

LEGAL PROTECTION FOR FOREIGN INVESTORS INVESTING ACTIVITIES AS SECURITY IN INDONESIA IN THE ERA OF REGIONAL AUTONOMY

Marcel Seran,
Anna Maria WS.

ABSTRACT

Spur growth for a country's economic development would require funding not less. The financial capacity of the state to be expected as a source of financing, there is not enough then the alternative sources of funds needed is through foreign direct investment. However, hope to obtain funds from foreign direct investment is not an easy job. Many of the problems faced. For example, damage to infrastructure, permits convoluted and complicated, political instability, denial of citizens to invest to invest in several regions in Indonesia, the revocation of business licenses by the local government, as well as legal protection and certainty of inadequate law, which issues it is precisely often a barrier for foreign investors to invest in Indonesia. Even sometimes the issues are also a triggering factor for foreign investors to move their capital to other countries. Therefore, it is necessary improvements to these problems that foreign investors are interested to invest in Indonesia.

Keywords: Legal Protection, Foreign Investors, Invest Security, Autonomy.

Introduction

Today investment is one driver of the process of strengthening the economy of a country. As a means of driving the process of strengthening the economy in the context of economic policy some countries are trying hard to increase its investment. In the last decade of investment is not only a necessity for a country in the development of economic development but also represents a major tool in the development of an industry.¹ One way to increase investment is through foreign investment.

Indonesia as one of the countries that are building is certainly trying to increase investment by inviting foreign investment to invest in Indonesia. By inviting foreign investment to invest in Indonesia is expected to boost the development, welfare and prosperity for the people of Indonesia. Effort in this direction is done in various ways. The means used differ from country to country the other. But in general, business is always done by each country to promote development is to attract as many investors, especially foreign investors (foreign investors) to invest in his country.

Attracting investment into the country based on a myth that to be a prosperous country, national development should be directed to areas of the industry. To lead to it, these countries have been faced with the problems since the beginning of the lack of capital and technology is a basic element in moving towards industrialization. The path taken to overcome these kedala is to invite the entry of foreign investors from developed countries to the developing countries.²

Indonesia as one of the developing countries and is building a course in dire need of capital to promote development and economic growth is facing. One of the sources of funds to increase development growth came from foreign direct investment (FDI direct investment), because it is believed that with the accumulation of foreign capital as one of the best ways to obtain financing for the construction of an increasing and ongoing.

Basic adhered to the presence of foreign investment (foreign investors) is the state's duty to manage the economic power potential into real strength. In this framework, the accumulated foreign capital plays a very important because the 3 (three) reasons: first, the political economy of social across the country have not been transformed into the real economy due to lack of capital, expertise and technology, secondly, the transfer of economic power potential into strength the real economy should be based on the capability and capacity of its own but direct foreign investors need to be fully utilized, third, create a legal basis foreign investors who are prepared based on the principles of the law of a foreign investor integrative and overall effect.³

Furthermore, if traced further that the spirit of the Indonesian government to invite the influx of capital from foreign investment due to several things: 1. Indonesia has no other sources of financing sufficient to improve and develop the economy and national development activities, 2. The Government recognizes that the path to process improvement economic activity and development is simply the accumulation of foreign capital, 3. the formation and accumulation of foreign capital will be achieved if there is a

¹ I Gede A.B. Wiranata, *Reorientasi Tanah Sebagai Objek Investasi*, Penerbit Universitas Lampung, 2007, hlm. 7.

² Ridwan Khairandy, *Peranan Perusahaan Penanam Modal Asing Joint Venture dalam Alih Teknologi di Indonesia*, dalam *Jurnal Hukum Bisnis*, Vol. 22 No. 5 Tahun 2003, hlm. 51.

³ Marthen Arie, *Prinsip-prinsip Hukum Penanam Modal Asing di Indonesia*, Ringkasan Disertasi PPs Universitas Hasanuddin, Makassar, 2006, hlm. 1

solid legal basis to ensure the continuity of the process.⁴ Therefore, one of the best ways in which to obtain financing funds to improve and develop the activities of the builder is through foreign capital. Of investment in Indonesia is expected to boost economic development and improve pertumbuhan, as well as provide for the greater welfare of the community. This is of course in accordance with the spirit of konstitusi in the opening and torso UUD'45 which explicitly stated in Article 33 paragraph (3) of the 45 Constitution⁵ and Article 3 (2) h of Law No. 25 in 2007.⁶

Indeed, foreign investment is the best way for the development of construction and promote economic growth, as well as providing welfare for the people, unfortunately hopes to attract capital (foreign investment) to invest in Indonesia to achieve these goals will face various problems and will even be difficult to materialize. There is an indication that Indonesia will no longer be attractive and is no longer a safe place to invest.

The fact shows that since 1998 Indonesia experienced a net capital flow (net capital flows) is negative and in 2000 stood at US \$ 4,550,000, -.⁷ This means that the flow of capital outflows is far greater than the capital inflow. Indonesia experienced a net capital flow is also reflected in the research data presented by the Investment Coordinating Board (BKPM) show that the influx of foreign capital has decreased. BKPM noted that in the first five years in 2002, foreign investment dropped sharply, while domestic investors (MPDN) fell 30%. In 2000 the approval of foreign investment projects reached 403 declined 262 projects from ujuta year. When viewed realization is certainly more down again. Data for the period January-March, the new BKPM fixed for issuing business licenses (IUT) pananaman foreign capital with 98 projects worth US \$ 571.7 million,⁸ whereas the data manurut Chinese investment entities that January - May 2003 Indonesia to China investment realization reached 56.74 million US dollars. The value of the contract (agreement) investment fled from Indonesia to China amounted to 264 million US dollars, up 319, 77% compared with the same period in the previous year. The contract value and the realization came from 50 new companies from Indonesia are investing in China. Of the total number of enterprises there is an increase of 38.9%.⁹ This data shows that there are many relocation of industries to other countries that resulted in their being so huge capital flight.

Similarly, according to the results of the study the research team Faculty of Economics, University of Indonesia that the regional autonomy of local governments is considered investment. This is due to many additional costs and the cost of the levy or levies. At the same happened seizure of authority between central and local government to issue licenses investment even though Indonesia has had the Investment Law No. 25 in 2007 as a legal umbrella for investors. Because of the legal protection for the investor is deemed inadequate, so investors are reluctant to invest and even relocate their capital to invest in other countries.

In addition, the events that occurred in Indonesia certainly has influenced and contributed to the disinterest of foreign investment to invest in Indonesia. Call it, for example, fluctuation of labor protests,¹⁰ refusal of citizens to invest to invest in several regions in Indonesia,¹¹ is equally necessary permits morat maritnya system is still complicated and expensive, as well as the revocation of a business license by the local government.¹²

A continued decline in foreign investment and foreign investment disinterest in investing in Indonesia because of the legal protection sought is deemed inadequate. They are not uncommon question of legal protection because in many cases they have not obtained sufficient legal protection. Another factor that contributed to the discomfort and uncertainty to the investment is frequent labor demonstrations to demand a wage increase is accompanied by destruction of the object of investment, rejection of the citizens of the investment. The absence of such uncertainty and discomfort cause problems. Then result in reduced investment interest to invest in Indonesia.

Importance of Investment to Support Growth Economic Development.

The influx of investment for a State require the protection of the law so that investment is growing and developing States in supporting the growth of economic development. Legal protection for the investment of significant importance for the sustainability, convenience and ease of investing, because the existence of an investment in a country is closely linked to their demands to hold a national development in the country. The demand for the implementation of national development in the country aimed at improving the economic pertumbuhan, increasing per capita income of the community, as well as improving the living standards of the people's welfare.

⁴ Marthen Arie, *Ibid*, hlm. 2.

⁵ Pasal 33 ayat (3) UUD 45 menyatakan bahwa: bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat.

⁶ Juga dalam Undang-undang Penanaman Modal No. 25 Tahun 2007 tentang Penanaman Modal dinyatakan bahwa salah satu tujuan penyelenggaraan penanaman modal antara lain yaitu meningkatkan kesejahteraan masyarakat.

⁷ Editorial, Jurnal Hukum Bisinis, Vol. 22 No. 5 Tahun 2003, hlm. 4.

⁸ Editorial, Jurnal Hukum Bisnis, *Ibid*, hlm. 4.

⁹ Camelia Malik, *Jaminan Kepastian Hhukum Dalam Kegiatan Penanaman Modal di Indonesia*, dalam Jurnal Hukum Bisnis, Vol. 26 No. 4 Tahun 2007, hlm. 15.

¹⁰ Gejolak unjuk rasa buruh di sejumlah kawasan terkait dengan tarik menarik mengenai upah minumum antara buruh dan pengusaha, Kompas, 21 Februari 2012.

¹¹ Kompas 7 Februari 2012.

¹² Pengurusan ijin kegiatan usaha di Indonesia dirasakan masih berbelit-belit dan mahal, Kompas, 21 Februari 2012, pencabutan ijin usaha eksplorasi secara permanen oleh pemerintah daerah, Kompas, 29 Januari 2012.

To improve national economic growth, increasing per capita income communities and improve people's lives is reached if it can be done through improvement of the economy, the one source of financing and resources that can be used or may be used in the national interest and the public is through investment either from capital national or domestic and foreign capital.

Expectations of the goal the investments to increase national pembangunan and improve people's welfare is in line with the spirit of the mandate of the law ndang investments of Article 3 paragraph (2) Investment Law No. 25 of 2007 which stated that the purpose of investment activity among other things:

- a. Improving national economic growth
- b. Creates employment
- c. Boost the sustainable economic development
- d. Boost the competitiveness of national business
- e. Improving the capacity and capability of national technology
- f. Encourage the development of community economy
- g. Mengolahnekonomi potential into real economic strength by using funds from both domestic and from abroad
- h. Improving the welfare of the community.

Hope to be able to boost economic growth are often faced with various difficulties. Difficulties encountered in the implementation of the economic development is the lack of capital. Difficulties in terms of capital are generally experienced by most developing countries, because each national development continue to be multi-dimensional and complex. Told multi demensional and complex due regard to all aspects of national life which require substantial funding source. In addition, another problem often faced in carrying case is the ability of mastering science, technology mastery, experience and skills.¹³

To overcome these problems it is one of the resources used to promote growth or development to boost economic activity is through domestic capital. But the hopes to obtain funds through the domestic capital faced with various constraints:

1. Obstacles faced by the government in collecting funds for the construction of low savings society. This is due to the still small per capita income levels of society.
2. Savings government is still heavily dependent on acceptance of oil and gas sector that cost increasing and uncontrolled.
3. Sector retribusimaupun tax revenues or government business is still a lot to leak (corruption)
4. Investment in overseas / domestic post-crisis experience difficulty capital / funds.

Therefore, foreign investment is still one important alternative in obtaining funds for economic development. This is in accordance with the opinion of many economists that the accumulation of foreign direct investment is the driving force of any process of economic development because of its ability to mobilize aspects of life other development.

As for the impact of foreign investment for the economic development of a country mmenurut Chenery and Carter can diklafikasikan into 4 (four), namely:

1. Sources of external funds (foreign capital) can be utilized by developing countries as the basis for accelerating investment and economic growth.
2. The increased economic growth must be accompanied by changes in the structure of production and trade.
3. Foreign capital can play an important role in the mobilization of funds and the structural transformation
4. The need for foreign capital to decrease as soon as the structural changes actually occur (though foreign capital more productive later in life).¹⁴

He felt the presence of foreign capital as a dominant element in the development activities of a specific country emerging nations made so many efforts. It has long been a group of developing countries hoping sources of development funding from the group of industrialized countries in order to boost economic activity. Miasalnya visible efforts formal multilateral approach through the UN General Assembly, especially since I proclaimed Development Decade or the First Development Decade for the 1960s decade to decade Fourth Development for the decades of the 1990s to the present.¹⁵

However, there are concerns about the negative effects that can be caused due to the activity of foreign investment in the investment membiayaai. Among others about dependence on foreign, particularly the fate of the population, including the labor force, on the ground where the investment will be carried out and the conditions prevailing foreign exchange for foreign businessmen will utilize portions advantage in their home country. However, if observed a number of studies on the function and role of investment shows the positive role of investment. First, there is no denying that the investments have a positive role for the economic activities of a country, the second, the investment raises the excesses both in the economic, social, political,

¹³ Rosyidah Rakhmawati, *Hukum Penanaman Modal di Indonesia*, Banyumedia Publishing, Malang, 2003, hal. 8.

¹⁴ I Gede A.B. Wiranata, *Perkembangan Hukum Penanaman Modal di Indonesia*, Penerbit Universitas Bandar Lampung, 2009, hlm. 23-24.

¹⁵ I Gede A.B. Wiranata, *Ibid*, hlm. 24.

cultural and legal, thirdly, the investment may not be rejected simply because it creates negative effects, fourth, there is urgency the need for investment management through a legal instrument to minimize access posed.¹⁶

To anticipate this will require government policies planned by creating better legal tools so that the confusion caused by the inter-agency coordination can be avoided so that Indonesia can take advantage of the positive aspects of foreign capital as much as possible and minimize the impact negatif generated from investments.

Terms To Attract Foreign Investment

The economic development of a country especially the developing countries is determined from the growth of foreign investment. Flows of foreign direct investment fluctuates depending on the investment climate of the country concerned.

For the state investor, before investing first conducting an assessment of the aspects that influence and mendukung investment climate such as the political, legal and security. Therefore, for the developing countries of course to be able to bring in investments needed at least three conditions: First, the condition for the existence of economic opportunities (economic opportunity). This means that to attract foreign capital needed their economic opportunities for investors, as close to natural resources, availability of raw materials, availability of land to set up factories sufficient, available labor and the availability of prospective markets. Second, the terms of political stability (political stability). That is, the investor want to come to a country strongly influenced by political stability, the political elite conflict or conflict society will affect the investment climate. Foreign investment will come in and expand its business if the State concerned woke up the process of political stability and the process of constitutional democracy, the Third, the requirement of legal certainty (legal certainty). That is, investors will come to a country if deemed of those countries are in a favorable situation.¹⁷

To create a legal system that is able to support the necessary investment climate clear rules which start from a permit to venture up to the costs to be incurred to operate the company.

Furthermore, Dhaniswara K. Harjono, explains that there are several factors that affect investment, namely:

1. Political factors.

This factor is very menentukan business climate conducive to investment businesses, especially foreign investment. Political conditions Indonesia this latter is less stable and uncertainty has caused a decline in investment enthusiasm.

2. Economic factors.

Economic factors are also crucial for the desire of investors to invest. Political factors and economic factors affect each other and have a close relationship. Domestic political temperature heats up, of course, cause the business climate will be reduced and the performance of the economy will decline. Thus what if the economy of a country is very worrying indeed that investors would be very worried about investing.

3. Factors law.

Factors legal or juridical factors are also very important and concern by investors. This is very relevant to the protection given by the government for investasi activities. The declining authority of the law in the country will affect the interest of investors to invest will depend on the legal system that is applied, where the legal system should be able to create certainty (predictability), justice (fairness) and efficiency (efficiency).¹⁸ In addition to the factors above investment is also influenced by external conditions such as signs of impending economic recession worldwide.

Similar opinion by Nindyo Pramono, that if developing countries want to attract the developed countries to invest in the country then some things that have to be met to attract foreign capital are: 1. The regulations are fixed and consistent policy that is not changing too fast and can guarantee the legal certainty because of the absence of legal certainty would complicate long-term planning of their businesses. 2. The permitting procedure which is not convoluted that can result in high cost economy. 3. guarantee of their investment and legal protection regarding property rights belonging to investors. 4. Facilities and infrastructure to support the implementation of their investments properly, among other things, communication, transparency or transportation, banking and insurance.¹⁹ By meeting these requirements for the destination country would be the initial capital investment is very valuable to attract investment to invest in his country.

Barriers For Foreign Investment In Indonesia in the Era of Regional Autonomy

The government policy in principle is to increase the per capita income, welfare and prosperity for the people. How taken is to spur economic development, especially economic development in the real sector, as it is believed that by spurring economic development of the real sector, it can create jobs. By creating jobs means it can accommodate the workforce and reducing unemployment.

¹⁶ I Gede A.B. Wiranata, *Ibid*, hlm. 26

¹⁷ Erman Radjagukguk, *Hukum Investasi di Indonesia*, Fakultas Hukum Universitas Indonesia, 2005, hlm. 40.

¹⁸ Dhaniswara K. Harjono, *Hukum Penanaman Modal*, PT Raja Grafindo, Jakarta, 2007, hlm. 8-9

¹⁹ Camelia Malik, *Loc. Cit*, hal. 16.

To spur economic growth in the construction sector is not an easy task because it requires no small amount of capital. Domestic capital which is expected to drive the growth of the economy development is apparently not sufficient then one way in which the government is inviting investors to invest (invest) primarily by foreign investors (foreign investors). However, hopes to attract foreign investors (foreign investors) to invest in Indonesia seems to still confronted by a number of obstacles, namely:

1. After decentralization often struggle for authority between the central government and local governments to issue licenses investment.²⁰ Seizing this occurs because of the interests between the central government and local governments who feel the most interest in investment in the area.²¹ In addition, following the implementation of regional autonomy laws encountered a number of local regulations (regulations) and the draft local regulations are seen as problematic because it regulates the levy.²² Products such laws can not be denied that would impede the entry of foreign investors to the area because of the potential at the high cost economy.
2. Foreign investors also often complain about the bureaucracy that is reflected among other things concerning the administrative procedures in administering licensing. Investors often burdened by affairs birokrasi convoluted so it takes quite a long time. For example, the hospitality sector permits required number reached 37 pieces, because every part of the hotel must have special permission from the relevant Department. Among them is to build a restaurant in the hotel need a permit from the health department, because it involves foods that are healthy and safe for consumers, while building a swimming pool must be permission from the department of sport and to the use of labor must follow the rules set out in the labor law that apply.²³ In addition, foreign investors have also complained about the speed of service and licensing are not uniform, and often differ from one area to another area.²⁴ Therefore, investors are often faced with bureaucratic convoluted and took a long time so that investors are not uncommon burdened with extra cost unnecessarily large enough.
3. Infrastructure also does not support the investment climate in Indonesia. Such as, electricity is often life and death, port facility that does not meet international standards, the number of road network in the hollow-lubagng conditions, restrictions on investors to certain sectors and control over the import of certain commodities.²⁵ The results of the WEF survey 2007 showed that 8.5% of the number of entrepreneurs in Indonesia disputed because of restrictive labor legislation.²⁶ This means restrictive labor regulations.
4. The legal protection and legal certainty to be not yet sufficient. For example, from the aspect of legal protection frequent change-instead of rules, lack of synchronization between a rule each other to make foreign investors confused interpretation of a rule. While law enforcement aspect, it seems to be a problem for Indonesia. Investors often complain to law enforcement.²⁷ Law enforcement is felt not provide assurance and sense of justice. For example, regulatory issues investigation, issue a case broker (markus) and the Mafia is an example of the bad face of law enforcement in Indonesia.

By paying attention to these constraints if allowed to continue the course can inhibit the influx of investor foreigners to invest in Indonesia and even impossible foreign investors who have invested will move their operations to another country then the best path taken is immediately fix and resolve all these obstacles in particular by: reorganize the legislation that are inconsistent and regulations are rapidly changing, repealed bylaws problem that could potentially hinder the flow of such investment, and restructure the bureaucratic system of licensing in order not to be convoluted, infrastructure inhibit investment climate needs to be improved and enhanced, such as roads, ports, banking and insurance. In law enforcement must give a sense of justice, expediency and ensure legal certainty.

In addition, according to Juwono, to create a conducive investment climate, the note 3 (three) fundamental things that need to be repaired Indonesian officials and businessmen. Three things need to be done if Indonesia really wants competitive against developing countries more. Thirdly it according to Juwono known as the three "L", namely (Legal, Labour and Local).²⁸ The third "L" can be explained as follows.

"L" is the first legal problem. In this case Indonesia should improve the legal system and applying enforcement-friendly for investors and trade. Second, Indonesia must amend labor issues, including various regulations concerning the employment relationship that is familiar to investors (investors). Third, Indonesia should improve the relationship between the central government and local governments.²⁹

"L" The second, namely labor. This relates to the improvement of the regulatory issues and the implementation of the provisions of labor may be a thorny problem facing the government of any kind and at any time in Indonesia, the labor force increased by around 1.8 million a year, 10 million unemployed and 36 million people live below the line poverty, so whoever labor department officials will be dizzy 24 hours a day a week.³⁰

²⁰ Editorial jurnal Hukum Bisnis, *Loc.Cit.*, hlm. 4.

²¹ Tulus Tambunan, *Kendala Perijinan Dalam Kegiatan Penanaman Modal Di Indonesia Dan Upaya Perbaikan Yang Perlu Dilakukan Pemerintah*, Jurnal Hukum Bisnis, Volume 26, No. 4 Tahun 2007, hlm: 38.

²² Kompas, 3 Februari 2009.

²³ Tulus Tambunan, *Loc.Cit.*, 2007, hlm. 37.

²⁴ Kompas 5 November 2009.

²⁵ Kompas, 9 Desember 2009

²⁶ Tulus Tmbunan, *Loc. Cit.*, 2007 hlm. 37.

²⁷ Rosyidah Rahkmawati, *Op.Cit.*, 2003 hlm .48

²⁸ Camelia Malik, *Op.Cit.*, 2007, hlm. 17.

²⁹ Camelia Malik, *Ibid*, 2007, hlm. 17.

³⁰ Camelia Malik, *Ibid*, 2007, hlm. 18.

Foreign companies actually want to help the leaders and trade unionists Indonesia overcome all issues related to wages, working hours, provision of the right to strike, pasangon money, authority dismissal. Such as in law enforcement, foreign direct investment (foreign investors) often face twists nationalism against globalization or foreign capitalism.

"L" is the third Local. This relates to the settlement of the division of authority between the central government and local governments. Foreign entrepreneurs observed that large and rapid decentralization voiced since January 2001 whatever the weakness is a good thing for democracy in Indonesia. However, the balance recorded a few things can hurt pengembangan democracy in any area where a number of issues and the division of authority between the central area are not addressed. Taxation issues, the provisions concerning the terms of employment, the rules regarding the rights and obligations of employers and workers, minimum wage fixing, tujangan applicable by sector and location tends to increase the burden of the company's budget.³¹

Thus issues relating to legal, labor and local is a challenge that must be addressed in order to re-investment climate Indonesia repaired so as to obtain the attention of interest for foreign investments to re-invest in Indonesia.

Certainty assurance Sought For Foreign Investment

Attract foreign investment to Indonesia to invest is not a job that is easy and simple. However, efforts were still done because it is believed that through the foreign investment can benefit either directly or indirectly for the nation to boost development growth and improve the nation's competitiveness in the economy, as well as providing welfare for the people. Another benefit is expected by this nation of investing is the process technology transfer of foreign investment in Indonesia to manage modern technology, as foreign investment has advantages both in the fields of science, management and technology.

Understanding the importance of foreign investment is the effort to encourage direct investment in Indonesia is a reality that can not be negotiable and avoided, because only by encouraging investment to invest, the economic growth can continue to be encouraged and further investment is expected to create jobs, reduce unemployment and capable alleviating poverty. Direct investments will only increase what when creating a conducive investment climate and healthy, as well as increasing the competitiveness of Indonesia as an investment destination that is conducive and healthy would not only be borne by the government but also all components of society, including the business community and the general public.³²

In relation dengan the creation of a favorable investment climate and legal certainty for the convenience of this investment has clearly stipulated in Article 3 (1) and Article 4 of Law No. 25 of 2007 on Investment. Article 3 (1) states that the investments held by the principles of: a. Certainty, b. Openness, c. Accountability, d. Equal treatment and not discriminate national origin, e. togetherness, f. efficient justice, g. Sustainable, h. Environmentally sound, i. Independence, j. Kemanjuaan balance and national economic unity. Further down in Article 4 states that: (1). The government set a basic policy of investment for: a. Encourage the creation of national business climate conducive for investors to strengthening the competitiveness of the national economy. b. Accelerating the increase in capital investment. (2). In setting the basic policy of the government: a. Giving the same treatment to domestic investors and foreign investors with regard to national interests. b. Ensure legal certainty, certainty and security attempted to investors since the process to obtain permits until the end of activities in accordance with the provisions of Regulation of the legislation. c. An opportunity for development and provide protection to micro, small, medium and cooperative.

Based on the provisions of this law is clear that the State through the government has a role and are well placed to ensure the safety and legal certainty are trying to strive for an investment that creates a favorable investment climate for the continuity sought for investment.

The role of the state through the government to regulate the process of economic development by Wolfgang Friedmann can be divided into, first, the state as a guarantor (provider). This concept deals with the concept of the welfare state (welfare state). In the concept as a Welfare state here that the state is responsible for providing to provide social services to guarantee minimum living standards and give freedom to the economic strength, both, the state as a regulator (regulator). The state as regulator means that by means of the use of means of laws to control economic activity, third, the state as entrepreneur (entrepreneur) which in this case state involvement in economic activity can be done through government departments semi-autonomous or corporations owned by the state. State involvement in entrepreneurship can function as a form of private and public.³³

The firmness of government to ensure the safety and legal certainty sought for this investment under President Grant Thornton Indonesia (GTI) Jamaes Kallman foreign states most effective incentives to attract foreign investment activity is that the government must be able to enforce the law and provide security. The firmness of the government in implementing policies and regulations, especially the consistency of enforcement and security.³⁴ Similarly, Daniel S. Leve claimed that the state law is a

³¹ Camelia Malik, *Ibid*, 2007, hlm. 18.

³² Ida Bagus Rahmadi Supancana, *Kerangka Hukum Dan Kebijakan Investasi Langsung di Indonesia*, Ghalia Indonesia, 2006, hlm. 11.

³³ Wencislaus Sirjon Nansi, *Peran Hukum dan Pembangunan Ekonomi Indonesia (Tinjauan Terhadap Aspek Penanaman Modal Asing)*, Jurnal Hukum Pemberdayaan Hukum, FH Universitas Atma Jaya Makassar, Vol. 1 No. 1 Juni 2011, hlm. 24.

³⁴ Erman Radjagukguk, *Op.cit*, hlm. 51.

sine qua non for effective without legal process might be expected improvement in the economy, politics, social life and justice.³⁵

According to Mochtar Kusuma Atmadja that a major problem in Indonesia and many complaints by foreign investors is a good legal certainty regarding the provisions of the legislation which many things are unclear and contradictory, and also regarding the implementation of court rulings.³⁶ According to Erman Radjagukguk, legal uncertainty will affect the economy. There are three factors that cause lack of legal certainty in Indonesia, namely, first, the hierarchy of legislation is not working and still overlapping material is set, the second, the apparatus is weak in implementing the rules and thirdly, the settlement of disputes in the field of economics can not be foreseen.

But for the Indonesian nation functions and role of the state to regulate the economy as stated Wolfgang Friedmann not functioned properly. Even should also be said not sufficient. Business security and legal certainty for foreign investment to acquire the convenience investing still seems to be a luxury item and move in this country.³⁷

With regard to the uncertainty sought in the investment involves many aspects. Uncertainty in the legal field is concerned with a provision of legislation which in many cases are unclear and conflicting. For example, after the implementation of regional autonomy frequent seizure of authority between the central government and local governments to issue licenses investment.³⁸ Seizing this authority can occur because of the interests between the central government and local governments who feel the most interest in investment in the area.³⁹ Worse yet legal product issued by local governments that collide with the many measures taken by the central government (laws and higher) it causes the impression of authority powers fight each other, for example in taxation and levies. Seizing the authority not unreasonable. Because the entry of entrepreneurs and investors resulted in the addition of significant revenue.⁴⁰ Also found a number of local regulations (regulation) and the draft local regulations are seen as problematic because it regulates the levy.⁴¹ It can be seen from the area produk legislation issued by local governments with autonomous rights reasons postscript create an additional burden for investors. Products such laws can not be denied that it would hinder the flow of foreign investment to the area because of the potential at the high cost economy. In addition, also, frequent change-instead of rules, lack of synchronization between a rule each other to make foreign investment confused interpretation of a rule.⁴² Similarly, the bureaucracy, the bureaucracy that is reflected among other factors concerning the administrative procedures within the necessary permits. Investments are often burdened by affairs birokrasi convoluted so it takes quite a long time. For example, the hospitality sector permits required number reached 37 pieces, because every part of the hotel must have special permission from the relevant Departmen. Among them is to build a restaurant in the hotel need a permit from the health department, because it involves foods that are healthy and safe for consumers, while building a swimming pool must be permission from the department of sport and to the use of labor must follow the rules set out in legislation applicable employment.⁴³ Foreign investment is also complaining about the speed of service and licensing are not uniform, and often differ from one area to another area.⁴⁴ Therefore, investors are often faced with bureaucratic convoluted and took a long time, so that investment is not uncommon burdened with extra cost unnecessarily large enough.

Infrastructure also does not support the investment climate in Indonesia. Such as, electricity is often life and death, port facility that does not meet international standards, the number of road network in the hollow-lubagng conditions, restrictions on investors to certain sectors and control over the import of certain commodities.⁴⁵

The results of the WEF survey 2007 showed that 8.5% of the number of entrepreneurs in Indonesia disputed because of restrictive labor legislation.⁴⁶ This means restrictive labor regulations.

In connection with that, the government should pay attention to the rules relating to foreign investment, especially relating to the protection of foreign investment in the business and how to enforce them fairly. Therefore, to overcome the above problems in the face of increasingly rapid economic development, complex and unpredictable, then the function and role of the state should come forward to participate in the economy, especially related to the field of law and economics. Settling in the field of economic law essentially with respect to the legal system, especially the system of economic laws which have been in the spotlight that is comprised of aspects of the substance of the law, that legislation has not been able to reflect aspects of certainty, the legal structure with respect to the legal apparatus in which the quality of aperture law often causing harm to the country,

³⁵ Erman Radjagukguk, *Ibid* hlm. 53.

³⁶ Adi Sulistiyono, *Pembangunan Hukum Ekonomi Untuk Mendukung Pencapaian Visi Indpnesia 2030*, Pidato Pengkuhan Guru Besar Tetap pada FH Universitas Sebelas Maret, Solo, Tanggal 17 November 2007, hlm. 30.

³⁷ Adi Sulistiyono, *Ibid*, hlm. 30.

³⁸ Editorial jurnal Hukum Bisnis, *Loc.cit*, hlm. 4.

³⁹ Tulus Tambunan, *Kendala Perijinan Dalam Kegiatan Penanaman Modal di Indonesia dan Upaya Perbaikan Yang Perlu Dilakukan Pemerintah*, Jurnal Hukum Bisnis, Vol. 26, No. 4 Tahun 2007, hlm. 38.

⁴⁰ Camelia Malik, *Loc.Ccit*, hlm. 18-19.

⁴¹ Kompas, 3 Februari 2009.

⁴² Rosyidah Rahkmawati, *Op.Cit*, hlm. 48.

⁴³ Tulus Tambunan, *Lo.cit*, hlm. 37.

⁴⁴ Kompas, 5 November 2009.

⁴⁵ Kompas, 9 Desember 2009.

⁴⁶ Tulus Tambunan, *Loc Cit.*, hlm. 37.

giving rise to a priori of the foreign investment and legal culture with regard to society's view of the legal system. The foreign investment requires legal certainty which is manifested through a fair settlement mechanism in case of disputes.

The setting of the system of economic laws in order that economic law is able to play its role to provide legal certainty to economic operators, the government should be responsible for making the laws as a commander, so that the future legally capable played a role as a factor guide, protect and guide and capable of guaranteeing so as to create an atmosphere conducive to the economic field.

The function and role of the state through the government to reform the legal substance, namely to restructure the field of economic law, for example, enacted a variety of laws and regulations in the field of economics such as: Law No. 25 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition Law No. 8 of 1999 on Consumer Protection, Law No. 24 of 1999 on Foreign Exchange Traffic and Exchange Rate System, Law No. 40 of 2007 on Limited Liability Companies Act No. 19 of 2004 on Forestry, Law No. 22 of 2001 on Oil and Gas Law 3 of 2004 on Bank Indonesia, Law No. 23 of 1997 on Environmental Management, Law No. 25 of 2007 on Investment.

With the enactment of various legislations in the field of economic law is intended to provide certainty and protection to investors, creating an atmosphere conducive to investors, increasing the presence of foreign investors and support economic growth so as to increase the national income in the taxation sector and at the same time increasing the maximum welfare and prosperity for the people, nation and state. The next step that must be done is to synchronize the legislation from the central to the local level and cancel regulations that impede investment, do *keperpihakan-poor*, reform tax laws appear from the government along with the legislature has produced many legislations in the field of economy to support the economics of creating an atmosphere conducive to investment, increasing the presence of foreign investment and sustain growth and economic development in order to reduce unemployment and reduce poverty.⁴⁷

The next government's policy with regard to the structure of the law is necessary to implement good corporate governance seriously at all levels of government so that government officials be better. While policies regarding the legal culture is necessary to build the level of awareness and understanding of the benefits of foreign investment for the nation, the state and society, so that people do not reject the presence of investment in the areas of investment objectives, however, because of government policy in the field of investment in principle is to increase revenue per capita, welfare and prosperity for the people. How taken is to spur economic development, especially economic development in the real sector, as it is believed that by spurring economic development of the real sector, it can create jobs. By creating jobs means it can accommodate the workforce and reducing unemployment

To spur economic growth in the construction sector is not an easy task because it requires no small amount of capital. Domestic capital which is expected to drive the growth of the economy development is apparently not sufficient then one way in which the government is inviting investors to invest (invest) primarily by foreign investors (foreign investors). However, hopes to attract foreign investors (foreign investors) to invest in Indonesia seems to still confronted by a number of obstacles.

Furthermore, in connection with the efforts to create a conducive investment climate then there are three basic things that should be fixed Indonesian officials and businessmen. Three things need to be done if Indonesia really wants competitive against developing countries more. Thirdly it according to Juwono known as the three "L", namely (Legal, Labour and Local).⁴⁸

The third "L" can be explained as follows.

"L" which is the first legal problem. In this case Indonesia should improve the legal system and applying enforcement-friendly for investors and trade. Second, Indonesia must amend labor issues, including various regulations concerning the employment relationship that is familiar to investors (investors). Third, Indonesia should improve the relationship between the central government and local governments.⁴⁹

"L" is both labor. This relates to the improvement of the regulatory issues and the implementation of the provisions of labor may be the most problems faced by any government *pelikyang* dn anytime in Indonesia, with the labor force increased by around 1.8 million a year, 10 million unemployed and 36 million people live below the poverty line, so whoever labor department officials will be dizzy 24 hours a day a week.⁵⁰

Foreign companies actually want to help the leaders and trade unionists Indonesia overcome all issues related to wages, working hours, provision of the right to strike, severance pay, dismissal authority. Such as in law enforcement, foreign investors (foreign investors) often face twists nationalism against globalization or foreign capitalism.

"L" party, which is Local. This relates to the settlement of the division of authority between the central government and local governments. Foreign entrepreneurs observed that large and rapid decentralization voiced since January 1 2001apa any shortcomings is a good thing for democracy in Indonesia. However, the balance recorded a few things could be detrimental to the development of democracy in any area where a number of issues and the division of authority between the central area are not

⁴⁷ Adi Sulistiyono, *Loc.Cit*, hlm. 29.

⁴⁸ Camelia Malik, *Loc.cit*, hlm. 17

⁴⁹ Camelia Malik, *Ibid*, hlm. 17

⁵⁰ Camelia Malik, *Ibid*, hlm. 18

addressed. Taxation issues, provisions on working conditions, the regulations concerning the rights and obligations of employers and workers, minimum wages, allowances which are the sectors and locations likely to increase the burden of the company's budget.⁵¹

Thus issues relating to legal, labor and local is a challenge that must be addressed in order to re-investment climate Indonesia repaired so as to obtain the attention of interest for foreign investors to re-invest in Indonesia.

CONCLUSION

From the above it can be concluded that the investment is one area that is important in supporting the economic development of a country, because the investment is aimed at improving the economy, equitable development, the distribution of economic outcomes, as well as an increase in per capita income for the community (to improve the welfare for the community),

For Indonesia Investment becomes important because the investment is capable of producing a dual effect on the development of national economy. Investment is not only transferring capital, develop import substitution industries, expanding employment, improving kemamuran for the community but also more than that through the investment can be expected for the transfer of science and technology.

However, to attract foreign investment is not an easy job. A number of issues must be addressed. These problems often become a source of hindrance to foreign investment who want to invest (invest) d Indonesia. To these issues, for example concerning poor infrastructure, bureaucratic licensing convoluted and time-consuming that berpotensi in increased levies, legislation is not in sync with each other, local regulations governing the fees that could potentially hamper climate ivestasi in the area and poor law enforcement system.

These problems if not addressed soon it will be a factor inhibiting the entry of foreign investment and even a trigger for foreign investors to relocate their capital to other countries. In connection with it, if only the government constantly strive to improve and overcome obstacles so that they no longer become a source (factor) inhibitors for foreign investors to invest in Indonesia.

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⁵¹ Camelia Malik, *Ibid*, hlm. 18

Marcel Seran
Lecture At Faculty of Law,
Atma Jaya University, Makassar.
E-mail : marcelseran@yahoo.com

Anna Maria WS.
Lecture At Faculty of Law,
Atma Jaya University, Makassar.