

# The Importance of the Investment Business Sector in Foreign Investment

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**ABSTRACT:** *Direct investment means investment (investor) forming a business or company in Indonesia (Article 1 point b) Law no. 3 of 1982 concerning mandatory company registration (UU WDP). The choice of business field is one of the important aspects in the establishment of Foreign Investment in addition to the policy aspect, the realization of the agreement and the establishment of the company. The parties in foreign investment, namely the Indonesian (Indonesian Participation) and foreign (Foreign Participation) parties make a Memorandum of Understanding (MOU), then they make a Joint Venture Agreement which contains the will of the parties in a more detailed and complete manner as a follow-up to the MOU. The relationship of the Parties in foreign investment is an equal and equal relationship.*

**KEYWORDS -** *List of Business Fields, Foreign Owned Companies, Joint Venture agreement*

## I. INTRODUCTION

Investment has an important role in improving the economy and employment growth. Governments around the world are currently actively competing to create a better business climate to support investment activities.

Whether we realize it or not, foreign and domestic investment is beneficial for economic growth. In fact, many countries have realized that there are not many benefits derived from differentiating foreign investment from domestic investment. This is because both investments made by foreign parties and by domestic parties both create jobs and pay taxes. Both, directly or indirectly, greatly affect economic growth.

Moreover, foreign investment activities often play a role in opening up new markets and encouraging the entry of new technologies and skills. Even if investors repatriate profits, this is offset by the amount of capital invested, technology, market access and export activities obtained. On the other hand, a lack of investment activity will lead to a decrease in competitiveness, and weaken the relationship between the country's economy and international markets. For this reason, in terms of attracting investment, it is necessary and appropriate to highlight some fundamental changes that lead to increased mobility. Investment policies that contain strict restrictions and are practically widespread in almost all developing countries must be replaced by more open investment policies. Non-discrimination and equal treatment of domestic and foreign capital is accepted as one of important principles in investment policy. Streamlined the negative investment list to include only a small number of businesses related to health, defence and security, morals and the environment.

The foreign investment law must also guarantee equal treatment. Coordination between government agencies, between the government and Bank Indonesia, and between central government agencies and regional governments. Coordination with local governments must be in line with the spirit of regional autonomy. Regional governments together with private and government agencies should be empowered again in developing regional potential opportunities. Regional governments have the widest possible autonomy to regulate and manage their own investment operations. Therefore, the speed of improving coordination must be measured by granting permits and investment facilities that have foreign power.

Furthermore, investment facilities are provided taking into account the level of economic competitiveness and the state's financial condition and must be promotive compared to facilities provided by other countries. The importance of certainty of investment facilities requires more detailed arrangements for the form of fiscal facilities, land rights facilities, and immigration and import licensing facilities. The provision of these facilities is at least an effort to encourage employment.

Investment law must be able to accommodate competition. There are at least three qualities that need to be created by a new legal product from the Investment Law, so that it can encourage foreign investment, namely 1) *stability*; 2) *predictability*; 3) *fairness*.

The first two are prerequisites for the economic system to function. *Predictability* requires that the law brings certainty. Investors will come to a country if they believe that the law will protect their investment. Legal certainty is as important as *economic opportunity and political stability*. Second, it must be able to create stability, which is to be able to balance or accommodate competing interests in society. In this case, the Investment Law can accommodate the interests of foreign capital and protect local entrepreneurs or small businesses. Third, *fairness* or justice such as equality of all people or parties before the law, equal treatment of all people and the existence of standard patterns of government behavior, are emphasized by many experts as a prerequisite for the functioning of market mechanisms and preventing excessive bureaucratic actions. (Djisman,dkk)

## II. FORMULATION OF PROBLEM

Based on the description above, the formulation of the problem is What is the position of the list of business fields in the establishment of foreign investment?

### Benefits of research

#### 1. Theoretically

This research is expected to provide theoretical benefits in the form of a contribution to the development of legal science, especially regarding the list of business fields

#### 2. Practically

The results of this research in outline are expected to be a reference material for improving regulations on the business sector in more detail. The benefits of this research are as follows:

- a. For policy holders, get input to improve regulations regarding the list of business fields .
- b. For policy implementers, get input on the concept or theory of implementation of the enactment of the list of business fields.

## III. RESEARCH METHODS

### 1. Research Specification

According to Setiono, the specification of this research is descriptive analysis. Using descriptive specifications because this research is expected to be able to provide a detailed, systematic and comprehensive description of all matters relating to the *Joint Venture Agreement or joint venture agreements*, especially regarding legal protection for *Joint Ventures* .

The term analysis implies (1) grouping (2) connecting (3) comparing and giving meaning to the aspects of the *Joint Venture Agreement* in terms of theory and practice.

### 2. Population and Sample

The population in this study are all related to the implementation of foreign investment, based on these considerations, the research subjects are:

- a. Establishment of Foreign Investment
- b. A notary or a notary representative draws up a deed of establishment of foreign investment.
- c. Indonesian parties and foreign parties who make foreign investment
- d. Monitoring institutions, supervisors of foreign investment, namely the Investment Service and One Stop Integrated Service (DPMPTSP)
- e. Advocates or lawyers and legal consultants as parties involved in the establishment of foreign investment.

3. Data collection technique
  - a. Literature study
  - b. Field survey by interview
4. Data analysis  
Used qualitatively, namely analyzing the data required from the results of the study by making a description that explains the problem.

#### IV. DISCUSSION AND ANALYSIS

The use of capital from within and outside the country is to accelerate national economic development and realize Indonesia's political and economic sovereignty. In this case, it is necessary to increase investment to process economic potential into real economic strength.

This investment is very much needed in the face of changes in the global economy and Indonesia's participation in various international collaborations. Therefore, it is necessary to create an investment climate that is conducive, promotive, providing legal certainty of efficient justice while still taking into account the interests of the national economy.

Article 1 of the UUPMA states:

"The definition of investment in this law only includes direct foreign investment which is carried out according to the provisions of this law and which is used to run a company in Indonesia in the sense that the owner of the capital directly bears the risk of the investment"

Article 1 UUPMDN states:

"In this law what is meant by domestic investment is: the use of wealth as referred to in Article 1, either directly or indirectly to carry out business according to or based on the provisions of the law."

This provision regulates investment in terms of the sources of funds used, namely foreign capital and domestic capital which have consequences for the risks that will be faced by the capital owner, meaning that for foreign and domestic investors who will invest their capital directly, then physically he is present in the capital. run their business. Thus, the business entity must comply with the legal provisions in Indonesia.

In addition, investment must see the list of business fields according to the Presidential Regulation of the Republic of Indonesia number 39 of 2014 concerning the List of Business Fields that are Open with requirements in the field of closed investment. Presidential Regulation of the Republic of Indonesia Number 44 of 2016 concerning the list of closed business fields and open business fields with conditions in the investment sector.

The purpose of PP No. 39 of 2014 is to further increase investment activities in Indonesia and in the context of implementing Indonesia's commitments in relation to the Association of Southeast Asian Nations/ASEAN Economic Community (AEC), it is deemed necessary to replace the provisions regarding the list of open business fields with the requirements in investment sector. Meanwhile, according to PP No. 44 of 2016 that the consideration of the business register is to further increase investment activities both from within the country and from abroad to accelerate development while increasing protection for micro, small and medium enterprises, as well as cooperatives and various national strategic sectors and To improve ASEAN economic competitiveness and the dynamics of economic globalization, it is deemed necessary to replace the provisions regarding the list of closed business fields and open business fields with conditions in the investment sector.

According to PP No. 39 of 2014 that closed business fields are certain business fields that are prohibited from being carried out as investment activities. The list of closed business fields as referred to in paragraph (1) is as contained in attachment 1. This presidential regulation (Article 1 paragraphs 1 and 2) business fields that are open with conditions are certain business fields that can be used as investment activities with certain conditions, namely business fields that are reserved for micro, small, medium-sized enterprises, and cooperatives, business fields that require capital ownership, business fields that are required by a certain location, and business fields that require special permits (Article 2 paragraph 1).

According to PP No. 44 of 2016 that the business fields in investment activities consist of:

- 1) Open Business Fields

- 2) Closed Business Fields and
- 3) Open Business Fields with conditions

The business fields that are open with the requirements as referred to in paragraph (1) letter C consist of:

- 1) Open business fields with reserved conditions or partnerships with micro, small, medium enterprises and cooperatives, and
- 2) Business fields that are open with certain conditions, namely:
  - a) Restrictions on foreign capital ownership
  - b) Specific location
  - c) Special Permissions
  - d) Domestic capital 100% (one hundred percent) of funds tau
  - e) Limitation of capital ownership within the framework of the Association of Southeast Asian Nations (ASEAN) cooperation

Business fields that are not listed in closed business fields and business fields that are open with conditions are open business fields (articles 2 and 3) investment business fields can basically be divided into three, namely:

- 1) Open Business Fields

Chapter VII Article 12 paragraph (1) of the investment law stipulates that all business fields or types of business are open to investment activities, except for business fields or types of business which are declared closed and open with conditions.

This is the main principle adopted by legislators and the government. This shows that the government opens the widest possible field of business for investment activities. This policy aims to provide convenience for investment activities in Indonesia. However, in fact this very broad arrangement does not provide legal certainty and does not protect the people's economy and constitutes excessive liberalism.

From these provisions, it can be seen that there is a tendency that the closed business fields are getting thinner and limited in number, only those related to the security and defense sector, while the telecommunications channel sector is not included in it. (Widjaja, n.d.)

To determine which business fields are closed, open or open with the condition that they fully become the authority of the President as stipulated in Article 12 paragraph (4) which states "the criteria and requirements for closed and open business fields with conditions and a list of closed and open business fields with their respective requirements. -each will be regulated in a presidential regulation.

Business fields or types of business that are closed and open with conditions stipulated through a Presidential Regulation are compiled in a list based on the standard classification of business fields or types of business in force in Indonesia, namely the Indonesian Standard Classification of Business Fields (KBLI) and/or *the International Standard For Industrial Classification. (ISIC).* (Peraturan Pemerintah No. 12 Tahun 1998)

- 2) Absolute (Absolute) Closed Business Fields

The definition of absolute closure in this case is that foreign capital is prohibited from entering for certain reasons. Business fields

Which is absolutely closed to the receipt of foreign capital according to the provisions of Article 12 paragraph (2) of Law no. 25 of 2007 are:

- a) Production of weapons, munitions, explosives, and war equipment: and
- b) Business fields that are explicitly declared closed by law.

The government is a closed business field for investment, both foreign and domestic, based on the following criteria: morals, culture, environment, defense and national security, as well as other national interests.

From these provisions, very few business fields are closed to investment. When looking at the provisions of Presidential Decree No. 96 of 2000 absolute closed business fields are quite a lot, including the following:

- a) Mining and energy sectors, namely that investors are prohibited from opening a radioactive mineral mining business.
- b) In the field of transportation, investors are prohibited from investing in the business of air traffic integration (ATS provider), classification and ship statutory.
- c) Management and operation of Radio Frequency Spectrum Monitoring Station and Satellite Orbit.

The provisions of presidential decree no. 96 of 2000 was later amended by Presidential Decree No. 118 of 2000, where the list of closed business fields changed, but there are still quite a lot of businesses, namely radio, television, print media, related fields such as taxi transportation and public shipping.

In view of the implementation provisions, namely the Presidential regulation which regulates closed business fields based on the provisions of Law no. 25 of 2007 does not yet exist, with reference to the transitional provisions of Article 37 paragraph (1), the provisions of the Presidential Decree above remain in effect before the issuance of a new implementing regulation.

### 3) Business fields that are open with requirements

It is stated that there are business fields that are open to investment, but their implementation is subject to conditions based on certain criteria as stipulated in Article 12 paragraph (5), namely: development of micro, small, medium and cooperative enterprises, supervision of production from distribution, improvement of technological capacity, participation of domestic capital and cooperation with business entities appointed by the government.”

Arrangements regarding investment facilities are regulated in chapter X, articles 18, 19, 20, 21, 22, 23, and 24 of Law No. 25 of 2007. The provisions of Article 18 regulate the provision of facilities to investment which, according to Article 20, the facilities are does not apply to foreign investment that is not a legal entity. Or it means that the facilities provided under the provisions of article 18 are only given to foreign investors who are legal entities.

Investment facilities are provided by considering the level of foreign power of the economy and the state's financial condition and are promotive compared to those provided by other countries. The importance of certainty of investment facilities encourages more detailed regulation of the form of fiscal facilities, land rights facilities, immigration facilities, and import licensing facilities.(Hartono, 1974)

The provision of investment facilities is also carried out in an effort to encourage employment, the linkage of economic development with people's economic treatment, export orientation and more profitable incentives for investment using capital goods or machinery or production equipment in the country, as well as facilities related to investment locations in Indonesia. disadvantaged areas and in areas with limited infrastructure.(Adalf& Candrawulan, 1945)

It can be said that the objectives of providing these incentive facilities are as follows:

- 1) To accelerate the spread of investment to all corners of the country, because with investment there is economic growth. With growth, there will be an increase in welfare. When viewed from the realization and current investment plans, there are only 7-8 provinces in Indonesia out of the four categories that are in the top five. This means that there is an investment imbalance.
- 2) Incentives or facilities are given so that there is an acceleration of the economic sector. The economy must grow if the sectors under it work well. Including the production sector, namely industry. This means that sectors must be stimulated.

In order for the investment objectives to be achieved, based on the provisions of Article (18) paragraphs (1) and (2), the government provides facilities to investors who make investments. These facilities are provided to:

- 1) Investors who carry out business expansion, and
- 2) Investors who make new investments.

Investors who make new investments will receive investment facilities if they meet at least one of the criteria as stipulated in Article 18 paragraph (3), namely:

- 1) Absorb a lot of energy
- 2) Including high priority scale
- 3) Including infrastructure development

- 4) Doing technology transfer
- 5) Doing pioneer industry
- 6) Being in remote areas, disadvantaged areas, border areas, or other areas deemed necessary.
- 7) Maintaining environmental sustainability
- 8) Carry out research, development, and innovation activities
- 9) Partnering with micro, small, medium enterprises or cooperatives.
- 10) Industry that uses capital goods or machinery or equipment produced domestically.

The facilities provided in terms of investors are as follows:

a. Facilities for Taxes and Other Charges

Tax facilities granted to investors who carry out business expansion and investors who make new investments and who meet the criteria as stipulated in Article 18 paragraph (3) will obtain tax facilities which according to Article 19 are given based on the national industrial policy stipulated by the government. whose influence is further regulated by a Regulation of the Minister of Finance. The tax facilities according to article 18 paragraph (4) are in the form of:

- 1) Income tax through the reduction of net income to a certain level on the amount of investment 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 duty on raw materials or auxiliary materials for production purposes for a certain period of time and under certain conditions.
- 4) Exemption and/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) Land and building tax relief, especially for certain business fields, in certain regions or areas.

Exemption or reduction of corporate income tax in a certain amount and time can only be granted to new investment which is a pioneer industry, namely an industry that has broad links, provides added value and high externalities, introduces new technology, and has strategic value for the national economy. (Article 18 paragraph (5) of Law No. 25 of 2007).

Facilities in the form of relief or exemption from import duty are also provided to ongoing investors who are replacing machines or other capital goods (Article 8 paragraph (6) of Law No. 25 of 2007).

In accordance with investment standards, namely *admission*, it is determined that there must be a definite and clear licensing service which aspects of procedures and requirements, costs and time are managed in an integrated manner by an institution in an investment in a country. (1998)

For this reason, apart from tax facilities, the government also pro

vides ease of service and/or licensing for investment companies to obtain the following facilities. (Per Pres Tahun 2007.)

1) Land rights

Regarding the ease of service and licensing of land rights that can be granted and extended in advance at once and can be renewed at the request of investors, they are as follows.

- a) Cultivation rights can be granted for a total of 95 years by granting and extending in advance for 60 years and renewable for 35 years.
- b) Hak Guna Bangunan can be granted for a total of 80 years by granting and extending it in advance for 50 years and renewable for 30 years.
- c) The Right of Use can be granted for a total of 70 years in a year and can be granted and extended in advance for 45 years and can be renewed for 25 years. (PerPem.)

The requirements to be able to grant land rights which are extended in advance at once are: (No. 3 Tahun 1982.)

- a) Investments made in the long term and related to changes in the structure of the Indonesian economy that are more competitive;

- b) Investment with a level of investment risk that requires a long-term return on investment in accordance with the type of investment activity carried out;
- c) Investment that does not require a large area;
- d) Investment by using state land rights;
- e) investment that does not interfere with the community's sense of justice and does not harm the public interest.

The rights to the land can only be renewed after an evaluation is made that the land is still being used and managed properly in accordance with the circumstances, nature and purpose of granting the rights. The provisions of Article 22 paragraph (3) are in line with the social function of land as stipulated in Article 15 of the Basic Agrarian Law, Law no. 5 of 1960, namely that the soil must be properly maintained in order to increase its fertility and prevent damage

Immigration problems are often perceived by foreign entrepreneurs as an obstacle, where they are often chased after six months of residence administrative matters in Indonesia. For this reason, the government based on Article 23 of Law no. 25 of 2007, has provided ease of service and/or licensing of immigration facilities. Immigration facilities are provided for: These migration facilities are provided for:

- 1) investment that requires foreign workers to realize the investment;
- 2) investment that requires temporary foreign workers in the context of repairing machines, other production aids, and after-sales services; and
- 3) prospective investors who will conduct investment exploration.

Ease of service and/or licensing of immigration

facilities for points (1) and (2) can be provided after receiving a recommendation from the Investment Coordinating Board (BKPM). For foreign investors, the government provides facilities in the form of: (BKPM,)

- 1) Granting of limited stay permits for foreign investors for two years;
- 2) Granting of transfer of status of limited stay permit for investors to permanent residence permit which can be done after staying in Indonesia for two consecutive years;
- 3) granting re-entry permits for multiple trips for residence permit holders limited and with a validity period of one year which is granted for a period of twelve months since the limited stay permit is granted;
- 4) Granting re-entry permits for several trips for holders of limited stay permits and with a validity period of two years which is granted for a maximum period of 24 months from the time the limited stay permit is granted; and
- 5) The granting of re-entry permits for several trips for holders of permanent residence permits granted for a maximum period of 24 months from the time the permanent residence permit is granted.

The granting of limited stay permits to investors in points (1) and (2) shall be carried out by the Directorate General of Immigration on the basis of recommendations and the Investment Coordinating Board. One of the facilities and facilities provided by the government apart from the land and immigration sector, is the import licensing facility as stipulated in Article 24, with the following conditions. (Hartono, 1972)

- 1) Imported goods are not prohibited goods according to statutory regulations;
- 2) Imported goods are not goods that have a negative impact on the safety, security, health, environment and morals of the nation.
- 3) These goods are goods in the context of factory and overseas relocation to Indonesia.
- 4) These goods are in the form of capital goods or raw materials for their own production needs.

The regulation regarding the right to transfer and repatriate in foreign currency is one of the treatments provided by the Investment Law no. 25 of 2007 which is carried out in accordance with the provisions of the legislation. The provisions of Article 8 paragraph (3) stipulate that investors are given the right to transfer and repatriate capital in foreign currencies which are carried out in accordance with the

provisions of laws and regulations on:(BKPM, n.d.)

- 1) Capital;
- 2) Profits, bank interest, dividends and other income;
- 3) Funds needed for:
- 4) Purchase of raw and auxiliary materials, semi-finished goods, or finished goods; or
- 5) Replacement of capital goods in order to protect the viability of investment.
- 6) Additional funds required for investment financing;
- 7) Funds for repayment of loans;
- 8) Royalties or fees to be paid;
- 9) Income from individual foreign nationals who work in investment companies;
- 10) Proceeds from the sale or liquidation of investment;
- 11) Compensation for losses;
- 12) Compensation or expropriation;
- 13) Payments made for technical assistance, fees payable for engineering and management services, payments made under project contracts, and payments for intellectual property rights; and
- 14) The proceeds from the sale of assets as a result of the transfer of assets owned by investors to other parties desired by investors.

Investment Law Law Xo. 25 of 2007 does not regulate the form of foreign investment cooperation. However, because in relation to foreign investment, it is carried out in certain forms of cooperation, the discussion on this matter cannot be abandoned.(Adalf, 2004)

Especially in the era of globalization where there is liberalization of trade and investment, the presence of a form of cooperation in running a business is very much needed for business continuity. Especially in the field of foreign investment, where the development of cooperation with foreign parties with the Indonesian state, both with the government and with the private sector is very important, especially in relation to technology transfer and skills transfer.

This form of cooperation is not limited to trade cooperation, but also cooperation in the investment sector, both for the service sector and trade. as well as the industrial sector.

## V. CONCLUSION

### Conclusion

The list of business fields is one that must be considered by the parties in foreign investment in addition to the aspects of policy, policy realization and company establishment, then the parties make a joint venture agreement as a follow-up to the Memorandum of understanding.

### Suggestion

The role of experts in the negotiation process is to increase the position of Indonesian participants, so that in the negotiation process there is a balance of position between Indonesian participants and foreign participants. Thus the solution is to address the causes of losses for Indonesian participants. Another way to overcome things that are detrimental to Indonesian participants in particular and the Indonesian nation and State in general is through legislation that is supported in its implementation.

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