

The Paradox of Foreign Investment in Support Economic Sustainability After the Job Creation Law

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ABSTRACT

The Job Creation Law and the Job Creation Perpu have substantially the same objectives and arrangements with the aim of optimizing the investment ecosystem amid global economic pressures and supporting sustainable economic growth. Simplification of investment requirements is key in this regulation, intended to invite more investment to Indonesia. However, the implementation of this law has raised various views and controversies regarding its impact on economic sustainability after the Job Creation Law. This study is designed to evaluate the impact of foreign investment on economic sustainability, in line with the ideals and objectives contained in the Job Creation Law. This research uses normative juridical with a qualitative descriptive approach. The result of this study is that it is necessary to balance economic growth with legislative integrity and inclusivity in the process of formulating Foreign Direct Investment policies.

ABSTRAK

Undang-Undang Cipta Kerja dan Perpu Cipta Kerja memiliki tujuan dan pengaturan yang sama secara substansial dengan tujuan untuk mengoptimalkan ekosistem investasi di tengah tekanan ekonomi global dan mendukung pertumbuhan ekonomi yang berkelanjutan. Penyederhanaan persyaratan investasi menjadi kunci dalam regulasi ini, dimaksudkan untuk mengundang lebih banyak investasi ke Indonesia. Namun, implementasi undang-undang ini telah memunculkan berbagai pandangan dan kontroversi terkait dampaknya pada keberlanjutan ekonomi pasca Undang-Undang Cipta Kerja. Penelitian ini dirancang untuk mengevaluasi dampak penanaman modal asing terhadap keberlanjutan ekonomi, sejalan dengan cita-cita dan tujuan yang terkandung dalam Undang-Undang Cipta Kerja. Penelitian ini menggunakan yuridis normatif dengan pendekatan deskriptif kualitatif. Hasil dari penelitian ini bahwa perlu untuk menyeimbangkan pertumbuhan ekonomi dengan integritas legislatif dan inklusivitas dalam proses penyusunan kebijakan Penanaman Modal Asing.

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I. INTRODUCTION

Indonesia faces a significant legal dilemma after the passage of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law). The Job Creation Law exists as a strategy to reform regulations in order to have implications for regulations from hyper-regulation,

thus debureaucratization is part of the scheme of the Job Creation Law. This resulted in the government using the omnibus law method in the context of forming the Job Creation Law (Garner, 2014). Although this law has lofty goals ranging from simplifying the bureaucracy to supporting employment, the government has encountered severe challenges after submitting a judicial review related to the law in the Constitutional Court (M. Anwar & Shafira, 2022). The controversy over this law cannot be taken lightly, because the Constitutional Court held that the drafting of the law violated the principle of forming good laws and regulations and that it had significant legal consequences. As a result, through Decision Number 91/PUU-XVIII/2020, the Constitutional Court declared that the Job Creation Law was unconstitutionally conditional (Irawan, 2022). This decision became a turning point in the evolution of national law, affirming that the integrity and appropriateness of the legislative process must always come first. This gives the view to the government that every law must be made by considering the thoroughness and compliance with the formal aspects of drafting laws and regulations.

In its ruling, the Constitutional Court granted leeway to the government to amend the law within two years (Makkulawuzar et al., 2018) (Suhardin & Flora, 2023). This time should be used by the government to conduct comprehensive revisions and studies so that the national legislation product can be accepted by the public and related parties. The government is experiencing an essential dilemma, because amid the improvement of the Job Creation Law, global dynamics are turbulent and put unexpected new pressure on the government. This situation requires a quick and adaptive response from the government. Therefore, in the midst of the controversy of this law, the government issued a Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (hereinafter referred to as the Job Creation Perpu). This is an effort by the government, in the midst of urgent conditions to respond to needs arising from emergency conditions that can no longer be delayed. This move, although criticized by various parties, is part of the government's efforts to maintain legal and economic stability. The process of passing the Government Regulation in Lieu of Law was not free from criticism, but was finally passed through Law Number 6 of 2023.

Substantially, the Job Creation Law and the Job Creation Perpu have the same objectives and regulations. Both of these regulations were made with the aim of optimizing the investment ecosystem amid global economic pressure. Simplification of investment requirements is key in this regulation, intended to invite more investment to Indonesia (Kasih, 2022). The increase in investment has a direct impact on employment and economic growth. In consideration of these two regulations, it is stated that this regulation is present in response to the challenges of declining world economic growth and rising inflation. The Job Creation Law and the Job Creation Perpu are legal instruments that are expected to stimulate the economy, through relaxation and simplification of investment requirements. This is considered vital, considering the inflationary pressure and declining world economic growth which not only has an impact on the macroeconomy, but also on people's welfare. With an increase in investment, it is expected that the inflation rate can be suppressed and national economic growth can return to positive.

This research is related to previous research, namely the first by Ferdinand (2022) which examines legal certainty for foreign investors in connection with the unconstitutionality of the job creation law. The result of this normative juridical research is that legal certainty for FDI is currently a problem, so the government plays an important role in carrying out policies that do not harm the parties (Jason & Tan, 2022). The next research by Azhar (2023) discusses the form of host control and legal protection for foreign investment after the issuance of the Job Creation Law in Indonesia. This normative legal research resulted in the conclusion that the form of control of the Indonesian government as a host country had previously been outlined in the Investment Law with the creation of IIA with home country (Anwar, 2023).

Reviewing from previous research, there are differences in this study, namely: This study is designed to evaluate the impact of foreign investment on economic sustainability, in line with the ideals and objectives contained in the Job Creation Law. Research into the legal impact of foreign investment in Indonesia, especially following the implementation of the Job Creation Regulation, is limited with regards to detailed examination of regional and environmental factors. The majority of existing studies concentrate on macroeconomic aspects and fail to sufficiently illustrate the extent to which provincial policies are influenced. Furthermore, there is a dearth of research that combines evaluations of the ecological effects of foreign direct investment, which is crucial to guaranteeing the durability and equilibrium of economic advancement and environmental conservation. Consequently, more studies that scrutinise the legal and environmental consequences of FDI in Indonesia on a microscopic scale will greatly enhance the creation of impartial and sustainable policies. Through a qualitative descriptive approach, analysis will be conducted to uncover the dynamics and implications of this foreign investment.

Theoretical implications of this research shed light on how foreign investment policy affects socio-economic dynamics at the regional level and its environmental impact. This study enriches the law and economics literature by integrating aspects that have infrequently been studied together. It offers a new perspective to understand the legal impact of foreign investment in Indonesia. Moreover, conducting an extensive analysis at the micro level will enhance understanding of how central policies are mirrored and executed at the regional level. In practical terms, this research is anticipated to provide guidance to policymakers in devising more comprehensive and sustainable investment approaches. Additionally, the outcomes can support stakeholders at the sub-national level in maximising the advantages of FDI whilst reducing its adverse effects, especially on the environment. Furthermore, a greater comprehension of the regional dynamics and challenges can aid foreign investors in planning investments which are more responsive to the requirements of the local communities. The creation of equitable welfare, while also taking into account environmental sustainability aspects, is the ultimate aim of the continuing development.

II. RESEARCH METHOD

The approach used in this study is the Normative Legal Approach, which involves a thorough analysis of all laws and regulations relevant to the legal issue under investigation (Marzuki, 2019) (Negara, 2023). The Statutory approach in normative legal research provides significant practical and academic benefits. In carrying out the analysis of legal issues in this study, the first step is to conduct an inventory, which includes searching and compiling legal materials through literature studies (Julaika & Rahayu, 2019). Further, the legal materials that have been collected are classified according to the formulation of the problem. After that, the legal material is organized in a structured manner to facilitate the understanding of the existing legal substance. The primary legal sources used are Law Number 25 of 2007 concerning Capital Investment, Law Number 11 of 2020 concerning Job Creation and Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Secondary legal materials such as books, journals and Constitutional Court Decision Number 91/PUU-XVIII/2020.

III. RESULT AND DISCUSSION

1. Foreign Investment in Legal Perspective in Indonesia

Based on Law Number 25 of 2007 concerning Investment which has been amended through the Job Creation Perpu (hereinafter referred to as the Investment Law), it is emphasized the importance of increasing investment to accelerate national economic development (Aprita & Adhitya, 2020). This objective not only focuses on economic development, but also on strengthening Indonesia's political and economic sovereignty (Ramlan, 2022)(Quarterly & Budiana, 2020)(Triwulandari & Budiana, 2020). In his consideration, it was stated that the transformation of economic potential into real economic power requires investment support from within and outside the country. The point of the statement is that to achieve sovereignty and independence, Indonesia must increase investment. This will process the existing economic potential into real power capable of supporting the development and sovereignty of the country. Furthermore, Article 3 of the Investment Law emphasizes the basic principles that must be used as guidelines in the implementation of investment, including legal certainty, openness, accountability, equal treatment regardless of national origin, and others (Nugroho, 2022).

The importance of Article 3 of the Investment Law lies in its function as a foundation in the implementation of investment. These principles are designed to create a conducive, transparent, and fair investment climate for all parties. In this context, legal certainty is a crucial element that ensures that all investment activities are protected by law. Openness and accountability maintain transparency and integrity of the investment process, while the principle of equal treatment guarantees that domestic and international investors enjoy equal rights and obligations. Thus, Article 3 of the Investment Law becomes an important foothold that ensures that investment is carried out fairly, efficiently, and sustainably, and takes into account environmental aspects and the welfare of the wider community. This supports the achievement of a balance between economic progress and social, environmental, and political integrity, in line with the sustainable development goals.

Article 1 point (3) of the Investment Law defines foreign investment as “*kegiatan menanam modal untuk melakukan usaha di wilayah negara Republik Indonesia yang dilakukan oleh penanam modal asing, baik yang menggunakan modal asing sepenuhnya maupun yang berpatungan dengan penanam modal dalam negeri.*” Regarding who can become a foreign investor, in this case, Article 1 point (6) of the Investment Law states, among others: “*perseorangan warga negara asing, badan usaha asing, dan/atau pemerintah asing yang melakukan penanaman modal di wilayah negara Republik Indonesia.*” The form of foreign investors themselves must be in the form of limited liability companies as stipulated in Article 5 paragraph (2) of the Investment Law. The business fields that are open to foreign investors in this case have actually been regulated in Article 12 paragraph (1) of the Investment Law, namely “*Semua bidang usaha atau jenis usaha terbuka bagi kegiatan penanaman modal, kecuali bidang usaha atau jenis usaha yang dinyatakan tertutup dan terbuka dengan persyaratan.*” Business fields closed to foreign investors based on Article 12 paragraph (1) of the Investment Law are: “*produksi senjata, mesiu, alat peledak, dan peralatan perang; dan bidang usaha yang secara eksplisit dinyatakan tertutup berdasarkan undang-undang.*”

2. Realization of Foreign Investment in the Last 10 Years

Article 4 of the Job Creation Perpu affirms the purpose of this regulation, namely to improve the investment ecosystem and business activities, facilitate business, and spur investment from the Central Government. Before this regulation was enacted, the realization of Foreign Direct Investment (FDI) tended to stagnate, with a trend that did not show a significant increase, not exceeding 32,240 million US\$ (presented in Figure 1) (Central Bureau of Statistics, n.d.). However, there is an interesting dynamic that occurs after the implementation of the Job Creation Law. The trend of foreign investment shows a significant increase, amidst challenging global conditions. This change was specifically noted in 2020 to 2022, where the period was marked by a global pandemic and geopolitical conflict between Russia and Ukraine (Indonesia Dibanjiri Investasi Asing, 2022),

two factors that caused global economic turmoil. However, amid this uncertainty, Indonesia recorded an upward trend in investment. The highest achievement occurred in 2022, with the realization of FDI reaching 45,605 million US\$, a figure that reflects the successful implementation of the Job Creation Law. It can be seen that in the course of 2013 to 2016 the achievement of foreign investment realization in Indonesia was quite stagnant, until in 2017 there was an increase of 32,240 million US \$ and then decreased again in 2018 to 2020. When compared to 2021 which reached 31.09 million US\$, there was an increase of 44.2% in 2022.

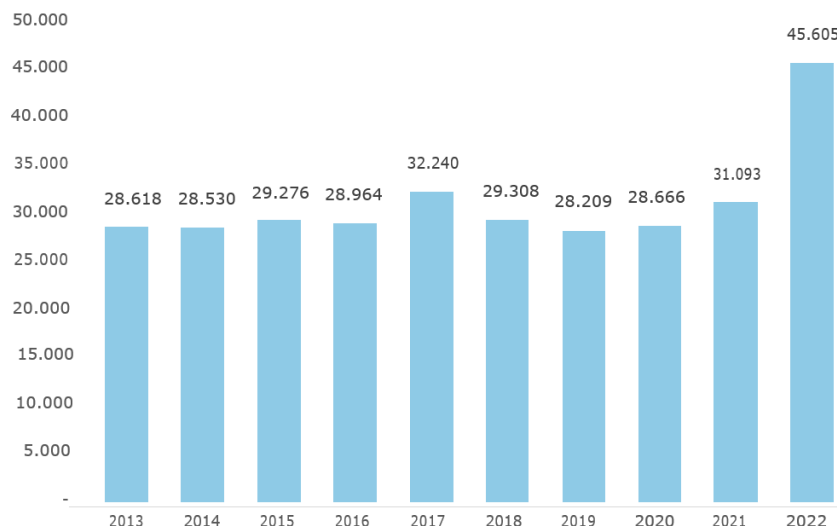


Figure 1. Realization of Foreign Direct Investment in Indonesia

Nationally, the increase in the realization value of Foreign Direct Investment (PMA) after the enactment of the Job Creation Law was felt significantly. However, if observed in more detail, the trend of increasing FDI is not uniform across all regions of Indonesia. Data taken from several provinces, including DKI Jakarta, East Kalimantan, Papua, South Sulawesi, and North Sumatra, show that each province has its own dynamics and trends, as can be seen in Figure 2.

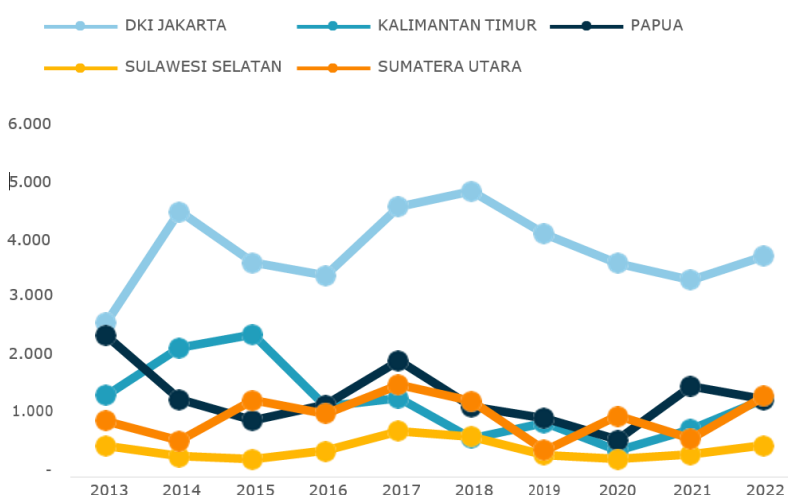


Figure 2. Realization of Foreign Investment in Several Provinces in Indonesia

For example, DKI Jakarta and North Sumatra are experiencing a negative trend, a phenomenon that contrasts with what other provinces are experiencing. This indicates that although at the macro level the new policy is effective, at the micro level - especially regional - there is variability

that needs to be addressed. The various implications of the implementation of the Job Creation Law at the regional level are crucial issues that demand in-depth evaluation.

3. Consequences of Foreign Investment

Foreign Direct Investment has proven to have a substantial impact in encouraging sustainable economic growth in various countries, including Indonesia. Through the flow of funds and resources, FDI contributes to sustaining economic stability and progress (Osei & Kim, 2023). FDI inflows play a role in increasing domestic savings, a crucial factor accelerating development efforts. FDI not only increases financial capitalization, but also facilitates the transfer of modern technologies and innovations, enriches production capacity and efficiency of domestic industries. One of the other significant impacts is the creation and increase of jobs. This is closely related to the concept of human capital in Solow's growth model, where skilled and knowledgeable individuals are considered important assets driving Total Factor Production (Nurlaili & Sugiharti, 2023). In this context, labor is not only considered as a resource, but also as an agent of transformation that can transform economic potential into real performance (Dankyi et al., 2022).

Improving the skills, knowledge, and capacity of the local workforce is the main focus. Through integration with the global economy, the workforce gains exposure and access to the latest practices, technologies, and innovations (Asafo-Agyei & Kodongo, 2022). Community health and resilience are also strengthened, creating a healthier, resilient and adaptive workforce. In addition, the positive impact of FDI is not limited to the economy and labor. There have been visible improvements in health, education, and other sectors, creating successive effects that support inclusive development. Every dollar of foreign investment not only realizes an increase in economic value-added, but also promotes improvements in people's quality of life, well-being, and long-term prospects. So that FDI in a broader context, is a catalyst for sustainable and inclusive development.

The existence of Foreign Investment in Indonesia has indeed contributed significantly to the national economy. However, environmental aspects are often consequences that must be faced. Many cases in the field show that the addition of economic value generated by FDI is not always in line with environmental conservation efforts. Therefore, it is important for FDI to not only focus on economic aspects, but also pay attention to environmental sustainability. One concrete example that illustrates the environmental consequences of FDI activities is the damage caused by mining activities that are not environmentally friendly. PT Vale Indonesia Tbk, a PMA mining company, has utilized forest areas for exploration activities and nickel ore mining production operations (Commission IV DPR-RI, n.d.). This situation has led to a debate about the importance of ensuring that economic activity does not come at the expense of environmental sustainability. The main argument in this context is that environmental sustainability should be a priority along with economic growth. It is undeniable that FDI has a vital role in the economy, however, the integrity and balance of the ecosystem must also be given equal attention. The need for strict criteria and standards that require FDI to operate its business with environmentally friendly principles, so as to prevent damage and maintain sustainability.

IV. CONCLUSION

The analysis in the previous section highlighted that it is necessary to balance economic growth with legislative integrity and inclusivity in the Foreign Direct Investment policymaking process. The Job Creation Law has become a controversial but essential topic in the legal and economic context in Indonesia. This regulation, although faced with legal challenges and controversies, has a central role in efforts to strengthen the investment ecosystem amid global economic pressures. The need for strategic adjustment of investment policies according to the regional context to distribute benefits equitably is important. In addition to paying attention to sustainability in terms of

economy, Foreign Investment must also be environmentally oriented. So that economic and environmental goals can go hand in hand.

This study aims to offer stakeholders a comprehensive understanding of the impact of Indonesia's investment law policies on the realization of foreign direct investment. By conducting a detailed analysis of the benefits and drawbacks of FDI, stakeholders can develop more targeted policies and strategies to promote inclusive and sustainable economic growth. Moreover, these research outcomes can be of great use to other investment law researchers in comprehending the intricate intricacies and dynamism of present regulations and policies. Additionally, this study presents an unbiased opinion on how regulations, even with good intentions, can result in conflicting repercussions at the regional level. Finally, this investigation can aid in shaping proposals for future research, particularly in exploring possible resolutions to the difficulties encountered by specific provinces in enticing FDI. The ultimate goal of this entire analysis is to promote forward-thinking in the advancement of sustainable investment legislation in Indonesia.

While the study of investment law in Indonesia has made a substantial contribution to the field, it presents a number of limitations. The research, for instance, focuses only on macro analysis, failing to capture the specific dynamics at the local level that may have unique characteristics. Additionally, the research covers multiple provinces in Indonesia; however, not all regions have been explored, leaving room for unexplored variations. Thirdly, environmental factors were assessed from an economic standpoint, without a thorough ecological evaluation. Therefore, the subsequent research should embrace a micro approach, considering the specific details and dynamics of each area. Future studies may scrutinize the societal, economic and environmental influences of foreign investments through interdisciplinary methods comprising economics, law and environmental science. This will enhance the overall understanding of the subject matter and offer more detailed proposals for future policies and practices. Additionally, there is a necessity to broaden the scope of research collaboration by integrating regional stakeholders, local authorities, and the business fraternity into the research program.

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