

PROGRESSIVE LEGAL POLICY ON INVESTMENT IN THE NICKEL AND COAL MINERAL PROCESSING INDUSTRY SECTOR FOR JUSTICE AND PEOPLE'S WELFARE

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Abstract: *This study looks at the Indonesian government's policies on nickel and coal minerals in order to provide certainty and protection for both state and business actors. Government policies that do not aim for the welfare of the public result in ineffective policies that deplete natural resources but do not benefit the people. The author discusses the importance of investment law in managing natural resources and the government's failure to manage natural resources from an interdisciplinary standpoint. The study's findings on the potential of exploited natural resources and government intervention are also presented. The study examines the implications and relationship between a state that does not prosper its people and lacks a legal framework to manage nickel and coal natural resources.*

Keywords: *nickel; coal; natural resources; investment law; welfare*

1. INTRODUCTION

Indonesia is a rich country in natural resource potential with renewable and non-renewable resources. The control and management of the potential of natural resources in Indonesia is constitutionally regulated (Arsil & Ayuni, 2021). The development of investment in a country is one indicator of the progress of economic growth in that country (Venkatesan .& Luongo, .2019; Nuraini & Hariyani, 2019). Investments made properly can support the achievement of improving the welfare of the community. However, in reality, developing countries including Indonesia are not able to carry out comprehensive development if they only rely on domestic capital, due to the low level of public saving, capital accumulation that is not yet effective and efficient, and inadequate skills (Levine, 2021). These obstacles are tried to be overcome by various alternatives, including through foreign assistance and cooperation needed to complement domestic capital that can be immediately mobilized.

Foreign investment is one of the important instruments in a country's economic system, it cannot be denied that many developed countries and developing countries such as Indonesia are trying their best to become investment destinations from various developed countries in order to move the wheels of the economy, especially the general mining industry sector which is one of the fields of investment that plays an important role in the continuity of national economic growth with the primary goal to gain prosperity and ensure welfare of the people. Indonesia's natural resources, especially in the general mining sector, such as nickel and coal are quite large (Sony, 2019). However, it has not been processed optimally due to funding and technology problems, so since the first nickel mining materials have been exported in the form of raw materials at low prices. This scope is not excessive if it is stated that the presence of investment in the nickel mining sector in Indonesia is a significant matter in supporting national development.

Many positive steps have been initiated/undertaken by the Jokowi government in order to increase foreign investors in Indonesia, one of which is the formation of a ministry of investment. "The Investment Coordinating Board (BKPM)" was changed to the Ministry of Investment, aspects of certainty, transparency, and policy coherence related to investment, bureaucratic efficiency and ease of administration - administration of doing business and investing in Indonesia can be further improved. With the position of BKPM as a ministry, it is hoped that the cooperation between BKPM



and the technical ministries in the sector can be more balanced and more able to complement each other so that the interests of creating a competitive business and investment climate are important. In addition, the establishment of the Ministry of Investment aims to make Indonesia more reliable and strong, as well as adaptive in responding to changes at the regional and international levels that affect the competitiveness of the business and investment climate in Indonesia. Hence, there are various policies in place to aid the economic development with investment in the mining industry to make the most of the resources (OECD, 2019). The purpose of this article is to explore the policies of Indonesia's government in nickel and coal mining with effective consideration of society welfare.

2. LITERATURE REVIEW

The Indonesian Government continued to spur the mineral and coal sector to continue to contribute to the interests of the nation and people of Indonesia even during the pandemic. This sector is also experiencing a very good growth trend. In addition, in terms of minerals, amid the export ban in the form of raw materials due to the impact of the ban on palm oil to the European Union, the government continues to increase added value through downstreaming (Rifin, et al., 2020). As of December 2020, 18 units of mineral processing and refining facilities, or smelters, have been completed and another 30 units are still under construction. Of the 18 smelters that have been operating, 12 units are for nickel, 2 units for bauxite, 1 unit for iron, 2 units for copper, and 1 unit for manganese (Visiglobal, 2021). It is hoped that with the ban on raw material exports, nickel mineral production can provide added value and state revenue from the mining sector.

Provisions regarding investment as regulated in various investment regulations, stipulated Indonesian investment policies as the basis or basis for the government to regulate and direct, as well as develop investment in Indonesia. The existence of this investment policy will emphasize the government's efforts to regulate and direct investment in Indonesia so that it can make an optimal contribution to Indonesia's economic development. There are many examples that can be used as references in seeing the existence of investment in various countries. The absence of a clear policy in the regulation of investment results in the existence of investment being deemed not to provide a contribution or benefit to the host country (OECD, 2000). On the contrary, the existence of investment is only considered as a parasite in the economic system of a country. Reflecting on the cases that occurred in almost all Latin American countries where the existence of investment is only a tool for the authorities to enrich themselves and the natural resource depletion is so massive that it creates a deep sense of hatred and antipathy for the Latin American community towards foreign investment in the country (da Rocha & Bielschowsky, 2018).

The main need for national development in Indonesia can come from the presence of domestic investors. However, the limited domestic investment funds owned, caused the government to require funds from foreign investors. Foreign investment is one source of investment that can be used to create national development. Foreign investors have many factors to consider for foreign investors before investing in Indonesia. One of them is the legal protection provided by the state for foreign investors. There needs to be protection for these investments regardless of whether or not there are problems and risks faced by investors related to their investment activities in the recipient country. There are various kinds that can lead to disputes in the implementation of foreign investment, including economic and monetary crises, the political situation that occurs in the recipient country of capital, which can hinder the implementation of investments that have been agreed with foreign investors.

3. METHODOLOGY

The study has used the secondary method of data collection to complete the work in an effective manner while discussing the progressive legal policy on investment in Indonesia's nickel and coal mineral processing industry for justice and people welfare's. Secondary data collection involves gathering information from sources that already exists and involve the primary work of other researchers. Further, the collection of data from the secondary sources has been supported with the qualitative design. The qualitative design involves gathering non-numerical and textual information



on the topic to gain an in-depth understanding of the subject matter. The qualitative design helps with the collection of large amount of data on the topic to explore all elements of the topic. The flexibility offered by the design to the researcher is the reason why this design has been selected for this study. Hence, government reports, official websites of the Indonesian government and peer-reviewed journals have been used to gather the required information on the topic. The gathered information have been presented in different headings in the next section of the article.

4. FINDINGS AND DISCUSSIONS

4.1 Importance of investment policies and law in managing the natural resources

Investment policy will be able to provide direction for efforts to develop investment in Indonesia and become the basic framework for further investment arrangements. Without an investment policy, of course, the direction of our investment development will be unclear. In the sense that the investment development efforts carried out are not well planned, so that the implementation of their business applications is also not optimal. In fact, it often creates opposition and antipathy from the community because it is considered that the contribution given is not sufficient or in accordance or relevant with the needs of the community. Investment regulation policies are increasingly coming to the fore in line with the ongoing decentralization policy in Indonesia through the process of implementing regional autonomy which has been in place since 2001. In addition, the crisis period is still often felt to haunt Indonesia's national economy so that it requires extra careful handling. Substantially the regional autonomy policy implemented in Indonesia can be interpreted as regional independence to carry out government functions and development in the region.

The existence of a kind of dualism in the management or implementation of investment as mentioned above, becomes an assessment by most foreign investors in seeing the implementation of regional autonomy in Indonesia as a lack of legal certainty (Nasir, 2023), so they assume that instead of regional autonomy it will provide benefits and comfort for investing, especially investment services. Better capital but on the contrary it will lead to a high cost economy. Some cases have made it clear through various unfounded charges, non-compliance with the licensing system and one-door service system due to the absence of clear authority granting to investment bodies/or institutions in the regions, whether in the province or the province. district/city area, then this will also affect the efforts to supervise and control investment in the region. The problem of revamping the investment licensing process in Indonesia, including the authority to grant initial approval (permit in principle) to investment activities, both foreign investment and domestic investment, is a homework that never seems to be done properly. Surveys that are often carried out by certain parties show that in order to carry out a business activity in Indonesia, a number of business licenses are required, the process of which is still relatively inefficient and highly bureaucratic in terms of time and cost (Pananrangi & Nurkaidah, 2021).

One of the efforts that have been made for a long time to make the business licensing process run faster, simpler and more efficiently is to establish a One Stop Shop or One Stop Investment Services through the establishment of the Investment Coordinating Board (BKPM) in 1973. Failure to carry out One Stop Investment Service is actually not due to BKPM's inability to serve potential investors, but rather to BKPM's inability to serve the interests of government agencies that have the authority to issue the relevant business permits. To improve the performance of a one stop shop in the business licensing process in Indonesia, serious political will is needed to reform the bureaucracy and even reform in the legal field, both at the central and regional levels. This situation is taken into account by investors with regard to the impact it will have. Factors that can support the entry of investment flows into a country, such as security guarantees, political stability, and legal certainty, appear to be a separate problem for Indonesia. Even regional autonomy which is now being implemented in Indonesia is considered to be a new problem in investment activities in several regions. Such as issues concerning the clarity of coordination of the authority of the central and regional governments in terms of managing investment activities.

Weak institutional coordination is caused by unclear duties and main functions of each agency and also by coordination mechanisms that do not work well (Blompkam et al., 2018). Often failures in



coordination are caused by subjective considerations based on political and economic interests. In order to improve investment competitiveness to attract as much investment into Indonesia as possible, the weakness of coordination between the relevant agencies needs to be corrected by increasing institutional synchronization at both the central and regional levels. In addition, it is necessary to carry out a comprehensive management (reform) of the state apparatus (civil service reform) and reform of public services (public service reform).

4.2 Governments' role and intervention in the management of the natural resources

From the provisions of the laws and regulations above, it is clear how changes in government authority have occurred in terms of the implementation and service of investment. On the one hand, regulations require the necessity of centralizing authority to the center, while on the other hand there are regulations that stipulate the necessity for decentralization to the regions. As regulated in the Investment Law, foreign investment activities are under the authority of the central government. This causes the regions to lack 'power' in the regulation of foreign investment which should be provided by law, especially with the implementation of regional autonomy. Regions should have a big role in developing the potential in their regions, especially in the field of investment.

The type of nickel ore and coal mining is one of the many destinations for foreign investors in the mining sector. As we know that the potential of nickel ore in Indonesia has been known for a long time. Indonesia is known as a country that has a large content of mining materials, both those that have been mined and those that have not been mined. The world nickel market remains strong, where world nickel demand is increasing, especially in European and Asian countries, which are estimated at 370 million tons (Huber, 2021). That the occurrence of the takeover or nationalization of foreign companies in 1958 through "Law Number 86 of 1958" concerning the "Nationalization of Dutch-Owned Companies" by the Soekarno Government would certainly be a consideration for potential investors and/or investors. Nationalization also occurred in 1962 when Indonesia confronted Malaysia. Even with the existence of "Law Number 25 of 2007" concerning Investment, it is said that the government will not take expropriation actions, except by law. Although it is stated in the provision that in the event of a takeover, compensation or replacement of an amount of money according to the market price will be provided, this will still lead to a dispute (Salim & Prisandani, 2022). Of course, the dispute will make foreign investors pay more for litigation, which will be burdensome.

Another issue related to the investment climate in the nickel and coal mining industry sector is related to the determination of the Mineral Benchmark Price, which is currently the implementation of the Mineral Benchmark Price (HPM) by the central government through the "Ministry of Energy and Mineral Resources", which is expected to provide justice for nickel miners. Currently, APNI is also pushing for the implementation of the ESDM Ministerial Regulation (Permen) No. 11 of 2020 which regulates the domestic nickel trade system in order to avoid price injustice conflicts between miners and buyers who are domestic nickel smelter companies. Although this rule has been in effect since May 14, 2020, a month since it was promulgated on April 14, 2020, in fact until now there are still companies that have not obeyed. This is allegedly because the determination of HPM is still not fully able to support a balanced profit for investors who have invested in industrial sectors such as Smelter. Production costs, taxes, labor, and industrial operations on the existence of HPM are considered influential and less profitable for investors.

"Law Number 4 of 2009" concerning "Mineral and Coal Mining", part of which has been amended by "Law Number 3 of 2020". Various legal regulations that have been established and applied do not always specifically regulate mineral and coal mining, but there are also those that actually regulate other issues but have something to do with mining, for example the Regional Government Law. Changes in regulations will basically change the direction of policy regarding matters regulated in the regulation, as well as in the mineral and coal sector. For example, the post-reformation local government was given the authority to manage mining in its territory but in subsequent developments this authority was removed, it became possible because of the regulations that were formed. Thus, the 2009 Minerba Law, which has only been in effect and has been running for five years, must base and adjust its provisions with the 2014 Regional Government Law.



Other problems related to mineral and coal mining management regulations that are considered confusing to investors are that the Government's policies are considered inconsistent, such as related to the prohibition of oil and gas coal spore. The government's policy to ban coal exports on January 1-31 2022, was carried out to avoid a domestic energy crisis and the inflation risk that follows. The reason is, the export ban was lifted again less than two weeks after it was enforced. In the initial decision, the ban would be in effect for one month. The tendency of the government to often make inconsistent policies can have an impact on the confidence of foreign investors to invest in the mining sector (Price Waterhouse Cooper, 2019). The implications for the investment regulation climate in the mining sector can be seen in the realization of investment in mining sector with 310 projects costing US\$482.7 million (Ministry of Investment, n.d). Investment in 2019 was down compared to 2018 which reached US\$ 7.48 billion. Many investors prefer to invest in several countries such as New Caledonia because they are considered more profitable, even though Indonesia's nickel and coal natural resource reserves are still superior.

There has been no significant settlement of investment in the mining sector so far. For this reason, it is necessary to understand and revise the legal substance of the Minerba law through the Omnibus Law which specifically regulates and accommodates various matters in the field of nickel and coal mining so that there is no overlap and gap in the regulations concerning Minerba. One of the Government's efforts to increase investment is carried out through supporting regulations, namely "Law no. 11 of 2020" concerning. The ratification of the "Job Creation Law" is expected to have an impact on good economic development. Indonesia has a vision to become the top 5 countries with the strongest economy in the world, and has a GDP of IDR 27 million per capita per month by 2045 (The Jakarta Post, 2023). It is hoped that the "Job Creation Law" can create a conducive investment climate that will absorb more workers thereby reducing unemployment, increasing economic growth, and increased worker productivity. Job Creation has several strategic policies. These policies are bringing the much needed improvement within the investment ecosystem along with the business activities, protecting and welfare of workers, facilitating, empowering, and protecting Micro, Small and Medium Enterprises (MSMEs). In addition, other policies are increasing government investment and national strategic projects.

Furthermore, investment requirements are made easier with the Job Creation Act. First, determine the investment business fields that are encouraged for investment. The investment criteria in question include high technology, large investments, digital-based, and labor-intensive. Second, for MSME business activities, they can partner with foreign capital. Third, the status of Foreign Investment (PMA) is only associated with foreign ownership restrictions. The fourth and final requirement, the investment requirement provisions in the sector law are removed because they will be regulated in the Presidential Regulation on Investment Business (BUPM). With the "Job Creation Law" passed by the government, it is hoped that it will encourage the entry of quality investment so that it will have an impact on employment and increase economic growth in Indonesia (Ministry of Investment, 2021).

However, the job creation law has not been able to increase mineral and coal investment (minerba). Realization of investment in this sector from the beginning of the year to May 2021 is still low. Investment in the mineral and coal subsector in 2020 missed the target. Realized investment was recorded at USD 4.015 billion, below the target USD 7.749 billion. For 2021, mineral and coal investment is targeted at USD5.984 billion (Ministry of Energy and Mineral Resources, 2021). The government's move to issue a job creation law is correct. However, the follow-up to implement the regulations in the field is still long. For example, the preparation of implementing regulations, government regulations (PP), and ministerial regulations (Permen). Entrepreneurs currently want the rules that have been drawn up by the government to attract investment to be accelerated. In addition, the implementation of the rules as far as possible can be implemented. This is because in the mining sector there are many regulations. With the current conditions, the most important thing is how all government regulations as derivatives of "Law Number 3 of 2020" concerning mineral and coal must be completed first. Including the Presidential Regulation regarding the delegation of authority for mineral and coal licensing from the regions to the central government. The "Ministry of



Environment and Forestry (KLHK)”, the “Ministry of Energy and Mineral Resources (ESDM)” and the Ministry of Finance must be involved in drafting regulations derived from the Minerba Law. Especially regarding licensing and taxation which are much attached to raise investment.

4.3 Legal Protection of Investors in the Nickel and Coal Mineral Mining Industry Sector

Economic development is an indicator to determine the economic progress of a country. The presence of investment allows the government to provide jobs in large numbers to reduce the number of unemployed in the community and can improve people's welfare. This can be seen through the high interest in investment in the mining sector. The most productive regions in Indonesia are Kalimantan and Sumatra, but the supply of coal in Indonesia is not only found in these areas but is spread over 21 provinces. According to data from the Institute for Essential Services Reform (2021), in 2020 Indonesia is recorded to have total nickel metal resources and reserves of 143 million tons and 49 million tons, respectively. Meanwhile, the total resources and reserves of cobalt are 3.6 million tons and 0.4 million tons, respectively. Based on data from the “Directorate General of Mineral and Coal”, there are a total of 339 active mineral and coal permits with a total area of around 836 thousand hectares spread across “Southeast Sulawesi, Central Sulawesi, South Sulawesi, North Maluku, Maluku, South Kalimantan, West Papua, and Papua”. Indonesia's nickel ore production reached 0.76 million tons-Ni with an absorption of around 0.70 million tons.

Prior to 2019, the trade balance for nickel-based products provided a positive value, which mostly came from the contribution of exports of ore, NPI/FeNi, nickel matte, and HRC stainless steel. While in 2020, its contribution will be increased by CRC stainless steel. According to data from June 2021, nickel processing and refining plants that have been operating are dominated by pyrometallurgical technology as many as 27 factories, while there are only 2 hydrometallurgical technology users that have been operating (Media Nikel Indonesia, 2022). The downstream nickel industry that has been developed is the stainless steel industry with a production realization of 2.62 million tons of 300-series and 60 thousand tons of 200-series steel. An increase in nickel ore exploration activities is needed, especially for saprolite ore, because the life of the reserves ranges from 10 years (>1.7%Ni content) to 15 years (>1.5%Ni content), at a wet ore consumption rate of 210 million tons per year. Year (Media Nikel Indonesia, 2021). Exploration of other minerals related to the nickel industry is also needed, for example the exploration of iron, chromite, manganese, lithium, and cobalt minerals to support the stainless steel and lithium battery industries.

The state of abundant mineral and coal resources is a good opportunity for the country to improve the economy in the mining sector. The results from the management and use of mining are marketed through national and international market sales. Mineral and Coal Mining is an important and strategic sector that is able to provide benefits to the lives of many people. As a vital production component, the mining sector is included in the scope of Article 33 of the 1945 Constitution which emphasizes that all natural resources contained in the Indonesian soil are sought for the welfare of the people. Since the mineral and coal mining industry started operating in Indonesia, the high economic benefits of this sector have attracted investors, both foreign and national private, to develop it. Indonesia is a very profitable land for investors who want to invest in this field. Not only in terms of capital but also domestic and foreign investors to be able to assist the Indonesian government in absorbing labor, creating domestic demands as raw materials, helping to increase foreign exchange for Indonesia, technology experts and also knowledge.

Although the main source of funding in Indonesia still comes from domestic lenders (Bank Indonesia, 2023), it is still not sufficient, therefore Indonesia still needs investments from foreign investors. Therefore, Indonesia needs a law that protects investors and attract not only domestic investors but also foreign investors. The rules governing investment were initially differentiated through Law No. 11 of 1967 concerning Foreign Investment and Law No. 6 of 1968. Then there were many changes to make it easier and provide clearer legal certainty to PMDN and PMA. Then it was made by combining the two in Law No. 25 of 2007. The making of the Capital Market Law must be based on the creation of a clean and good investment in order to increase the attractiveness of investment. Then proceed to be able to regulate everything that is important, covering aspects in various investment sectors to promote economic growth for the welfare of the people.



“Foreign Investment (PMA)” is an investment made by foreigners in the field of investors in the form of business activities within the territory of the Republic of Indonesia which are carried out by investors from abroad, either using entirely foreign funds or through cooperation with domestic investors (joint venture). PMA itself has advantages including its long-term nature, facilitating immigration permits. This is done in order to invite and attract PMA to invest their capital, because if investment increases, economic growth will also increase in order to have good success in economic development in Indonesia which is based on creating a clean economy and political stability (The World Bank, 2022).

4.4 Renewal of the Investment Law in Support of Increasing Investment in the Nickel and Coal Mineral Mining Industry

Development priorities in order to improve the welfare of the people must be structured and have the main targets including: improving justice and law enforcement as reflected in the creation of a fair, consistent and non-discriminatory legal system, as well as providing protection and respect for human rights, ensuring the consistency of all laws and regulations. Invitations at the central and regional levels as part of efforts to restore public confidence in legal certainty. To achieve this target, development priorities must be placed on efforts to reform the national legal system and legal politics, which are directed primarily at strengthening efforts to eradicate corruption through improving legal substance, legal structure and legal culture by increasing professionalism and improving the quality of the system in all areas of the judiciary. Simplify the judicial system and ensure that the law is applied in a fair manner which respects and strengthens local wisdom and customary law to develop the legal and regulatory system (Junkung Madyo, 2023).

Further, investment as an alternative to development financing must be able to facilitate economic development, where investment can further lead to economic progress, transfer of knowledge and technology while creating new opportunities to reduce the unemployment rate and being able to increase people's purchasing power. For this reason, only by encouraging investment can economic growth continue to be spurred so that it is able to balance the economic capabilities of other countries.

This is in line with the content contained in “Article 33 paragraph (1) of the 1945 Constitution” which states that, “Indonesia's economy is run based on joint efforts and the principle of kinship”. On that basis, Indonesian Investment has an ideal and constitutional basis in accordance with the norms contained in the Pancasila philosophy and the 1945 Constitution. With this principle, Indonesian Investment is directed to efforts to equalize people's incomes towards increasing economic capacity. So that investment is able to encourage Indonesia's economic growth in line with the economic development outlined by the Government. For this reason, economic development must be supported by legal development because the two are mutually supportive, where economic development can only be achieved if there is legal certainty. Between law and economics are two systems of social systems that are mutually integrated with each other.

To achieve economic development that moves quickly towards high economic growth following the development of society, the law must be able to anticipate every movement of change as a manifestation of legal functions, as follows:

1. It should contain pleasant surprises for investors;
2. the need to broadcast credible signals of Indonesia's strategic intent to return to a fast-paced development orbit through a strong investment revival;
3. Need to clear up some institutional confusions related to Investment;
4. It needs the support of a broad political coalition, if not consensus;
5. Requires a fast process, because speed is very important in every race;
6. The new Investment Law and its implementation need to reflect the diffusion of today's technological advances, especially information and communication technology;
7. Investment procedures need to be made very transparent, concise and definite as a reflection of the high response policy;
8. The new law limits incentives to a few businesses, namely those that are truly pioneers and/or located in disadvantaged areas.



4.5 Regulatory Arrangement Policy in the Mineral and Coal Mining Sector for People's Welfare *Contract of Work (KK) Becomes Mining Business Permit (IUP)*

One of the most fundamental changes is the system of “Contracts of Work (KK)” and “Coal Mining Concession Work Agreements (PKP2B)” into mining business permits, a transition period for ongoing contracts of work, and the obligation to build smelters (processing) in the country. Based on Law no. 11 of 1967 concerning the Basic Provisions for Mining, mining exploitation and management using a contract of work pattern. With this pattern, the benefits obtained by the Indonesian people from the exploitation and management of mineral and coal mining are considered not optimal, because the state's position is on a par with mining companies. In fact, the state is the owner of all mineral and coal deposits in the bowels of Indonesia. The entire mining wealth must be used for the greatest prosperity of the Indonesian people (Law of the Republic of Indonesia Number 4 of 2009).

Article 170 of the Minerba Law states that the KK and PKP2B that existed before the enactment of this Law will remain in effect until the expiration of the contract/agreement. The law also stipulates that although the current KK and PKP2B are still valid, the provisions contained therein must be adjusted no later than 1 year after the Minerba Law is enacted. But not all of the adjusted provisions, provisions related to state revenues are maintained and do not need to be changed. Article 33 of the Minerba Law states that mining concessions that previously used a contract and agreement regime are then carried out in three forms, namely “Mining Business Permits (IUP), People's Mining Permits (IPR), and Mining Business Agreements (PUP)”. The difference is, if one uses the form of contracts and agreements, then the government and mining companies are two equal parties. Both methods have very basic changes, namely the permit form method, the position of the government can be said to be more 'higher or more powerful' because it acts as the party that gives permits to mining companies to carry out mining activities (Rocha & Paul, 2012).

The government has the 'power' to revoke permits if deemed necessary through existing procedures. The granting of permits was divided into three. For IUPs, permits are given to mining companies that can carry out large-scale mining. People's Mining Permits (IPR) are granted to communities or cooperatives that carry out small-scale mining activities. Meanwhile, the Mining Business Agreement (PUP) is carried out by the mining company with the implementing agency established by the government. In the oil and gas sector, the agency is like BP Migas. PUP is expected to provide more legal certainty than IUP in doing business because until now Indonesia does not yet have a good prevailing law system. Economically, mining management in Indonesia is considered less profitable for the country because many domestic mining products are exported as raw products, so the prices are cheap (Laksana, 2022). After being processed abroad, many semi-finished or finished products are re-imported to Indonesia. In this way, the added value of mining products is enjoyed by other countries.

In order to increase state revenue, the Minerba Law implements several obligations for IUP and PUP holders in processing and refining mining products in the country as stated in Article 110 of the Minerba Law. Meanwhile, in Article 171 it is stated that the implementation of the provisions concerning the purification of Contract of Work holders who are already in production shall be carried out no later than 5 years after the Minerba Law is enacted. The feasibility of a mine must also be considered in determining the extent to which the downstream industry is required to be carried out by the company. The Minerba Law also states the obligation to develop a domestic smelter. This is determined to increase the added value of domestic mining products. In addition, this law also expands the granting of permits to individuals other than business entities and cooperatives (Hartana, 2017). The expansion of this provision will encourage the issuance of more permits.

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Investment policies to support trade that are global in nature not only allow trade traffic in several countries in the world, but also the existence of an increasing dependency system between nations as well as the enactment of international standards and quality standards. Investments that are cross-border show that foreign trade laws are formed from state practices, the habits of economic actors in trade transactions which then become habits in foreign trade and are formulated in various international conventions. The existence of international conventions or agreements on investment



can be bilateral (PIB) and multilateral investment agreements (PIM). Both are very influential on the national legal products of a country (Houde & Yannaca-Small, 2004).

Law Number 25 of 2007 concerning Investment was made in order to adjust the global economic situation in the world. One of the considerations for the issuance of this law is to deal with the global community situation and Indonesia's participation in international cooperation requires a conducive, promotive, legal, fair and efficient business climate (Asian Development Bank, . Moreover, Indonesia and Asean countries have signed an international agreement on the Asean Economic Community which imposed an economic system with a free market ideology in 2015 which also determines investment policies. It is natural for the government to determine investment policies that make it easier for investors to invest in various fields of life, including areas that affect the livelihood of many people such as banking, mining, water, plantations, forestry, electricity, energy and mineral resources and investment fields.

At the ASEAN level, an investment policy has been determined that enforces free trade, a common market and becomes a production base. This investment policy at the ASEAN level has prompted significant changes in various laws which include provisions that characterize the existence of free trade in the territory of Indonesia by applying the same regardless of the country of origin of the capital. Economic zones that are increasingly free for the flow of goods, services, investment, labor and capital indicate that this region is already in a global capitalist scenario. Progressive legal studies teach that the law must be used for the benefit of humans. In the construction of Indonesia, investment law must realize the welfare and justice of the Indonesian people. However, investment law as regulated in the WTO, GATT and the Blue Print of the ASEAN Economic Community and has become the basis of investment policy in Indonesia is built on the basis of investment liberalization. Investment liberalization is not intended to create public welfare, but to guarantee the certainty of freedom to invest (Ayu Taduri, 2021).

Understanding the substance of a legal product cannot be obtained in its entirety if only understanding the formulations of the articles of a product of legislation. According to Rahardjo as cited by Harun (2019), a regulation is only the embodiment of a legal norm. To understand the real purpose of a legal regulation as formulated in certain articles, we must understand the social ideals and ethical views of its people. Social ideals and ethical views of society become the basis for the birth of a legal regulation. Enforcement of investment law norms built on the basis of free trade principles. Gilpin (1975) introduced three different patterns in the economic management of a country, namely on the basis of mercantilism where politics provides an economic framework and the state is the main actor, both liberal economies are characterized by the reality of freedom for the market, and economic relations can be in the form of a positive sum game, namely a method of negotiation that emphasizes cooperation on mutually beneficial principles. In her writings, Liang as cited by Chang-fa Lo (2017) view that there is a politicization in the negotiation and formulation of international trade law norms, which states that "With the establishment of the WTO and the expansion of its membership of developing countries, the organization has, increasingly, become more like the UN in terms of the culture and approach adopted by its membership. The WTO has become more politicised. Political rhetoric is increasing becoming the order of the day."

The character of the international political regime has the same orientation and basis as free trade in the form of an international economy with an open market, freedom of capital movement, and the principle of non-discrimination absolutely requires rules. The principles of efficient economic international trade characterize international trade. International regimes are a necessary feature of world economic trade and are needed to facilitate the effective and proper operation of the international economy (Keohane, 1982). This efficiency principle is an advantage that the WTO offers from free trade. Free trade is more efficient than the isolation and protection model.

Indonesia's ratification of the WTO agreement through Law No. 7 of 1994 is legally formal, Indonesia has submitted to the Uruguay Round agreement and the ratification of the WTO agreement has entered the national legal system. This means that the national legal system in the field of trade and all aspects related to international trade has become a system of international trade law. This means that every citizen and legal entity in Indonesia is subject to the approval of the Uruguay Round and



the WTO agreement. The two Indonesian governments have committed to the “Asia Pacific Economic Cooperation Forum APEC (Asia Pacific Economic Cooperation)” on trade and investment liberalization which took effect in 2010 for developed countries, and in 2020 for developing countries. The agreement of APEC countries underscores that the GATT agreement is the foundation of commitments in the Asia Pacific region to implement free trade. Third, the agreement of ASEAN member countries to implement AFTA (ASEAN Free Trade Agreement) in 2003.

The basis for the issuance of “Law no. 25 of 2007” concerning Investment, one of which is to deal with the global economy and Indonesia's participation in international cooperation. The basis for this consideration is not only related to the idea of applying liberalization in the investment sector but is in the grand design of international economic institutions and developed countries to apply globally. Adjustment of ideas, the idea of implementing investment liberalization in international trade has a meeting point with terms commonly used in the world trade system which is based on the ideology of the free market. Based on this ideology, the world's economic and trade system is absolutely handed over by the market mechanism. Consequently, the state as a representation of society is no longer authorized to carry out regulations in the economic field unless it facilitates the implementation of the market economy system.

5. CONCLUSION AND RECOMMENDATIONS

Even though this Investment Law is a stimulus factor for the entry of foreign investors, in the end it is still necessary to pay attention to the interests of national economic development based on the rise of micro, small, medium and cooperative sector business development, therefore the provisions of the law should be This must be balanced with independence to be able to develop science and technology. This must be followed up through implementing regulations in the investment sector that support the direction of independent technology development and improvement of the work climate of the investment institutional bureaucracy, for example through simplification of systems and business licensing, reduction of various levies that cause business activities to become high cost or overlapping taxes and transparency of licensing fees for interest in investment activities. And the most important thing is to create a clean bureaucracy without any corrupt actions carried out by policy holders. The commitment to upholding values in the development of national law in Indonesia as referred to in the points above is neglected when faced with investment policies through the Investment Law product because there are many legal loopholes that can be debated again, if the interests of national investment policies are especially the interests of the people neglected. This is the problem, we realize that the country is rich in natural resources, but it cannot be enjoyed by its people to realize prosperity and prosperity.

The need for efforts to amend the investment law is based on several points of view, namely:

1. So that the national interest must continue to be pursued to become the mainstream in every consideration of national legislation policy, even though it is faced with the global realm through trade liberalizationism and capitalism.
2. The regulation of the Investment Law must contain content to safeguard the national interest, considering that Indonesia has tremendous potential to build a prosperous society.
3. The legal order must be responsive so that the objectives of the law concerning justice, certainty and benefit can be achieved, without building a typical law that makes it difficult to realize the interests of the welfare of the community.
4. Legal policy through Law No. 25 of 2007 concerning Investment is an interesting knot to study considering its content emphasizes arguments about the occurrence of a clash of values between the values of nationalism and globalization which reflects the issues of liberalization and global capitalism.

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