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Trends And Issues of The Investment Legal Revolution: Evidence of The Omnibus Law On Job Creation

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ABSTRACT

The multidimensional crisis due to the COVID-19 pandemic has implications for the country's economy. Foreign investors are sought to help extinguish the threat of a deficit in state finances through foreign investment (FI). Access to investment, which was initially limited in nature, has become quite flexible due to the promulgation of the Omnibus Law on Job Creation. Legislative reform which was colored by intrigue and controversy was packaged as a way out for national development and economy, especially as a response to the prevention of the country's financial crisis. The purpose of this research is to examine about the implementation of FI regulations on the investment climate in Indonesia, especially during the period of COVID-19 pandemic and a critical narrative towards the Omnibus Law on Job Creation which represents the investment legal revolution. The research method used is normative legal research method, this research is expected to be able to answer the above legal issues through a statute approach, also using literature law materials which include scientific works and research results. The data were obtained from literature studies which were then analyzed by descriptive analysis. The results show that the implementation of FI regulations in Indonesia is still classified as complicated so that the effect is the low interest of foreign investors to invest their capital in Indonesia. Although the government through the Capital Investment Coordinating Board has attempted to overcome this problem by pioneering the establishment of the One Stop Integrated Service and Investment Service, the COVID-19 pandemic has made it more difficult for the realization of foreign investment in Indonesia. On the other hand, Government policy in reforming investment law in Indonesia through the Omnibus Law on Job Creation too prioritizing economic targets that are not proportional to the threat of state sovereignty and guarantee of people's welfare.

Keywords: **Foreign Investment; Investation; Investment Law; Omnibus Law on Job Creation**

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INTRODUCTION

The COVID-19 pandemic that has occurred globally since the end of 2019 has triggered a multi-dimensional crisis in various fields, one of them is the economy. Many countries must implement strict restrictions on various activities (lockdown / social distancing) in order to break the chain of spreading the virus. The polemic intersects with economic activities that are closely integrated in the Global Value Chain which then experienced a sharp decline, causing a contraction in the global economy. Unlike other economic crises that have hit the world before, the crisis due to the impact of COVID-19 pandemic has not only hit the demand side, but also the global supply side.

China, as one of the countries providing global offers for various global production activities, has actually become the initial epicenter of the emergence of the COVID-19 virus. Argument the central point of Chinese domination inprove it through China's contribution to global economic growth which based on a Bank Indonesia report, in 2019, China has contributed up to 17% to the global economy.[1] This situation makes China willcontrolling more than half of global economic growth. Meanwhile, in the field of international trade and investment, respectively, it reached 11% and 7% of the total Gross Domestic Product (GDP) Global.[2] In line with the aforementioned problems, the resilience of the global economy is tested. The Chinese economy was no exception, which also experienced a temporary economic contraction. Even so, since the third quarter of 2020, the majority of countries in the world have recovered through policy stimulus and increased mobility, as well as monetary easing.[3] Unfortunately, the improving economic situation does not create guarantees for improvement in global trade and investment due to the pandemic that has not subsided. Limitative social interaction contradicts the main foundation of the Global Value Chain, so that global trade and investment are the sectors most affected by the COVID-19 pandemic.

1 Bank Indonesia. (2020). *Chapter 5 Article I: The Impact of Coronavirus on the Global Economy*. Jakarta.
2 *Ibid*.
3 Bank Indonesia. (2020). *Report on the Implementation of Duties and Authorities of Bank Indonesia for Quarter III 2020*. Jakarta.

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Based on data from the Global Trade Update 2020, global trade is predicted to fall by 13% to 32% during the COVID-19 pandemic,[4] so it could slow down Multinational Enterprise (MNE) capital expenditures as well as production locations that are required to close or operate at a lower capacity than usual, causing company cash to shrink. Pressure on global financial markets has also begun to ease, hampering investment plans and expanding existing facilities. Most countries also allocate their state budgets to cope the crisis of the COVID-19 pandemic. As a result, the availability of funds or capital, which is an important aspect of investment, has decreased sharply so that FI is predicted to plunge deeper and may decrease by up to 40%, although the latest data shows that global FI is at 42%.[5] Various reports from international economic institutions that analyze the impact of COVID-19 pandemic predict that the crisis due to this pandemic will have eroded world economic growth in 2020, including Indonesia.

Indonesia has also had an impact on the phenomenon of the global economic crisis due to the COVID-19 pandemic, especially on FI activities that tend to be slow even before the COVID-19 pandemic. The issue of investment in Indonesia is a vital indicator of the national economic ecosystem. The government has ratified and enacted Law Number 25 of 2007 concerning Investment (hereinafter referred to as Investment Law of 2007) as a renewal of the previous Investment Law which has been in effect for approximately 40 years. Most recently, the aforementioned Law was amended through Article 77 of the Omnibus Law on Job Creation to accelerate economic recovery and recovery in Indonesia. Various kinds of policies were also issued as part of the Indonesian government's efforts to facilitate investors and the candidates (Ease of Doing Business). The existence of the Omnibus Law on Job Creation, especially in the articles regulating investment, serves as a form of investment law revolution. It is not only a legislative reform launched by the

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4 World Trade Organization. (2020). *Trade Set to Plunge as COVID-19 Pandemic Upends Global Economy*. Available from: <https://www.wto.org/english/news_e/pres20_e/pr855_e.htm>. [Accessed: March 15, 2021].

5 United Nations Conference on Trade and Development.(2021). *Investment Trends Monitor: Global FDI Flows Down 42% in 2020, Further Weakness Expected in 2021, Risking Sustainable Recovery*. Available from: <https://unctad.org/system/files/official-document/diaeiainf2021d1_en.pdf>. [Accessed: March 15, 2021].

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Government of Indonesia, but also acts as an acceleration program for the national economy.

This paper will examine: *first*, the implementation of FI regulations on the investment climate in Indonesia, especially during the period of COVID-19 pandemic; and *second*, a critical narrative of the Omnibus Law on Job Creation as a represents the investment legal revolution.

RESEARCH METHOD

The research conducted is normative legal research or literature law research.[6] To find a solution to the problems in this study, the substance of the law approach is used related to legal issues as follows in this paper. The data used to study issues include the Investment Law and the latest articles regarding investment as amended through the Omnibus Law on Job Creation, primary legal materials which include scientific works and research results related to FI, etc. There is also data collection using literature review, as well as qualitative methods as the standard of analysis. To verify the validity of the data, the Researcher used comparisons through a review of literature studies to strengthen the level of data credibility through supporting theories in it.

RESULTS AND DISCUSSIONS

Implementation of Foreign Investment Regulations on the Investment Climate in Indonesia

As a developing country, Indonesia continues to carry out development in various fields. In the era of post reform, the direction of development policies carried out by the Government has undergone many changes. That is different when the New Order era, the Government only relied on the Development Trilogy which focused on 3 (three) things, among others: *first*, equitable development; *second*, realizing a high rate of economic growth; and *third*, achieving national stability. However, the focus of the Indonesian government has

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6 Ibrahim, Johnny. (2013). *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayu Media Publishing, p. 45.

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now changed in terms of increasing economic growth with the hope that Indonesia will no longer experience economic crises such as in 1997 and 2008.[7]

Post-independence, it is undeniable that the availability of abundant and diverse natural resources, a very potential domestic market, market-oriented economic policies, and a competitive and productive workforce attract Foreign Direct Investment (FDI) in Indonesia. President Soeharto's leadership became a milestone for Indonesia to concentrate on the investment sector. What was highlighted at that time were trends in the petroleum, oil, and natural gas business sectors. Indonesia was success in experiencing the rate of economic growth is supported by the fact that there has been an average increase of 8% since its promulgation FI Law in the late 1960's. Even the average achievement value of the planting practice FDI reached 154.1 billion USD. This condition did not last long, given the Asia financial crisis in 1997. Corporate governance and the financial sector, as well as public institutions, are things at stake for the country.[8]

Although the Government in the most recent period has created new dynamics in capital formation, Indonesia's investment to GDP ratio has not yet recovered to pre-crisis levels and is below the rankings of comparable countries in Asia.[9]

The realization of FI activities in Indonesia can be applied through:[10]

1. Build image building, through: advertising in the media industry or financial in general; involved in investment fairs; undertaking general investment missions from source country to host country or from host country to source country; and / or holding seminars on investment opportunities.
2. Understanding the Investment Generation, as an examples: direct mail campaigns or telemarketing; undertake an industry or sector specific investment mission from the country of origin to the host country or *vice versa*; holding sector-specific information

7 Pramono, Nindyo. (2013). *Hukum PT Go Public Dan Pasar Modal*, ed. Dewi H., 1st ed. Yogyakarta: ANDI.
8 Hughes, Helen. (1996). *Perspectives for an Integrating World Economy: Implications for Reform and Development*. Singapore: Institute of Southeast Asian Studies.
9 Moccero, Diego. (2008)."Improving the Business and Investment Climate". *OECD Economics Department Working Paper*, No. 638: 59–87. doi: https://doi.org/10.1787/236810400872.
10 Morisset, Jacques and Kelly Andrews-Johnson. (2004). *The Effectiveness of Promotion Agencies at Attracting Foreign Direct Investment*. Washington: The World Bank.

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seminars industry; and / or engage in company-specific research followed by a sales presentation.

3. Opening Investor Services, such as: providing access to investment counseling services; acceleration of the application and licensing process; and / or provide post investment services.
4. Policy Advocacy, which can be done by actively participating in a policy task force; developing lobbying activities; drafting laws or policy recommendations; as well as reporting on investor perceptions.

Investment in Indonesia can be carried out in several ways, including: 1) taking a share of shares at the time of establishment of a Limited Liability Company; 2) buying shares; and 3) take other methods in accordance with statutory provisions.[11]

Procedurally, there is no significant difference in filing a FI application for the establishment of a new company or participation in a domestic company.[12] This is indicated by the transfer of Domestic Investment (DI) to FI which still requires approval like establishing a new company, one of them is through licensing which is the authority of the government in carrying out their functions, either on regulation and control.

The Researcher argues that the focus of investment agreements is exclusively on investment protectionor of the potential for certain disturbances, for example, such as the takeover of an investment business without compensation,[13] that becomes government's focus in formulating laws and policies that accommodate protection and legal certainty, especially for foreign investors. This becomes important due to agreement provides an

[11] Indonesia, Law on Investment, Law Number 25 Year 2007 concerning Investment, State Gazette Number 67, Year 2007, Article 5 Paragraph (3).

[12] Harjono, Dhaniswara K. (2012). *Hukum Penanaman Modal : Tinjauan terhadap Pemberlakuan Undang-Undang No. 25 Tahun 2007 tentang Penanaman Modal*. Jakarta: Pusat Pengembangan Hukum dan Bisnis Indonesia, p. 335.

[13] Bonnitcha, Jonathan. (2016). "Foreign Investment, Development and Governance: What International Investment Law Can Learn from the Empirical Literature on Investment". *Journal of International Dispute Settlement*, 7 (1): 31–54. doi: https://doi.org/10.1093/jnlids/idv030.

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important foundation for latercould applied, because of its binding nature and legal consequences if it is not implemented in accordance with existing agreements.[14]

One form of Government commitment in providing guarantee legal certainty for foreign investors, by issuing the Investment Law of 2007. The FDI regime has strengthened since that moment, because it has been abolished the old rules. It is a special characteristic that the existence of this Law is a pioneer inequality between DI and FI. These provisions in accordance with the principles of Trade Related Investment Measures which was conceived by World Trade Organization (WTO) that requires principle non-discrimination for the host country.[15] More specifically, through the Capital Market Law, sectoral barriers to foreign participation have been relaxed, at least in part. The government's sensitivity to the crucial issue that investment is an important sector for the economy is also accommodated through the Capital Investment Coordinating Board as organizational structure which is no longer a foreign investment authorizing agency, but becomes a promoter for investment activities, as well as being one of the influencers in making investment laws and policies in Indonesia.

Recent years, Capital Investment Coordinating Board has initiated a reduction in the approval period to be faster than the old policy. This initiative is implemented at the local government level, because of the constraints on the local sector which tends to be vulnerable to regulatory uncertainty. This is related to the practice of decentralization in Indonesia. Licensing is such a complex procedure that Capital Investment Coordinating Board has spearheaded the formation of One Stop Services to consolidate the process for business licenses issued by different government entities. Currently, people only come to the Capital Investment Coordinating Board office, then the investors are able to get information from 22 Ministries / Agencies and guarantee of certainty in terms and time of

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[14] Lewis, Arthur. (1998). *Dasar-Dasar Hukum Bisnis (Introduction to Business Law)*. Bandung: Nusa Media, p. 81.

[15] Hernawati, R.A.S and J.T. Suroso. (2020). "Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law". *Jurnal Ilmiah MEA (Manajemen, Ekonomi, dan Akuntansi*, 4 (1): 392–408. doi: https://doi.org/10.31955/mea.vol4.iss1.pp392-408.

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license processing. Other than that, the investors can also maximize processing time by monitoring online the application for licensing services submitted.[16]

To create a pro-investor investment climate, Capital Investment Coordinating Board and related Ministries / Agencies have simplified end-to-end licensing from 52 permits 923 days to 32 permits 256 days. It is also carrying out an integration One Step Services process between the Central and Regional in order to realize the same standards in providing licensing services. Furthermore, Capital Investment Coordinating Board has also compiled an Standard Operating Procedure on the mechanism for applying for a tax allowance where the applicant can find out whether his application is approved or not within 28 working days.[17]

However, well-designed legislation can not guarantee the success of the realization of FI in Indonesia. The investment problem in Indonesia is quite high.[18] This is a concern in the fluctuation of Indonesia's economic ranking in the Asia region. There are several basic reasons behind this problem, including:

1. Inconsistency of policy. This can be seen in the main duties and functions of Capital Investment Coordinating Board which still confuses the canditates of investors regarding whether it has a function as an investment promotion agency or as an integrated service center (one stop services).
2. Irregularities in regions that are still prone to double levies, due to the large number of Regional Regulations regarding user fees that are charged to investors who invest at the local level, whereas contracts ratified by the Central Government are included.[19]

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16 One Stop and Investment Service. (2021). *Begini Cara Pemerintahan Jokowi Ciptakan Iklim Investasi*. Available from: <https://web.dpmptsp.jatengprov.go.id/p/124/begini_cara_pemerintahan_jokowi_ciptakan_iklim_investasi>. [Accessed: March 15, 2021].

17 *Ibid*.

18 Hursepuny, Johan. (2019). "Penanaman Modal dan Permasalahannyadi Indonesia". *JISAMAR (Journal of Information System, Applied, Management, Accounting and Researh)*, 3 (2), 72–78, ISSN : 2598-8719 (Online) ISSN : 2598-8700 (Printed).

19 Putri, Resha Roshana, An-An Chandrawulan, and Prita Amalia. (2018). "Peringkat Arus Investasi Indonesia Dalam Kerangka Asean-China Free Trade Agreement (Perbandingan Dengan Singapura, Malaysia, Thailand, Dan Vietnam) Ditinjau Dari Prinsip Fair and Equitable Treatment". *Jurnal Hukum & Pembangunan*, 48 (2): 275-298. doi: http://dx.doi.org/10.21143/jhp.vol48.no2.1664.

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3. Uncertainty in the interpretation and implementation of regional autonomy which then creates new problems in relation to taxes and levies. As a result, the investment climate is increasingly unpredictable.
4. Lack of transparency in labor sector policies. The level of education and competence of workers are one of the considerations for investors in determining where they will invest.

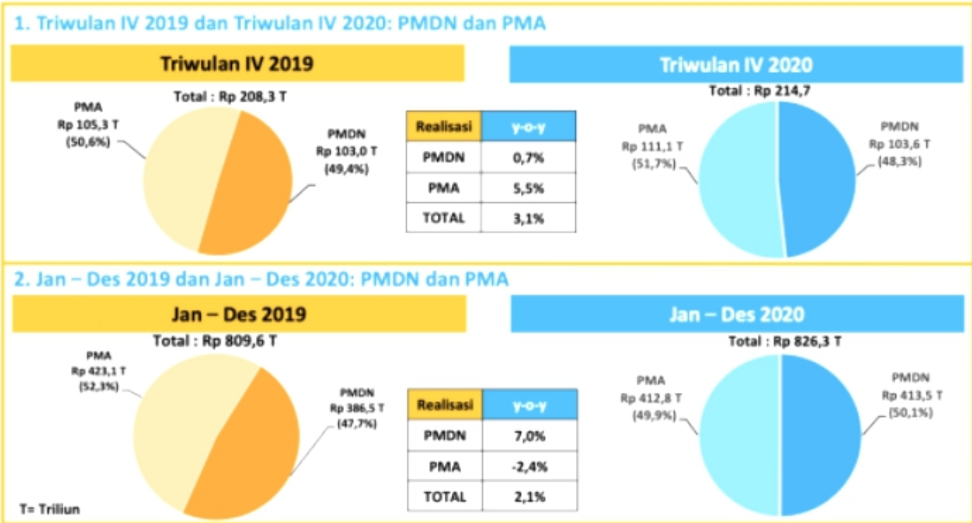

Figure 1. Investment Realization for the Period of 2019 and 2020.[20]

The Researcher argue that there is a fairly large consensus between legislators and the business community that a weak business ecosystem is a major obstacle to investment practices in Indonesia. This was characterized by macroeconomic instability; disharmony of regulations or regulatory uncertainty, including taxes and business licenses; weak law enforcement; contract inconsistencies; rigidity of labor regulations; and poor quality infrastructure.

[20] Capital Investment Coordinating Board of Republic of Indonesia. (2020). *Realisasi Penanaman Modal PMDN-PMA Triwulan IV Dan Januari - Desember Tahun 2020*. Available from: https://www.bkpm.go.id/images/uploads/file_siaran_pers/PTerbang_Realisasi_In Investasi_TW_IV_2020_Bahasa_Indonesia.pdf. [Accessed: March 15, 2021].

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The pro-investor policy makes it possible for Indonesia to achieve an improved business climate. That is considered consistent with alternative indicators for a successful business environment followed by legal certainty for foreign investors.[21]

During the COVID-19 Pandemic

The COVID-19 pandemic very influencing the rate of economic growth. Not only has tax revenue on trade in goods and / or services to oil and gas and non-oil and gas exports in Indonesia have decreased, but Indonesia's investment rate has also dropped dramatically.[22] The following is the realization report related to DI and FDI that has been issued by Capital Investment Coordinating Board. There was a decline from 52.3% in 2019 to 49.9% in 2020.[23]

The data above shows if amount of investment in FI has decreased, while DI has contributed more than FI. This is not only in spite of decreased activity Global Value Chain, but also not separated from the complexity the rules investment in Indonesia. The complexity of legislation in Indonesia is a consequence policy of decentralization to be one of the obstacles in improving the economic climate through business lines and investment. As a result, not just bound by Investment Law of 2007, the investors are also forced to comply with other complex laws, such sectoral laws.[24]

In this section, the Researcher have explored several articles in the Investment Law of 2007 which allow the creation of obstacles to the realization of foreign investment in Indonesia, especially during the COVID-19 pandemic, as follows:

1. Article 5 Paragraph (2): "*FI must be in the form of a limited liability company based on Indonesian law and domiciled in the territory of the Indonesian state, unless otherwise stipulated by*

21 Abidin, R. F. (2017). "Harmonisasi Peraturan Penanaman Modal Asing Dalam Bidang Pertambangan Mineral Dan Batubara Berdasarkan Prinsip Keadilan (Studi Kontrak Karya Antara Pemerintah Republik Indonesia Dengan PT. Freeport Indonesia". *Az Zarqa'*, 9 (2): 315–364.

22 Nasution, Dito Aditia Darma, *et. al*. (2020). "Dampak Pandemi Covid-19 terhadap Perekonomian Indonesia". *Jurnal Benefita*, 5 (2): 212-224.

23 Capital Investment Coordinating Board of Republic of Indonesia. (2020). *Realisasi Penanaman Modal PMDN-PMA Triwulan IV Dan Januari - Desember Tahun 2020*. Available from: https://www.bkpm.go.id/images/uploads/file_siaran_pers/P Terbang_Realisasi_In Investasi_TW_IV_2020_Bahasa_Indonesia.pdf. [Accessed: March 15, 2021].

24 Abdullah, Adang. (2007). "Tinjauan Hukum Atas UU Penanaman Modal Nomor 25 Tahun 2007: Sebuah Catatan". *Jurnal Hukum Bisnis*, 26 (4).

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law". That is explained that the physical position of a FI business entity in Indonesia is mandatory. The Researcher concludes that this contains ambiguity, because normatively there is another understanding, through the existence of a Permanent Establishment, such as in the mineral and coal business sector, which allows the position of the company to be outside the territory of Indonesia. This non-uniformity becomes a gap for the state which results in toreluctance investors to invest in Indonesia.

2. Article 23 Paragraph (3) regulates facilities that can be enjoyed by foreign investors, such as: Granting a limited stay permit for foreign investors for 2 (two) years; Granting the change of status of a limited stay permit for an investor to a permanent residence permit after living in Indonesia for 2 (two) consecutive years; Granting re-entry permits for multiple trips for limited stay permit holders and with a validity period of 1 (one) year is granted for a maximum period of 12 (twelve) months from the date the limited stay permit was granted and applies in multiples of 2 (two). Furthermore, in Paragraph (4) it is explained that the permit is granted by the Directorate General of Immigration on the basis of a recommendation from Capital Investment Coordinating Board. It means the investors need to go through several tiered permit processes. This reflects that the bureaucratic process related to investor licensing is quite complicated. The actual fact is that it is a logical consequence for investors to intend to stay in Indonesia, so that they can directly monitor the running of the wheels of the company concerned.

As an illustration of how regulations can become a burden for FI activities, when an investor wants to build a factory in Indonesia to supply the domestic market, investors must pay attention to the 900 regulations from the Ministry of Manpower and the Ministry of Industry. In addition, if they want to participate in the Global Value Chain and import semi-finished materials or export finished products, there will be 695 trade rules that must be obeyed. Investors must also follow certain sector policies issued by the Ministry of Transportation, Education, Agriculture, Energy and Mineral Resources, Construction, Communications.information and information, and Tourism. Apart from complying with all central regulations, investors also still have to pass various regional regulations, depending on where their investment is located. These FI regulations are another factor in

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the obstacle for foreign investors to make Indonesia their land for investing, especially during the period of COVID-19 pandemic.

Critical Narrative of the Job Creation Law as a Representation of the Investment Legal Revolution

Economic globalization in the last few decades has created a separate correlation between multinational companies and developing countries. Identical business and investment identities can be analogous to coin.[25] The existence of foreign investors is undoubtedly a strong subject in the legal, business and economic communities created by market and capital liberalization. The understanding of liberalization is identified as the impact of globalization brought about by economic development.[26] There is also Indonesia, with its capacity as a developing country, which can be called an avid reader of external capital. This is due to Indonesia's position of having a GDP rating below the global cumulative value.[27]

Investment is an essential factor in economic development.[28] As a mainstay of reform efforts, the government has provided a positive signal to the business and investment community with the passing of the Omnibus Law in the form of Law Number 11 of 2020 concerning Job Creation in October 2020. However, this regulation is also not immediately make FI regulations easier. The reason is that changes to articles in a law do not automatically cancel the Law and its implementing regulations. For example, Omnibus Law on Job Creation amending 5 (five) of the 40 articles in the Capital Market Law. 1 (one)

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25 Echandi, Roberto. (2013). *Prospects in International Investment Law and Policy*, ed. Pierre Sauve. Cambridge: Cambridge University Press, p. 159.

26 Hangabei, Sinung Mufti, Khudzaifah Dimyati, and Natangsa Surbakti. (2020). "Oversee Investment and Indonesia Economic Regulatory Reform in the Era of Globalization and Industrial Revolution 4.0". *International Journal of Advanced Science and Technology*, 29 (4): 5123–5138. https://www.researchgate.net/profile/Sinung_Hangabei/publication/342344573_Oversee_Investment_and_Indonesia_Economic_Regulatory_Reform_in_the_Era_of_Globalization_and_Industrial_Revolution_40/links/5eef187e458515814a71a38e/Oversee-Investment-and-Indonesia.

27 Jened, Rahmi and Betharia Noor Indahsari. (2019). "Lessons Learned from the British Exit from the European Union for Indonesia and the ASEAN Economic Community". *Hasanuddin Law Review*, 5 (1): 132–139. doi: http://dx.doi.org/10.20956/halrev.v5i1.1850.

28 Wamafma, Filep, et al. (2019). "The Arrangement of Investment Policy for the Protection of Indigeneous People's Rights". *Hasanuddin Law Review*, 5 (2): 253–261. doi: http://dx.doi.org/10.20956/halrev.v5i2.2403.

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article requires a new Presidential Regulation, while the other 4 (four) articles require regulatory adjustments. The rest of the articles remain in effect and include the implementing regulations. Therefore, investment in the future must follow 2 (two) Laws, Omnibus Law on Job Creation as the new rules and the Investment Law on 2007, each with its implementing regulations. Therefore, complexity regulations and the risk of overlap allows for confusion regarding the implementation of FI regulations in Indonesia, especially at the regional level.

The position of the Omnibus Law on Job Creation has directly annulled a number of provisions in the Investment Law on 2007. The Researcher argues that the pros and cons of change will always exist in every legislative reform.

The change has been proven through Article 77 of the Omnibus Law on Job Creation which provides new regulations related to business fields, which are then clarified through derivative regulations in the form of Presidential Regulation Number 10 of 2021 concerning Investment Business Fields. There is also a provision in Article 2 of the Presidential Regulation above which states that in essence: all business fields are open to investment activities, except: 1) closed business fields; and 2) business fields that can only be carried out by the Central Government.[29]

Business fields that are closed to investment, both DI and FI refer to Article 77 of the Job Creation Law, including: *first*, the cultivation and narcotics industry of class I; *second*, all forms of gambling and / or casino activities; *third*, catching fish species listed in the Appendic I Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); *fourth*, utilization or taking of corals and utilization or taking of corals from nature which are used for building materials / lime / calcium, aquariums, and souvenirs / jewelry, as well as live or dead coral (recent death coral) from nature; *fifth*, the chemical

[29] Indonesia, Presidential Regulation concerning the Investment Business Sector, Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector, State Gazette Number 61, of 2021, Article 2.

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weapons manufacturing industry; and *lastly*, the industrial chemical industry and the ozone depleting substances industry.[30]

If analyzed, the formulation of Article 12 of the Investment Law on 2007 which is changed through Article 77 of the Omnibus Law on Job Creation rated open gap for foreign investors to invest in strategic sectors which are quite crucial for the life of the wider community, such as the electricity sector, water, telecommunications, etc. In addition, the Omnibus Law on Job Creation has also eliminated closed business fields, such as the production of weapons, ammunition, explosives and war equipment. Even so, the existing laws and regulations only exclude the chemical weapons industry for foreign investors which means that foreign investors can still invest in other weapons industries.

In addition, that article does not adopt advanced provision of the formulation of Article 12 of the Investment Law, the Presidential Regulation Number 44 of 2016 concerning List of Related Open Business Fields related to the investment requirements if people want to establish an incorporated company, such as: *first*, the company business field is not included in the Negative Investment List; *second*, Minimum Capital; and *third*, Maximum Foreign Equity Participation. Non-limitative nature in equity participation it is feared that it could threaten the stability and sovereignty of the country, as well as social welfare. Preferable if strategic and important domestic industries are exempted from interference by foreign investors. Although only through investment, this is important to protect, because practically it does not rule out the possibility for them to be able to control strategic sectors in the country which of course in the future can become a threat.for country.

Another thing that must be questioned is whether the guarantees and certainties for the subjects who are involved in investment activities are sufficient to be guaranteed by the state through law. and policywhich exists. On the other hand, the ease of investment activities for foreign investors must of course be linear with the welfare of the community, such as regarding the absorption of labor, and so on.

30 Indonesia, Job Creation Law, Law Number 11 of 2020 concerning Job Creation, State Gazette Number 245, 2020 year, Art 77.

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Most recently, companies in this era are the protagonists of world economic development. But another key issue is the extent to which investors contribute to improving social welfare in the host country. The social welfare obtained by the state through foreign investment is the main guarantee of business stability, both from the perspective of both the investor and the host. This requires further study. Even so, at least the substance of the law and decision makers should be able to create the ultimate goal of legal and economic practice through investment activities, which is nothing but social welfare.

CONCLUSION

The implementation of FI regulations in Indonesia has in fact experienced a decline in investment figures, even since the period before the COVID-19 pandemic. This is a separate concern regarding the factors of the decreasing rate of improvement of the investment climate in Indonesia due to the complexity of the FI regulations, which results in the absence of legal certainty. There are also bureaucratic practices in areas that are prone to double levies which is another reason for the low interest of foreign investors in Indonesia.

The existence of the Omnibus Law on Job Creation does not automatically guarantee the investment legal revolution in Indonesia, because in some articles it has legal loopholes that have the potential to threaten the stability and sovereignty of the country, as well as social welfare. Even though the economic climate potentially to develop, the absence of a guarantee for the people's welfare after the progress of the country's economy is another problem that is incompatible with the principles of sustainable development.

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