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## **Investment Law Policy in Efforts to Develop Border Regions for the Realization of a Welfare State**

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### **Abstract**

*Its management and utilization must be in line with the constitutional mandate, namely that its management is intended for the greatest prosperity of the people. Attracting investors to invest in the regions is not an easy job because the regions are not the only players, but there are national and global factors that need to be taken into account, such as political stability, national security and resilience, the rule of law and the consistency of the regional autonomy program. Meanwhile, global factors, economic globalization and the opening of new markets are two things that business players in the region must immediately catch. The purpose of this research is to examine the investment law policy that is fair in the border area. The research method uses a normative juridical research method that is descriptive analytical. The results of the study The author argues that the influence of policy on investment activities in Indonesia is quite large, especially investment or investment which has an important role in the welfare of the community. The concept of a welfare state law must be a reflection of the state's responsibility in implementing state control which is the authority of the central government whose real goal is to maximize the welfare of the people, so that state authority by involving investors must be understood as a tool or facility to achieve that goal, so that the implementation of state control so far has not been abused and can prosper the people from the aspect of national resilience.*

**Keywords:** *Law Investment, Border Areas, Welfare State*

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## **INTRODUCTION**

Law is basically the rules of the game that are agreed to apply to interested parties. Laws that do not guarantee the interests of interested parties can result in violations of the rights of other parties whose interests are not guaranteed by law, so that harmony between the parties will not be created. Law is not a static thing. Law is part of society, therefore, law grows and develops with the community itself. This general understanding is very important in the development of investment in Indonesia. Several parties involved in investment are the Government of the Republic of Indonesia representing the interests of the state, local governments representing regional interests towards investment, investors and the community.

The extent of Indonesia's border areas should reflect the existence of an effective and accountable border management policy, especially from the socio-economic and security aspects as stated in Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands as amended by Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. However, conditions on the ground show that the management system, especially the islands on the Indonesian border, is still not optimal. The level of achievement of success in the welfare of border area communities can be determined by the dynamics of how cooperative cross-regional collaboration is and the level of involvement of community groups, local governments, the private sector and legal institutions as well as other sectors.

Management of border areas based on the provisions of Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia mandates that the national economy is organized based on economic democracy with the principles of togetherness, efficiency of justice, sustainability, environmental insight, independence and by maintaining a balance of progress and development. national economic unit. It is clear here that basically Article 33 Paragraph (4) refers to the management of state border areas based on the people's economy.

Economic wealth and other advantages that exist are also a driving factor for improving the socio-economic welfare of the surrounding community, in addition to having interrelationships that influence each other with activities carried out in other areas that border between regions and between countries and have an impact on defense and security conditions both on a regional and national scale. Changes that are fundamental to the system of state administration in Indonesia are marked by amendments to Article 18 of the 1945 Constitution of the Republic of Indonesia. These amendments have an impact on changing the government system from a centralized government to an autonomous government system. the emphasis of the government from a centralized government to an autonomous government in terms of the division of authority for the implementation or administration of government affairs, including in terms of investment in border areas. The efforts of the central government to decentralize authority in various development programs to local governments are intended for equitable development despite ecological differences, area size, hundreds of ethnic groups, and contrasts from a social point of view, so that against this background it is clear that the various aspects of the relationship between the center and the regions are different. play an important role in the development of Indonesia

Changes to the constitution are not accompanied by changes or adjustments to various legal products under it, especially legal products related to the interests of regional government implementation and border area management. There are still many legal products that are centralized, such as legal rules related to the use of natural resources, especially investment in border areas, so that in its implementation there are still various conflicts of interest that occur between the center and the regions.

Its management and utilization must be in line with the constitutional mandate, namely that its management is intended for the greatest prosperity of the people. Attracting investors to invest in the regions is not an easy job because the regions are not the only players, but there are national and global factors that need to be taken into account, such as political stability, national security and resilience, the rule of law and the consistency of the regional autonomy program. Meanwhile, global factors, economic globalization and the opening of new markets are two things that business players in the region must immediately catch. The purpose of this study is to examine investment law policies that are just in an effort to develop border areas with the aim of protecting people's rights for the realization of a welfare state.

## **RESEARCH METHODS**

The approach method used in this research is the juridical-normative approach method by studying and reviewing legal principles, especially positive legal rules derived from existing library materials, from statutory regulations and legal provisions, especially those that relating to the implementation of investment in border areas in Indonesia as well as legal regulations regarding the functions and authorities of local governments after the implementation of regional autonomy by using primary sources of secondary data or library materials.

This research is analytical descriptive in nature, which aims to obtain a comprehensive and systematic description or general description, as well as describe the existing conditions or facts, namely about the legal aspects of investment in border areas in Indonesia based on the principle of justice for regional interests. Then the general description is analyzed based on the legislation and the opinions of experts with the aim of getting answers to the problems identified in this study.

The data collection technique was carried out by studying literature to obtain data in the form of documents or writings which were then analyzed by qualitative analysis methods.

## **RESULTS AND DISCUSSION**

The results of this study indicate that the existence of investment is a fairly large source of income that has a contribution to the Regional Revenue and Expenditure Budget for financing development in the region, especially in terms of obtaining regional taxes and levies, and obtaining revenue sharing. With the growth of investment in border areas, the process of community empowerment through the involvement of local workers in the area as well as the rehabilitation and reconstruction of the social conditions of the people living around the area can be realized. The local government is very interested in investment in their area, especially to support the increase in Regional Original Income.

Granting authority to regional heads to manage regional development through the implementation of decentralization and regional autonomy, regional governments expect that investments in their regions can have a significant contribution to regional income, so that they can be utilized optimally so that they can realize the implementation of development in the regions as a realization of responsibility. wider responsibility or authority given to the regions in carrying out development in the regions. The effectiveness and efficiency of public services is the main objective of the delegation of authority, so that by handing over various types of authority to autonomous districts/cities, it is hoped that the relationship and distance between public services will be closer to the people being served. Service quality does not only lead to the intended target but also the process is easier and cheaper or affordable.

The long-term interests associated with investment in border areas including the preservation of environmental functions, conservation of mineral resources and the preservation of the rights of local communities need serious attention from the government. It is impossible to compensate or eliminate this long-term interest with the financial benefits derived from short-term investments, so there is no other way but to invest by applying strict legal principles and rules to protect the various parties involved. involved so that the achievement of short-term goals in the form of financial benefits by taking into account the long-term interests of the preservation of the joints of community life in the region and the preservation of environmental functions.

The 1945 Constitution of the Republic of Indonesia as a political constitution as well as an economic constitution clearly shows that the Indonesian state as a country adheres to the concept of a welfare state, where the position of the state in addition to having duties and responsibilities to create security and order for its people , also has duties and responsibilities in managing and utilizing the resources of the nation's economic potential in realizing a decent life for the welfare of the community. Sunaryati Hartono said that the state of law in a material sense, namely a state of law that can bring justice to all Indonesian people in accordance with the values of Pancasila.

Indonesia as a constitutional state can be reflected in the formulation of state objectives, namely; protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and realize social justice. The goals of the state, in

particular promoting general welfare and realizing social justice, are stated in Article 33 of the 1945 Constitution of the Republic of Indonesia. This article is not something that stands alone but is related to the realization of social welfare and social justice.

The state is obliged to take advantage of all forms of real economic potential to increase the prosperity and welfare of the people, protect and guarantee all the rights of the people in the form of rights to land, water and certain natural resources that can be produced directly or enjoyed directly by the people, and prevent any actions from any party that will cause the people to not have the opportunity or will lose their rights to enjoy them. The concept of a welfare law state needs to be realized through legal policies in the investment sector.

It should be noted that the era of imperialism and capitalism took place in the 18th and 19th centuries but in the mid-20th century the physical practice of imperialism and colonialism had disappeared, because after World War II, the colonized countries began to free themselves from the shackles of colonialism. Starting in the middle of the 20th century, slowly but surely the emergence of a new form of imperialism known as neo-liberalism. In contrast to the old imperialism, in its new form, military power is not the mainstay in the conquest of ex-colonial (post-colonial) countries. The strength that is the mainstay is the existence of competitiveness in a system that favors free trade.

I. Wibowo (ed), in *Neoliberalism*, mentions several factors that encourage the emergence of neo-liberalism are: *First*, the emergence of multinational corporations (MNCs) as a real power and even have assets of greater wealth than small countries in the world that have headquarters in developed countries (United States, European Union, Canada, Japan, Australia) take advantage of all the facilities and infrastructure owned by these countries. *Second*, the emergence of organizations or "international regimes" that function as a surveillance system that ensures that countries around the world comply with the principles of free markets and free trade. In today's world, there are known international organizations and institutions that continuously monitor countries, the main international institution is the World Trade Organization (WTO) which can impose penalties on countries that do not comply with free trade. Then two financial institutions, namely the World Bank and the International Monetary Fund (IMF). *Third*, is as an independent variable of all this is a revolution in all fields of communication and transportation technology to achieve such high progress.

Theoretically, capitalism is an understanding that aims to carry out capital accumulation through capital investment processes. Capitalism has encouraged and required external expansion in the context of market control, sources of supply of raw materials. The struggle for and control of the market is actually aimed at ensuring the continuity of capital accumulation in the country of origin.

In the social field, social engineering was started through the preparation of social theories. In this case, theories are developed that can be interesting and can be applied in Third World countries (including Indonesia) but still can perpetuate capitalism itself. One of the social theories that was later introduced to developing and newly independent countries is the theory of modernization which was developed in the United States since 1948.

According to the construction of modernization theory, in fact the role of the state has been reduced to a minimum, this is in accordance with the understanding of capitalism which greatly minimizes the role of the state in the economic affairs of society and prioritizes the role of the private sector. The application of modernization theory in policies in developing countries including Indonesia has opened up opportunities for capitalist countries to develop their businesses in developing countries through multinational companies whose operations these companies then invest in these countries.

If modernization in Western Europe and the United States is mostly non-state actors, on the other hand, in developing countries including Indonesia, modernization comes from the very

large role of the state, not society. Then there was a collaboration between the forces of global capitalism and the rulers (state) in the form of regulatory policies or even with politicians/political parties in the form of forming a legal product in favor of the capitalists or businessmen, so that the so-called "coalition of interests" emerged. This results in the interference of capitalist interests in a policy taken by the government related to foreign investment, in countries where foreign capital is placed, including in Indonesia.

In the context of the current condition of Indonesia, according to the author, the issuance of the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment is expected to increase a conducive investment climate in Indonesia. The main purpose of this law is indeed to entertain foreign investors, so one of the revolutionary changes is the abolition of the distinction between indigenous capital and non-indigenous capital which was previously based on Law no. 11 of 1967 concerning Foreign Investment is considered discriminatory because it distinguishes between foreign investors and local investors. Based on the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment, that both foreign investors and domestic investors get the same treatment.

The above conditions are of course an antithesis to Mohammad Hatta's opinion, that the formulation of Article 33 of the 1945 Constitution which became the political basis of economic development, was carried out as a consideration for changes in Europe (especially the Netherlands) where liberal capitalism gradually disappeared so that The global economy that occurred in the third world at that time tended to develop further away from individualism, and on the contrary would be closer to collectivism which was based on the principle of common welfare.

The author is of the opinion that the explanation above illustrates a fairly large influence on investment activities in Indonesia, especially investment or investment which has an important role in the welfare of the community. The concept of a welfare state law must be a reflection of the state's responsibility in implementing state control which is the authority of the central government whose real goal is to maximize the welfare of the people, so that state authority by involving investors must be understood as a tool or facility to achieve that goal, so that the implementation of state control so far has not been abused. When examined in the context of implementation in Indonesia's current condition, it is clear that the meaning of a welfare state is law. This era is described by Peer Zumbansen as the era of neo-formalism and neo-functionalism, which paved the way for the role of law in the political framework of privatization, marked by fundamental shifts from public regulation to private regulation. Neo-formalism.

The substance in the Investment Law must be reaffirmed in every policy on the rule of law in the investment sector, especially in border region by reflecting the concept of a welfare state law, in which the state has the authority to include determining policies regarding, regulation, allocation, use and supervision that ensures the implementation the laws and regulations aimed at the greatest prosperity of the people.

Investment policies in the regions must realize the goals of the Welfare State with the legal political dimensions of Regional Government accompanied by a new paradigm that focuses more on decentralization and the development of regional autonomy in order to accelerate the realization of community welfare, taking into account the principles of democracy, equity, justice, privileges and the specificity of a region in its development. the system of the Unitary State of the Republic of Indonesia. That is, the meaning in the 1945 Constitution Article 18 paragraph (5): "Regional Governments carry out autonomy as wide as possible", must be within the framework of the welfare of the people. Of course, this is not enough to be interpreted and understood simply as the text of a law, but more than that, the constitutional order is very meaningful to see the extent to which the implementation of legal politics,

especially in the field of investment in border areas in the implementation of autonomy or decentralization.

The meaning of the word "fair" in the 1945 Constitution Article 18A paragraph (2) allows it to be interpreted in various ways, but cannot be separated from the paradigm of people's welfare. Of course, the power over the formulation of the word "fair" is strongly influenced by the dominant policy makers, because after all the reality of interpretation is always associated with the attraction of various interests. The holders of interpretive power in this matter are policy makers or legislators. Political philosophers have actually paid attention to the power of interpretation, as Trasymachus views, which states that law is a vehicle for their strong interests. Likewise, Machiavelli, who erased the distance between law and power, stated that law is nothing but a tool to legitimize power and can be a tool to justify violence. However, what needs to be clarified is that the justice here by Brian Barry is summarized in three groups, namely; economic justice, political justice and social justice. According to the author, these three forms of justice must be fulfilled in the context of utilizing the economic potentials of the border areas to realize the goals of the welfare state. Especially the fulfillment of social justice, because social justice is justice related to the distribution of the favors and burdens of a social cooperation, especially the so-called state, therefore in the literature, justice is often referred to as distributive justice, but it should also be noted that social justice is not just a problem. economic distribution only, but much wider as stated by John Rawls, which includes the entire moral dimension in political, economic, social and individual arrangements, more than the perspective of social structure.

Through democratic policies in investment, it is hoped that it can regulate management activities that contain the value of justice. All groups, both at the center and in the regions, are given a fair opportunity to participate in the rules of the game that apply as a condition of fulfilling the Pancasila economic democracy which is the goal of the state.

Furthermore, the aspect of justice should also include justice in authority, or by John Rawls, call it "institutional justice" or in the language of Charles E. Meriam which states that "justice is a political institution that is realized in a system where there is mutual understanding and procedures that give everyone what has been agreed upon and deemed appropriate" in setting policies, thus the legal concept in the investment sector within the framework of regional autonomy should be directed towards to create a conducive atmosphere, between the interests of the state which represents the national interest, the interests of investors as owners of capital, the interests of the area where the investment is made, and the interests of the community who are directly or indirectly affected, thus what are the legal objectives as stated Mochtar Kusumaatmadja, namely order and legal certainty to realize justice can be achieved.

The construction of legal development in the investment sector can certainly function as a means of order and justice to facilitate the course of investment as well as to support the country's economic independence in utilizing every potential possessed by the state in accordance with the ideology of state control to realize the welfare of the people as much as possible.

Actions that must be taken now to protect all parties involved, either directly or indirectly in the implementation of investments, especially in the context of the implementation of regional autonomy, are to renew effective investment law products to anticipate various possibilities that occur in the regions. This means that legal reform or law making must be carried out which can be interpreted as an effort to renew investment law, so that it is in accordance with the need to serve all parties including protecting the rights and interests of the local community. This legal reform needs to be approached with a legal review that aims to achieve legal guarantees and certainty for investment activities globally and locally but still see the national interest which aims to create the maximum welfare of the people.

Legal development of course not only examines how the law can encourage economic growth in this case investment, but the law certainly must look further at the changing order of life of the nation and state, the law must of course adjust to the direction of change desired by the community. One of the focuses is how the role of law as social engineering or a tool of social change (law is a tool of social engineering) from traditional society to a modern society that has changed.

The context of legal reform in the investment sector in the nuances and spirit of regional autonomy and decentralization of authority is increasingly important to put forward as an effort to provide legal guarantees and certainty in Indonesia, therefore the policy of reforming investment law in Indonesia in the context of regional autonomy should be oriented towards legal guarantees and certainty. as required by the constitution. In addition, what must be a concern in reforming the law is a means that can facilitate the running of the economy and guarantee legal certainty and protection for the interests of all parties.

According to a study conducted by Burg's regarding law and development, there are several elements that must be developed so as not to hamper the economy, namely "stability" (stability), "predictability" (predictability), "fairness" and "education" (education). Furthermore, Burg's argues that the first and second elements above are requirements for the economic system to function. Here stability serves to accommodate and avoid competing interests. While prediction is the need to be able to predict the provisions related to the economy of a country. This is according to J.D. Mrs. Hart who also put forward the concept of law as the basis of economic development, namely predictability, procedural capability, codification of goals, education, balance, definition and clarity of status and accommodation. Referring to the legal approach in economic development above, investment law in Indonesia must at least contain the following elements:

First, the law must be able to make predictions (predictability), namely whether the law can provide legal guarantees and certainty for actors in predicting what activities are carried out for economic development projections. Second, the law has procedural capability. For example, in the context of investment, every procedure taken is not too complicated so as not to confuse investors. Third, harmonization between various related legal regulations, because investment activities are closely related to various fields, such as the state territory sector, the environment sector, land sector, spatial planning sector and other fields. Fourth, the issue of transparency. That investment law must ensure transparency in all of its activities, starting from institutional administration issues, contract issues, profit sharing issues. Fifth, investment law must be able to accommodate balance, clear definition and status for national interests, regional interests within the framework of regional autonomy and the community, especially border area communities.

Investment law policies in Indonesia, especially in meeting regional interests in aspirational border region, must be based on the principles of justice, togetherness, openness, and integration. The government's failure to understand and fulfill people's aspirations can trigger vertical conflicts between the central and local governments as well as horizontal conflicts between elements of society which can lead to anarchy. The practice of development policies based on "fairness" and "equity" has given rise to demands for a new development paradigm, namely fair and proportional development. This means that attention to equitable local aspirations (should) be the basis of the government's foothold in implementing "proportional" and "participatory" and "aspirational" policies in managing the potential that exists in border areas.

In the context of investment law policy in border region, it is hoped that it will continue to refer to and pay attention to the spirit of decentralization. The state's obligations in the context of regional government have not been realized in the utilization of economic resources, so that

regions that have the potential of natural resources and other potentials have not been able to contribute to improving people's welfare. Implementation of investment in border region, especially those related to state and regional interests in realizing the goals of the welfare state, the authors strongly support changes to the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment, in order to further carry out the principles of justice and sustainability with include articles on investment in border region to realize the goals of a welfare state, fair and equitable in the utilization of regional potentials.

The participation of stakeholders which includes, among others, the central government, regional governments, legislatures, the business world, elements of local/customary communities, and so on will be able to provide comprehensive input and consideration for any investment implementation plan in Indonesia, especially in border region, and be responsible for towards the creation of a conducive investment climate so that the investment decision-making process in border region democratically will produce policies that are able to accommodate and protect the various interests of stakeholders and at the same time will reduce the possibility of the entry of discriminatory substances.

## CONCLUSION

The direction of the investment law policy is to review the substance of the Investment Law which must reaffirm every policy on the rule of law in the investment sector, especially in border areas by reflecting the concept of a welfare state law, in which the state has the authority to determine policies regarding, regulation, allocation. , the use and supervision that ensures the implementation of the said laws and regulations aimed at the greatest prosperity of the people. The legal political dimension of Regional Government must also be accompanied by a new paradigm that focuses more on decentralization and the development of regional autonomy in order to accelerate the realization of community welfare. see how far the implementation of legal politics, especially in the field of investment in border areas in the implementation of autonomy or decentralization can be realized.

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