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Legal Protection for Foreign Investment According to Law Number 25 of 2007 concerning Investment

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ABSTRACT

This writing aims to explore the importance of a legal regulation that is able to provide legal protection for foreign investment. Foreign investment is a very important instrument for the development of the nation's economy so that a legal regulation is needed to provide legal certainty for foreign investors so that they feel safe and comfortable in carrying out investment practices in Indonesia. In this study, the author will focus on exploring How Legal Protection for Foreign Investment is According to Law Number 25 of 2007 Concerning Investment and What Forms of Ease of Land Rights Licensing Services Are According to Law Number 25 of 2007 Concerning Investment. The data collection method in this study was carried out through library research and document review, namely by collecting legal materials through studies of journals, legal research results, and various official institutional documents such as laws and regulations, trial circulars, and other literature relevant to the problems studied.

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INTRODUCTION

The development of the Indonesian economy and digital technology has encouraged the emergence of various forms of investment that are easily accessible to the wider public. Increasing awareness of the importance of personal financial management and the drive to achieve high returns quickly have made investment a primary alternative for achieving economic prosperity. However, behind this positive trend, a very disturbing negative phenomenon has emerged: the rise of fraudulent or illegal investment practices that harm the public.

In practice, investment involves placing funds with the hope of obtaining additional funds or profits. Investment is essentially the current placement of funds with the expectation of future profits.

Generally, investment activities and laws are defined and referred to in Law No. 25 of 2007 concerning Investment, which divides investment into two types, based on the source of funds used: foreign and domestic capital. This means that for both foreign and domestic investors wishing to invest directly, they must be physically present to conduct their business. These provisions also contain several investment requirements. In making an investment, the parties must mutually fulfill their respective rights and obligations, including legal certainty, legal protection, information transparency, and the requirement to possess valid permits in accordance with applicable laws and regulations.

Law Number 25 of 2007 concerning Foreign Investment details the requirements for investment practices in Indonesia, including:

1. Legal Certainty and Transparency
2. Equal Treatment;
3. A minimum investment value of IDR 10 billion for foreign investment;
4. Valid permits.

The above requirements constitute a form of legal protection provided by the government to both domestic and foreign investors, ensuring a sense of security and comfort when investing. Furthermore, the government, through the Financial Services Authority (OJK), also provides legal protection for investors by overseeing the business licenses of investment institutions to protect investors from detrimental investment practices.

Legal protection for the public is necessary to provide legal certainty and assurance to the public when investing. The OJK is a state institution that oversees banking and non-banking financial institutions in Indonesia, as well as investment activities.

Investment is the initial step towards development. Domestic investment is called Domestic Investment (PMDN) and foreign investment is called Foreign Investment (PMA). Both are equally important and influence a country's economic growth. Not only the private sector strives to invest, but the government also plays a role in improving the country's economy.

Provisions regarding Foreign Investment are clearly stipulated in Law Number 25 of 2007 concerning Investment. These provisions provide a foundation for foreign investors to conduct investment activities in the Republic of Indonesia safely and securely, ensuring legal protection and certainty in their investment practices within Indonesia.

In practice, investments made in Indonesia by foreign investors must comply with applicable laws and regulations. Article 3, paragraph 1 of Law Number 25 of 2007 concerning Investment emphasizes that investment practices must prioritize the principle of non-discrimination. This principle is applied in investment, aiming to ensure that foreign and domestic investors are not discriminated against. Furthermore, Article 3, paragraph 1 of Law Number 25 of 2007 also establishes several principles for investment practices, namely:

1. The Principle of Legal Certainty;
2. The Principle of Transparency;
3. The Principle of Accountability;
4. The Principle of Togetherness;
5. The Principle of Equitable Efficiency;
6. The Principle of Sustainability;
7. The Principle of Environmental Awareness;
8. The Principle of Independence.

The Investment Principles mentioned above represent a form of legal protection provided by the Government through Law No. 25 of 2007 to foreign investors, ensuring a sense of security and comfort in conducting investment activities within the territory of Indonesia. In addition to legal protection, these principles are also used to achieve the objectives of investment practices within the territory of Indonesia, namely, to increase national economic growth, create jobs, foster sustainable economic development, enhance national business competitiveness, enhance national technological capacity and capabilities, and so on.

To facilitate investment practices within the territory of Indonesia, the Indonesian government also provides various forms of facilitation services to foreign investors so that they can feel comfortable and at ease when investing in Indonesia. These forms of investment facilities are regulated in Articles 18, 19, 20, 21, 22, 23, and 24 of Law No. 25 of 2007 concerning Investment. These facilities include:

a. 95-year Right to Cultivate (HGU) with an upfront extension of 60 years and renewable for 35 years;
b. 80-year Right to Build (HGB) with an upfront extension of 50 years and renewable for 30 years;
c. Right to Use (Hak Pakai) with an upfront extension of 70 years and renewable for 25 years.

The above investment facilities represent the government's efforts to provide protection and convenience for foreign investors, ensuring a safe and secure investment experience in Indonesia.

Law No. 25 of 2007 concerning Investment (UUPM) regulates the benefits and objectives of investment practices in Indonesia. In general, the benefits of foreign and domestic investment for Indonesia include serving as a tool to improve the nation's economy through increased employment, technological exchange, increased production of goods and services, and enhanced national and global competitiveness.

Law No. 25 of 2007 concerning Investment (UUPM) regulates the benefits and objectives of investment practices in Indonesia. In general, the benefits of foreign and domestic investment for Indonesia include serving as a tool to improve the nation's economy through increased employment, technological exchange, increased production of goods and services, and enhanced national and global competitiveness.

One example of foreign and domestic investment practices in Indonesia is PT Freeport Indonesia. PT Freeport Indonesia is a mineral mining company affiliated with Freeport-McMoRan (FCX) and Mining Industry Indonesia (MIND ID). PT Freeport Indonesia mines and processes ore to produce concentrates containing copper, gold, and silver. PT Freeport has been operating since 1967. Foreign Direct Investment (FDI): Freeport-McMoRan invested directly by establishing PT Freeport Indonesia as a local entity, but majority-owned by a foreign company.

Initially, Freeport owned nearly 90% of the shares, with the Indonesian government through PT Indocopper Investama owning the remainder. Under Law No. 4 of 2009 on Minerals and Coal (Minerals and Coal), foreign mining companies are required to divest up to 51% of their shares to Indonesian investors. In 2018, a major agreement was reached where the Indonesian government, through the state-owned mining company PT Indonesia Asahan Aluminium (Inalum) (now MIND ID), successfully acquired 51.2% of PT Freeport's shares, marking the return of PT Freeport's investment to domestic investors, namely the Indonesian government.

From the background description above, the researcher is very interested in studying "Legal Protection of Foreign Investment and According to Law Number 25 of 2007 Concerning Investment". In this study, the researcher will also study How Legal Protection of Foreign Investment is according to Law Number 25 of 2007 Concerning Investment and What Forms of Ease of Land Rights Licensing Services are According to Law Number 25 of 2007 Concerning Investment.

LITERATURE REVIEW

Overview of Foreign Investment

1. **Definition of Foreign Investment**

   Article 1 Paragraph (6) of Law Number 25 of 2007 concerning Investment defines Foreign Investment as an investment activity to conduct business in the territory of the Republic of Indonesia, carried out by Foreign Investors, whether using foreign capital entirely or in partnership with domestic investors, with the aim of, among other things, increasing economic growth, creating jobs, enhancing sustainable economic development, increasing the competitiveness of the domestic business world, increasing national technological capacity and capabilities, encouraging the development of a people-oriented economy, transforming potential economic potential into a real economic strength using funds originating from both domestic and foreign sources, and improving community welfare.

2. **Forms of Foreign Investment**
Article 5 paragraph (2) of Law Number 25 of 2007 concerning Investment explains the forms of investment, namely, mandatory foreign investment in the form of a limited liability company under Indonesian law and domiciled within the territory of the Republic of Indonesia.

3. **Requirements for Foreign Investment in Indonesia**
In general, foreign investment practices conducted in Indonesia must comply with applicable laws and regulations. The provisions of Law Number 25 of 2007 concerning Investment explicitly regulate the mechanisms used to conduct foreign investment practices in Indonesia, namely:
   a. Mandatory Limited Liability Company (PT) Form
   In practice, foreign investment in Indonesia is permitted only by a company legally established as a limited liability company. This provision is also expressly stipulated in Article 5 paragraph (2), which states that "foreign investment must be in the form of a limited liability company under Indonesian law and domiciled within the territory of the Republic of Indonesia, unless otherwise stipulated by law."
   The above provision clearly establishes the basis for affirming that foreign investment must be in the form of a limited liability company (PT) and have legal standing in Indonesia. This, of course, aims to ensure that foreign investment companies have legal certainty in conducting investment activities in Indonesia.
   b. Limitations of PT PMA
   In conducting its business, a PT Penanaman Modal Asing must collaborate with Indonesian citizens or Indonesian legal entities to foster national business competition and create jobs. Furthermore, the limitations of PT PMA are also limited. This PMA also applies to capital ownership, and the granting of directorships can only be granted to Indonesian citizens.
   c. Limitations on Establishing a Foreign Investment Limited Liability Company
   When establishing a Foreign Investment Limited Liability Company (PT) in Indonesia, the Business Entity or PT must comply with all applicable regulations within the Indonesian jurisdiction. If the PT violates applicable laws within the Indonesian jurisdiction, the Limited Liability Company may be subject to administrative sanctions, criminal sanctions, or even the revocation of its business license.
   d. Company Founders
   When establishing a Limited Liability Company or legal entity, foreign citizens may establish a Limited Liability Company or legal entity within the Indonesian territory, provided they comply with applicable Indonesian laws and regulations and must possess a license or a certificate of incorporation.

e. Organizational Structure
   According to the Limited Liability Company Law, there are three organizational structures within a company: a Board of Directors, a Commissioner, and two shareholders.
f. Employment
   Regarding employment, Article 10 of the Investment Law stipulates that:
   1) Investment companies must prioritize Indonesian citizens in meeting their labor needs;
   2) Investment companies have the right to employ foreign experts for certain positions and specialties in accordance with statutory provisions;
   3) Investment companies are required to improve the competency of Indonesian citizens through job training in accordance with statutory provisions;
   4) Investment companies employing foreign workers are required to provide training and transfer technology to Indonesian citizens in accordance with statutory provisions.

4. **Prohibition on Making Share Ownership Agreements in the Name of a Third Party (Other Person)**
   Article 6 paragraph (6) of the Investment Licensing and Facilitation Regulations and Procedures Number 6 of 2018 states that an investor is prohibited from making an agreement and/or statement confirming that share ownership in a limited liability company is for and in the name of another person. This provision is also reaffirmed in Article 33 of the Investment Law, which states that if a foreign investment is made in the form of a share ownership agreement and/or in the name of another person, the agreement and/or statement are deemed null and void.
5. **Dispute Resolution**
   Article 31 paragraph (1) states that the process for resolving investment disputes can be resolved through deliberation and consensus. However, if deliberation and consensus fail, the parties can resolve the dispute through arbitration or alternative dispute resolution, or through the courts.

METHODOLOGY

In writing this journal, the author uses the normative juridical legal writing method, this research method is a research method that focuses on understanding and deepening legal norms, laws and legal issues related to the writing of this journal. This journal research method also uses data collection methods through library research and document review, namely by collecting legal materials through studies of journals, legal research results, and various official institutional documents such as laws and regulations, court circulars, and other literature relevant to the problems being studied.

RESEARCH RESULT

A. Legal Protection for Foreign Investment According to Law Number 25 of 2007 Concerning Investment

Indonesia is a country with abundant natural resources, often referred to as "heaven on earth." This term is certainly not without reason. According to the Directorate General of State Finance (DJKN) in 2014, Indonesia had reserves of oil, natural gas, coal, nickel, gold, silver, and other minerals totaling IDR 200,000 trillion. The value of this natural wealth can certainly be utilized to the maximum extent by the Indonesian government for the prosperity of the Indonesian people, as mandated by Article 33 paragraph (3) of the 1945 Constitution.

In general, Indonesia also continues to utilize its natural resources to attract foreign investors (foreign direct investment) to help fund various natural resource management facilities owned by the State of Indonesia. Furthermore, the presence of foreign direct investment in Indonesia is also utilized by the state to support national economic development. This is because Indonesia is a developing country and still requires foreign capital to build and advance its economy. This economic progress will also demonstrate Indonesia's ability to effectively manage its natural resources, thereby enhancing economic relations with other countries.

The practice of foreign investment in Indonesia is not new. It began during the Dutch colonial period. During this period, the Dutch East Indies government issued the Agrarian Law of 1870, which essentially provided significant opportunities for foreign investors to invest in Indonesia through the management of natural resources such as mining, plantations, and other natural resources. From this foreign investment, the Dutch East Indies government earned profits, reaching 4 billion guilders in 1930.

The presence of foreign investment will undoubtedly also impact the unequal competition for investment in Indonesia. This will undoubtedly raise concerns among Indonesians who fear that Indonesia's natural resources will be controlled and managed entirely by foreign companies or investors. Therefore, legal certainty is essential to protect foreign investors, ensuring they feel comfortable and secure in investing in Indonesia. This legal certainty can also serve as a foundation for the government to ensure that natural resources are used to build the nation's economy and further encourage domestic investors to learn and compete fairly with foreign investors in managing Indonesia's natural resources.

Meanwhile, in the management of natural resources, the government also emphasizes that foreign investors or foreign direct investment (PMI) must be established in the form of a limited liability company under Indonesian law and domiciled within the Republic of Indonesia, not a CV or other form of limited liability company. This regulation clearly emphasizes that before engaging in investment practices in Indonesian territory, foreign investors or PMI must comply with applicable Indonesian laws and regulations.

Under Indonesian positive law, legal protection for foreign investment is expressly stipulated in Law Number 25 of 2007 concerning Investment. The enactment of Law Number 25 of 2007 concerning Investment, also known as the UUPM, demonstrates the Indonesian government's firm and serious commitment to protecting foreign investors, ensuring they feel comfortable and secure while investing in Indonesia while still complying with applicable laws and regulations.

Article 14 (a) of the Investment Law explains that "legal certainty is a government guarantee that laws and statutory provisions serve as the primary foundation for all investment actions and policies."

Law Number 25 of 2007 concerning Investment stipulates several articles relating to legal protection for foreign investors, ensuring they feel safe and secure when investing in Indonesia. These provisions are outlined in Article 4 paragraph (2) letters a and b, Article 6, Article 7, and Article 8.

Article 4 paragraph (2) letters a and b of Law Number 25 of 2007 concerning Investment emphasizes that in investment practices, the government explicitly provides legal certainty for foreign investors investing in Indonesia. This legal certainty is crucial for foreign investors to ensure they feel safe and secure when investing in Indonesia.

Furthermore, Article 6 of Law Number 25 of 2007 concerning Investment also states that:

(1) The government provides equal treatment to all investors originating from any country conducting investment activities in Indonesia in accordance with statutory provisions.
(2) The treatment referred to in paragraph (1) does not apply to investors from a country that has received special privileges based on an agreement with Indonesia.

The provisions of this article emphasize that the government will expressly provide equal treatment or equal status to foreign investors conducting investment practices in Indonesia. This aims to ensure that foreign investors can experience a fair and competitive investment climate.

Furthermore, Article 7 of Law Number 25 of 2007 concerning Investment also emphasizes that:

(1) The government will not take any action to nationalize or take over ownership rights of investors, except by law.
(2) If the government takes any action to nationalize or take over ownership rights as referred to in paragraph (1), the government will provide compensation, the amount of which will be determined based on market prices.
(3) If the two parties cannot reach an agreement on compensation or redress as referred to in paragraph (2), the settlement shall be carried out through arbitration.

Article 7 of this article states that the Indonesian state has the authority to take over ownership of a company managed by foreign investment or foreign investors, referred to as (expropriation), or nationalize the company and all investor assets in the name of the public interest. In general, nationalization is the process, method, or act of converting something, first owned by a foreigner, into state property, usually followed by compensation. Nationalization can also be defined as the process of taking over ownership of a private company, whether owned by domestic or foreign investors, usually followed by compensation provided by the government to the capital owner.

However, in the practice of (expropriation) and nationalization of foreign companies, the Indonesian government must be strict, namely, it must have a strong legal basis, namely the law. The stage of drafting the law must also involve the role of the government and the House of Representatives. So it can be concluded that in efforts to nationalize foreign companies, the government must not carry out this practice carelessly, but must be based on the provisions of applicable laws and regulations.

Meanwhile, Article 8 of Law Number 25 of 2007 concerning Investment also stipulates that:

(1) Investors may transfer their assets to any party they desire in accordance with statutory provisions.
(2) Assets not included in paragraph (1) are assets designated by law as assets controlled by the state.
(3) Investors are granted the right to transfer and repatriate in foreign currency, including:
   a. Capital;
   b. Profits, bank interest, dividends, and other income;
   c. Funds required for:
      1. Purchase of raw and auxiliary materials, semi-finished goods, or finished goods; or
      2. Replacement of capital goods to protect the continuity of the investment;
         a. Additional funds required for investment financing; e. Funds for loan repayment;
         b. Royalties or fees payable;
         c. Income from foreign nationals working in investment companies;
         d. Proceeds from the sale or liquidation of investment;
         e. Compensation for losses;
         f. Compensation for takeovers;
         g. Payments made for technical assistance, fees payable for technical and management services, payments made under project contracts, and payments for intellectual property rights; and
         h. Proceeds from the sale of assets as referred to in paragraph (1).
(4) The right to transfer and repatriate as referred to in paragraph (3) shall be exercised in accordance with statutory provisions.
(5) The provisions referred to in paragraph (1) shall not diminish:
   a. The authority of the Government to enforce statutory provisions requiring reporting of fund transfers;
   b. The Government's right to receive taxes and/or royalties and/or other government revenue from investment in accordance with statutory provisions;
   c. Implementation of laws that protect creditors' rights; and

d. Implementation of laws to avoid state losses.

Article 8 clearly regulates the transfer of assets and the right to transfer and repatriate them in foreign currency. However, if a foreign investor wishes to transfer assets, the process is expressly and clearly regulated in the Investment Law. The transfer refers to the process of transferring profits in the form of the capital's original currency, based on the exchange rate, to the investor's country of origin. Meanwhile, repatriation is the right of a foreign investor to withdraw all economic rights from the country where the investor invested to their country of origin. Legal protection also covers multilateral investment agreements. Although the Indonesian government has established policies related to investment and legal protection for bilateral investment agreements, this step is intended to prepare the government to face various risks and problems that may arise in the future. This article also emphasizes that the Indonesian government has a legal obligation to create a conducive business environment, including for foreign investment (foreign investors). This means that foreign investors must feel safe, comfortable, and attracted to investing in Indonesia because of the guarantee of fair treatment and ease of doing business.

B. Forms of Ease of Land Rights Licensing According to Law Number 25 of 2007 concerning Investment

The concept of ease of service as stipulated in the Investment Law is closely related to the principle of public service in good governance. Law Number 25 of 2009 concerning Public Services defines it as an activity or series of activities aimed at fulfilling service needs in accordance with laws and regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers, in this case the government. This ease of service has been implemented in the Investment Law, which provides ease of service as outlined in Article 21, which can take the form of land rights; immigration service facilities; and import licensing facilities.

Forms of Ease of Land Rights Licensing for foreign investment activities in Indonesian territory are expressly regulated in Article 22 of Law Number 25 of 2007 concerning Investment. The definition of land rights is a right that authorizes the holder of said rights (whether an individual, a group of individuals, or a legal entity) to use, in a broader sense, to control, utilize, and/or benefit from a particular plot of land. These land rights encompass various types of rights that can be obtained, but when linked to the ease of service provided by the Government related to investment activities in Indonesia, they only include the right to cultivate, the right to build, and the right to use.

Article 22 explains that:

(1) The ease of service and/or licensing for land rights as referred to in Article 21 letter a may be granted and extended in advance and may be renewed upon the application of the investor, in the following manner:
   a. The Right to Cultivate may be granted for a period of 95 (ninety-five) years, by granting and extending in advance for a period of 60 (sixty) years and may be renewed for a period of 35 (thirty-five) years;

b. Building Use Rights (Hak Guna Bangunan) may be granted for a period of 80 (eighty) years, extending the term in advance for a total of 50 (fifty) years, renewable for another 30 (thirty) years; and
c. Use Rights (Hak Guna Usaha) may be granted for a period of 70 (seventy) years, extending the term in advance for a total of 45 (forty-five) years, renewable for another 25 (twenty-five) years.

(2) Land rights as referred to in paragraph (1) may be granted and extended in advance for investment activities, subject to the following requirements:
a. Long-term investments related to changes in Indonesia's economic structure to a more competitive one;
b. Investments with a risk level that requires a long-term return on investment commensurate with the type of investment activity undertaken;
c. Investments that do not require a large area;
d. Investments using rights to state land; and
e. Investments that do not disrupt the public's sense of justice and do not harm the public interest.

(3) Land rights may be renewed after an evaluation has been conducted to determine that the land is still being used and cultivated properly in accordance with the conditions, nature, and purpose for which the rights were granted.

(4) The granting and extension of land rights granted in advance and renewable as referred to in paragraphs (1) and (2) may be terminated or revoked by the Government if the investment company neglects the land, harms the public interest, uses or utilizes the land inconsistently with the intent and purpose of granting the land rights, or violates the provisions of land laws and regulations.

CONCLUSIONS AND RECOMMENDATIONS

Indonesia, as a country rich in natural resources, utilizes this potential to attract foreign investment (FDI) to support national economic development. The government provides various facilities and legal protections to foreign investors, as stipulated in Law Number 25 of 2007 concerning Investment, including guarantees of legal certainty, fair treatment, protection against asset expropriation, and the right to transfer and repatriate funds. However, foreign investment practices must remain subject to national law and be implemented in the form of a limited liability company in Indonesia. This policy demonstrates the government's commitment to creating a conducive, fair, and sustainable business climate, while maintaining sovereignty over natural resources for the prosperity of the people.

The ease of service provided in the Investment Law (UUPM) is a concrete manifestation of the principles of good governance and public service stipulated in Law Number 25 of 2009. The government provides various facilities to support investment, including streamlined land permits, such as Land Use Rights (Hak Guna Usaha), Building Use Rights (Hak Guna Bangunan), and Land Use Rights (Hak Pakai). Article 22 of the Capital Market Law stipulates that these rights can be granted in advance, extended, and renewed under certain conditions, particularly for strategic long-term investments. However, these rights can be terminated if the land is misused or not used for its intended purpose, as a form of oversight and protection of the public interest.

ADVANCED RESEARCH

Future research could focus on evaluating the effectiveness of Indonesia's legal framework in balancing the promotion of foreign direct investment (FDI) with the protection of national interests and natural resources. While Law Number 25 of 2007 provides legal certainty and investor protections, there is a need to examine how these legal guarantees are implemented in practice, particularly in sectors involving natural resource extraction. Studies could explore whether the requirement for foreign investors to operate through limited liability companies in Indonesia effectively ensures compliance with national laws and contributes to sustainable development, or if it merely serves as a procedural formality without substantive oversight.

In addition, further studies could analyze the implementation and impact of land use regulations related to investment, especially concerning the strategic use of Land Use Rights (HGU, HGB, and Hak Pakai) in long-term projects. Researchers could assess the effectiveness of government oversight in preventing misuse of land and ensuring that investment projects align with public interest and environmental sustainability. Comparative studies with other resource-rich countries could also provide insights into best practices in managing FDI, especially in harmonizing investor rights with sovereign control and the welfare of local communities. Such research would contribute to improving regulatory mechanisms and strengthening Indonesia's ability to attract responsible and beneficial foreign investment.

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