

Conformity of Capital Provisions for Foreign Investors in the Regulations of the Investment Coordinating Board of the Republic of Indonesia

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Abstract

Foreign investors tend to be disadvantaged by the existence of new regulations which are derivatives of the work copyright law, so a study will be carried out and compiled to analyze the Conformity of Capital Provisions for Foreign Investors in Regulation of the Investment Coordinating Board of the Republic of Indonesia No. 4 of 2021 with laws and regulations regarding investment. The results of the research show that Law Number 11 of 2020 concerning Job Creation and Law Number 25 of 2007 do not regulate capital in setting capital requirements for foreign investment. So that legal uncertainty arises because the minimum investment value is equated with the minimum paid-up capital, while the paid-up capital is only 25% of the capital which implies that PMA must have capital of Rp. 40,000,000,000,000.00 because the paid-up capital is at least Rp. in Presidential Regulation Number 10 of 2021, the investment value is also IDR 10,000,000,000,000.00. In UUPM, PMA must be in the form of a Limited Liability Company, so based on UUPT, the issued capital must be 25%, so the law should strictly regulate capital requirements in foreign investment to create legal certainty.

Keywords: Foreign Investment; Job Creation; Investment Coordinating Board; Capital.

1. Introduction

The rule of law is not a new discussion in the running of the state, starting from the constitution to the concept of a rule of law state (Ridlwani, 2012). The constitution appeared at the beginning of the 19th century setting out the limitations of government power, which was then followed by the concept of a rule of law state. The constitution of the rule of law shifts the role of the state through the government to actively improve the welfare of its people. The concept of a rule of law is also known as a welfare state or a material rule of law state.

Basically, if you want to invite investors to come to invest in Indonesia, one thing that must be prepared is the existence of clear legal instruments, meaning that one rule and another does not conflict with each other (Sembiring, 2010). Therefore, law in Indonesia should be able to create legal certainty so that it can play a role in economic development.

PMA has an important role in Indonesia, so it must be treated fairly, but in the past, arrangements regarding foreign investment (hereinafter abbreviated as PMA) and domestic investment (hereinafter abbreviated as PMDN) were regulated in different regulations. PMA is regulated in Law Number 1 of 1967 concerning Foreign Investment, then amended by Law Number 11 of 1970 concerning Amendments and Supplements to Law Number 1 of 1967 concerning Foreign Investment. Meanwhile, the regulation regarding PMDN was initially regulated in Law Number 6 of 1968 concerning Domestic Investment, then amended by Law Number 12 of 1970 concerning Amendments and Additions to Law Number 6 of 1968 concerning Domestic Investment.

Based on the history of these regulations, it appears that in these regulations there is a difference between PMA and PMDN, as evidenced by the amount of capital that must be owned by local investors in these companies must be

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more/dominant compared to foreign investors. In its context, this issue is considered to be no longer suitable for the needs of accelerating economic development and the development of national law in the investment sector, so it must be repealed and declared no longer valid. Departing from this, the arrangements regarding PMA and PMDN are subject to the same provisions, namely Law Number 25 of 2007 concerning Investment (hereinafter abbreviated as UUPM).

Prior to the issuance of the Job Creation Law, Limited Liability Company capital was determined as a minimum authorized capital in Law Number 40 of 2007 (UUPT), where the UUPM did not stipulate capital requirements. But then the requirements for foreign investment capital are regulated in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 13 of 2017 concerning Guidelines and Procedures for Licensing and Investment Facilities. Article 12 paragraph (1) stipulates that PMA companies with large business qualifications are required, unless otherwise stipulated by laws and regulations, to comply with conditions, investment value and capital requirements to obtain investment registration and/or business licenses. Where the net worth of a company with substantial business qualifications is more than IDR 10,000,000,000.00 (Ten Billion Rupiah) excluding land and buildings based on the latest financial statements; Or have annual sales of more than IDR 50,000,000,000.00 (Fifty Billion Rupiah) based on the latest financial statements.

After the issuance of the Job Creation Law, the rules regarding capital in the current regulations provide convenience for the establishment of domestic companies, but not for the establishment of foreign investment companies. In the implementing regulation of government regulation number 5 of 2021 concerning the implementation of risk-based business licensing, namely in article 12 paragraph (7) of the investment coordinating agency regulation number 4 of 2021 concerning guidelines and procedures for risk-based business licensing services and investment facilities, it is stated that capital is placed / deposited at least IDR 10,000,000,000.00. This regulation amends Article 6 paragraph (3) letter b of the Republic of Indonesia Investment Coordinating Board Regulation No. 5 of 2019 which stipulates that the value of the issued capital is equal to the paid-up capital of at least IDR 2,500,000,000.00. This means that the issued capital for foreign investors has quadrupled.

The Regulation of the Investment Coordinating Board of the Republic of Indonesia is a derivative regulation of the job creation law, where the purpose of creating a job creation law is to promote investment, accelerate economic transformation, align central and regional policies, overcome overlapping regulations, provide business convenience and eliminating sectoral ego. From the time the work copyright law was drafted until it was passed, there have been many pros and cons to it. One of the things regulated in the work copyright law is investment, also known as investment. Investment has been regulated in law No. 25 of 2007, but has a lot of overlap with sectoral laws. It is on this basis that investment is also regulated in the work copyright law. (Elora, 2021).

There are several regulations derived from the work copyright law in terms of investment. One of them is Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning Investment Business Sector. One of the things affected by this new regulation is foreign investors. In Article 7 of Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning Investment Business Sector, it is stated that foreign investors can only carry out activities in large businesses with an investment value of more than IDR 10,000,000,000.00, then in article 12 paragraph 2 of the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning guidelines and procedures for risk-based business licensing services and investment facilities, it states that the investment value applies per 5-digit KBLI business field. The rules contained in the Regulations of the Investment Coordinating Board of the Republic of Indonesia should be based on a hierarchy of laws and regulations that must be based on higher regulations, namely in this case laws and presidential regulations. Previously, in Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning Investment Business Sector, it was stated that foreign investors could only carry out activities in large businesses with an investment value of more than Rp. 10,000,000,000.00 without explaining the amount. paid-up capital. The total investment value is the wealth of the company, not just paid-up capital.

Based on the things previously mentioned, foreign investors tend to be disadvantaged by the existence of new regulations which are derivatives of the work copyright law, so the authors will conduct a study entitled: "Conformity of Capital Provisions for Foreign Investors in Regulations Investment Coordinating Board of the Republic of Indonesia.

This issue has never been discussed before, but there have been several studies regarding investment after the enactment of the work copyright law. The first study entitled "Effectiveness of the Job Creation Law on Increasing Investment" by Hari Agus Santoso which contains a discussion of the refinement of the previous regulations regarding investment into a job creation law and is able to attract domestic and foreign investors, but the culture of office holders Those who are accustomed to the old customs are quite a hindrance to the licensing process. (Santoso, 2019).

The second study entitled "Legal Certainty for Foreign Investors in Relation to the Unconstitutionality of the Job Creation Law" by Ferdinand Jason and David tan which resulted in the conclusion that legal certainty for PMA is currently a problem, so the government plays an important role in carrying out policies that do not harm the parties (Jason and Tan, 2022). The third study entitled "Investment Policy during the Covid-19 Pandemic Period in Indonesia" by Sri Husnulwati and Susi Yanuarsi discussed that additional investments were needed, so that work copyright laws that provide convenience and reduce business license requirements can encourage investment flows (Husnulwati and Yanuarsi, 2021).

Based on the background that has been described, it is possible to formulate the main issues regarding the conformity of the Capital Provisions for Foreign Investors in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 with Presidential Regulation Number 49 of 2021.

2. Method

In this research a normative juridical approach (legal approach) is used which analyzes legal norms from the point of view of literature studies (Amiruddin and Asikin, 2004). This study examines the norms or arrangements regarding the suitability of capital provisions for foreign investors in the regulations of the Investment Coordinating Board of the Republic of Indonesia. The application of this research is research that focuses on mono-disciplinary problems, namely law. The type of data used in this research is secondary data. The secondary data consists of: (Soekanto and Mamudji, 2019) The primary legal materials used are laws and regulations related to investment, secondary legal materials are books that are used as reference sources, namely books and legal journals on Foreign Investment, and tertiary legal materials used in this writing are related theories foreign investment. Another data collection technique used in this research is library research on secondary data, namely research by tracing and analyzing library materials and documents related to foreign investment (Soekanto and Mamudji, 2019). All data obtained was then analyzed using a qualitative approach, namely collecting or combining data obtained from laws and regulations and literature on foreign investment (Moch Andry Wikra Wardhana Mamonto and Andika Wahyudi Gani, 2022).

3. Result and Discussion

3.1. Conformity of Republic of Indonesia Investment Coordinating Board Regulation Number 4 of 2021 with Presidential Regulation Number 49 of 2021

In Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021 concerning Capital Business Sector, it is stipulated that all business fields are open for investment activities except for business fields that are declared closed to investors or activities that can only be carried out by the central government. Referring to the provisions of Article 2 paragraph (1) of Presidential Decree Number 44 of 2016, business fields in investment activities are divided into 3 (three) types, namely: "Open business fields; Closed line of business; and Business fields that are open with conditions".

In the provisions of Article 2 Paragraph (1) Presidential Decree 10 of 2021 stipulates that all business fields in investment activities are basically open unless the business fields are expressly declared closed or are part of the business fields which can only be carried out by the central government. Open business fields as referred to in Presidential Decree 10 of 2021 consist of:

1. Priority Business Fields;
2. Business fields allocated or partnerships with Cooperatives and MSMEs;
3. Business fields with certain requirements; and
4. Business Fields that can be engaged in by all Investors.

The latest and very clear breakthrough in Presidential Decree Number 10 of 2021 is the creation of the concept of a priority business area, in this case the government offers various types of incentives from a financial and non-financial perspective to investors. The financial incentives offered include tax incentives (reduction of certain sector income tax, reduction of corporate income tax, reduction of net and gross income tax) and exemption from import duties on the import of machinery, goods and materials for industrial construction or development. Non-financial incentives include ease of issuing business licenses, provision of supporting infrastructure, certainty of availability of raw materials, immigration and employment. This regulatory shift certainly provides new hope for entrepreneurs who want to enter the Indonesian market and respond to the government's desire to create a more positive investment environment.

Apart from that, the ease in carrying out investment activities in Indonesia that is very much felt is the reduced boundaries of business fields that can be explored by investors. Referring to the provisions of Presidential Decree Number 44 of 2016, there are at least 20 (twenty) types of business fields that fall into the category of closed business fields. Through the Create Work Omnibus Law, which is an amendment to Article 12 of Law Number 25 of 2007 concerning Investment, the government only provides 6 (six) types of business fields that are closed to investors. On March 2, 2021, President Jokowi canceled the opening of investment in industries containing alcoholic beverages so that this type of business was again included in the list of closed business fields. (Farisa and Meiliana, 2021).

The following is a comparison table regarding changes to the provisions of Presidential Regulation Number 44 of 2016 and Presidential Regulation Number 10 of 2011 in several sectors as an overview.

Table 1. Closed Business Fields Become Open Business Fields and Open Business Fields with Conditions

Closed Business Sector Becomes Open Business Sector		
Business fields	Category of Business Sector	
	Presidential Regulation Number 44 of 2016	Presidential Regulation Number 10 of 2021
Aviation navigation services		
Transport passenger terminal operator	Closed	Open
Operator of radio frequency spectrum and satellite orbit monitoring stations		
Field of Business Open with Conditions		
Business fields	Category of Business Sector	
	Presidential Regulation Number 44 of 2016	Presidential Regulation Number 10 of 2021
Plantation seed cultivation business with an area of 25 Ha or more	95% maximum foreign investment with a plasma plantation obligation of 20%	
Oil and gas construction (platform)	75% maximum foreign investment	Open
Power plants	> 1MW 95% maximum foreign investment (can be 100% if in the framework of Public Private Partnership/PPP during the concession period)	
Two Star Hotels	67% maximum foreign investment	Open and enter into priority business fields
Newspapers, magazines and bulletins (press)	100% maximum domestic investment	100% domestic capital in business establishment. For development, foreign capital can enter a maximum of 49%
Hospital	67% maximum foreign investment (for ASEAN investors a maximum of 75%)	Open

Source: Processed by Researchers

Based on this regulation, for investors, business fields can be distinguished at least based on a presidential decree, business fields that are closed or only carried out by the central government, business fields opened by the private sector and business fields opened independently, including: priority business fields, designated business sectors business or partnerships with cooperatives and small and medium enterprises, business fields with certain requirements, and other open business fields.

From the several business fields above, especially business fields that are open for investment, when viewed from the point of view of foreign investors, it can be understood that there are: business fields that are open to investment but there is absolutely no room for foreign investors to enter in Business areas open to investment investment but there are

restrictions on share ownership for foreign investors; and business fields that are open to investment, and do not limit share ownership by foreign investors.

In addition, the regulation regulates restrictions on foreign capital ownership. Presidential Regulation on Investment Business Sector in Article 7 that foreign investors can only carry out business activities in large businesses with an investment value of more than IDR 10,000,000,000.00 excluding the value of land and buildings, foreign investment must be in the form of a limited liability company according to law Indonesia and domiciled in the territory of the Republic of Indonesia unless otherwise stipulated by law.

This rule is in accordance with the rules regarding foreign investment capital in the regulations of the investment coordinating agency. When compared, the two regulations:

Table 2. Comparison of Investment Coordinating Board Regulation Number 4 of 2021 with Presidential Regulation Number 10 of 2021 which has been amended with Presidential Regulation Number 49 of 2021

No	Variable	Investment Coordinating Board Regulation Number 4 of 2021	Presidential Regulation Number 10 of 2021 which has been amended by Presidential Decree Number 49 of 2021	Suitability
1.	Investment Value	<p>Article 12 “(1) Business entities as referred to in Article 9 paragraph (1) letter b that are classified as PMA are categorized as large businesses and are required to comply with the minimum investment value provisions, unless otherwise stipulated by laws and regulations.</p> <p>(2) Provisions for the minimum investment value for PMA as referred to in paragraph (1), namely the total investment is greater than IDR 10,000,000,000.00 (ten billion rupiah), excluding land and buildings per business sector KBLI 5 (five) digits per project location.”</p>	<p>Article 7 “(1) Foreign Investors can only carry out business activities in Large Enterprises with an investment value of more than IDR 10,000,000,000.00 (ten billion rupiah) excluding the value of land and buildings.</p> <p>(2) Foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled in the territory of the Republic of Indonesia, unless otherwise stipulated by law.”</p>	In accordance
2.	Paid-up capital	<p>Article 12 “(7) The minimum capital requirements for PMA as referred to in paragraph (6) are issued/paid up capital of at least Rp. 10,000,000,000 (ten billion rupiah), unless otherwise stipulated by laws and regulations.”</p>	Not set	Not suitable

Source: Processed by Researchers

From the table above it can be seen that the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 regarding guidelines and procedures for risk-based business licensing services and investment facilities with Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021 concerning Field Business Investment is in accordance where these two rules regulate foreign investment capital, namely the investment value is greater than IDR 10,000,000,000.00. However, only the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 regulates paid-up capital. The investment value is the total value of all the business entity's assets, so it should not be the same as the paid-up capital value. The paid-in capital value regulated in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning guidelines and procedures for risk-based business licensing

services and investment facilities is the same as the investment value. Thus, foreign investors are required to prepare an investment value that is much higher than what is stipulated in these two regulations.

3.2. *Compliance with the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 is contrary to Law Number 11 of 2020 jo. Law Number 25 of 2007*

As for the value of investment and capital, in 2018 it was held based on Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (PP OSS), where currently investment licensing is generally held based on the Online Single Submission (OSS) system. However, PP OSS does not regulate investment and capital provisions. Whereas for the following sectors which are not regulated in the PP OSS, provisions regarding investment and capital can refer to the Investment Coordinating Board Regulation Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities (PerBKPM 6/2018):

1. Several permits in the energy and mineral resources sector, including: The electricity subsector (eg geothermal permit); Oil and natural gas subsector (example: permission to utilize oil and natural gas data); and Mineral and coal sub-sector (example: exploration mining business license).
2. Several permits for the public works and public housing sector (example: business license for housing); Customs and tax facilities (example: provision of machinery import facilities); and
3. Several licenses in the investment sector (for example: foreign company representative office permits).

If it is included in the sector mentioned above, the investment value and capital are as follows:

Table 3. Value of Investment and Capital (BKPM Regulation Number 6 of 2018)

No	Investment Type	Investment Value and Capital in BKPM Regulation Number 6 of 2018
1	Domestic investment	The amount of the investment value and capital is not determined
2	Foreign investment	<p>The amount of investment value and capital is determined for PMA companies that qualify as large businesses, namely companies that (Article 6 paragraphs (1) and (2)):</p> <ol style="list-style-type: none"> 1 Have a net worth of > IDR 10 billion, excluding land and buildings for business premises, based on the latest financial statements; or 2 Have annual sales results of > IDR 50 billion, based on the latest financial reports. <p>For PMA companies with large qualifications (unless otherwise stipulated by laws and regulations), the investment value specified below must be met within a maximum period of one year after the company obtains a business license (Article 6 paragraph (3) and (5)) :</p> <ol style="list-style-type: none"> 1. Total investment value > IDR 10 billion, excluding land and buildings; 2. The value of the issued capital is the same as the paid-up capital, ≥ IDR 2.5 billion; 3. The percentage of share ownership is calculated based on the nominal value of the shares; and 4. The nominal value of shares for each shareholder is at least IDR 10 million. <p>If a PMA company is engaged in property development and business, then the investment value follows the provisions of Article 6 paragraph (4):</p> <ol style="list-style-type: none"> 1. In the form of property in the form of a complete building or integrated housing complex provided that: <ol style="list-style-type: none"> a. Investment value > IDR 10 billion, including land and buildings; and b. Paid up capital value ≥ IDR 2.5 billion and the value of participation in the company's capital. 2. In the form of property units not in one building as a whole or one housing complex in an integrated manner, provided that: <ol style="list-style-type: none"> a. Investment value > IDR 10 billion, excluding land and buildings; b. Value of paid-up capital ≥ IDR 2.5 billion; and c. The investment value in the company's capital for each shareholder is at least IDR 10 million with a Debt-to-Equity Ratio of 4:1.

Source: Processed by Researchers

Even though the provisions regarding investment value and capital have been determined in PerBKPM Number 6 of 2018, it does not rule out the possibility that sectoral regulations per business sector may regulate differently.

In its development, the minimum capital for foreign investment in Regulation of the Head of BKPM Number 6 of 2018 was changed through the Regulation of the Investment Coordinating Board of the Republic of Indonesia (BKPM) Number 5 of 2019 concerning Amendments to the Regulation of the Investment Coordinating Board Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Facilities Investment, in Article 6 paragraph (3), namely with a total investment value greater than IDR 10,000,000,000.00 (ten billion Rupiah), provided that this value is excluding the value of land and buildings. 25% or a minimum of IDR 2,500,000,000.00 (two billion five hundred million Rupiah) to be issued capital equal to paid-up capital. The nominal value of shares for each shareholder is required to be a minimum of IDR 10,000,000.00 (ten million rupiah). However, specifically for certain sectors, a minimum capital requirement that is higher than this value may be required.

The issuance of Law Number 11 of 2020 has many implications for the business world in Indonesia. The policies that are regulated have an influence on companies with Domestic Investment or Foreign Investment (PMA). One of the influences that need to be considered in foreign investment is the provisions for the establishment of a PT PMA. At the end of March 2021, the government issued Regulation of the Head of BKPM Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities (Regulation of the Head of BKPM Number 4 of 2021) as implementing regulations for Government Regulation Number 5 of 2021 concerning Implementation of Business Licensing Risk Based.

There are 5 contents of Law Number 11 of 2020 concerning Job Creation related to investment, especially foreign investment, namely improving the investment ecosystem and business activities, employment, ease of doing business, land acquisition, and economic zones. Several crucial changes in the Job Creation Law regarding regulation of foreign investment in Indonesia, both directly changing the provisions of Law 25/2007 and indirectly affecting the improvement of the foreign investment ecosystem in Indonesia.

Another form of convenience provided by the Job Creation Law is the elimination of the minimum capital when you want to set up a limited liability company, which previously in Article 32 paragraph (1) of the Company Law was set at Rp. 50,000,000.00 (fifty million rupiah). The Job Creation Law changes this provision through Article 109 paragraph (3), it states that:

- (1) The company must have the authorized capital of the company
- (2) The amount of authorized capital of the Company as referred to in paragraph (1) is determined based on the decision of the founder of the Company.

Thus, the elimination of this minimum capital does not mean that the establishment of a PT can be carried out without any capital pool at all. So that in Law Number 11 of 2020 concerning Job Creation there is no regulation of capital requirements for foreign investment. Where in Article 12 regulates:

- (1) All business fields are open for investment activities, except for business fields declared closed for investment or activities that can only be carried out by the Central Government.
- (2) Closed business fields for investment as referred to in paragraph (1) include:
 - a. cultivation and industry of narcotics class I;
 - b. all forms of gambling and/or casino activities;
 - c. catching fish species listed in Appendix I Conference on International Trade in Endangered Species of Wild Fauna and Flora (crrES);
 - d. utilization or collection of coral and utilization or collection of coral from nature used for building materials of calcium lime, aquariums, and souvenirs/jewelry, as well as live or dead coral (recent death coral) from nature;
 - e. chemical weapons manufacturing industry; and
 - f. industrial chemical industry and industrial substances depleting the ozone layer.
- (3) Further provisions regarding the investment requirements as referred to in paragraph (1) and paragraph (2) are regulated in a Presidential Regulation.

Based on the description above, regarding the conformity of BKPM Regulation Number 4 of 2021 with Law Number 11 of 2020 can be described in the table below:

Table 4. Conformity of BKPM Regulation Number 4 of 2021 with Law Number 11 of 2020

No	Variable	BKPM Regulation Number 4 of 2021	Law Number 11 of 2020	Suitability
1.	Investment Value	Article 12 (1) Business entities as referred to in Article 9 paragraph (1) letter b that are classified as PMA are categorized as large businesses and are required to comply with minimum investment value provisions, unless otherwise stipulated by laws and regulations. (2) Provisions for the minimum investment value for PMA as referred to in paragraph (1), namely the total investment is greater than IDR 10,000,000,000.00 (ten billion rupiah), excluding land and buildings per business sector KBLI 5 (five) digits per project location.	Unregulated	not appropriate
2.	Paid-up capital	Article 12 (7) The minimum requirement for capital for PMA as referred to in paragraph (6) is issued/paid up capital of at least Rp. 10,000,000,000 (ten billion rupiah), unless otherwise stipulated by laws and regulations.	Unregulated	not appropriate

Source: Processed by Researchers

From the table above it can be seen that the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 with Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021 is appropriate where these two rules regulate foreign investment capital, namely the investment value is more greater than IDR 10,000,000,000.00. However, because the Job Creation Law is further regulated in a Presidential Decree and so it can be said that there is conformity. Even though it is appropriate, it's just that in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 as the implementing regulation of the Presidential Regulation, where the value of paid-up capital regulated in the regulation is the same as the investment value. Thus, foreign investors must prepare an investment value that is much higher than what is stipulated in these two regulations.

If we look at UUPM, Article 5 states that foreign investment must be in the form of a limited liability company according to Indonesian law and domiciled in the territory of the Republic of Indonesia, unless the law stipulates otherwise. The method of investment is by acquiring shares when establishing a limited liability company, buying shares, and carrying out other methods in accordance with laws and regulations. UUPM explicitly states that the government provides equal treatment to all investors from any country who carry out investment activities in Indonesia in accordance with legal provisions.

In essence, UUPM and Presidential Regulation Number 10 of 2021 which have been amended by Presidential Regulation Number 49 of 2021 require mandatory foreign investment in the form of a limited liability company based on Indonesian law and domiciled in the territory of the Republic of Indonesia, unless otherwise stipulated by law. In addition, domestic and foreign investors who invest in the form of a limited liability company are implemented through:

1. Investment in shares at the time of establishment of a limited liability company.
2. Buy stocks, and
3. Using other methods in accordance with the provisions of the legislation.

Similar to Law Number 11 of 2020 concerning Job Creation, Law Number 25 of 2007 also does not regulate capital in setting capital requirements for foreign investment. So it becomes interesting when the Presidential Regulation regulates the limitation of foreign capital ownership. Foreign investors can only carry out business activities in large businesses with an investment value of more than IDR 10,000,000,000.00 excluding the value of land and buildings, so foreign investment must be in the form of a limited liability company according to Indonesian law and domiciled in the territory of the Republic of Indonesia unless stipulated others by law.

Prior to the issuance of the Republic of Indonesia Investment Coordinating Board Regulation Number 4 of 2021 and the work creation law, regarding foreign investment capital requirements were regulated in the Republic of Indonesia Investment Coordinating Board Regulation Number 13 of 2017 concerning Guidelines and Procedures for Licensing and Investment Facilities. Article 12 paragraph (1) stipulates that PMA companies with substantial business qualifications are required, unless otherwise stipulated by laws and regulations, to comply with conditions, investment value and capital requirements to obtain investment registration and/or business licenses. Where the net worth of a company with substantial business qualifications is more than IDR 10,000,000,000.00 (Ten Billion Rupiah) excluding land and buildings based on the latest financial statements; or have annual sales of more than IDR 50,000,000,000.00 (Fifty Billion Rupiah) based on the latest financial report. PMA to start a business must meet the investment requirements and capital value, and must meet the following conditions:

1. The total investment value is greater than IDR 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings;
2. The value of the issued share capital is equal to the value of the paid up share capital of at least IDR 2,500,000,000.00 (two billion five hundred million rupiah);
3. Participation in the company's share capital for each shareholder of at least IDR 10,000,000.00 (Ten Million Rupiah); and
4. The percentage of share ownership is calculated based on the nominal value of the shares

While the minimum capital for foreign investment in PerBKPM Number 6 of 2018 was amended through Regulation of the Investment Coordinating Board of the Republic of Indonesia (BKPM) Number 5 of 2019 concerning Amendments to Investment Coordinating Board Regulation Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities, in Article 6 paragraph (3), that is, with a total investment value greater than IDR 10,000,000,000.00 (ten billion Rupiah), provided that this value is excluding the value of land and buildings. 25% or a minimum of IDR 2,500,000,000.00 (two billion five hundred million Rupiah) to be issued capital equal to paid-up capital. The nominal value of shares for each shareholder is required to be a minimum of IDR 10,000,000.00 (ten million rupiah). However, specifically for certain sectors, a minimum capital requirement that is higher than this value may be required.

In the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 regarding guidelines and procedures for risk-based business licensing services and investment facilities with Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021 concerning Investment Business Sector is in accordance where these two rules regulate foreign investment capital, namely the investment value is greater than IDR 10,000,000,000.00. However, only in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning guidelines and procedures for risk-based business licensing services and investment facilities, it is regulated regarding paid-up capital. The investment value is the total value of all the business entity's assets, so it should not be the same as the paid-up capital value. The paid-in capital value regulated in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning guidelines and procedures for risk-based business licensing services and investment facilities is the same as the investment value. Thus, foreign investors must prepare an investment value that is much higher than what is stipulated in these two regulations. Compared to the UUPT, PMA has a higher minimum capital requirement.

The rules contained in the Regulations of the Investment Coordinating Board of the Republic of Indonesia are based on the theory of a hierarchy of laws and regulations, so they are not in accordance with higher regulations, namely the Investment Law, Limited Liability Company Law, and Job Creation Law. So that legal uncertainty arises because the minimum investment value is equated with the minimum paid-up capital, while the paid-up capital is only 25% of the capital which implies that PMA must have capital of Rp. 40,000,000,000,000.00 because the paid-up capital is at least Rp. in Presidential Regulation Number 10 of 2021, the investment value is also IDR 10,000,000,000,000.00. So that the law should strictly regulate capital requirements in foreign investment to create legal certainty.

4. Conclusion

In Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021 concerning Investment Business Sector, it is regulated that all business fields are open for investment activities except for business fields which are declared closed to investors or for activities that can only be carried out by Central government. Here it is regulated regarding restrictions on foreign capital ownership. Foreign investors can only carry out business activities in large businesses with an investment value of more than IDR 10,000,000,000.00 excluding the value of land and buildings, then foreign investment is required to be in the form of a limited liability company based on Indonesian law and domiciled in the territory of the Republic of Indonesia except otherwise determined by law. This rule is in accordance with the rules regarding foreign investment capital in the regulations of the investment coordinating agency. In Law Number 11 of 2020 concerning Job Creation there is no regulation of capital requirements for foreign investment. As stated in Article 12 paragraph (3) which stipulates that further provisions regarding investment requirements are regulated in a Presidential Regulation, namely Presidential Regulation Number 10 of 2021 which has been amended by Presidential Regulation Number 49 of 2021. So that it can be considered in accordance with Regulation of the Head of BKPM because the provisions hereinafter stipulated in the Presidential decree in accordance with the Regulation of the Head of BKPM. Similar to Law Number 11 of 2020 concerning Job Creation, Law Number 25 of 2007 also does not regulate capital in setting capital requirements for foreign investment. So that legal uncertainty arises because the minimum investment value is equated with the minimum paid-up capital, while the paid-up capital is only 25% of the capital which implies that PMA must have a capital of 40,000,000,000,000.00 because the paid-up capital is at least 10,000,000,000,000.00, while in Presidential Regulation Number 10 of 2021, the investment value is also 10,000,000,000,000.00. In UUPM, PMA must be in the form of a Limited Liability Company, so based on UUPT, the issued capital must be 25%, so that the law should strictly regulate capital requirements in foreign investment to create legal certainty.

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