

INDONESIAN INVESTMENT LAW POLITICS QUO VADIS OMNIBUS LAW

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Abstract

Every country that stands must have goals, one of which is to prosper the people in it, to prosper the community using an instrument known as the Law, which is run by the government, which is poured through aspirational, responsive, accountable and progressive laws and regulations in accordance with the will of the general public, in accordance with existing boundaries. In enforcing laws or rules, it is not only focused on ensuring legal certainty (rechtvaardigheid) but also and which mainly prioritizes the values of justice (justice) that live, grow and develop in people's lives. The role of the law in realizing welfare must be seen from the material of the laws and regulations made, the high level of integrity and moral values of law enforcement officials, especially judges in adjudicating cases.

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Essence

Every country that stands must have goals, one of which is to prosper the people in it, to prosper the community using an instrument known as the Law, which is run by the government, which is poured through aspirational, responsive, accountable and progressive laws and regulations in accordance with the will of the general public, in accordance with existing boundaries. In enforcing laws or rules, it is not only focused on ensuring legal certainty (rechtvaardigheid) but also and which mainly prioritizes the values of justice (justice) that live, grow and develop in people's lives. The role of the law in realizing welfare must be seen from the material of the laws and regulations made, the high level of integrity and moral values of law enforcement officials, especially judges in adjudicating cases.

Keywords: Investment, Legal Role, Omnibus Law, Legal Politics.

1. Introduction

Every sovereign state, must want to realize a prosperous life for its people, in order to achieve the goal of living together that is useful for the nusa and the nation. To make it happen, at least 3 (three) pillars must be supported, namely the state in casu government, law and law enforcement apparatus. Welfare is not new, as it is also contained in the preamble to the constitution.¹

In the preamble to the 1945 Constitution the fourth paragraph is mentioned as follows:

"Then from that, to form an Indonesian state government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the nation's life and participate in carrying out world order based on independence, lasting peace and social justice, then the independence of Indonesia is compiled in a Constitution of the State of Indonesia which is formed in a state structure of the Republic of Indonesia which has the authority the people based on the One True God, just and civilized humanity, the unity of Indonesia and the people led by wisdom in the Consultative/Representative Affairs and by realizing a social justice for all Indonesian people".

Indonesia as a sovereign country, of course, the welfare aspect is something that must be realized *in concreto* through the formation of tangible legislation as responsive law, because the law is a guide in regulating state life and to protect every different interest of society in general.

Legislation as a political product of the law of a nation must have a nature like two sides of a coin. The first side plays a role that the law aims to regulate and give to society what it is entitled to, as well as to do what it is obliged to. On the other hand, the law must protect the interests of its people as a result of the current onslaught of globalization. Then there must be a clear and concrete law to regulate it all, so that the entire Indonesian rakyat is terayomi, so that the Indonesian people can see that the legal certainty in our country is still there, and this is not an imagination only, but a reality.²

Law Number 11 of 2020 concerning Job Creation, known as the *Omnibus Law*, regulates a lot in terms of the economy, one of which is investment. The controversy over the promulgation of *a quo* law is a concern for the author to write about the Politics

¹ John Suhardin, *Role Law Deep Realize Welfare Community* Journal Pro Justitia Law, 2007, Vol. 23, No. 3, Pp. 270

² Satjipto Rahardjo, *Let the Law Flow* (Jakarta: Kompas, 2007).

of Indonesian Investment Law : Quo Vadis Omnibus Law. This research is to be able to find out how investment arrangements in Indonesia are and how effective the rules are applied in improving welfare.

2. Research Methods

This section contains explanations and reviews of the types and methods of research used. Ditulis uses Times New Roman typeface size 12, *justify*, writing sentences between paragraphs without additional spaces before and after (*no before and after space*), space 1.5. The first paragraph protrudes into 1 cm. The entire text of the article must be written following these conditions.

This type of research is normative research, because this research refers to the norms contained in laws and regulations that are directly related to the research carried out,³ whether existing norms are supportive, there are vague norms or conflicting norms. The research data used is Secondary Data obtained and reviewed from various literature relevant to the material, problem and substance of the research.⁴ The Research Approach uses a statutory approach and a conceptual approach.

3. Analysis and discussion

The establishment of our country is inseparable from the struggle of the founding fathers of our country, for the sake of promoting the welfare of its nation, and not to be oppressed and exploited by the resources that exist in our country. So after independence, the constitution was born as the initial benchmark for carrying out the life of our country, as a reference and benchmark for action.

With the existence of the basic law as a reference to form laws and regulations as implementers of the basic law, a firm, visionary law must be formed and ensure the survival of the wider community, so that the laws formed are not biased and become multi-interpretation by some circles.

According to Jeremy Bentham, the law actually has an essence that basically has a very important role, which is to lead the wider community to the direction of well-being

³ M. Syamsudin, *Proficient in Researching Legal Issues* (Yogyakarta: Kencana: Prenada Media Group, 2021).

⁴ Mukti Dawn, *Dualism of Normative and Empirical Legal Research* (Yogyakarta: Pustaka Pelajar, 2015).

in its life, which is also referred to as happiness. So actually this welfare will have an impact on the happiness of our society.⁵

If we look at the terms often used by our founding fathers, namely just and Prosper, then general welfare and social justice, which are all contained in the preamble to our constitution. The term is not just a mere decoration, but there is a moral message that must be carried out in it.

In Francis' book, he said that at least the state has 3 (three) functions, namely the minimal function, the intermediate function and the activist function.⁶

The minimal functions are:

1. Providing public needs (Facilities and Infrastructure), defense, law and order of private property rights;
2. Macroeconomic management, as well as public health;
3. Improving justice;
4. Protecting the poor.

The intermediate functions are:

1. Addressing external issues (ex. Foreign relations);
2. Regulating monopolies;
3. Improving the quality of education, insurance, financial regulation and social insurance.

Activist functions include:

1. Industrial policy;
2. Redistribution of wealth.

Analyzing the functions of the state that have been explained, then our government as a state organizer should be able to create and make laws and regulations that are very partial to the people. Alone, of course, with the birth of laws that favor our people, will open up opportunities and avenues for the creation of public welfare.

The law should be created justly, so that the targeted development can be achieved. Development is not a change that is piecemeal, it must be structured and comprehensive so that the purpose of development can be successful and have a real impact on society.⁷

The implementation of good law enforcement is inseparable from the actions of

⁵ Jeremy Bentham, *Statutory Theory (Principles of Legislation, Civil Law and Criminal Law)* (Bandung: Nuance, 2006).

⁶ Francis Fukuyama, *Strengthening the State, Governance and World Order of the 21st Century* (Jakarta: PT. Gramedia Main Library, 2004).

⁷ Jimly Asshiddiqie, *Economic Constitution* (Jakarta: Kompas Media Nusantara, 2016).

law officers, be it police, prosecutors, judges and the advocat itself. If the law officers carry out their functions as fairly as possible, it can be ensured that the welfare of the people will definitely be guaranteed and can avoid situations of distrust of the people to law enforcement officials and the government.

Regarding justice, there are usually two basic opinions regarding this justice, namely:

1. The view of the lay class, which basically formulates justice, is that justice is the existence of harmony between rights users and executors of obligations, which is in line with the legal argument that is the measure of rights and obligations.⁸
2. The views of jurists, according to him, essentially formulate that justice is a harmony between legal certainty and legal comparability.⁹

The theory of natural law from the time of Socrates to the time of Francois Geny, still pays attention to justice as the crown of law. The theory of natural law proclaims the name search of justice. So to this day, there are many kinds of theories regarding justice and a just society. Surely most of these theories concern rights and freedoms, opportunities for power, opinion and prosperity.

One of Aristotle's thoughts on justice can be learned in his work entitled *Nicomachean Ethics, Politics and Rhetoric*. So specifically in the book *Nicomachean Ethics*, it is entirely aimed at justice, which is based on Aristotle's general philosophy, the core of his philosophy of law 'because law can only be established in it has to do with justice'.

Aristotle stressed that it is very necessary to make a distinction between convictions that base justice on the nature of the case and those that are based on a common and very prevalent human disposition, and convictions based on certain views of a particular legal community as well. So besides the law provides legal certainty, it must also pay attention to justice.

Meanwhile, according to John Rawls, justice enforcement programs with people's dimensions must pay attention to two principles of justice, namely:¹⁰

1. Providing equal rights and opportunities to the broadest basic freedoms of equal liberty to everyone;

⁸ Subhan Amen, *Justice Deep Perspective Philosophy Law Towards Community* 2019,

⁹ Theo Huijbers, *Philosophy of Law* (Yogyakarta: Kanisius, 1995).

¹⁰ John Rawls, *A Theory of Justice: Theory of Justice Basics of Political Philosophy To Realize Social Welfare In The State* (Yogyakarta: Pustaka Pelajar, 2011).

2. Able to reorganize socioeconomic inequalities that occur so as to provide reciprocal benefits for the community, both for people who come from lucky circles or groups, or unlucky.

According to him, the concept of justice is an attempt or steps to liberalize liberalism and socialism. So conceptually Rawls states that existence is fairness, which contains principles, that a free and rational person who wishes to develop his interests, should obtaining an equal position at the time of commencing it and it is a fundamental condition for them to enter the society or will they will.¹¹

So Indonesia as an independent and free country, should take advantage of the resources that exist today which are very abundant, must be used for the benefit of the akita bangs itself, so that the younger generation of the Indonesian nation becomes a smart nation, and starting from an intelligent nation as well, our nation will become a prosperous nation.

A. Investment in Economic Development

In this case, we can assume investment as an activity of withdrawing or collecting funds from sources of funds, both private and public, which aims to be used in the provision of capital goods that will be the forerunner of a new product. The investment itself focuses funds on the right placement with the aim that the money distributed can get profits as the master plan has been set.¹²

So to be able to understand about this investment, basically what we must know from the beginning is about the economic development of our nation which is viewed from the perspective of legal views, because this is the context of national development. The national development itself is essentially the development of the whole Indonesian people and the development of the Indonesian society as a whole, with Pancasila as the basis, goals and guidelines.¹³

The American state alone, which adheres to a free market economic system, is very productive in determining, making and implementing regulations regarding the market, whether Indonesia should be very concerned about the dynamics of our

¹¹ James Garvey, *The Greatest Works of Philosophy* (Yogyakarta: Kanisius, 2010).

¹² Jonker Sihombing, *Investment Law in Indonesia* (Bandung: Alumni, 2009).

¹³ Johnny Ibrahim, *Normative Legal Research Theory & Methodology* (Malang: Bayu Media Publishing, 2006).

market which is very vulnerable to the pressures that occur, both from within the country and from outside.

This shows that, no matter how big the country is, no matter how strong it is with all kinds of existing resources, no matter how free the dynamics of the market economy to be developed, still what is most urgently needed is the intervention or interference of the state in the form of regulations and permits that have a very strong influence in the process of economic development and of course as control of the market itself.

The regulations that are made, must be more inclined to think about domestic interests, so that no matter how freely the private sector enters our country, there are still restrictions that they cannot go through, in order to prevent conflicts of interest in office holders with the wider community that support their hopes for the government.

The regulations imposed on the public are certainly expected to contain definite justice, fair certainty, and have a clear use. It is with this that the law can guarantee regular freedom in the dynamics of the economy, so that in turn it can bring common prosperity in people's lives.¹⁴

We must not only be fixated or focused only on the funds obtained from investors, but also must reach the stage of distribution, the government must ensure that in the use of the funds that have been disbursed by investors for these particular activities, our people must be able to receive the benefits, both the benefits that can be felt directly, and the benefits that are indirect.

The law itself can be a tool in advancing the economy of a nation, especially our sovereign nation. The welfare of the rakyat, as long as the law is implemented fairly, and consistently, which has an impact on creating legal certainty in the midst of a society that doubts the law itself.

If the regulations made are not implemented honestly, fairly and consistently, then the law itself can also be an obstacle to the intended economic progress. If the arrangements are made unfairly, honestly and inconsistently, we can see carefully that there will be no legal certainty, and the public is increasingly distrustful of the

¹⁴ Aladin Sirait, "The Political Role of Investment Law in Indonesia's Economic Development," *Politea: Journal of Islamic Political Studies* 2, No. 1 (2019): 66.

law itself.¹⁵

In our own country has been regulated regarding investment or investment (essentially the same), the government issued a legal product, namely Law No. 25 of 2007 concerning Investment, as a substitute for Law No. 1 of 1967, this is done to keep up with the pace of development times and also as a need for the state in creating a conducive economic climate in our country. Finally, the government issued Law Number 11 of 2020 concerning Job Creation.

With the issuance of Law Number 11 of 2020 concerning Job Creation, there are pros and cons. On the positive side, there will be lasting implications for the practice of a work-oriented Education curriculum, but on the other hand, there are still many who question that this omnibus law was only formed to make it easier for foreign funds to enter without paying attention to things that have the potential to become polemics in the future.¹⁶

It is undeniable that there are many investors both from within the country and abroad who want to invest in Indonesia, in various fields, be it mining, plantations and infrastructure. One of the economic theories that is still often used today is the savings theory by Harrod Domar, that economic growth is determined by the high level of savings and investments. If savings and investment are low, then it is certain that the country's economic growth is low.¹⁷

Foreign countries see that our country has extraordinary potential, both human resources, and natural resources contained in it. Indonesia's population is around + 250 million people, and from this figure there are more people of productive age, so this is an opportunity for foreigners to invest.

Because within the time frame they have calculated, surely the initial funds they have invested in Indonesia, will come back and get double the profit. Foreigners invest in Indonesia because they know that with the ability of our abundant natural and human resources, the margin of error can be taken into account, and is not a threat to these investors.

But also keep in mind that when investors come with the aim of investing funds

¹⁵ Sri Redjeki Hartono, *Indonesian Economic Law* (Malang: Bayu Media Publishing, 2007).

¹⁶ Agus Darmawan, "The Politics of Omnibus Law in the Context of Indonesia's Economic Development," *Indonesia Journal of Law and Policy Studies* 1, No. 1 (2020): 15.

¹⁷ Darmawan.

into our country, they must have seen and also seen the influence of the condition of our country or the country to which it is intended. What is the internal state of the country like, what about the economic stability of the country, the politics of the country, and most importantly law enforcement.

So with so many investors who are interested in investing their funds into our country, the government has from the beginning determined the amount of capital and also the difference in capital raised by national capital and foreign capital. So that it does not give space to investors to carry out monopolies and unfair business competition.¹⁸

Without clear regulation, monopoly markets often produce socially undesirable conditions, such as higher prices compared to prices that would otherwise be based on production costs, or companies surviving by closing the entry of new companies whose business fields are the same and much more productive. Then we must realize how important the existence of law is as a tool to facilitate economic progress.¹⁹

If our country does not provide a limit on the amount of funds that foreign investors can invest in our country, then it is tantamount to selling our own country to foreigners. Because whatever the reason for these investors, they invest in Indonesia definitely to seek the greatest profit with the smallest capital.

In the context of well-being it is undeniable that to achieve this, it cannot be instantaneous or like turning the palm of the hand. For this reason, every investment that enters our country, must use resources that come from within the country. Whether it is from the labor needed, then other needs that are indeed abundant in our country.

B. Structuring the Land Ownership Structure

Land is one of the factors in supporting the achievement of people's welfare today. The denser the population of Indonesia, the availability of land or land will

¹⁸ Indra Surya M. Irsan Nasarudin, *Legal Aspects of the Indonesian Capital Market* (Jakarta: Kencana : Prenada Media Group, 2004).

¹⁹ Adi Sulistiyono, "Legal Renewal That Supports the Conduciveness of the Business Climate," *Yustisia* 4, No. 3 (2015): 666.

be depleted, considering that land is not only a need for individuals, but also the needs of large companies.

In the course of political development, economic development and land, we still cannot fully implement the mandate of the constitution and the UUPA. We can feel the impact now, namely the many conflicts that occur, be it between individuals and individuals, as well as individuals with companies.

In regulating land, the Indonesian government has issued a special hukum product that regulates land, namely Law Number 5 of 1960 concerning the Basic Regulations of the Principles Agrarian. Basically, this UUPA contains the principles of land tenure and utilization to encourage the advancement of the economy, industry, and other fields.

This principle is also very concerned about weak communities, marginalized by land policies in the past. UUPA can be placed as progressive law²⁰ or prismatic law. As a progressive law, UUPA is intended as an instrument to create a change in society that advances in the economic field.

As a prismatic law, the principles of this UUPA are re-defined to 2 social value groups, namely:

- 1) Modern, reflected in the individualization of land ownership (art. 4 jo. Article 9 and the articles of land rights) encouragement of land use that can produce the highest production through the obligation to utilize intensively, equal opportunity to every citizen owns or owns land throughout Indonesia without distinction of gender and citizenship status, and the granting of land ownership to large-scale business developers in agricultural or industrial sectors with certain restrictions;
- 2) Traditional, the attachment of the social function of land rights and the restriction of the area of land that everyone can own and own as a deterrent so that the individualization of land ownership does not lead to absolute ownership and accumulation of landowners in the few, granting special measures against weak and marginalized communities and groups to protect the economic class weak and

²⁰ Satjipto Rahardjo, *Progressive Law Enforcement* (Jakarta: Kompas, 2010).

distribution of land to them, prevention of land tenure by enterprises and prohibition of monopoly.

With the increase in land ownership, it can be hoped that our community will be given the greatest opportunity to manage the existing land, whether it is used for plantations and others so that idle lands can be used for the welfare of the disadvantaged people.

Apart from that, ownership or granting of permission to manage land by companies both small and large scale, both from within the country and abroad the country, must be given real restrictions, because the company if it has used the land for production activities, then the area used is not small, rather it is quite large.

For a company that is engaged in business in oil palm, the company must at least have a land or land permit use of 7500 ha (seven thousand five hundred hectares).²¹ So we can imagine that one palm oil company alone must have land for its production of 7500Ha, and we can calculate how much land is needed for the entire company palm oil in Indonesia. If the palm oil company alone acquires a large area of land, then the Indonesian people are also entitled to the land, in accordance with the 1945 Constitution, article 33.

4. Final words

In order to realize welfare in accordance with the mandate of the preamble to the 1945 Constitution and article 33 of the Basic Law, all the wealth contained in this mother earth must be used and utilized as much as possible for the benefit and prosperity of the people, so that the community prospers. However, to achieve the level of prosperity in question, there must be standards set to become a benchmark and reference for future actions. The existence of regulations that must be biased towards the community must be our concern carefully, so that welfare can be realized immediately and not just a thumbs up.

²¹ Ricky Yudhistira, "Palm Oil Problem: Plantation Companies in Conflict With Villagers," The Jakarta Post, 2009, <https://www.thejakartapost.com/news/2009/05/19/plantation-companies-conflict-with-villagers.html>.

Make it easier to invest, but still with the principle of prudence and aim to prosper the people, and be given concrete and unthinkable boundaries, so that investors are subject to the regulations we make, thus upholding our country as a country of laws. Also, the granting of state land management permits is restricted to both outsiders and domestic people, so that the land ecosystem is not disturbed. So if the rules are made and implemented properly, honestly, and the law officers have integrity, welfare will be achieved immediately.

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<https://www.thejakartapost.com/news/2009/05/19/plantation-companies-conflict-with-villagers.html> .