

JURIDICAL ANALYSIS OF IMPLICATIONS OF EMPLOYMENT CREATION LAWS ON FOREIGN INVESTMENT IN INDONESIA

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| Info Article | Abstract |
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| <p><i>Masuk: 10 Agustus 2023</i> <i>Diterima: 22 Agustus 2023</i> <i>Terbit: 24 Agustus 2023</i></p> <p>Keywords: <i>Investment, Job Creation Law, foreign investment.</i></p> | <p><i>Investment plays a crucial role in a country's development process, transforming economic potential into real economic power and providing a boost to positive economic growth. The demand for foreign investment has prompted many countries to implement changes in their legal systems. One of these changes is commercial law reform, which aims to attract foreign investment. Indonesia has taken a breakthrough through Law Number 6 of 2023 on Job Creation (Job Creation Law) by implementing an Omnibus Law approach. More than 80 laws and more than 1200 articles have been revised simultaneously into one legal document, namely the Job Creation Law that regulates various sectors in 11 groups. The type of research conducted by researchers is normative juridical research, which involves the study of library materials and secondary data, including primary, secondary, and tertiary legal materials. The government has endeavored to create basic investment policies that support a conducive national business climate. Nevertheless, the reality is that many investors are still reluctant to invest in Indonesia due to difficulties in business licensing. The commitment to improve the investment climate is also reflected in Part III of the Job Creation Law that regulates the Improvement of Investment Ecosystem and Business Activities. Meanwhile, efforts to facilitate business actors in investing are seen in Section VI of the Job Creation Law.</i></p> <p>Keywords: <i>Investment, Job Creation Law, foreign investment</i></p> |
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| <p>Keywords: <i>Investment, Job Creation Law, Foreign Investment.</i></p> <p>Corresponding Author:</p> | <p><i>Investasi memegang peran krusial dalam proses pembangunan suatu negara, mengubah potensi ekonomi menjadi kekuatan ekonomi yang nyata dan memberikan dorongan terhadap pertumbuhan ekonomi yang positif. Tuntutan akan investasi asing mendorong berbagai negara untuk mengimplementasikan perubahan dalam sistem hukum. Salah satu bentuk perubahan ini adalah reformasi hukum komersial, yang bertujuan untuk menarik minat</i></p> |

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investasi asing. Indonesia telah mengambil terobosan maju melalui Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja (UU Cipta Kerja) dengan menerapkan pendekatan Omnibus Law. Lebih dari 80 undang-undang dan lebih dari 1200 pasal telah direvisi secara bersamaan menjadi satu dokumen hukum, yaitu Undang-Undang Cipta Kerja yang mengatur berbagai sektor dalam 11 kelompok. Jenis penelitian yang dilakukan oleh peneliti adalah penelitian yuridis normatif, yang melibatkan kajian bahan pustaka dan data sekunder, termasuk bahan hukum primer, sekunder, dan tersier. Pemerintah telah berupaya untuk menciptakan kebijakan dasar penanaman modal yang mendukung iklim usaha nasional yang kondusif. Meskipun demikian, kenyataannya masih banyak investor yang enggan berinvestasi di Indonesia karena kesulitan dalam perizinan berusaha. Komitmen untuk memperbaiki iklim investasi juga tercermin dalam Bagian III UU Cipta Kerja yang mengatur Peningkatan Ekosistem Investasi dan Kegiatan Usaha. Sementara itu, upaya untuk memfasilitasi pelaku usaha dalam berinvestasi terlihat dalam Bagian VI UU Cipta Kerja.

Keywords: *Investasi, UU Cipta Kerja, Investasi Asing*

1. Introduction

Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution) mandate that the purpose of the establishment of the Republic of Indonesia is to produce a just, prosperous, prosperous and equitable society, both in material and spiritual aspects. One important step in the effort to create employment opportunities is to increase investment or investment from abroad.

Investment plays a crucial role in a country's development process, turning economic potential into real economic strength and providing impetus to positive economic growth. In this context, Foreign Investment (PMA) refers to the practice of investing to run a business in Indonesian territory, either through wholly foreign capital or in the form of partnerships with domestic investors.

The demand for foreign investment is driving countries to implement changes in the legal system. One form of this change is the reform of commercial law, which aims

to attract foreign investment. Legal clarity is an important factor for potential investors to make decisions whether to invest in a country or not.¹

Indonesia has made a breakthrough through Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (Job Creation Law) by applying the Omnibus Law approach. More than 80 laws and more than 1200 articles have been revised simultaneously into one legal document, namely the Job Creation Law which regulates various sectors in 11 groups. The scope of the Job Creation Law involves the following:²

- a. Development of a better investment environment and business activities;
- b. Increased protection and optimal workforce well-being;
- c. Convenience, empowerment and protection for Cooperatives and Micro, Small and Medium Enterprises (MSMEs);
- d. Efforts to increase government investment and accelerate the implementation of national strategic projects.

In the beginning, the law *to all* embodied in the Job Creation Law is considered a legal product that is less democratic because the process for its formation seems rushed and is considered not to adequately represent the voice of the people. This could be caused by the public's difficulty in understanding the substance of the Job Creation Law, which contains amendments or revocations of various other laws that are complex and difficult for ordinary people to understand.³

With the help of the Job Creation Law, the regulatory simplification process can be carried out with the aim of making it easier to implement. The large number of excessive regulations and inefficient policies, as well as the existence of sectoral laws that are not aligned, have led to legal uncertainty. This simplification step is necessary to improve the ease of doing business and attract foreign investors to Indonesia.⁴

¹ Keith E. Whittington, *Handbook of Law and Politics* (Bandung: Nusa Media, 2018), 90.

² Article 3, Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become Law

³ Arya Setyo Novanto and Ratna Herawati, "Effectiveness of the Job Creation Law in the Development of Indonesian Law," *Journal of USM Law Review* 5, no. 1 (2022): 403.

⁴ Porman Hutabarat, "Juridical Analysis of Legal Protection for Foreign Investment in Indonesia After the Birth of Law Number 11 of 2020 Concerning Job Creation," *Jurnal Syntax Admiration* 3, no. 12 (2022): 1588.

Therefore, the presence of foreign investors contributes to benefits for Indonesia as a recipient of investment to support economic development. However, from the investors' point of view, business goals remain the main factor, namely creating investment security and earning profits. Therefore, countries wishing to attract foreign investment need to create a conducive business environment, where the legal aspect has an important role in providing legal certainty through clear regulations. From the discussion above, questions arise such as what was the existing condition of the investment climate in Indonesia before the issuance of the work copyright law? and what are the implications of the work copyright law on foreign investment in Indonesia?

2. Research methods

The type of research conducted by researchers is normative juridical research, which involves a review of literature and secondary data, including primary, secondary, and tertiary legal materials.⁵ This research begins by conducting a search of legal sources such as books and literature that are relevant to the object of the research problem. In this study, 3 (three) approaches were used, namely the statutory approach, the conceptual approach, and the analytical approach. An analytical descriptive method is used in this study with the aim of explaining and analyzing laws and regulations related to legal theories and the practice of implementing positive law in the context of the issues being researched.

3. Results and Discussion

A. Existing Conditions of Investment Climate in Indonesia Before the Job Creation Law Was Issued

Investment policy is highly dependent on the political and economic situation in each country. In order to be able to invite investors to invest, a country needs to formulate an investment policy that is conducive and promotes investment friendliness (*conducive and investment friendly policy*).⁶ Conducive investment policies stimulate and facilitate private and foreign investment, encourage domestic and international investors to

⁵ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Graphic, 2019), 23.

⁶ OECD, *The Policy Framework for Investment* (Paris: OECD, 2006), 2.

participate, increase the level of comfort and reduce the level of uncertainty and ambiguity.

The characteristics of a supportive investment policy are policies that reflect clarity, stability and transparency, namely:⁷

- 1) Documented in a transparent and clear manner, so that investors can invest with confidence and certainty and understand the investment requirements;
- 2) Simple, meaning that the policy can be understood by anyone;
- 3) Clear so as not to cause confusion and not be the subject of debate or problems regarding its meaning;
- 4) *Nondiscretionary* so that every decision is taken based on objective criteria;
- 5) Comprehensive and complete, so that investors have a thorough understanding of the investment situation;
- 6) Remain stable and predictable, so that investors' expectations are not disrupted by unexpected policy changes;
- 7) Consistently applied so that there is no uncertainty regarding the desired investment results.

In fact, the government has attempted to establish basic investment principles to encourage the formation of a favorable national business environment for investors, with the aim of strengthening national economic competitiveness and accelerating investment growth. These basic investment principles are stated in Article 4 of Law Number 25 of 2007 concerning Investment.⁸

According to Article 4 paragraph (2) of Law Number 25 of 2007, the government in establishing a basic investment policy is required to:

- 1) Apply equal treatment to domestic investors and foreign investors, while maintaining attention to national interests;
- 2) Ensuring legal guarantees, business certainty, and a safe business environment for investors starting from the licensing process to the end of the investment, in accordance with applicable legal provisions;
- 3) Open opportunities for growth and provide protection to Micro, Small and Medium Enterprises (MSMEs) and cooperatives.

⁷ *Ibid*, 9.

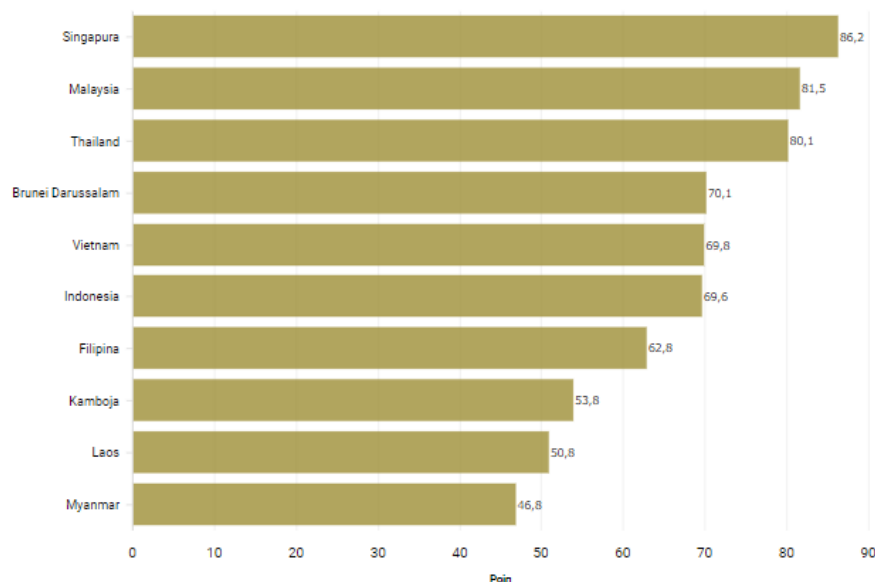
⁸ Dear Rahma, *Investment Law* (Jakarta: Kencana, 2020), 68.

Presidential Regulation Number 16 of 2012 regarding the General Investment Plan (abbreviated as RUPM) is the implementation of the basic principles of investment. Its function is to integrate and carry out all relevant sectoral interests, in order to prevent overlapping in setting sector priorities to be pursued and promoted through investment.

Then, the government took an innovative step by issuing Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services known as Online Single Submission (OSS). However, in reality, the convenience offered through OSS still faces challenges and has not fully met the expectations of the community.⁹

In fact, many investors are not willing to invest their capital in Indonesia due to difficulties in obtaining business permits in this country. Many regulations issued by ministries and regions often have no connection between one policy and another. Improvement in policy is a serious step that must be taken if investors are to generate interest.

Figure 1. Indicators of Ease of Doing Business in 2020



Source: databoks.katadata.co.id

⁹ Azharuddin, "The Urgency of the Job Creation Law in Attracting Foreign Investors," *Journal of Law Science* 6, no. 2 (2022): 293.

The indicators above show that in the business ranking, Indonesia is in the fifth lowest position among ASEAN countries. Indonesia is still lagging behind Singapore, which ranks second globally, and Malaysia, which ranks twelfth in the world.

Laws governing the investment sector face several problems, including:

- 1) not in line with the times and the demands of society's needs;
- 2) There is a mismatch or overlap between laws. Many of these regulations are incompatible or overlapping, causing complexity in business processes in Indonesia, which ultimately hinders job creation;
- 3) Although the regulations already exist, their inadequacy results in limited implementation effectiveness.

An accurate strategy is needed to overcome the investment situation in Indonesia. In this context, the government issued the Job Creation Law as an effort to overcome the challenges that arise in starting a business. This step is aimed at encouraging foreign investors to invest domestically, especially in a crisis situation due to the COVID-19 pandemic which has had a negative impact on the income of many business people.

The Job Creation Law is a regulation that regulates regulatory changes in various sectors with the aim of improving investment conditions and is expected to have a positive impact on economic growth in Indonesia. Thanks to the Job Creation Law, the business licensing process has become simpler, encouraging investment because previously overlapping permits between the Central, Regional and Ministries caused difficulties for investors with a slow and prolonged process.

B. Implications of the Job Creation Law on Foreign Investment in Indonesia

The Job Creation Law was designed using an omnibus law legislation approach. The omnibus law approach describes the merging and unification of regulations, with the ultimate aim of increasing the efficiency of implementation of the regulations. The characteristics of this technique are as follows:¹⁰

- 1) Involving various sectors with similar themes;
- 2) Contains many articles because it covers many sectors;

¹⁰ Ahmad Redi, *Omnibus Law: Discourse on its Adoption into the National Legislation System* (Depok: Rajawali Press, 2020), 6.

- 3) Merging many laws and regulations into one new regulation;
- 4) Stand alone and not depend on other regulations;
- 5) Removing part or all of other regulations.

The Job Creation Law has the goal and intention of improving investment conditions in Indonesia to make it more profitable for domestic and foreign investors. This is reflected in various changes and improvements to regulations that previously could hamper the investment climate. Changes in the improvement of the investment ecosystem and business activities can be seen as follows:

1) Implementation of Risk-Based Business Licensing

This action corrects the previous regulation, where the previous permit did not consider risk factors. In Part III of Part Two of the Job Creation Law, a more risk-focused approach is implemented. This appears in Articles 7 to 10 of the Job Creation Law and further provisions, as stated in Article 4 letter (b) of Government Regulation Number 5 of 2021.

Business licenses based on risk are carried out by determining the level of risk and scale of business activities, based on an assessment of the level of hazard and potential hazard in the following aspects:¹¹

- (1) health;
- (2) security;
- (3) environment; and/or
- (4) utilization and management of resources.

For certain types of activities, evaluation of the level of risk may involve additional aspects according to the characteristics of the business, taking into account the following matters:

- (1) type of business activity;
- (2) business activity criteria;
- (3) location of business activity;
- (4) limited resources; and/or
- (5) volatility risk.

An assessment of the potential occurrence of a hazard includes the following:

¹¹ Article 7 paragraph (3), Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law.

- (1) almost impossible;
- (2) unlikely to occur; likely to occur; or
- (3) almost certain to happen.

On the basis of this assessment, the risk level and business activity scale classification is regulated as follows:

- (1) low risk business activities;
- (2) medium risk business activities; or
- (3) high risk business activities

Business permits for low-risk businesses are realized in the form of Business Identification Numbers (NIB) as the legality of carrying out business activities. NIB, which is valid for life, serves as a sign of registration and identity for business actors. Previously, regulations required the issuance of a Company Registration Certificate (TDP) which had to be renewed every five years. Replacing TDP with NIB helps simplify the licensing process.

2) Simplification of the Basic Licensing Requirements for Business

a) Suitability of Space Utilization Activities

The suitability of space utilization is in line with the business location plan according to the RDTR. The Regional Government must provide a digital RDTR that is easily accessible to the public for conformity information. The Central Government incorporates digital Detailed Spatial Plans into the Business Licensing system. If the business location is in line with the Detailed Spatial Plan, Business Actors can submit a request for approval via Electronic Business Licensing by including location coordinates. After confirmation, Business Actors can apply for a Business Permit.

b) Environmental Approval

Only high-risk environmental documents are required for the EIA, then a decree on environmental feasibility (SKKL) will be produced. For documents that have moderate risk, it is enough to go through UKL-UPL and an environmental approval known as a Statement of Commitment to Manage the Environment (PKPLH). Meanwhile, for documents with low risk, it only requires the process of registering a business identification number (NIB).

c) Building Approval

The licensing process for building construction has also undergone changes. According to Government Regulation Number 36 of 2005 governing Law Number 28 of 2002 concerning Buildings, a Building Permit (IMB) is required for this step. However, through Government Regulation Number 16 of 2021 related to the implementation of Law Number 28 of 2002 regarding Buildings, which is part of the Job Creation Law, the IMB has been removed and replaced with a Building Construction Approval (PBG), by simplifying the administrative process.

3) Ease of Sector Business Licensing and Ease and Investment Requirements

Foreign investment with the existence of the Job Creation Law has several facilities for investing. Reducing the Complexity of Business Licensing in the Sector and Efforts to Increase Investment Interests are regulated in Part Four Chapter III of the Job Creation Law, starting from Article 26 to Article 75.

4) Simplification of Specific Sector Investment Requirements

Simplification of investment provisions in specific sectors is regulated in Part Five Chapter III of the Job Creation Law, starting from Article 76 to Article 79, which covers capital investment, banking and Islamic banking. Then, in order to facilitate business actors, domestic investors and foreign investors, the government introduced a new regulation in Part VI of the Job Creation Law which applies to several regulations as follows:

a) Immigration

Law Number 6 of 2011 concerning Immigration has undergone changes, including the issuance of Visit Visas for pre-investment activities and Limited Stay Visas (VITAS) for Foreigners as a second place of residence. This step is a government initiative in facilitating foreign investors who want to invest in Indonesia.

b) Adopt the Land Bank Idea

Foreign investors consistently require significant land areas for their investment projects or factories. Therefore, the government's capacity to provide land for foreign investors is a key factor in attracting foreign investment. The concept of a "land bank" will provide land for free to investors with a concession period of 20 years. This decision need not cause concern because after the concession period expires, the land will again become state property. This step is an incentive given by the government to potential investors.¹²

c) Taxation

Some of the changes made in the Income Tax regulations involve dividends received by individuals and entities registered both domestically and from abroad, with the exception of Income Tax obligations, provided that certain requirements are met.¹³ Presidential Regulation Number 10 of 2021 also provides benefits for investors through a reduction in income tax for business entities (tax holiday). In addition, a tax allowance is also applied, namely a reduction in net income related to investment, as well as a reduction in gross income for special activities. Finally, customs incentives include exemption from import duties for the import of machinery, goods and materials used in the construction or development of industries as part of investment efforts. These advantages, which are now available to foreign investors, are the result of the Job Creation Law which aims to create a positive response to investment in Indonesia.¹⁴

d) Paten

¹² Syarif Hidayatullah, "Considering the Effectiveness of the Job Creation Law on Increasing Foreign Investment," *Solar Kencana Journal One* 12, no. 2 (2021): 121.

¹³ Tresnajaya, "Analysis of Changes in Provisions on Individual Tax Subjects in the Job Creation Law on Individual Income Tax and Human Resource Mobility," *Journal of Taxes and State Finance* 3, no. 1 (2021): 103.

¹⁴ Ferdinand Jason, "Legal Certainty for Foreign Investors Regarding the Unconstitutionality of the Job Creation Law," *Unes Law Review* 4, no. 3 (2022): 377.

Regarding patents, changes can be observed in Article 107 of the Job Creation Law which creates flexibility in the application of patents. Previously, the obligation to make/use has been changed to the obligation to perform. Likewise, the decision to approve or reject a simple patent application which was previously made within 12 months of receipt of a simple patent application, has now been shortened to a maximum of 6 months.

e) Brand

The substantial mark inspection period that previously took 150 days in no-objection cases has now been shortened to 30 days. Meanwhile, if there are objections during the announcement period, a substantial examination which initially lasted 150 days, now only takes 90 days.

Even though the Job Creation Law has reaped various controversies from the public, as can be seen from the various opinions voiced to the government, with comprehensive implementation, this law has the potential to facilitate the licensing process and improve the investment climate in Indonesia, as well as support economic growth. The hope is that with the increase in investment flows in Indonesia, there will be opportunities to create new jobs for residents. With the construction of many manufacturing factories as a result of the investment, it is hoped that there will be further developments in the Indonesian industrial sector.

4. Closing

A. Conclusion

- 1) The government has endeavored to create basic investment policies that support a conducive national business climate. Nonetheless, the reality is that there are still many investors who are reluctant to invest in Indonesia due to difficulties in obtaining business permits. The problem is caused by disconnected and disharmonious regulations between various government agencies, as well as deficiencies in the effectiveness of existing regulations. In facing this challenge, proper planning and serious solutions are needed.

- 2) One effort to improve the investment situation is through the issuance of the Job Creation Law, which aims to attract investors, especially in dealing with the impact of the crisis due to the COVID-19 pandemic. The commitment to improving the investment climate is also reflected in Part III of the Job Creation Law which regulates the Improvement of Investment Ecosystems and Business Activities. Meanwhile, efforts to facilitate business actors in investing can be seen in Part VI of the Job Creation Law. Through this step, it is hoped that foreign investment can increase and create new jobs, as well as reform industry in Indonesia. Therefore, awareness of the importance of simplifying licensing and harmonization of regulations is key in creating a profitable and competitive business climate for the Indonesian state.

B. Suggestion

- 1) The government and related institutions must ensure that foreign investment still pays attention to environmental sustainability.
- 2) It is hoped that the implementation of the Job Creation Law will encourage technology transfer to support sustainable development in Indonesia.

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