

## **The Prospects and Legal Security of Investment in Indonesia**

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### **ABSTRACT**

The aim of the research is to analyze the prospects for medium- and long-term investment in Indonesia and analyze investment obstacles, especially the legal certainty of investing in Indonesia. The research method used is a descriptive analysis method and uses a normative juridical method. Research data uses secondary data. As a result of the research findings, first, investment prospects in Indonesia have experienced a continuous increase because Indonesia has very abundant resources, it has abundant raw materials and a very large market share as well. Second, to increase investment in Indonesia, the government is very serious about reducing investment barriers, especially providing legal certainty for investment, especially granting investment permits that are simple and have strong legal certainty too.

**Keywords:** Investment Prospects; Investment Legal Certainty

### **INTRODUCTION**

Direct investment is needed to create quality economic growth. In this quality economic growth will produce sustainable growth and increase labor absorption in the economy and ultimately reduce unemployment and poverty rates. Based on Indonesian economic data, the investment component or gross fixed capital formation (PMTB) contributed to domestic gross income (GDP) reaching 32.17 percent. The contribution of public consumption is 56.82 percent and the rest is contributed by government spending and exports. With the large contribution of investment in the Indonesian economy, the investment thrust to increase Indonesia's economic growth is very large and sustainable. Indonesia in encouraging this increase in investment in order to increase quality economic growth issues investment policies to bring investment from foreign investment (FDI) and from domestic investment (PMDN).

The Indonesian government's policy in increasing investment is to provide space for comfort in investing in Indonesia, especially providing legal certainty in investing and simplifying the management of investment permits and providing various incentives for foreign and domestic investors. In increasing the contribution of investment to economic growth, the Indonesian government issued Law Number 25 of 2007 concerning Capital Investment (Investment Law). This Investment Law

aims to provide encouragement for the creation of a conducive business climate and increase Indonesia's investment competitiveness and accelerate the increase in investment in Indonesia. Various policies and regulations related to the investment issued and also the issuance of this Investment Law in order to increase our competitiveness against our competitor countries so that we can accelerate the increase in investment. Various investment policies issued and the issuance of the Investment Law improve Indonesia's Ease of Doing Business (EoDB) ranking. With the improvement in the ranking of ease of doing business, it certainly increases the competitiveness of attracting investment to Indonesia. To improve the ranking of ease of doing business or EoDB, it is necessary to solve the barriers to investing in Indonesia, especially related to legal certainty to invest and the slow and high cost of obtaining an investment permit in Indonesia.

So far, the reform carried out by the government in increasing our competitiveness is how to reduce as much as possible the legal uncertainty of investing, especially uncertainty in managing business licensing. Business licensing in Indonesia has weakened our investment competitiveness compared to our competitor countries that are serious about improving their investment competitiveness. Indonesia's investment reform in addition to issuing the Investment Law, was also followed by the government issuing a one-stop policy in managing business licensing. This one-stop policy in obtaining business permits in Indonesia aims to ensure that investors are not bothered and played by individuals in various government institutions in managing their investment licenses. To improve Indonesia's investment competitiveness, it is not enough to treat a one-stop policy in managing investment permits because the government wants to improve the ranking of ease of doing business or EoDB, the government issued Presidential Regulation of the Republic of Indonesia Number 91 of 2017 concerning the Acceleration of Business Implementation. With Presidential Regulation No. 91 2017 concerning the Acceleration of Business Implementation, it is hoped that integrated investment licensing services by utilizing information technology which also make investors take care of their investment licenses no longer hampered by complicated bureaucracy and reduce costs and time in managing business licensing and there is legal certainty in investing in Indonesia. To implement business permit management services that are integrated with the use of information technology so that efficient and effective licensing management in which investment licensing management minimizes bureaucracy and reduces licensing time and financing, the government issued Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Electronic Integrated Business Licensing Services or known as Online Single Submission (OSS).

With the implementation of electronically integrated investment permit management services or OSS, this is positively correlated with the ease and comfort of investing because of the legal certainty of investing in Indonesia, especially in managing business licenses. So, of course, this increases the ranking of ease of doing business or EoDB Indonesia. With the huge need to encourage investment in increasing economic growth, it is necessary to examine more deeply the

development of future investment and examine investment barriers in Indonesia, especially legal certainty in investing in Indonesia. Therefore, in this paper it is necessary to examine the prospect of investment in Indonesia in the medium and long term and investment barriers related to obstacles to legal certainty in investing in Indonesia. So the formulation of this paper problem is, first, how is the prospect of investment in Indonesia. Second, how is the legal certainty of investing in Indonesia.

## **LITERATURE REVIEW**

### **Investment**

Capital investment or often called direct investment can be interpreted as expenditure or expenditure or investments or companies buy capital goods and production equipment to increase the ability to produce goods and services (Sukirno, 2002). According to (Ahmad, 2003), the definition of investment is to place money or funds in the hope of obtaining additional or certain benefits on the money or funds. This investment understanding emphasizes the placement of money or funds. The purpose of investment is to make a profit. Understanding investment in the Indonesian Encyclopedia (Encyclopedia of Indonesia, n.d.), investment is investment or investment of money in the production process by buying buildings, machinery, reserve materials, cash management and its development. Investment can be divided into two types, namely foreign investment and domestic investment. Foreign investment is investment sourced from foreign financing, while domestic investment is investment sourced from domestic financing (Sudirman, 2018).

### **Investment Prospects**

In the dictionary Indonesian prospects are opportunities and hopes, sights (ahead), hope (giving), good hopes, possibilities. Prospects are things that may happen in a thing so that they have the potential for a certain impact. Prospect is an opportunity that occurs because of a person's effort to be able to meet the needs of his life as well as to be able to get profit or profit. In this case, prospects are connected by two things, namely opportunities and benefits. Prospects can also be understood as opportunities that increase the possibility of profit (Asriyanti, 2020). According to the Big Indonesian Dictionary (KBBI) in a narrow sense, a prospect is a possible hope. Prospect can be interpreted in many things (Big Indonesian Dictionary (KBBI). And according to (Krugman & Maurice, 2004), defining prospects is all opportunities that occur from the efforts of individuals and companies / organizations, in meeting the needs of life to get profit (profit).

### **Legal Certainty**

This research is based on the theory of legal certainty (*scherkeit des rechtsselbst*), namely first, that law is positive, meaning that positive law is legislation. Secondly, that the law is based on facts, that is to say, it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, in addition to being easy to implement. Fourth, positive laws should not be easily changed (Mertokusumo & Pitlo, 2013). Then further regarding legal certainty, Sidharta also argued, namely that legal certainty in certain situations requires the following: 1) clear or clear, consistent and accessible legal rules are available, issued by state power; 2) that the ruling agencies apply the rules of law consistently and are also subject to and obey them; 3) that the majority of citizens approve in principle of the content and therefore adapt their behavior to those rules; 4) that independent and impartial judges apply these rules of law consistently as they resolve legal disputes; and 5) that judicial decisions be concretely implemented (Sidharta, 2006). These five conditions show that legal certainty can be achieved if the substance of the law is in accordance with the needs of the community. This kind of legal certainty is called realistic legal certainty, which requires harmony between the state and the people in orienting and understanding the legal system.

## **METHOD**

The research method used is the descriptive analysis research method. This descriptive analysis method is a research method that examines or describes or also analyzes phenomena or objects only. According to (Sugiyono (2016), the descriptive analysis research method is a research method of describing or describing the collected data as it is without making extensive conclusions. Meanwhile, according to (Rukajat, 2018), descriptive research is research that seeks to describe phenomena that occur realistically, real and contemporary, because this research consists of making descriptions, drawings or paintings systematically, factually and precisely regarding facts, characteristics and relationships between the phenomena studied. In addition to using descriptive analysis methods in this study, it also uses research methods related to legal certainty legal products, namely legal normative research. According to (Amirudin & Asikin, 2004), legal normative research is research focused on a rule of law or regulations that are connected with reality in the field. In this study using secondary data. According to (Umar, 2013) secondary data is primary data that has been further processed and presented either by the primary data collector or by other parties for example in the form of tables or diagrams. Meanwhile, according to (Indriantoro & Supomo, 2013), secondary data is a source of research data obtained by researchers indirectly through intermediary media (obtained and recorded by other parties).

## **RESULT AND DISUSSION**

### **Investment Prospects in Indonesia**

The amount of investment contribution to increase Indonesia's economic growth which is 32.17 percent. With the large contribution of investment, economic growth increases significantly and at the same time our economic growth will be quality and sustainable. We must admit that the contribution of public consumption, amounting to 56.82 percent, is to encourage Indonesia's economic growth, but also the contribution of investment is very large in encouraging quality economic growth which results in a very large absorption of labor in our economy and ultimately reduces the poverty rate in Indonesia. So if you want quality economic growth that produces labor in the economy and at the same time reduces the poverty rate, then inevitably the government must encourage investment contributions in encouraging our economic growth.

Very high potential prospects for increasing our investment in the medium and long term. Because the government in the last decade is very serious about increasing the contribution of investment in playing a role in our economy and reducing investment barriers, especially obstacles to legal certainty to invest in Indonesia. Indonesia's investment prospects in the medium and medium term have very high potential to increase because the current government is "boldly" and consistently fighting for the birth of a "sweep the universe" law in the investment sector, omnibus law, or also called the Job Creation Law. Admittedly, the prospect of investment in Indonesia is very bright because also this omnibus law significantly reduces investment obstacles in Indonesia related to legal certainty of investing in Indonesia, especially facilitating investment licensing, reducing slow bureaucracy and reducing high costs in managing investment permits.

In addition to the encouragement of the "sweep the universe" law in reducing investment certainty, the omnibus law or (Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation) makes investment prospects in Indonesia very bright in the future because of the strength factors we have as a nation, namely, a very large population, strong macro-economic stability, and having abundant raw materials. By consistently and tenaciously implementing the omnibus law and being able to properly manage the advantages of our population, and make our macro-economic stability and manage the abundant raw materials we have, our investment competitiveness advantage is better than other countries. By being able to also implement the Job Creation Law and manage our strengths related to excellence in the field of macro-economic stability, a very large population, and the abundance of raw materials on earth Indonesia will automatically.

Related to the superiority of our population. Based on data from World Population Review, Indonesia is ranked 4th in the world, with 275 million people in 2022. The population of 275 million people is not only encouraging economic growth in terms of people's consumption power, but also from encouraging global investors to flock to Indonesia. The reason is, the abundant population is an encouragement for investors to invest their investment because of the availability of markets for the investments they build in the form of industry. Investment is still increasing significantly in Indonesia because the market is still very large in Indonesia and the

market that is abundant in population is also large in the driving force of consumption reflected in the contribution of the consumption sector to Indonesia's economic growth, which amounted to 56.82 percent. In addition, the character or demographics of the Indonesian population also have competitiveness because the demographics of the Indonesian population are now greater than those who are not productive. From 2030 to 2040, we receive a demographic bonus, where the productive age population (15-64 years) will be greater than the non-productive age (65 years and over) with a proportion of more than 60 percent of the total population of Indonesia.

The impact of this demographic bonus is that in addition to increasing the market for investment because of the large consumption for the productive population, also the demographic bonus also provides abundant human resources to be employed in investments built in Indonesian industry. Thus, in terms of demographics of Indonesia's population, it will certainly encourage massive investment and at the same time increase Indonesia's investment prospects in the future will remain bright. Indonesia's macro-economic stability has been tested in the last four decades, persisting in moderate growth, in the range of 5-6 percent. This moderate growth is the driving force for investors to invest heavily in Indonesia. With this persistent moderate economic growth, the Indonesian government has been able to manage economic growth well. With this moderate economic growth, investors are not afraid or worried about investing in Indonesia because their investments are given high and sustainable returns. Bank Indonesia (BI), which is tasked with controlling inflation, is able to maintain stable inflation in the Indonesian economy. And over the past few decades, BI has been able to maintain a moderate inflation rate of around 3-5 percent per year. With a moderate inflation rate that is in accordance with the burden of our economy, it encourages Indonesia's investment prospects to be maintained because the investment invested by these investors is not eroded "eaten" by inflation.

One of the dominant factors that encourage the droves of investment to Indonesia is due to the abundance of raw material sources in Indonesia. The abundance of sources of raw materials in Indonesia due to the excellent weather climate so that our land is fertile and produces an abundance of sources of raw materials for industrial needs. Of course, having abundant natural resources and sources of raw materials for industry makes investment competitiveness increase significantly and also improves Indonesia's investment prospects. In fact, without having abundant sources of raw materials for a country, it is very difficult for the country to have competitiveness in attracting global investments. The abundance of raw materials is available in various industrial sectors. We can see in the plantation sector, raw materials are available, among others, palm oil, rubber, coffee, sugarcane, tea and coffee. In the mining products industry sector, raw materials are available, among others, tin, oil and gas, coal. And the forestry sector is abundant in raw materials because Indonesia has vast forests. Let's take a look at Indonesia's investment performance and prospects. Based on data released by the Ministry of Investment / BKPM, investment realization from domestic investment (PMDN) and foreign

investment (PMA) in 2016 amounted to Rp 601.66 trillion. For PMDN of Rp216.23 trillion with a portion of 35.94 percent and for FDI of 64.06 percent. In 2020, investment realization increased to IDR 831.27 trillion. For the realization of PMDN investment of IDR 413.54 trillion with a portion of 49.75 percent, for the realization of PMA investment of IDR 417.73 trillion with a portion of 50.25 percent. In 2021, realization increased to IDR 901.02 trillion. And in 2022, investment realization increased sharply to IDR 1,207 trillion, growing very high compared to investment realization in 2021, growing by 34 percent. The realization of PMDN investment amounted to Rp552.8 trillion with a portion of 45.8 percent. Meanwhile, the realization of FDI investment reached Rp654.4 trillion with a portion of 54.2 percent. In 2023, investment realization will also increase, to IDR 1,418.9 trillion. And grew 17.5 percent compared to 2022. The realization of PMDN investment amounted to Rp674.9 trillion with a portion of 47.6 percent. Meanwhile, the realization of FDI investment amounted to Rp744 trillion with a portion of 42.4 percent.

Looking at the trend of investment realization data, both PMDN investment and FDI have increased significantly in the last decade. Indonesia's investment growth increased sharply above the economic growth, in the range of Indonesia's economic growth of 5-6 percent. Despite the period of health crisis that hit the world and Indonesia, Corona Virus 2019 (Covid-19), from 2020 to 2022, investment realization is still increasing as described above, even though world economic growth and including Indonesia are contracting or experiencing minus growth. The reason for the significant growth in Indonesia's investment realization is due to the success of the government in the last decade to reform our investment climate and the management of capital strength, excellence in the investment sector that is well utilized. In the past decade, the government has been very serious about reducing investment barriers related to legal certainty in investing, especially reducing bureaucracy and costs of obtaining investment permits in Indonesia. And then the government utilizes the potential advantages of our investment, related to macro-economic stability, population potential and increasing the added value of raw materials by consistently increasing downstream industry. By looking at the data on increasing Indonesia's investment realization as presented in the last decade data above, Indonesia's investment prospects in the short term, in 2024, medium-term prospects for the next 3 years, 2024 to 2027 and long-term prospects for the period 2024 to 2029 experience bright prospects and have sharply increased investment performance. Investment prospects in the short, medium and long term are bright with investment growth well above economic growth. By looking at investment growth data over the past decade, seeing the seriousness of the government in carrying out investment policy reforms and utilizing the potential advantages in the investment sector that we have, it is very likely that the average investment growth is above 20 percent in the next 5 years.

### **Legal Certainty of Investment in Indonesia**

Admittedly, the potential advantage in winning the competition in seizing investment is very large, namely, the market we have is huge, raw materials are abundant in every industrial sector and our macro-economic stability in decades is well maintained, but there are weaknesses that make the potential for investment growth reduced. So that the ranking of ease of doing business or EoDB is still 72 out of 190 countries. One of the reasons for this ranking has not experienced significant improvement, towards the 40th rank desired by the government due to obstacles to legal certainty to invest in Indonesia, especially managing convoluted permits and the lack of synchronization of laws and regulations issued and overlapping laws and regulations between the central and local governments. If the ranking of ease of doing business or EoDB increases, there must also be legal certainty given to investors, both to PMA and PDMN. Very difficult ranking ease. Legal certainty must be able to protect investment capital, technology owned by investors and other devices owned by investors and also include legal protection of the profits obtained by these investors. Laws, government regulations, presidential decrees and local government regulations or local regulations issued must be able to protect the investment of investors. Legal uncertainty in protecting investment is reflected in the absence of synchronization of laws and regulations, which harms investors. We take for example the case of coal mining investment which has low legal certainty of investment. In the 1945 Constitution Amendments mandated the empowerment of local governments given a greater role in the development process, Law No. 23 of 2014 concerning Regional Government was issued. With the Local Government Law, local governments in governing their regions have the authority.

Another impact of the back and forth of the central government managing mineral and coal mining is the rampant occurrence in the field of illegal mining. According to the Governor of East Kalimantan, due to the central government back and forth in managing this coal mine and illegal mining due to the impact of the local government not having a legal umbrella authority in regulating this coal mine. This coal mining case which occurs due to the non-synchronization of laws and regulations and also occurs like the tin mining case which currently has corruption costs the state Rp271 trillion and this also happens in other mining cases may not have been revealed. The non-synchronization of laws and regulations such as in the case of coal mining and the rampant illegal mining have resulted in increased legal uncertainty for investors who invest their money in Indonesia. Or to the detriment of the investors because of the government.

As a result of the impact of illegal mining, it harms investors also because of unfair competition and unlawful actions also for illegal mining. These illegal mining actors compete in this mining sector but their position is more advantageous because they are not burdened like legal investors. With the occurrence of illegal mining, the government does not carry out legal protection and certainty for these legal investors. With the occurrence of illegal mining, corruption is confirmed because there are companies operating without having legal permits. The reason is, there are companies that operate in a certain area that does not have a permit and



the company can operate without having a legal permit, of course there are government and security officials who allow operating with certain rewards to these officials. It must also be admitted that regional autonomy has a negative impact as well as legal certainty to invest in Indonesia. The autonomy of this region results in.

Local governments and their regional heads can be the little "kings" in issuing investment permits and this creates investment licensing management with high legal uncertainty. This is very detrimental to investors who invest in Indonesia." The small kings of the regional rulers and also added to the management of investment permits in the central government certainly produce investment permits with long and convoluted bureaucratic management, high costs, long periods of time to take care of investment permits, and can create corruption and bribery in managing investment permits so that they can "tear" or degrade the legal certainty of investing in Indonesia. The local government and these small "kings" of the area issued bylaws also to the communities and companies operating in the area. The purpose of these bylaws is to fill the revenue of the region by providing financing burdens to these investors.

Investors also face legal uncertainty about investing in Indonesia related to lawsuits due to the lack of harmony in laws and regulations between fellow ministries or institutions for investment permits. And lawsuits due to the lack of synchronization of laws and regulations from the 1945 Constitution Amendments, ministerial or institutional regulations and regional regulations. Due to the lack of harmony of laws and regulations between ministries or institutions and the lack of synchronization between the 1945 Constitution Amendments with the regulations of the Ministry of Justice or institutions and regional regulations, investors who have investment permits can be tested for legal material to the Constitutional Court (MK) and can be tested for legal material for investment permits to the State Administrative Court (PTUN). Comprehensively, legal uncertainty in investing in Indonesia, among others, there is still disharmonization of laws and regulations and there is still no synchronization of legislation, uncertainty in the management of perizi.

The question is, what are the government's efforts to increase legal certainty in investing, especially increasing legal certainty in investing in Indonesia. On April 26, 2007, the Indonesian government issued Law Number 25 of 2007 concerning Investment, hereinafter referred to as the PM Law. One of the essentials of the purpose of this PM Law is to impose foreign investment or FDI as well as domestic investment or PMDN. With equal treatment in the types of businesses that can be entered for capital investment, the government has imposed PMA and PMDN equal in the rights and obligations of investing in Indonesia. With the implementation of the same, it is expected that there will be a sustained significant increase of foreign investment flows. In addition to increasing investment, there are also foreign exchange inflows to Indonesia. This policy is also aimed at maintaining the

dominance of FDI in direct investment in Indonesia, as well as increasing Indonesia's competitiveness against.

In concept, this one-stop policy is to take care of investment permits or try to be more efficient in terms of time and energy or energy expended because investors are not bothered or played with in various agencies. However, in its implementation, the one-stop policy of managing investment licensing does not encourage maximum investment in Indonesia. Because according to (Sembiring, 2020) the existing licensing services are cross-sectoral both at the level of laws, government regulations, and ministerial / head of institution regulations. So there is still a need for harmonization and synchronization of these laws and regulations, of course, it still needs to handle complicated and long and high-cost bureaucracy. The right momentum to increase legal certainty in investing, especially to take care of business or investment permits, then in 2017, the government made a breakthrough to accelerate legal certainty of investing in Indonesia by issuing.

There is also the purpose of the issuance of Presidential Regulation No. 91/2017, among others, first to improve the standard of business licensing services that are efficient, easy, and integrated without compromising good governance. Second, speed up the process of issuing business licenses in accordance with service standards. Third, provide certainty of time and cost in the business licensing process. Fourth, improve coordination and synchronization of ministries/agencies and local governments in the process of granting business licenses. Fifth, resolve obstacles in the process of implementing business. And sixth, utilizing information technology in the business licensing process through the implementation of an integrated licensing system (single submission). To implement the Presidential Regulation to accelerate the implementation of business or investment in Indonesia so that there is an acceleration in the granting of business or investment permits and to prevent bribery and corruption in managing business permits.

With the issuance of Presidential Regulation No. 91/2017 concerning the Acceleration of Business Implementation and Government Regulation No. 24 of 2018 concerning Electronic Integrated Business Licensing Services, the legal certainty of investing in Indonesia has experienced a very significant acceleration. With these two regulations to accelerate legal certainty of trying or investing in Indonesia, the barriers to legal uncertainty of investing in Indonesia can be reduced in such a way as to increase the competitiveness of our investment in competing for the flow of investment funds both from FDI and PMDN. With the two regulations also issued, the first thing, there is a serious implementation of synchronization and harmonization of laws and regulations and has been slow to implement. Second, in managing permits there is legal certainty through OSS, which will be realized by the certainty of requirements, certainty of time period, certainty of costs incurred and certainty.

By treating this Job Creation Law, the government makes progressive policies in increasing investment and creating a conducive investment climate in a fast way. This Job Creation Law firmly strengthens the acceleration of business

implementation and improves the business climate. Because of the progress of this Job Creation Law to increase investment and create a conducive investment climate, this Job Creation Law is also called the "sweep the universe" law, because this Job Creation Law can easily change, delete, or establish new regulations in order to improve the investment climate and increase the amount of investment. Because of the progresivity of this Job Creation Law in improving the investment climate, including simplifying the management of investment licensing and providing firmer legal certainty in investing, in the case of Indonesia's omnibus law, 79 laws in Indonesia are summarized into one law, called the Job Creation Law. Despite the shortcomings of this Job Creation Law.

## CONCLUSION

Investment prospects in Indonesia are very good and promising in the future because they are supported by the abundant sources of raw materials owned by Indonesia and Indonesia's economic and political stability is strong and the market or population of Indonesia is very large. In addition to these three factors, the government is also encouraging a progressive increase in investment by issuing three laws and regulations, the Law on the Acceleration of Usa Implementation, the Law on Electronic Integrated Business Licensing Services. With the huge amount of resources we have and the seriousness of the government to improve legal certainty in investing, especially improving the granting of investment permits, Indonesia's investment prospects in the future are getting better. In addition to having a source of raw materials, having a very large market share and having strong economic stability and political stability is certainly a very large capital to increase investment in Indonesia. To boost investment in Indonesia, it is not enough just to use the three resource strengths we have, but also the government must reduce investment barriers, especially providing investment legal protection and certainty. In protecting the capital invested by investors and providing legal certainty for investing, the government issued three laws and regulations, including the Law on the Acceleration of Business Implementation, the Law on Electronic Integrated Business Licensing Services and the Law on Job Creation.

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