

Position of Law in Investment Mechanism to Indonesia

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Abstract: This study highlights the main issues related to the legal position in the mechanism of foreign investment in Indonesia, such as (a) How far does the regulations control the arrangement of foreign investment in maintaining the independence of the national economy?; (b) Is the investment law effective in resolving foreign investment disputes?; (c) Is there a social engineering law on foreign investment to redistribute development equality?; (d) How far does the regulation of foreign investment provide social maintenance?; (e) How deep does the internal and external oversight function of foreign investment regulations occur? The basic assumption of this paper is that the Foreign Investment Law is still not optimal in giving the effect of equitable development for social welfare. The results showed (a) The investment law has given control to foreign companies that will invest in Indonesia, (b) The investment law is still not effective in overcoming government disputes with international business people who invest in Indonesia such as PT. Freeport, (c) Redistributive roles and social engineering inequitable development through the investment law have not yet been felt, (d) The investment law is still not effective in carrying out social maintenance, especially in the balance of the role of domestic entrepreneurs. Capital to the government is very minimal, so it does not provide efficiency for the national economy, (e) Emphasis on supervision by the Investment Law on the government is minimal, so it does not provide efficiency for the national economy. Therefore, it could be concluded that (1) Control of foreign investment regulations is still maintained so that the national economy is controlled by the domestic, (2) the reconciliation model is more optimized in dispute resolution than arbitration, (3) Education and training of Indonesian workers is sought to replace strategic sectors (4) The alignment of Micro Small and Medium Enterprises and CSR programs is a form of social maintenance effort, (5) Legal supervision is still not optimal so that several articles in foreign investment regulations are aborted by the Constitutional Court in whole or in part.

Keywords: foreign investment, investment law, social welfare

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I. INTRODUCTION

In December 2013, in the era of President Susilo Bambang Yudhoyono, PT Indonesia Asahan Aluminum (Inalum), the aluminum producer in North Sumatra was successfully owned by the government after nearly 30 years the majority of its shares were controlled by a Japanese joint venture company, PT Nippon Asahan Aluminum (NAA). Based on the Indonesia and Japan agreement on July 7, 1975, NAA ownership of Inalum reached 58.87% while the remaining 41.13% was owned by the government. The cooperation contract with the value of Inalum's development investment which reached the US \$ 2 billion ended on October 31, 2013.

Meanwhile, in December 2018, the Joko Widodo government succeeded in taking over PT Freeport Indonesia (PTFI) through a 51% divestment process and starting with the disbursement of funds by Inalum to Fifty-six trillion Rupiah to buy participating interest (PI) owned by Rio Tinto — a British mining company — by 40% at PTFI. After that, Indonesia's share ownership in PTFI rose from 9.36% to 51.23%. Although the acquisition of PT. Freeport through the debt scheme carried out by SOEs, this, of course, needs to be appreciated considering that almost 40 years this mining company made profits from Indonesia's land.

Indonesia has a total area of 2,001,648.97 km² consisting of land covering an area of 1,904,569 km² and an ocean of 96,079.15 km². Also, this country is also equipped with extraordinary natural resources such as gold, coal, natural gas reserves, oil to the richness of flora and fauna. This condition until now is still not enough to make the area stretching on the equator become an economic power at least even for the Asian level.

Article 33 of the 1945 Constitution of the Republic of Indonesia contains the doctrine that all natural resources are controlled by the state and fully utilized for the prosperity of the people. This means that the state is required to protect the management of assets and natural assets for the success of the people. Naturally, if the

protection device includes law, it should be able to stand in harmony with the will of the people and move development for the betterment of society (Kusumaatmaja, 1986: 11; Laudjeng and Simarmata, 2000: 119). Thus, various policies including a set of regulations in the investment mechanism to Indonesia should be able to protect the interests of the people's welfare.

PT. Inalum and PT. Freeport is a description of how foreign companies can legally manage national assets. Among the factors that make the government difficult to face their dominance, one of which is related to the position of investment regulation. Before the majority shares were owned by the government, both Inalum and Freeport turned out to leave some problems. During its establishment, Inalum's production was mostly supplied Japanese industrial needs by the agreement in ownership. There is no opportunity for the national industry. Meanwhile, since the contract of work between PT. Freeport and the Indonesian government signed in 1991; this American mining company has committed various crimes such as systematic environmental killings, violations of tax payments and crimes against humanity in the form of eliminating the right to life, economic, social and cultural rights of some citizens (Rais, 2008: 264-265).

The advantage of direct foreign investment is the transfer of technology, know-how, management skills, business risk is relatively small and more profitable as stated by Panayotou (1998), apparently did not occur. This shows that in the mechanism of foreign investment in Indonesia the legal position is still weak to sustain the principle of justice in providing a basis for equity for the prosperity of all citizens.

Based on this background, this study tries to answer the main problem related to the legal position in the mechanism of foreign investment in Indonesia. Also, this paper will explore some issues such as (a) How far does the regulation control the arrangement of foreign investment in maintaining the independence of the national economy? (b) Is the investment law effectively resolving foreign investment disputes? (c) Is there a social engineering law on foreign investment to redistribute equity in development? (d) How far does the regulation of foreign investment provide social maintenance? (e) How deep does the internal and external oversight function of foreign investment regulations occur?

This research rests on the assumption that so far, regulations related to the mechanism of foreign investment are still not optimal in providing the effects of equitable development for social welfare.

II. LEGAL FUNCTIONSYSTEM

The legal system is part of the social control system. This might be the primary function of the legal system; while others, on one side, are underneath. In other words, the legal system is concerned with controlling behavior. It's like a traffic cop who tells road users what to do and what not to do.

The legal system can do this directly, very literally. As there are traffic police who stand in a busy corner, waving their hands with this or that code, and of course they are part of the legal system as it is being defined. The criminal justice system may be an example of the law best known as social control. Here we find a set of prominent artillery societies: judges, prisons, wardens, police, and lawyers. Lawbreakers and other abusers are pursued, arrested, and sometimes punished. This is a control in the lowest and basic sense (Friedman & Hayden, 2017: 8).

The second broad legal function is as a dispute resolver. The dispute itself is a public statement about inconsistent claims for a value. For example, two people both insist that they own the same land. Or Mercedes crashed into the Honda Accord, and the Accord driver threatened to sue the Mercedes driver. Or the marriage of a husband and wife who did not last long, and they quarreled over who got home, children, or money. These all illustrate disputes in terms of claims that are inconsistent with something of value.

Furthermore, redistributive functions or social engineering. This refers to the use of law to create planned social change, which is imposed from above, namely by the government. Social engineering includes very prominent aspects of modern developed countries. The United States levies taxes on people who have money and use this money to provide cash, food aid, medical benefits, and sometimes cheap housing for poor people and other people who feel they deserve it.

The planned or "engineered" aspect of social policy - whatever is done intentionally through public choice - is carried out through law. Here the law is contrary to an unplanned market. In the market, the law of supply and demand determines the price. The market decides which products and businesses grow and which ones wither and die. The exchange distributes goods and services, benefits and expenses, through a price system. This is similar to an auction where buyers bid on the items they want; rare and desirable items rise in price, while less desirable general goods go down (Friedman & Hayde, 2017: 9).

At this stage, the legal system is a rival scheme for the distribution of goods and services. As well as rations for rare commodities. To increase troops during wartime, a country can buy soldiers literally; and that happened in the past. As for today, that system cannot be used. In the present, the government often invites a group of young volunteers, men or women by giving them incentives.

The term "social engineering" does not need to be interpreted too far. Because it can give a deep impression that the legal system is constantly working to fix and improve. Often, equitable allocations do the

opposite: instead of changing things, they act in such a way as to maintain or try to keep the status quo intact. This function can be called social maintenance. The legal system presupposes and enforces structures that keep the engine running more or less like in the past. However, even "free markets" - even "invisible hands" - require laws to guarantee fair rules of the game. Even in the most laissez-faire systems, laws impose bargaining, create a money system, and try to maintain a framework of order and respect for property (Friedman & Hayden, 2017: 9).

2.1. Investment Regulation as an Instrument for Upholding Social Justice

According to Pound, a law has three meanings: first, seeking legal order. By controlling human behavior through the systematic application of the power of a politically organized society. In this sense, it is called a social regime of control. Second, the accumulation of footing of authority for some administrative and judicial decisions in society. Third, as a legal process (Pound, 1951). Besides, the law also serves in social engineering that is designed to eliminate various frictions and dispose of multiple satisfaction of universal human interests. And demand the warehouse of different goodness available (Pound, 1942; McManaman, 1958: 17). In this case, engineering is a practical art to realize plans that have been drawn up and drawn in detail in advance. Law is not a reflection of the spiritual reasons for the regulation of the universe or God's commands but a process of social adjustment; a practical compromise system of various conflicts and overlapping interests (Pound, 1932: 125-26).

Pound stated that the law must be in favor of three interests: social interests, public interests, and individual interests. Individual interests are claims that a person has as an individual and are expressed in rights in life. Public interest is a claim that is affirmed in the theme of living in a politically organized society. While social benefits are claims expressed in the property rights of social life in civilized nations where they are treated as claims of all social groups (Pound, 1944; Mc. Manaman, 19).

In supporting the economic revival of a country, Foreign Direct Investment (FDI) is an important instrument for development and economic growth. The assumption of a positive correlation between FDI and economic growth in recipient countries has been felt by countries such as South Korea, Malaysia, Thailand, China, and many other countries. Similarly, Indonesia in the New Order era (President Soeharto era), the state could rise with an average economic growth of 7% per year during the 1980s after a dark period of the economy in the previous era. FDI is one motor that initiates economic development in addition to other factors such as aid or foreign debt, the government's seriousness with national financial plans and political and social stability (Tambunan, 2007: 1; Makhfudz, 2016: 34).

Based on paragraph 4 article 33 of Law 145: "The national economy is carried out based on economic democracy with the principle of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and unity of the national economy," MPR RI Decree No. XVI / MPR / 1998 concerning economic politics in the context of economic democracy, emphasizing that investment policies should always underlie people's economy which involves the development of micro, small, medium and cooperative (Part b. Considering Law Number 25 of 2007 concerning Investment).

2.2. Between National Economic Independence and Foreign Investment

Along with the rapid globalization, the economy throughout the world has experienced a process of unification and acceleration of economic activities by reducing various costs and rates which have become barriers to international trade. It also refers to the growing process of interdependence between the economy and international trade, international migration, and foreign direct investment in international financial capital flows. (Greenaway and Nelson, 2001: 1). Every country, including Indonesia, inevitably follows the global trend in all aspects.

In 2000, the government issued Presidential Decree No. 118/2000 concerning Amendments to the presidential decree number 96 of 2000 concerning closed business fields and open fields with specific requirements for investment, releasing retail businesses from the negative list for Foreign Investment. This regulation is the entrance for foreign retailers to Indonesia because this business is very profitable. In six years, from 2007-2012 the overall number of modern retail outlets experienced an average growth of 17.57% per year (Siallagan, 2016: 12).

Meanwhile, Law no. 22 of 2001 in response to the improvement of oil and gas business management in Indonesia, in one of its articles stating that Pertamina's position was in line with other Oil & Gas companies. This regulation allows private parties other than Pertamina to manage Public Fuel Filling Stations (SPBU). In 2005, PT Shell Indonesia (Shell) emerged as the first foreign gas station in Indonesia. It was followed by Petronas from Malaysia and PT Total Oil Indonesia (Total) from France.

Various rules and regulations issued by the government should be able to maintain the harmonization of state, private (market mechanisms) and society through the constitution. The constitution is the fundamental law that covers all systems and norms of the three domains. Unfortunately, foreign investment that is too

focused on infrastructure development often ignores other aspects, causing conflicts especially on issues of economic growth and local culture. For example, The investment of PT. Freeport is one of Indonesia's most significant tax contributors, though, on the one hand, it is considered to have harmed the natural and socio-economic resources of the Papuan people (Panjaitan, 2010: 49; Bagaskoro et al., 2016: 527).

The experience of Indonesia's dynamic political economy should implement policies more mature, effective and efficient and rests on national economic independence. Unfortunately, each era has its interpretation of national financial autonomy. The first interpretation is in the Soekarno's Old Order era (1959-1967) where freedom was interpreted as an economy that grew on its own feet without relying on foreign assistance. Unfortunately, the conception that followed the ideological bias towards the Eastern block, the Soviet Union, China, and its allies, actually brought Indonesia into a slump. Consequently, a lot of large-scale expenditure must be spent on military needs, lighthouse projects and other political funds. Soekarno's Indonesian version closed itself mainly from western countries. The economy was neglected until inflation reached 600% per year in 1966. This reduced people's trust in the Old Order Era because they did not get economic welfare (Mas'ood, 1989).

The New Order's economic, political policy, the reform era and afterward more interpreted financial independence more moderately in the sense that besides relying on its strength, it also opened itself to foreign assistance with the requirement to provide guarantees for the implementation of social welfare (Juoro, 2011).

Of course, the regulation of foreign investment, besides having to provide protection to foreign investors, can also maintain the benefit side for the community such as supporting business growth, supply technology in the production and machinery processes or creating employment opportunities (Handayani, 2011: 63; Ridgway and Thalib, 2003: 335). Thus, the legal position in the investment mechanism in Indonesia will be in line with the state's goal of realizing prosperity for all the people of Indonesia.

2.3. The position of The Investment Law in the Process of Investment in Indonesia

Facing foreign capital investment in Indonesia, this country has experienced a dramatic foreign policy process. In the Old Order period, Indonesia adopted a system of foreign policy that sided with one of the blocs which were fighting in the cold war namely the eastern bloc (Soviet Union, China, etc.). The Soekarno regime at that time embraced economic independence through guided democracy.

Soekarno's Old Order Regime (1959-1967) applied a "self-sustaining" economic policy or stood on its own feet as the highest value of independence followed by an anti-foreign and inward-oriented attitude. This regime does not want foreign aid to build the Indonesian economy. Indonesia's economic development must be carried out by Indonesia. Unfortunately, at the implementation level, Soekarno's ideas became a blunder. Significant costs are spent not for development but to fund various military needs, lighthouse projects and other political projects. Indonesia is closed mainly to the western world. Inflation also reached up to 600% in 1966. The Indonesian economy deteriorated and the economic down felt by the people made them no longer believe in the Old Order leadership (Mas'ood, 1989; Pasaribu, t.t.). Thus, at this time, independence was defined as self-reliance, standing on its own feet, anti-capitalism and prioritizing the role of the state in many economic activities. But the Old Order ended with low hyperinflation and people's welfare, even though the main financial assets can still be said to be entirely in the hands of the Indonesian government, because the practicality of foreign capital is very minimal, and the economy is very minimal from global economic influences (Juoro, 2011).

If Soekarno's policies tended to close themselves from western countries, Soeharto's New Order regime instead tried to attract capital from the western states. The economy during the Soeharto period was also marked by improvements in various sectors and the sending of delegates to obtain loans from western countries and the IMF. This type of foreign assistance is significant in stabilizing prices through "injection" of imported materials into the market. The New Order held that Indonesia needed support from both the governments of foreign capitalist countries and from the international business community in general, namely bankers and multinational companies.

During this period independence was not much stated at the beginning of the government because the main concern was on economic stability, especially food needs and controlling inflation. Also, foreign capital is expected to manage assets that are still hidden, especially Natural Resources (SDA). Economic growth can increase quite high with maintained financial stability. Foreign capital is also increasingly entering many sectors of the economy, causing several protests such as student demonstrations that refuse foreign capital. It was only nearing the end of the New Order era that the slogan of economic independence began to return (Mas'ood, 1989; Juoro, 2011).

After the fall of the New Order, Indonesia adopted a new beginning, especially in the mechanism of more democratic state order. This period is often called the reform era which started from the Habibie, Wahid, Megawati, Yudhoyono to Widodo administrations. In mid-1997, the rupiah, the Indonesian currency experienced a crisis. From Rp. 2,500 to Rp. 12,650 per US dollar. This had an impact on the monumental events

of the birth of reform which was marked by the fall of the Soeharto regime which had been in power for about 30 years. Baharuddin Habibie had strengthened again at the level of Rp. 6,500 per US dollar at the end of his administration. An achievement that was never achieved by the government afterward.

In the reform era, democratic politics increasingly loudly voiced economic independence, but increasingly tricky in its implementation because the scattered power caused economic policies to be less effective. Now the term independence is still often mentioned, but economic pragmatism dominates. With the limitations of the government, there is independence, not more than just mentioned in some government speeches or programs, but it is not implemented (Juoro, 2011).

The law is not in a vacuum so that the legal product must be harmonized with the idea of the structure of society because the code should function to serve its people. This view raises the notion that codification and unification must be used as a direction in legal development. Codification can guarantee legal certainty, while standardization can accelerate the integration process (the developing of unity) of a pluralistic Indonesian nation (Rahardjo, 1986: 27; Gaffar, 1990; Mertokusumo, 1984: 137). Likewise, by looking at socioeconomic and political experiences since the Old Order, the New Order to reform, demands for proper alignment in investment continued to emerge.

With the shift of Soekarno's power to Soeharto, since the first time on 7 April 1967, the government accepted Foreign Investment which was marked by the signing of the Kontrak Karya I (Contract of Work I) for 30 years. This law was amended by Law No. 11 of 1970 Amendments and Additions to Law Number 1 of 1967 concerning Foreign Investment. After the Reformation to date, it has been refined through the Government Regulation of the Republic of Indonesia Number 20 of 1994 concerning Share Ownership in Companies Established in the Context of Foreign Investment. Finally, the Law on previous investment was revoked with the Investment Law No. 25 of 2007. Policies for foreign investors, whether foreign nationals, foreign business entities, and foreign governments that make investments in the territory of the Republic of Indonesia until now, are still maintained (Asyikin, 2018).

III. RESULT

On November 16, 2018, the Jokowi government renewed the 16th Economic Policy Package with three critical policies. First, expand the tax holiday reduction facility (tax holiday) to encourage direct investment in pioneer industries from beginning to end to promote economic growth. Second, re-relaxing the Negative Investment List as an effort to improve economic activity in leading sectors level. It is hoped that this policy can open opportunities for Domestic Investment (PMDN), including Micro, Small and Medium Enterprises (UMKM) and Cooperatives to enter into all business fields. Finally, strengthening foreign exchange control by providing tax incentives. Control form of an obligation to include receipt of payment of export transactions or Export Foreign Exchange (DHE) from the export of goods produced by natural resources (mining, plantation, forestry, and fisheries).

The government effort shows that regulations that are made are dynamic so that they need to be maintained to be able to balance global developments without reducing protection for national interests. The following are the findings of the problems that the author successfully obtained in this study.

3.1. Control of the Law on Foreign Investment in Maintaining the Independence of the National Economy

In exercising the authority of companies that will invest in Indonesia, the government has issued various regulations which substantially limit the types of businesses that may and may not be entered by foreign investment. Along with the development of global investment trends, investment law products need to make adjustments. UU no. 1 of 1967 concerning Foreign Investment and Law No. 06 of 1968 regarding Domestic Investment and derivatives revoked and refined with Law No. 25 of 2007 concerning Investment. The protection of the type of business carried out by the government regarding foreign investment is seen in the comparison of the following table.

Table 1. Protection of Closed and Open Business Types.

Law No. 01/1967		Law 25/2007	
Open Type Business	Closed Type Business	Open Type Business	Closed Type Business
1. ports; 2. electric power production, transmission and distribution for the public; 3. telecommunications;	1. production of weapons, gunpowder, explosive devices; 2. war equipment which are fields which occupy an important role in national	1. All business fields or types of businesses are open to investment activities, except for business sectors or types of businesses that are declared closed and open with conditions.	1. Production of weapons, munitions, explosive devices and war equipment; and 2. Business fields that are explicitly stated to be closed under the

<p>4. shipping; 5. flight; 6. drinking water; 7. public trains; 8. atomic power generation; 9. mass media</p>	<p>defense;</p>	<p>2. business fields that are open to requirements based on criteria of national interest, namely: a. protection of natural resources, b. protection, development of micro, small, medium and cooperative businesses, c. supervision of production and distribution, increased technological capacity, d. domestic capital participation, as well as e. cooperation with business entities appointed by the Government</p>	<p>law.</p>
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To expedite the flow of investment into Law No. 1/1967, with some conditions, provides relief and exemption in corporate tax on profits, dividend taxes, import duties and capital stamp duties on capital placement. In line with that, Law No. 25/2007 provides facilities in the form of investors in the way of: reduction in income tax, relief of import duties on capital goods, exemption of raw material import duties, suspension of value added tax or import of capital goods, accelerated amortization (depreciation) and land and building tax relief.

Ahead of the 2019 presidential election, the issue of foreign control over the Indonesian economy is heating up. In fact, in the study of Juoro (2011: 2-3), foreign capital entering Indonesia only ranged from \$ 3- \$ 5 billion per year. This is lower than Asian countries such as Singapore, Malaysia, and China. Just in 2010, foreign capital to Indonesia reached \$ 12 billion. This is also still smaller than China which reached \$ 50 trillion. Therefore according to Juoro, the Indonesian economy cannot be said to be controlled by foreign capital. In line with that, Faisal Basri, based on his research results concluded that the dominance of external forces in the Indonesian economy was still small compared to neighboring countries such as Malaysia, Vietnam or the Philippines. This is as shown in the following data.

Table. 2. Development of Southeast Asia Foreign Direct Investment 2011-2016.

Vietnam	50,5 %
Thailand	44,7 %
Malaysia	40,6 %
Indonesia	24,1 %

Source : (Basri, 2018)

Efforts to strengthen Indonesia's investment climate by prioritizing the overall marketing approach (end to end), providing investment incentives (tax allowances) and royalty reductions, still cannot defeat the dominance of BUMNs in investment in Indonesia (Soelistijo, 2011: 86; Rivaldi, 2016: 41) The value of foreign direct investment (FDI) is only about 5 percent of the total gross fixed capital formation (GFCF). Thus, the legal position so far has succeeded in providing control in the form of protection so that the law remains in favor of the welfare of the community and limits the liberalization process in investment to Indonesia (Basri, 2018).

3.2. The Effectiveness of Foreign Investment Regulations in Overcoming Disputes between the Government and Foreign Investment Parties

In resolving conflicts between the Indonesian government as regulators and foreign parties who invest their capital, they often take the path of reconciliation and do not reach the direction of arbitration. Provisions for resolving international investment disputes are contained in the Convention on Settlement of Disputes between States and Foreign Nationals on Investment (Convention on the Settlement of Investment Disputes between States and Nationals of other States). One item states that resolving disputes can be done peacefully (reconciliation) or taking the arbitrate path.

The government will not nationalize foreign capital companies. However, if forced to do it, according to Law No. 01/1967, the government is required to provide compensation. If it is not agreed on the amount, type and method of payment of compensation, arbitration will be held in which the decision is binding on both

parties. Likewise, Law 25/2007 in the process of resolving disputes is discussed in a particular chapter, namely chapter XV concerning Dispute Resolution.

PT Indonesia Asahan Aluminum (Inalum), an aluminum smelter whose shares are controlled by a Japanese company, Nippon Asahan Aluminum (NAA) of 58.88% since 1976, officially belongs to Indonesia with the signing of the termination agreement at 9 December 2013. Meanwhile, the signing negotiation of Head Agreement between PT. Indonesia Asahan Aluminum with Freeport Mc Mo Ran Inc. since July 12, 2018, completed on September 27, 2018, with the establishment of Indonesian ownership of 51% of the company's shares that have explored Indonesia's gold mines since 1967 (Ministry of Finance, 2013; Tribunnews, 2018; Liputan 6.com, 2018).

3.3. The Role of the Social Engineering Law on Foreign Investment in Development Equitable Redistribution

In the early stages of industrialization, high-skilled foreign workers, professionals, and technical supervision had a significant and positive role in the growth of industrial output (Bachtiar and Fahmi, 2011: 81). That is why in Law No. 1/1967 stated that the use of foreign workers for leaders and positions that require expertise is permissible for foreign capital companies as long as there are no Indonesian citizens in control. Therefore, as an effort of social engineering, foreign capital companies are meant to be obliged to facilitate training and education for Indonesian Workers so that it is projected that future expertise and technology can be transferred from foreign workers to Indonesian labor. Data from the Investment Coordinating Board follows the comparison of energy absorbed from foreign investment and domestic investment.

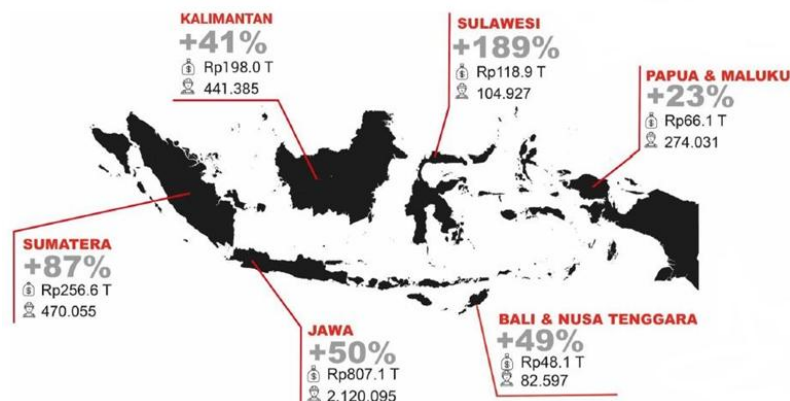
Table 3. Realization of Investment (IDR. Trillion)

Category	2015-2017 (Semester I)		
	Project	Investation	Indonesian workers
Foreign investment	58,470	969.4	2,250,240
Domestic investment	17,331	525.5	1,117,332
Total Foreign and Domestic Investment	75,801	1,494.9	3,367,572

Besides, as a form of role distribution, there is a divestment provision for foreign investors in the mining sector. In Law No. 4 of 2009 concerning Mineral and Coal Mining stated that after five years of production, business entities holding mining business licenses whose shares are owned by foreigners are obliged to divest shares. This divestment is carried out on the Government, regional government, state-owned enterprises (BUMN), regionally owned enterprises, or national private business entities.

Then, according to Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, the number of shares which must be divested at least 20% (twenty percent) is owned by Indonesian participants. So, even though foreign investors own a 90% stake, within five years of production, they are required to divest shares to a maximum of 80% ownership. The latest Mineral and Coal Law in the era of Susilo Bambang Yudhoyono emerged as a redistributive effort with justice in favor of the Indonesian government and society rather than investors (Abidin, 2017: 359) and these conditions lasted until the era of Jokowi. In its realization, the overall investment in both domestic investment and foreign investment is still centered on Java island and DKI Jakarta as the capital city as shown in the following figure.

Figure 1. Investment in All 2015-2017 Economic Corridors



Source: Capital Investment Coordinating Board (BKPM), 2017

The picture above shows the investment realization of 2015-2017 growth, while the figures show the understanding of investment numbers and the number of Indonesian labours directly absorbed.

3.4. Responsibilities of the Foreign Investment Law in Social Maintenance

The Constitution based on Article 33 of the 1945 Constitution of the Republic of Indonesia mandates that national economic development must be based on democratic principles that can create the realization of Indonesian economic sovereignty. One of the way is by involving the participation of populist economic actors in economic development as reinforced by the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI of 1998 concerning Economic Politics in the Context of Economic Democracy as a source of physical law. Therefore, the development of investment for micro, small, medium and cooperative businesses is part of the underlying investment policy.

Also, in the effort of social maintenance, regulations related to investment in Indonesia also regulate corporate social responsibility (CSR). Law 25/2007 on Investment also included an article governing CSR. Article 15 letter stated: "Every investor is obliged to: carry out corporate social responsibility." Explanation of Article 15 letters adds that what is meant by "corporate social responsibility" is the responsibility inherent in every investment company to continue to create harmonious relationships, balanced, values, norms, and culture of the local community.

Law 22/2001 Oil and Gas does not explicitly regulate corporate social responsibility. However, if we read carefully, there is one rule that implicitly refers to CSR. The provision is Article 11 paragraph 3 letter p, which reads, "The Cooperation Contract as referred to in paragraph (1) must contain a few basic provisions, namely: development of the surrounding community and guarantee of the rights of indigenous peoples". It does not mention explicit social responsibility, but use the term development and community empowerment program. Article 108 paragraph (1) of the Coal Mineral Law states that "Holders of IUPs (Mining Business Permits) and IUPK (Special Mining Business Permits) are required to develop community development and empowerment programs." Article 1 number 28 of the Coal Mineral Law defines community empowerment as "efforts to increase capacity the community, both individually and collectively, to be better at the level of their lives."

This statement shows how the legal position in investment has given firmness in efforts to maintain social good in the form of corporate responsibility, development programs, and community empowerment, and guarantees the rights of indigenous peoples.

3.5. Legal Supervision in the Foreign Investment Mechanism

Supervision is one thing that is important in regulation. With guidance, the legal position will be a mediator who keeps the law from irregularities based on individual interests. Therefore supervision in foreign investment is needed to avoid misappropriation of investors which can harm national interests.

In article 13 of Law 1/1967 several matters related to the determination of company directors by investors, fulfilling the need for Indonesian laborers, leaders and foreign experts for certain positions and the obligation to facilitate education and training of Indonesian citizens to successful leadership in foreign capital companies, supervised by the government.

In its process, supervision is also evidently essential to oversee the substance of the regulation itself. Because it could be that laws are made on orders or pressure from foreign parties who are very interested in investing their capital in Indonesia. Amien Rais said that intervening in the design of a regulation that would be made by a country was one of how the power of the international corporatocracy sought to conquer developing countries. In Indonesia, several laws seem to lead to the liberalization process without clear direction. Through Law 10/1998 concerning Banking, different parties can own up to 99% of bank shares in Indonesia. UU no. 19/2003 concerning State-Owned Enterprises (BUMN) provides a legal basis for the privatization of BUMN. Instead of delivering prosperity, the privatization of state-owned enterprises without conditions can directly harm the state. Likewise, Law No. 22 of 2001 concerning Oil and Gas and Law No. 25/2007 concerning Investment which is filled with articles on securing international liberalization and control in Indonesia (Rais, 2008: 175; 205).

Juoro (2011) argues that although the trend of foreign ownership of economic assets has increased, it is still far from the conditions that are classified as foreign-controlled so that the Indonesian economy, in general, is still domestic. Even Indonesia still needs greater foreign capital, especially in the real sector, such as manufacturing, agriculture, and mining. Despite this, in line with Rais, he also emphasized the government to be careful of foreign capital, especially in the form of portfolios. The data below shows that the amount of foreign ownership in portfolio investment is at high risk of the effect of the reversal of capital flows which can disrupt the stability of the economy.

Table 4. Risk of Foreign Portfolio Capital

Foreign Capital Instruments	Range of achievements	Risk
Foreign control of capital market capitalization	60%	If for some reason foreign investors withdraw their funds from Indonesia, there will be a shock in economic stability that can weaken the value of the rupiah and can affect economic fundamentals
Foreign ownership of SUN (Government Bonds)	21%	
Foreign ownership of SBIs (Bank Indonesia Certificates)	18%	
Foreign control of banking assets	35%	Because banking is the economic lifeblood, and it is increasingly difficult for domestic investors to meet capital banking requirements, the more banks will fall into foreign hands.

Source : (Juoro, 2011)

The existence of the Constitutional Court (MK) is regulated in Article 24 C paragraph 1 and paragraph 2 of 1945 Constitution as a result of amendment which was later reaffirmed in Law No. 24 of 2003 concerning the Constitutional Court, marking the judicial power system in Indonesia. Some areas that were untouchable by law, such as the issue of judicial review of the law and various other authorities regulated by the 1945 Constitution after the amendment, now it can be carried out by the Constitutional Court (Sutiyoso, 2010: 26).

The decision of the Constitutional Court Number 36 / PUU-X / 2012 dated November 13, 2012, decided that the article governing the duties and functions of the Executing Agency for Oil and Gas (BP Migas), as stipulated in Law No. 22 of 2001 concerning Oil and Gas, contrary to the mandate of the Constitution of the 1945 Law and does not have a binding law. This law in the eyes of the Constitutional Court has the potential to open up the liberalization of oil and gas management because it is strongly influenced by foreign capital. The Constitutional Court considers that the relationship between the State and Natural Oil and Gas Resources as long as it is constructed in the form of a Cooperation Contract (KKS) between BP Migas as a State-Owned Legal Entity as a government party or representing a business entity or permanent establishment, is contrary to the principle of control of the country in question in Article 33 of the 1945 Constitution (Mokalu, 2016: 59). In this case, the Constitutional Court has carried out the oversight function of the substance of the Law issued by state institutions.

IV. CONCLUSION

Several things need to be considered after seeing the explanation above as below;

- (1) In principle, the legal position has given control of the mechanism of foreign investment to Indonesia so that even though the trend of regulatory movements tends to support the economic liberalization process, however, it is still within the control of the state, especially compared to countries in the ASEAN region.
- (2) Related to dispute resolution since the Law on Investment was rolled out in the New Order era through Law No. 1/1967. The Indonesian government tends to strive for a settlement process that ends with a method of peace or reconciliation. The government tends to be careful and avoids the process of settlement through arbitration that binds both parties in conflict.
- (3) The government requires the transfer of knowledge from foreign investors who employ foreign workers in strategic fields to slowly increase the capacity of the Indonesian workforce. So that gradually through intensive education and training, they can become the driving force of companies that are slowly growing Indonesian property.
- (4) Concern for small and medium-sized micro-enterprises is a form of elaboration to promote people's welfare. Likewise with the concept of corporate social responsibility, which requires every foreign capital company to provide a program of empowerment and community development.
- (5) Proper oversight carried out externally, namely the attitude to supervise foreign investors so that there is no fraud internally in the form of autocorrection through the Constitutional Court turns out to open a new dimension of how the regulations made can be indicated to benefit investors' interests rather than people's welfare. This ignores the principle of justice and is contrary to the spirit of the 1945 Constitution.

Although the legal position seems to still rest on the independence of the national economy where the Indonesian economy, in general, is still domestic, the tendency towards economic liberalization raises fears of some political and economic observers that the Indonesian economy will be controlled by foreigners. This is because some regulations relating to foreign investment policies are often intervened by external parties. This is common in developing countries with significant foreign debt. Bank Indonesia (BI) recorded Indonesia's foreign debt (ULN) at the end of last year to reach the US \$ 376.8 billion or around Rp.5.452 trillion. The external debt

position at the end of last year consisted of government and central bank debt of 186.2 billion US dollars, as well as private debt, including state-owned enterprises amounting to the US \$ 190.6 billion.

The government debt rose the US \$ 7.1 billion compared to the end of the previous year. This increase was mainly due to the increase in inflows of foreign investors in the state securities (SBN) market in line with the conducive local economy and attractive yields; the uncertainty of the global financial market has eased a little; and issuance of foreign exchange SBN in the framework of fiscal pre-funding in 2019. Meanwhile, the position of private external debt increased the US \$ 10.6 billion compared to the previous quarter, mainly driven by an increase in the area of ownership of corporate bonds by foreign investors.

Thus, it appears that only countries that have economic sovereignty will have a strong legal standing towards the foreign investment sector in the country.

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