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## LEGAL BRIEF

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# Indonesia's Economic Recovery Through a New Policy on Investors Based on The Perspective of Immigration Law

**Asto Yudho Kartiko<sup>1</sup>, Biyan Habibie<sup>2</sup>, Faomasi Zalukhu<sup>3</sup>**

<sup>123</sup> Law Immigration Departement, Immigration Polytechnic  
Jl. Raya Gandul No. 4, RT.07 / RW.08, RT.5/RW.6, Gandul, Kec. Cinere, Kota Depok, Jawa Barat Kode  
Pos 16514

Email: [astoyudhokartiko6@gmail.com](mailto:astoyudhokartiko6@gmail.com), [habibiebiyan123@gmail.com](mailto:habibiebiyan123@gmail.com), [faoseptian21@gmail.com](mailto:faoseptian21@gmail.com)

### Abstract

A country's economy is affected by a variety of factors, one of which is a change in the law. Changes in the law in one country occur because of the results of a political system that adapts to global circumstances. One of the global circumstances affecting the current law change is the covid-19 pandemic that has spread to several countries, including Indonesia. During the current pandemic, Indonesia is also hit by an economic crisis. Various efforts have been carried out by the Indonesian government in the recovery of the nation's economy. One of them is through Government of Regulation Number 48 of 2021 concerning the Third Amendment of Government of Regulation Number 31 of 2013 concerning the Implementation of Act Number 6 of 2011 on Immigration. The formulation of the problems in this study is how the new policy provisions on investors in Government of Regulation Number 48 of 2021 and how the influence of new policies on investors in the Government of Regulation number 48 of 2021 on the recovery of the Indonesian economy. The results of this study are new provisions regarding Foreign Investment, namely pre-investment, foreigners who make investments are exempt from guarantors, and foreigners released from guarantors can pay immigration guarantees. The advice given for this research topic is that it should accelerate the establishment of special rules from Regulation Government Number 48 of 2021 to restore the Indonesian economy through investment from foreigners.

**Keywords** : Investors, Foreign Investmen, and Pre-investment.

## A. Introduction

Every time to time will go through the name of the process of development in various aspects. The process of development will bring positive and negative things. All aspects that include human life will have an impact caused by the background of the development process itself. One of them at this time is the development of Indonesian law during the Covid 19 pandemic. All legal developments in the Covid 19 pandemic adjust to the circumstances aimed at maintaining the country's highest sovereignty, namely the health of its citizens. (Communications Bureau, 2020)

State sovereignty in the present is not only public health, but the economy of a country must also be stable which affects the welfare of the people. However, Indonesia's economy was unstable when the covid-19 pandemic took place because foreign investors declined by 5.1% from January to September 2020. As a result, Indonesia's economic growth in the third quartal decreased by 3.49%. (Investment Coordinating Board, 2020: pg. 7).

Graph 1 Investments in 2021 (as of February 2021)

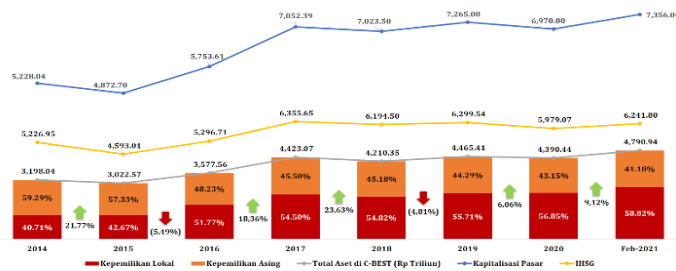


Figure 1. Investments Board 2021

One of the factors foreign investors are less interested in investing in Indonesia is regulation and bureaucracy regarding the foreign investment that is too complicated. This can be seen from the report. OECD FDI Restrictiveness Index At the Presentation of the Investment Coordinating Board in 2020 which stated that Indonesia is one of the countries with the highest restrictions after the Philippines. (Investment Coordinating Board, 2020, pg. 7)

Chart 2 10 ASEAN Countries with the highest investor restrictions in 2019

OECD's FDI Restrictiveness Index within ASEAN Countries, 2019

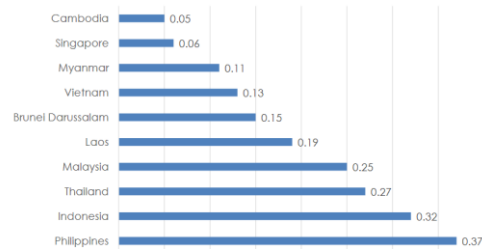


Figure 2. Investments Board 2019

Based on this, the Indonesian government issued Law Number 11 of 2020 on Work Copyright to clean up the economy during the covid-19 pandemic. The law was passed on November 2, 2020. The law also comes as an effort to facilitate foreign investors to invest in Indonesia. Since the arrival of the Law, Indonesia has increased the number of foreign investors who have assets by 9.12% based on Indonesia's central securities depository data in 2021. (PTCustodian Sentral Efek Indonesia, 2021: pg. 5)

The presence of the law also has an impact on several provisions of Indonesia's legislation, one of which has an impact on immigration. According to Article 1 number 1 of Law Number 6 of 2011 concerning Immigration, Immigration is a matter of traffic of people entering or exiting Indonesian territory and its supervision to maintain the establishment of state sovereignty. In the implementation of the immigration law, the issuance of Government Regulation Number 31 of 2013. But since the issuance of the copyright law, government regulation Number 31 of 2013 has changed, namely Government Regulation Number 48 of 2021. The change is the third amendment of Government Regulation Number 31 of 2013 and the location of the change is only a few parts of Government Regulation Number 31 of 2013, namely the policy on foreigners who have needs as investors and investors. Based on the statement, the right problem formulation for the problem is how the new policy provisions on investors in Government Regulation Number 48 of 2021 on the recovery of the

Indonesian economy. The purpose of this study is to find out policies that can have an influence on the national economic recovery based on immigration viewpoints.

## **B. Research Methods**

The research methods used are qualitative with a juridical-normative approach. Soekarno Soekanto said normative research is legal research that only uses secondary materials in the form of literature or literature studies. The data sources used in this journal use secondary materials in the form of primary law, namely laws and regulations such as and Government Regulation Number 48 of 2021 on the Implementation of Law Number 6 of 2011 on Immigration; such as literature studies or previous research, news on several sites concerning foreign investors, and processed data from various circles regarding economic recovery through new regulations for foreign investors; Tertiary law is a material that can explain the meaning or a term in primary and secondary legal materials such as Kamus Besar Bahasa Indonesia (Bachtiar, 2018).

The data collection techniques used in this journal are the study of several regulations related to problem formulation, review of previous studies or research, legal theory, legal principles, and legal rules, and some news about economic recovery through new regulations for foreign investors in online media. As for the method of data analysis in this journal qualitatively, which analyzes some of the data that has been collected in the form of legal regulations, literature studies of several theories related to the formulation of the problem to be examined to give a logical explanation and produce decisions or conclusions (Marzuki, 2011).

## **C. Discussions**

### **1. New Policy Provisions on Investors in Government Regulation Number 48 of 2021 on National Economic Recovery**

Government Regulation Number 31 of 2013 on the implementation of Law Number 6 of 2011 on Immigration has changed 3 times as follows:

- a) Government Regulation Number 26 of 2016
- b) Government Regulation Number 51 of 2020
- c) Government Regulation Number 48 of 2021

Among these changes, there are reasons for the necessity of reform of the regulations, including:

#### **a. Government Regulation Number 26 of 2016**

This first change was made because it provides convenience for former Indonesian citizens and families through the extension of visit residence permits and pays attention to the dynamic international scope changes that require additional visit visa time for foreigners.

#### **b. Government Regulation Number 51 of 2020**

In the second change, this was done to encourage the economy with conducive investment media through simplification of licensing administrative affairs and procedures for immigration residence permits. In addition, there are provisions regarding the passport period for 10 years to support the mobility of

Indonesian citizens who are abroad which causes passport applicants to continue to increase.

c. Government Regulation Number 48 of 2021

This third change was made to support the creation of jobs by simplifying the process to encourage increased investment that will have an impact on the Indonesian economy. One of them is through foreigners who have preinvestment needs. This activity is a new policy of this Government Regulation that aims to conduct a survey of the situation by the foreigner before investing in Indonesia.

In Government Regulation Number 48 of 2021, some provisions will have an impact on Indonesia's economic growth as follows Article 89

- 1) The visit visa is granted to foreigners who will travel to the Territory of Indonesia for visits in the framework of government, education, socio-cultural, tourism, preinvestment, business, family, journalistic, or stopover duties to other countries.
- 2) The visit visa referred to in paragraph (1) is granted for 1 (one) trip.
- 3) In addition to being granted for 1 (one) trip, a visit visa can also be granted for several trips to foreigners who will visit:
  - a) Government duties
  - b) Preinvestment
  - c) Business
  - d) Family.

Article 90 paragraph (2) if a Foreigner in the context of preinvestment does not have a Guarantor, the guarantee letter from the Guarantor as referred to in paragraph (1) letter b may be replaced with proof of immigration guarantee deposit. Article 142 paragraph (2) letter d concerning foreigners in the application for a limited residence permit For Foreigners in the framework of investment as referred to in Article 141 paragraph (2) letter, a includes:

- a) proof of immigration guarantee deposit
- b) Valid and valid national passport
- c) Letter of recommendation from the agency in charge of investment.

Article 171A paragraph (4) the provisions regarding guarantees do not apply to:

- a) Foreigners who legally marry Indonesian citizens
- b) business actors with foreign nationality who invest as their investment in Indonesia as referred to in the provisions of the laws and regulations regarding investment
- c) Citizens of a country that reciprocally provides guarantee exemptions.

Based on some of these articles, there are provisions regarding foreigners with preinvestment and foreign investment needs who are exempt from guarantors by paying immigration guarantees. The guarantor is an individual or co-conspirator responsible for the existence of foreigners in Indonesia following Article 63 paragraph (1) of Law Number 6 of 2011 on Immigration which reads "Certain foreigners residing in the Territory of Indonesia must have a Guarantor who guarantees their existence."

## **2. Impact of New Policies on Investors in Government Regulation Number 48 of 2021 on Indonesia's Economic Recovery**

Among several changes in immigration implementing regulations, which became the main discussion this year is the existence of preinvestor provisions, namely foreigners who have investment needs by knowing the state of the field or direct surveys before laying capital in Indonesia. In Government Regulation Number 48 of 2021, preinvestors can use a one-time visit visa in addition, it does not require a guarantor and pays immigration guarantees as a requirement in making a one-visit visa for foreigners with preinvestor needs is also a new policy in the Government Regulation. This is an innovation in simplification and pruning in the administration of immigration to foreigners with preinvestment needs. (Ardi Permana, 2020)

The preinvestment provisions in Government Regulation Number 48 of 2021 are also in line with the immigration function. The function of immigration is regulated in article 1 number 3 of Law Number 6 of 2011 on Immigration which is "part of the affairs of the state government in providing immigration services, law enforcement, state security, and facilitators of community welfare development". If examined more deeply, the immigration function has 4 functions:

- 1) Immigration Services Function
- 2) Law Enforcement Function
- 3) State Security Function
- 4) The function of Facilitator of Community Welfare Development

Based on this, there is an immigration function that is to become a facilitator for the development of community welfare. With the provision of preinvestment and do not require guarantors for preinvestment and foreign investment, it is expected to be an attraction for foreigners to invest in Indonesia as a form of recovery of the Indonesian economy after the aftermath of the covid-19 pandemic. (Ardi Permana, 2020) But the other side will threaten the security of the country because there are requirements in the making of a visit visa for preinvestment or a limited stay visa for foreign investment that does not require a guarantor. Instead of this, foreigners who have foreign preinvestment and investment needs can pay immigration guarantees as stipulated in Government Regulation Number 48 of 2021 as follows (Article 171C):

- a) Foreigners as referred to in Article 171A paragraph (4) letter b deposit the immigration guarantee instead of guarantor while in the Territory of Indonesia.
- b) Immigration Guarantee is provided in the form of depositing a certain amount of funds in the immigration guarantee fund holding account at the Directorate General of Immigration.
- c) The Immigration Guarantee as referred to in paragraph (1) applies also to Foreigners in the framework of preinvestment and second homes.
- d) Interest/ratio and/or current account services obtained on immigration guarantees are deposited into the state treasury following the provisions of the laws and regulations.
- e) Provisions regarding the opening, operation, closing, and reporting of immigration security fund holding accounts are implemented following the provisions of the laws and regulations.

Instead of this, foreigners who have foreign preinvestment and investment needs can pay immigration guarantees as stipulated in Government Regulation Number 48 of 2021 as follows (Article 171D)

- a) Immigration Guarantee as referred to in Article 171C is paid before foreigners enter the Territory of Indonesia.
- b) The Immigration Guarantee can be used as:
  - 1) payment of costs incurred to repatriate or remove Foreigners from the Territory of Indonesia
  - 2) payment of the charge of the burden of foreigners who have expired their residence permit, but are still in the Territory of Indonesia less than 60 (sixty) days from the deadline of the Residence Permit; and/or
  - 3) Payment of other expenses that are the obligations of foreigners related to immigration obligations.
- c) The period of guarantee of Immigration is following the period of the Foreigner Residence Permit in the Territory of Indonesia.
- d) If the validity period of the Foreigner's Residence Permit expires and the Immigration guarantee is not used as referred to in paragraph (2), the Immigration guarantee is returned to the Foreigner a certain amount of money deposited.
- e) Further provisions regarding the amount and mechanism of depositing and/or withdrawing immigration guarantees are regulated by the Ministerial Regulation after coordinating with the minister who organizes government affairs in the financial field.

Payment of immigration guarantees will also have an impact on the Indonesian state PNB in national development.

Government Regulation Nomor 48 of 2021 provides convenience for prospective foreign investors and foreign investors residing in Indonesia in terms of managing their immigration residence permits. This provides legal certainty following article 23 paragraph (1) letter c of Law Number 25 of 2007 concerning Investment regarding ease of service or permission in terms of immigration for prospective foreign investors who want to invest in Indonesia (Hernawati & Suroso, 2020).

According to Hakson Kim, political fortitude in the life of the nation and state will affect the atmosphere for a good investment in attracting the attention of foreign investors (Darmawan, 2020). In addition, Sumali said that law is one of the pillars of the social sub-system that can make a positive contribution to economic recovery efforts in Indonesia based on the traditions prevailing among the business world so far, namely the principle of *safety* to investment that has been instilled requires clarity or certainty (Sumali, 2002). Based on this, the existence of Government Regulation number 48 of 2021 as a form of the Indonesian government in building the nation's economy through foreign investors in terms of ease of immigration administration in the form of a clear guarantor exemption. This is in line with Stephen aikins' opinion that in the event of an international economic crisis, governments in each country must create regulations to build the country's economy for the welfare of the people (Darmawan, 2020). Therefore, Government Regulation number 48 of 2021 is also one part of the Work Copyright Act in terms of immigration as a facilitator of community welfare that supports the Indonesian economy.

## D. Conclusion



The provisions of the new policy on investors in Government Regulation Number 48 of 2021 are as follows:

1. Foreigners as potential investors and Foreign Investment who is exempt from the guarantor (Article 89; Article 90 paragraph (2); and Article 142 paragraph (2) letter d)
2. Foreigners as potential investors and Foreign Investment who are exempt from guarantors can pay immigration guarantees (Article 171A paragraph (4))
3. Guarantee of immigration that can be a substitute for guarantors for foreigners included in the provisions of Article 171A (Article 171C and Article 171D)

The influence of Government Regulation Number 48 of 2021 as a new policy that provides legal certainty and attracts attention for investors or preinvestors to invest in Indonesia so that it also affects the recovery of the Indonesian economy after the covid-19 pandemic later. Immediately issued the continued implementation of Government Regulation Number 48 of 2021 such as regulation of the Minister of Law and Human Rights or Decree of the Director General of Immigration relating to Foreign Investment and preinvestment.

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