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ANALYSIS OF THE LEGAL ROLE OF LICENSING IN THE EASE OF FOREIGN INVESTMENT TO ACHIEVE ECONOMIC DEVELOPMENT

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Abstract

This research discusses the role of licensing law in supporting the ease of foreign investment in Indonesia and its implications for national economic development. In a competitive global context, foreign direct investment (FDI) is one of the important factors in driving economic growth through technology transfer, job creation, and increased productivity. However, Indonesia still faces various challenges in creating a conducive investment climate, including legal uncertainty, overlapping regulations, and inefficient bureaucracy. Efforts to reform the licensing law have been made through the passage of the Job Creation Law and the implementation of a digitally-based and integrated Online Single Submission - Risk Based Approach (OSS-RBA) system. This research emphasizes that effective licensing not only provides legal certainty for investors, but also becomes a strategic instrument to direct investment to national priority sectors. On the other hand, the reform still faces challenges in terms of infrastructure readiness, apparatus competence, and consistency of policy implementation between the center and regions. Therefore, synergy between policymakers and business actors is needed to create a licensing system that is transparent, accountable, and adaptive to global dynamics. Thus, foreign investment can optimally contribute to sustainable and inclusive economic development in Indonesia.

Keywords

Licensing law, foreign direct investment, OSS-RBA, regulatory reform, ease of doing business, economic development, investment policy.

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INTRODUCTION

Economic development is a strategic goal in every national agenda, especially for developing countries like Indonesia. One indicator of successful development is the achievement of stable, sustainable and inclusive economic growth. In this context, investment-both domestic and foreign-acts as the main driving force. Foreign direct investment (FDI) in particular is believed to be able to strengthen the national economic structure through technology transfer, job creation, and increased productivity of the industrial and service sectors.

However, in practice, Indonesia still faces various structural challenges that hinder the inflow of foreign investment. One of the main factors highlighted is the aspect of legal certainty and regulatory effectiveness, especially in the field of licensing. Licensing law is a state administrative instrument that provides legality for business actors to carry out legal economic activities. This system should provide procedural clarity, time efficiency, and legal guarantees for investors. Unfortunately, complicated bureaucracy, overlapping regulations, and rampant corrupt practices are still a reality that reduces Indonesia's investment competitiveness compared to neighboring countries in the Southeast Asian region. Law No. 25/2007 on Investment and the Online Single Submission (OSS) system stipulated in Government Regulation No. 24/2018 are the first steps of regulatory reform in this area. However, in its implementation, there are still various technical and institutional obstacles that need to be addressed thoroughly.

Furthermore, the role of law in economic development is not only limited to a regulatory tool, but also as a means of forming a fair and efficient economic structure. Laws must be able to accommodate economic dynamics, provide predictability to risks, and become the foundation for the interaction of business actors and the state. Therefore, a study of the role of licensing law in facilitating foreign investment is not only academically relevant, but also has practical significance in efforts to improve national economic governance.

This Study aims to critically examine the relationship between licensing law and the ease of foreign investment in Indonesia, and analyze how the legal framework contributes to the achievement of sustainable and equitable economic development. In an increasingly competitive global context, Indonesia needs to systematically reorganize its investment licensing policy, in order to attract investors while maintaining national interests.

RESEARCH METHODS

This research is a juridical normative research, namely legal research conducted by examining library materials or secondary data. This research aims to analyze existing regulations and legal theories related to the licensing system and foreign investment facilities in Indonesia. Through this method, researchers try to solve legal problems arising from normative provisions and their implementation conceptually.

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The approaches applied in this study are statute approach and conceptual approach. The legislative approach is conducted by analyzing and reviewing various regulations governing foreign licenses and investments, both at the level of laws and their implementing regulations. The conceptual approach is applied to understand legal ideas or principles relating to ease of doing business, legal certainty, and regulatory change, especially in the context of administrative law and economic law. This research utilizes three types of legal materials as sources of information, namely: Primary legal materials, namely regulations and laws that are directly related to the object of research, including: Law No. 25 of 2007 concerning Capital Investment; Law No. 11 of 2020 concerning Job Creation; Government Regulation No. 5 of 2021 concerning the Implementation of Business-Based Licensing. Secondary legal materials refer to documents or academic writings that explain primary legal materials, including textbooks, law journals, scientific articles, and policy reports from national and international institutions (such as the "Doing Business" report published by the World Bank). Tertiary legal materials, which are additional sources that provide a basic understanding or understanding of legal concepts, such as legal dictionaries and encyclopedias.

ANALYSIS & DISCUSSION

Theoretical and Conceptual Framework

Foreign investment, or more commonly known as Foreign Direct Investment (FDI), is the investment of capital by individuals or business entities from abroad into a country, with the aim of generating profits and controlling the management of companies in the destination country. Foreign investment differs from portfolio investment in that, in foreign direct investment, investors not only invest capital but also bring technology, management, and business networks that can drive economic growth in the recipient country. Types of foreign investment can be categorized into two categories: foreign direct investment (FDI) and foreign portfolio investment. Foreign direct investment occurs when foreign investors purchase or build production facilities in another country, thereby gaining control over the company. Meanwhile, foreign portfolio investment is investment made by purchasing shares or bonds of companies in other countries without having managerial control. In addition, there are also joint ventures, where foreign investors collaborate with local investors to establish joint companies, as well as investments in the form of cooperation contracts or Build Operate Transfer (BOT).

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In economic development theory, foreign investment is often seen as one of the driving forces of economic growth, especially in developing countries. Classical theories such as the Harrod-Domar theory emphasize the importance of capital accumulation in driving economic growth. In this context, foreign investment becomes a much-needed source of capital for developing countries that often experience domestic capital constraints. Endogenous growth theory also highlights the role of foreign investment in driving innovation and technology transfer. Foreign investment not only brings fresh capital but also new technologies, modern management practices, and access to international markets. This can increase domestic economic productivity and competitiveness. Additionally, dependency theory reminds us that foreign investment can also lead to economic and political dependence, so proper regulation is essential to ensure that foreign investment truly provides optimal benefits for national development. Ease of doing business is a concept that measures the extent to which regulations and bureaucracy in a country support or hinder business activities. Ease of doing business indicators include ease of starting a business, licensing, investor protection, access to credit, tax payments, cross-border trade, contract enforcement, and bankruptcy resolution. The World Bank, through its annual "Doing Business" report, has popularized this concept and made it an important benchmark for foreign investors in assessing a country's attractiveness. Countries with high ease of doing business rankings typically have fast, transparent, and low-cost licensing processes, making them more attractive to foreign investors. Conversely, cumbersome bureaucracy, slow licensing, and legal uncertainty are major obstacles to foreign investment.

From an economic law perspective, licensing is a legal instrument used by the state to regulate, supervise, and control economic activities, including foreign investment. Licensing aims to ensure that business activities are carried out in accordance with the public interest, do not harm the community, and comply with environmental, health, and safety standards.\Meanwhile, from a state administration perspective, licensing is a form of public service provided by the government to the community or business actors. The licensing process must be conducted in a transparent, accountable, and non-discriminatory manner. Good governance principles such as legal certainty, openness, and efficiency are very

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important in the implementation of licensing. Licensing laws must also be able to balance investment interests and the protection of national interests.

Licensing Law as an Instrument for Regulating Foreign Investment

Licensing law plays a central role in creating a conducive investment climate. Legal certainty, transparency, and ease of licensing processes are the main attractions for foreign investors. Countries that are able to provide an efficient licensing system will find it easier to attract foreign investment because investors feel protected and confident about the stability of their businesses. A good licensing process not only accelerates investment realization but also minimizes corruption and illegal fees that often occur due to lengthy and non-transparent bureaucracy. The Indonesian government has recognized the importance of licensing law reform to improve investment competitiveness, as reflected in various regulations and strategic policies.

In the implementation of licensing in Indonesia, there are several legal principles that serve as important foundations. These principles include legal certainty, transparency, accountability, efficiency and effectiveness, and non-discrimination. These principles form the basis for the formulation and implementation of licensing regulations in Indonesia, both at the central and regional levels. Principle of Legal Certainty Every licensing process must be based on clear and consistent laws and regulations. Investors need certainty regarding their rights and obligations. Principle of Transparency The licensing process must be transparent so that the public and investors can access the necessary information. Principle of Accountability Every decision in the licensing process must be legally and administratively accountable. Principle of Efficiency and Effectiveness The licensing process must be carried out quickly, accurately, and without unnecessary complications, so as not to hinder business activities. Principle of Non-DiscriminationEvery permit applicant must be treated equally, without discrimination based on national origin, race, or class. Relevant Licensing Regulations (Job Creation Law, OSS-RBA, Presidential Regulations, etc. In recent years, the Indonesian government has implemented regulatory reforms to improve the ease of investment, including the issuance of Law No. 11 of 2020 on Job Creation (Job Creation Law). This law amends various provisions related to business and investment licensing, such as simplifying permits, cutting red tape, and implementing a risk-based licensing system.

The Online Single Submission – Risk Based Approach (OSS-RBA) is an integrated electronic licensing system that manages business licensing based on the level of risk of business activities. This system makes it easier for investors to apply for licenses online, speeds up the process, and increases transparency. In addition, various Presidential Regulations (Perpres) and Government Regulations (PP) have been issued to support the implementation of OSS-RBA and licensing simplification, such as Perpres No. 10 of 2021 concerning Investment Business Fields, and PP No. 5 of 2021 concerning the

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Implementation of Risk-Based Business Licensing. At the regional level, provincial and district/city governments have also issued subsidiary regulations to align with local needs and support the integrated licensing system.

Analysis of Ease of Foreign Invesment in Indonesia

The Indonesian government has made it easier for foreign investors to invest in Indonesia through regulatory arrangements, ease of licensing processes, and incentives provided. Law No. 25/2007 on Investment has regulated the regulation of foreign and domestic investment, this law is the main basis for regulating foreign and domestic investment. This regulation provides legal certainty, protection of rights, and obligations for foreign investors, including the obligation to report investment activities. This regulation is intended to prevent disputes between investors. In addition to regulatory arrangements, the Indonesian government has also provided ease of licensing. The Indonesian government has carried out structural reforms to accelerate post-pandemic economic recovery by simplifying the business licensing process through the Online Single Submission (OSS) system. This system aims to cut bureaucracy and speed up the business licensing process, thereby increasing the attractiveness of foreign investment. Foreign investors who invest will get fiscal and non-fiscal incentives such as tax incentives and administrative facilities, the granting of a limited stay permit for two years with the possibility of extension and transfer of status to a permanent residence permit, and re-entry permit facilities for repeated trips during the validity period of the residence permit. In addition, the Indonesian government through the Indonesia Investment Authority (INA) opens investment opportunities, especially in infrastructure projects that support sustainable development.

However, although the ease of investment continues to be improved, there are still some challenges such as regulatory uncertainty that can create doubts for investors, market risks such as currency fluctuations and global economic conditions, environmental and social issues, including potential conflicts with local communities and negative environmental impacts, excessive dependence on foreign capital that can hamper economic independence, and the need for capacity building of the local workforce and technology transfer so that investment provides sustainable benefits. The government seeks to address these challenges by strengthening the regulatory framework, promoting responsible business practices, and enhancing local capacity. Indonesia continues to improve the ease of foreign investment through regulatory reform, simplifying licensing with the OSS system, providing fiscal and non-fiscal incentives, and investment promotion. Clear regulations and legal protection are the main foundation to attract foreign investors. However, challenges such as regulatory uncertainty and socio-environmental issues must be managed well so that foreign investment can optimally contribute to sustainable and inclusive economic development in Indonesia. Thus, the ease of foreign investment in Indonesia is improving and becoming a major attraction for global investors, although it still requires attention to risk management and local resource development.

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The Role of Foreign Investment Licensing in Economic Development

Foreign investment licensing plays an important role in supporting a country's economic development. This licensing process is not just an administrative formality, but a strategic instrument that can shape the investment climate, attract capital, and ensure that the investment has a maximum positive impact on the national economy. Foreign investment licensing serves as a legal umbrella that provides assurance and certainty for investors. With a clear and structured licensing process, foreign investors will feel more secure and confident in investing. The licensing system allows the government to direct foreign investment to sectors that are considered strategic or have great potential to encourage economic development. The government can determine which sectors are wide open to foreign investors and which are restricted or require special conditions. This helps diversify the economy and reduce dependence on one sector. While foreign investment competition may be challenging for domestic companies, their presence can encourage innovation and efficiency improvements in the country. Healthy competition encourages local companies to improve the quality of their products and services to remain relevant in the market. Efficient and transparent foreign investment licensing demonstrates a country's commitment to economic liberalization and integration into the global economic system.

CONCLUSION

Based on the discussion that has been described, it can be concluded that licensing law has a strategic role in creating a conducive foreign investment climate in Indonesia. A clear, transparent, and efficient licensing system is a key factor in attracting foreign investors to invest. Regulatory reforms, such as the implementation of the Job Creation Law and the Online Single Submission - Risk Based Approach (OSS-RBA) system, are progressive steps by the government in responding to the needs of the business world and improving Indonesia's competitiveness in the global arena. However, challenges such as unsynchronized regulations between institutions, legal uncertainty, and the readiness of infrastructure and human resources are still obstacles that need to be addressed immediately. The implication of this analysis is that licensing law reform cannot stop at the normative or regulative level, but must be accompanied by institutional strengthening, capacity building of the apparatus, and consistency in policy implementation in the field. The government needs to ensure that all policy implementers, both at the central and regional levels, understand and are able to implement regulations with the principles of good governance. Furthermore, strengthening digital systems such as OSS-RBA must be accompanied by technological updates and training for operators, so that the system can run optimally and truly provide convenience for investors. Suggestions for Policy Makers and Business Actors Policy makers are advised to:

1. Harmonize regulations between the central and regional governments to avoid overlapping policies that may confuse investors.

2. Increase transparency and accountability in the licensing process to minimize corruption and illegal levies.
3. Strengthen the legal framework that provides legal certainty and protection for foreign investors, and provide space for public participation in policy making.
4. Encourage the establishment of an integrated evaluation and monitoring system to periodically assess the effectiveness of licensing policy implementation.

Meanwhile, business actors, especially foreign investors, are expected to:

1. Utilize the licensing facilities and facilities provided by the government while complying with applicable regulations.
2. Promote socially and environmentally responsible business principles, and establish constructive relationships with local communities.
3. Increase collaboration with domestic businesses to support technology transfer and strengthen the capacity of local human resources.

With the synergy between the government as a policy maker and business actors as investment executors, Indonesia is expected to be able to create a healthy, inclusive, and sustainable foreign investment ecosystem, which ultimately contributes to the achievement of equitable national economic development.

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