community welfare in an economic climate with maintained competitiveness (Hernawati, 2020).

D. Conclusion

One of the government's strategies in order to encourage economic growth through increased investment is to reform regulations in the field of business licensing in the form of implementing the Job Creation Law. Reforms need to be carried out to resolve investment obstacles, namely the long bureaucratic chain, overlapping regulations, and the many regulations that are not harmonious, especially in central and regional regulations (hyper-regulation).

The implications of the licensing aspect after the Job Creation Law in terms of investment, at least in the form of several provisions such as, First, the existence of risk-based licensing which is measured by the level of risk and the ranking of the business scale seen from the assessment and its potential, such as taking into account the type, criteria, location, and limitations of business resources. Second, simplification of business permit requirements, land acquisition, and land use in the form of suitability of space utilization activities, environmental approvals, building approvals, and certificates of functional feasibility. Third, simplification of business sectors and investment requirements. Fourth, simplification of requirements in the form of capital issues and their mechanisms in certain sectors in investing such as banking, Islamic banking, and the press. Fifth, land acquisition for public interest and government priorities. Sixth, investment regulations in Special Economic Zones, Free Trade Zones and Free Ports, National Strategy Projects, and Investment Management Institutions.

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