

Legal Review of Investment Implementation In Vietnam and In Indonesia Is Reviewed Based On Investment Regulations In Each Country

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KEYWORDS	ABSTRACT
legal review; investment implementation; investment rules; in indonesia; vietnam	Investment or investment is an activity to increase the capital owned by a company or country with the aim of earning profits in the future. This activity is carried out by investors both from within the country and abroad, having a positive impact on Indonesia's economic development. The purpose of this study is to analyze the implementation of investment in Indonesia and Vietnam, especially related to regulations in each country. In addition, the study also aims to identify the advantages and disadvantages of foreign investment in both countries. Descriptive legal research methods and comparative approaches are used to analyze the implementation of investment in Indonesia and Vietnam, focusing on investment regulations, advantages, and disadvantages of each country. The results of the study show that although Indonesia has natural potential, political stability, and strong government support, the country is still less attractive than Vietnam in terms of Foreign Investment (FDI). Vietnam has managed to attract more foreign investment thanks to more investor-friendly regulations and better legal certainty. In conclusion, to increase competitiveness in attracting foreign investment, Indonesia needs to improve investment regulations and create a more conducive investment climate.

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Introduction

Investment (also called investment) is an activity that has the purpose of increasing the capital owned by a company or state. The form can be in the form of fresh money, land and/or buildings, or other forms, which can be interpreted as the capital is used to bring in a much larger profit for the future (Wiranata 2007). Investors who can make investments are those who are native Indonesians or can also be foreign citizens. In essence, the existence of investors in this country is in order to invest their capital in Indonesia will have a positive impact on the country's economic development, both long-term and short-term (Pahlevi, Prananingtyas, en Lestari 2017).

The existence of investment or investment in a country, including those that occur in Indonesia, has a considerable contribution in terms of achieving the country's economic growth because investment can provide an impetus for the development of economic activities quite rapidly. So that for this reason, investment activities must be carried out properly as part of the implementation of the national economy and at the same time as an effort to improve state development, especially related to the state economy. As well as to realize the achievement of community welfare that has competitiveness (Hernawati en Suroso 2020).

The capital needed by the state comes from capital in several projects that have strategic value, such as several businesses that can increase foreign exchange for the Indonesian state for the realization of national development and community welfare. The course of government in Indonesia is largely supported by the injection of funds from investors to support the development of the country. In terms of making investments, investors will conduct a feasibility study on future business prospects in the field to be invested, including one of the important aspects included in the feasibility study is the provisions of laws and regulations governing investment in the country (Sembiring 2019).

Regarding the existence of these legal provisions, it is included in one of the considerations for investors to invest in a country because with this rule, investors feel safe and comfortable because they have legal protection in the implementation of investments. So that when making an investment there is a problem, investors feel calm because they are legally protected. The existence of these considerations then made the Indonesian government form special laws and regulations that regulate investment contained in Law Number 25 of 2007 concerning Investment (hereinafter referred to as the Investment Law). From the existence of this basic rule, financiers are massively securing their capital in Indonesia to accelerate Indonesia's modernization process (Rumawi 2021).

In Article 1 number 1 of the Investment Law, it is stated that, "Investment is all forms of activities related to investment, both carried out by domestic investors and foreign investors who do business in the territory of the Republic of Indonesia." In this article, it is interpreted that investment activities in Indonesia are not only related to domestic investors but also investors from outside Indonesia. Both are well accepted by Indonesia but must be in accordance with regulations in Indonesia.

These investors, both from within and outside the country, are very interested in investing in Indonesia because there are various benefits such as: (Wicaksono 2016)

There are rules and policies by the Indonesian government that support the presence of foreign investors to invest in Indonesia.

1. Indonesia has a large population with a large workforce potential with a low income level, so many investors like to invest in this country.
2. The production market owned by the Indonesian state is very wide and wide.
3. Indonesia's natural potential is very beautiful and potential.
4. Political stability in Indonesia tends to be stable compared to other neighboring countries;
5. Legal certainty in Indonesia is seen as better than other countries so investors do not feel worried.

Investors who invest their capital in Indonesia are spread across various fields ranging from industry, finance, food, and so on.

In the investment carried out in Indonesia, which is currently being intensively increased by the Government of Indonesia, it is foreign direct *investment* (FDI). Foreign

Investment (FDI) or also known as FDI plays a quite important role in improving the economy in a country, especially for countries that are among developing countries such as Indonesia. Because with this FDA, it can be a means for the state to increase capital in a much more effective way and cost. In addition, the existence of this FDI can also increase assets, both tangible and intangible assets, which benefit countries that open investment opportunities. These assets are such as advanced technology, much better management capabilities and much better production design (Pratiwi 2020).

The arguments expressed above are quite grounded considering that several developing countries that are launching efforts to bring in FDI, are known to have experienced relatively high economic growth after receiving FDI from various countries in the world, especially developed countries. Examples of developing countries that are currently intensively carrying out programs to bring in FDI are countries in the ASEAN region. What is meant by ASEAN is the United Nations in the Southeast Asian region, this organization was established on August 8, 1967 in Bangkok, Thailand. The purpose of the establishment of ASEAN itself is to increase friendship and cooperation in the fields of economic growth, social progress and cultural development for ASEAN member countries. Countries included in ASEAN members are, Indonesia, Malaysia, Singapore, Laos, Myanmar, Thailand, Vietnam, Brunei Darussalam, Cambodia, the Philippines, and East Timor. Although it is a member of ASEAN, not all ASEAN member countries are included as developing countries. Singapore is the only ASEAN member that is a developed country.

Developing countries in ASEAN are currently starting to try to bring in foreign investors to invest in their countries because the presence of FDI in a country can increase economic growth faster than domestic investment, this is because the value of investment given or invested by foreign investors is much greater than that of domestic investors. This is what then makes these countries do various ways to attract the attention of foreign investors.

The presence of these foreign investors is the key for developing countries to get out of the global economic slowdown and at the same time avoid these developing countries from a global recession. However, as is known, bringing in foreign investors is not something easy, because these foreign investors will be more careful in investing in developing countries, especially the value of the investment given is also not worth a little. In addition, there are many issues that developing countries are countries that are still vulnerable in several things such as economic stability, politics and the state of their government. In fact, these things directly or cannot have an impact on investment stability. Therefore, foreign investors will also check first the developing countries that are their investment destinations.

Developing countries in the ASEAN region, for now, seem to be competing to bring in foreign investors in their respective countries. Based on the ranking of FDI in ASEAN countries, Indonesia ranks at the bottom or the lowest in terms of the entry of foreign investors among ASEAN countries. In the last 5 years, the average value of FDI entering Indonesia is only around 1.9%, this is quite slow compared to Cambodia which has a percentage of around 11.8%, Vietnam 5.9%, Malaysia 3.5%, and Thailand 2.6%. In fact, Vietnam is the only country in the ASEAN region that has experienced the highest increase in FDI growth since 2019 with a value of ±USD 16.7 billion (Winata 2018).

Based on this ranking, it can be interpreted that Indonesia is a developing country that tends to be slow in presenting foreign investors to invest in Indonesia compared to other ASEAN countries such as Vietnam. Even though Indonesia is a country that has

considerable potential to bring in foreign investors, plus currently the Joko Widodo administration has an economic diplomacy program that functions to bring in investors. The program aims to expand foreign market access and increase foreign investors' interest in Indonesia to support the domestic economy and then provide welfare for the community. However, if you look at the ranking, it can be said that this economic diplomacy program has not run optimally.

Vietnam and Indonesia are developing countries that are trying to bring in investors, but in recent years, foreign investors tend to prefer Vietnam to Indonesia to invest, here are some examples of foreign investors who tend to prefer Vietnam as the main investment destination:

1. Based on the information obtained, one of the American giant companies, Apple, is launching its business in an Asian country and then choosing several countries as its business or investment destinations, namely Vietnam and Indonesia. Although Indonesia is one of the investment destination countries, it is quite unfortunate that the value of Apple's investment between Vietnam and Indonesia has a considerable difference, where Apple investing in Vietnam has a much larger value than Indonesia. Vietnam received Apple's investment worth Rp. 255 trillion while in Indonesia it was only Rp. 1.6 trillion (Kompas 2024).
2. The investment of Microsoft, which is one of the largest companies in America, is also expanding in developing countries such as Indonesia and Vietnam. These two countries are the investment targets of this company, but the investment value given is also different and the investment value in Vietnam is greater than that of Indonesia, just like Apple does. Microsoft has invested in Vietnam worth 2.2 billion US dollars while in Indonesia it is only 1.7 billion US dollars (Suara 2024).

These two examples give a clear picture that there is a significant difference between investment in Vietnam and Indonesia, where foreign investors tend to prefer to invest in Vietnam than Indonesia, even though they are both developing countries. Based on these findings, there is a gap where each country has special rules, regulations and ways to bring in foreign investors, as Indonesia and Vietnam do, this is part of the country's efforts to provide legal certainty and also legal protection for foreign investors. However, this still creates a gap where foreign investors tend to prefer Vietnam to Indonesia.

Based on this, the researcher is interested in conducting further analysis with the aim of welcoming the analysis related to the implementation of investment in Indonesia and in Vietnam, especially related to regulations that occur in each country and to find out the advantages and disadvantages of the implementation of foreign investment in each country between Vietnam and Indonesia.

Research Methods

Legal research can be understood as a scientific activity based on certain methods, systematics and thinking with the aim of studying one or several specific legal phenomena (Soekanto 2014). This type of research is descriptive in nature which accurately describes the similarities and differences in investment law in Indonesia and in Vietnam and analyzes its advantages and disadvantages. The comparative approach is one of the normative research ways to compare legal institutions in one legal system with another legal institution that has something in common.

According to Morris L. Cohen, if you use a comparative approach, there are so many scopes of materials used, one of which is Foreign Law Sources and Comparative

Sources. Furthermore, this research was carried out by means of an approach between "macro-comparative law" and "micro-comparative law". Macro law comparison, focusing on the discussion of large or broad problems or themes, for example the discussion of systematic problems, classification and classification of the legal system. On the other hand, the comparison of micro-laws is related to legal rules, cases, and institutions that are special or actual. So, in this article, the author will use a micro-law comparison, namely a comparison between legal institutions. Micro comparison is something that is done by comparing certain legal issues between one country and another.

In the discussion of this article, the comparison made is the scope of application, the form of business entities and their positions, regulations related to labor, regulations related to the business sector, and institutions/investment bodies. The goal is to be able to know and understand the similarities and differences between the two countries, so that they can evaluate policies for the government in supporting government performance, especially the national economy.

The data in this study uses secondary data, which is data obtained from literature, which is sourced from primary, secondary, and tertiary legal materials. First, in primary legal materials, it includes binding legal materials consisting of basic norms or rules, basic regulations, and laws and regulations. Then, secondary legal material is an explanation of primary legal material, such as draft laws, research results or law books. Finally, tertiary legal materials, are materials that explain primary and secondary legal materials, such as legal dictionaries, Indonesian dictionaries, encyclopedias, cumulative indexes and others. The data analysis technique used by the author in this study is qualitative data analysis. Qualitative data analysis is a research procedure that produces descriptive-analytical data. The method is with what the respondents stated in writing or orally, as well as real behavior, which is researched and studied as something whole.

This research uses qualitative research, which is research that intends to understand the phenomenon of what is experienced by the research subject, such as behavior, perception, motivation, or action holistically and by means of description in the form of words and language, in a special context that is natural and by utilizing various natural methods (Moleong 2019).

Results and Discussions

Legal Review of Investment Implementation in Vietnam and Indonesia Based on Investment Regulations in Both Countries

The goal of national development as stated in Article 33 of the Constitution of the Republic of Indonesia of 1945 concerning the structure of the economy and the authority of the state to regulate economic activities, and reflects ideals, a belief that is firmly held and consistently fought for by government leaders. In Article 33 paragraph (1) of the 1945 Constitution it is emphasized that the economy is arranged as a joint effort (mutualism) in accordance with the principle of brotherhood in realizing a just and prosperous society. The rapidly growing world economy certainly requires developing countries to find alternatives to foreign loan assistance that has been supporting their development. **Elan Kurniawan, Investment Management, (Bandung: Media Sains Indonesia, 2023), p. 23.**

One of the efforts to develop a country is through investment, especially Foreign Investment (FDI). Foreign investment (PMA) is the act of a foreigner or a foreign legal entity in making an investment with the aim of doing business in any form to the territory

of another country. The history of FDI in Indonesia began during the second Ali Sastroamrdjojo Cabinet in 1953. The proposed Foreign Investment Law was not approved by parliament. Finally, in 1958, Law Number 78 of 1958 concerning Foreign Investment was issued. Law Number 78 of 1958 concerning Foreign Investment was issued with several considerations, such as article 3 which states that there are restrictions on production fields and types of companies for foreign capital. **Wiranata, Philippines Op.Cit, p. 44.**

Law No. 78 of 1958 concerning Foreign Investment at that time had quite strict prohibitions for foreign investment from the draft Foreign Investment Law which had been rejected by parliament in 1953. Then, Law No. 78 of 1958 concerning Foreign Investment was replaced by the issuance of Law No. 16 of 1965 concerning the Revocation of Law No. 78 of 1958 concerning Foreign Investment, which has been amended and supplemented by Law No. 15 of 1960. On the basis of consideration, Law Number 16 of 1965, can attract as many profits as possible from investors, but still with the principle of independence without any intervention from foreign parties in the economic sector.

Law Number 16 of 1965, especially in Article 2, states that the implementation of Article 10 of TAPMPRS No. VI/MPRS/1965, and economic cooperation with foreign countries, even though there is no foreign investment in Indonesia, will be regulated in the law. After the enactment of Law No. 16 of 1965, foreign investment in Indonesia did not exist until the period of 1967, with the issuance of a new law, namely Law No. 1 of 1967 concerning Foreign Investment.

Expert opinions related to this matter state that the government's policy of issuing the Foreign Investment Law is followed by consideration so that the development of resources from abroad can be used to cover the shortage of domestic capital without causing a dependence on foreign countries, thus on January 10, 1967 the Indonesian government enacted Law No.1 of 1967 concerning Foreign Investment, then followed by Law No. 6 of 1968 concerning Domestic Investment. Finally, there is Law No. 25 of 2005 concerning Investment, Statute Book of the Republic of Indonesia No. 67 of 2007, Supplement to Statute Book of the Republic of Indonesia No. 4724 as a form of consolidation of the old investment laws and regulations that are regulated separately, namely in Law No. 1 of 1967 as amended and perfected by Law No. 11 of 1970 concerning Foreign Investment and Law No. 6 of 1968 as amended by Law Number 12 of 1970 concerning Domestic Investment. Based on this description, it can be concluded that Law Number 25 of 2007 concerning Investment was born from several reviews and evaluations from a fairly long history.

Vietnam's Civil Law System is influenced by the civil law systems of France, Germany and Japan. Under *the* Civil Code 2015, precedents can be used in civil matters in cases where analogue law cannot be applied (Article 6.2 Civil Code, 2015). *The Supreme People's* Court has issued Resolution No. 03/2015/NQ-HDTP on the process for electing, issuing and adopting the president. The National Assembly is the highest legislative authority in Vietnam and its members are elected in democratic elections. Vietnam's latest constitution was re-enacted in 2013.

The National Assembly has its own Standing Committee and other councils and committees, including: (1) *The Law Committee*, which gives its opinion on the draft Constitution, laws and regulations. (2) *The Justice Committee*, which provides opinions on draft laws and regulations on criminal matters, criminal procedures, civil procedures, administrative processes, enforcement of decisions and other juridical services. Under the

National Assembly, there are People's Councils elected at the provincial, district and village levels. The government is the highest organ of state administration at the central level. The local organs of state administration are the People's Committees at the provincial, district and village levels. Under the Government at the central level are ministries and ministerial ranking committees. Under the provincial People's Committee are departments and specialized committees.

With the enactment of Law No.68/2014/QH13 on Companies and Law No.67/2014/QH13 on Investment in 2015, FDI began to be facilitated and more open in Vietnam, both laws are the legal basis for the implementation of FDI. Foreign investors can invest in Vietnam in several ways, including establishing a new company, acquiring or investing in an existing company, setting up a branch office or representative, or using contractual arrangements.

The *Scope of Application* in Law No. 25/2007 only covers direct investment in Indonesia, which means that investment is intended to carry out business activities in the territory or region of the Republic of Indonesia. The Investment Law does not address foreign investments made through the capital market (*indirect investment*), financial services, and the oil and gas industry are not covered by the UUPM.

All PMAs in Indonesia must be carried out through an Indonesian limited liability company (PT). PTs with foreign investors are often referred to as PMA companies. The term PMA is a reference to a PT license that allows it to have foreign shareholders. The list of business fields that can be owned by FDI is not contained in Law No. 25/2007, but in Presidential Regulation No. 44 of 2016 concerning the List of Closed and Open Business Fields with Requirements in the Field of Investment.

The 2016 DNI lists areas where investment by Indonesians and foreigners is prohibited or restricted. Article 3 of the DNI 2016 stipulates that if a certain business line is not registered in the DNI, it is 100 percent open to foreign investment without any conditions. However, in practice, investors need to confirm this with BKPM and OSS and determine if there is a requirement for 100 percent foreign ownership. For example, 100 percent foreign ownership is only allowed in the IT business sector if the investment level is at least 100 billion rupiah. Otherwise, foreign investment is limited to a maximum of 49 percent.

On the other hand, the *Scope of Application* of Vietnamese laws and regulations that are committed to continuing to open the market for foreign investment in certain service sectors under the WTO commitment. Until now, there are still some restrictions on the maximum percentage of foreign ownership or forms of investment with respect to some service sectors. For example, advertising services require foreign investors to establish joint ventures with existing Vietnamese advertising companies.

Among the service sectors on the list, sectors of particular focus include banking services, education, telecommunications with network infrastructure, publishing and healthcare. The Law on Companies provides a legal framework for company incorporation, corporate governance and company operations in Vietnam.

The Form of Business Entity and Domicile is regulated in Law No. 25 of 2007 Article 5 paragraph (2) affirming that PMA is mandatory in the form of a limited liability company (PT) in accordance with Indonesian law and domiciled in the territory of the Republic of Indonesia, unless otherwise specified by law. So, the legal entity required by Law No. 25/2007 is a Limited Liability Company (PT) for each PMA. It is further emphasized in Law No.25/2007 Article 5 paragraph (3) that PMDN and PMA that make investment in the form of limited liability are carried out by: (1) There is a portion of

share ownership at the time of establishment of the PT; (2) The existence of a purchase; and (3) Other methods in accordance with the provisions of laws and regulations.

On the other hand, the Form of Business Entity and Position in Vietnam is slightly different from Indonesia. The form of a PMA Business Entity in Vietnam can be in the form of the following: (1) Limited Liability Company ("PT"); (2) Joint Stock Company ("PSG"); (3) Partnership Company ("PK"); (4) Business Cooperation Contract ("KKB"); and (5) Public-Private Partnership ("PPP"). Michael Lorenz, a business advisor at Lorenz & Partners, added that there are three main forms of foreign direct investment in Vietnam: (1) Joint ventures; Joint ventures can be in the form of limited liability companies (PT) or joint stock companies (PSG) (McKenzie, 2019). The main difference between these two possibilities is that only a joint stock company can issue shares, securities, or be listed on the Stock Exchange; (2) 100% *foreign-owned enterprises*: Under Vietnamese law, 100% foreign companies are only allowed in certain sectors. The number of these sectors continues to grow and by 2014 almost all business lines will be open to 100% foreign investment. The corporate structure of a 100% foreign-owned company is the same as the structure for a joint venture, e.g. (3) *Business cooperation contracts*: Unlike joint ventures or 100% foreign companies, business cooperation contracts do not create a legal entity. Rather, it is simply a contractual arrangement between at least one foreign party and at least one Vietnamese party. The law on business cooperation contracts is quite brief with no specific regulations for things like management and operational structures or key personnel roles. Therefore this issue should be discussed in detail in the contract.

Comparison of Legal Rules for Foreign Investment between Indonesia and Vietnam

In the previous sub-chapter, some basic things that distinguish foreign investment in Indonesia and in Vietnam have been described, where each has different characteristics, to further explain the comparison of foreign investment arrangements between the two countries, the following will be described about the comparison in the form of a table:

Table 1 Comparison of PMA Rules between Indonesia and Vietnam

No	Checklists	Indonesian	Vietnamese	Information
1	Definition of PMA	In Law No.25/2007 in Article 1 Paragraph (6), it is interpreted that what is meant by FDI is an individual or a business entity or a foreign government that conducts business or investment activities in Indonesia, either from the foreign party or in joint venture with domestic capital.	In Law No. 67/2014/QH13 dated 2014 on Investment (Vietnam) in Article 3 Paragraph (14), it is stated that PMA means a person who has foreign nationality or an organization established under foreign law that makes business investments in Vietnam.	In this description, it can be interpreted that basically both Indonesia and Vietnam both interpret FDI as investment activities from foreign parties to each country. However, in Vietnam, the term 'Foreign investment' is not defined in the law like in Indonesia. Instead, Vietnamese lawmakers introduced the term ' <i>business investment</i> ' which is widely described as an investment activity carried out by investors, including private investors, Vietnamese investors or foreign business organizations in Vietnam.
2	Scope of Application	The Scope of <i>Application</i> in Law No. 25/2007 only covers direct investment in Indonesia, which means	<i>Scope of Application</i> : Vietnamese laws and regulations that are committed to continuing to open the	FDI in Indonesia is currently still limited by the existence of several lists of fields that are prohibited from foreign investment. Even in some sectors

		<p>that investment is intended to carry out business activities in the territory or region of the Republic of Indonesia. The Investment Law does not address foreign investments made through the capital market (<i>indirect investment</i>), financial services, and the oil and gas industry are not covered by the UUPM.</p>	<p>market for foreign investment in certain service sectors under WTO commitments. Until now, there are still some restrictions on the maximum percentage of foreign ownership or forms of investment with respect to some service sectors. For example, advertising services require foreign investors to establish joint ventures with existing Vietnamese advertising companies.</p>	<p>such as financial services, the oil and gas industry has not been clearly regulated regarding foreign investment in these sectors. This is different from Vietnam, which continues to open up opportunities for sectors that can be entered by foreign investors while still carrying out certain restrictions such as the maximum percentage of foreign share ownership and so on.</p>
3	Form of Business Entity	<p>The Form of Business Entity and Domicile is regulated in Law No. 25 of 2007 Article 5 paragraph (2) affirming that PMA is mandatory in the form of a limited liability company (PT) in accordance with Indonesian law and domiciled in the territory of the Republic of Indonesia, unless otherwise specified by law.</p> <p>It is further emphasized in Law No.25/2007 Article 5 paragraph (3) that PMDN and PMA that make investment in the form of limited liability are carried out by: (1) There is a portion of share ownership at the time of establishment of the PT; (2) The existence of a purchase; and (3) Other methods in accordance with the provisions of laws and regulations.</p>	<p>The form of Business Entity and Position in Vietnam is slightly different from Indonesia. The form of a PMA Business Entity in Vietnam can be in the form of the following: (1) Limited Liability Company ("PT"); (2) Joint Stock Company ("PSG"); (3) Partnership Company ("PK"); (4) Business Cooperation Contract ("KKB"); and (5) Public-Private Partnership ("PPP").</p>	<p>Based on this description, it can be seen that the form of business entities in Vietnam offers various forms that can be adjusted to the needs of foreign investors. Meanwhile, in Indonesia, the form of business entity stipulated by law is only a PT and there are no other alternatives. So sometimes this can make it difficult for foreign investors with these obligations.</p>
4	Workforce Arrangements	<p>The regulation regarding Manpower regulated in Article 10 of Law No.25/2007 regulates Manpower</p>	<p>Law No. 67/2014/QH13 on Investment actually does not cover employment, but in</p>	<p>In this description, it can be interpreted that in the rules of investment in Indonesia, Indonesian workers are prioritized over foreign workers. Even the</p>

Legal Review of Investment Implementation In Vietnam and In Indonesia Is Reviewed Based On Investment Regulations In Each Country

which determines as follows: (1) Companies that make investments must meet the needs of labor, especially for Indonesian citizens (WNI); (2) The investment company has the right to employ foreign experts in certain positions and expertise in accordance with the provisions of laws and regulations; (3) Companies that invest their capital are obliged to provide job training in accordance with the provisions of laws and regulations in order to improve labor competence; and (4) Companies investing their capital are required to provide training and transfer technology to Indonesian citizen workers in accordance with the provisions of laws and regulations.

The rules in Article 10 of Law No. 25/2007 above emphasize that the workforce must prioritize the labor force of Indonesian citizens. However, the Company still has the right to use foreign citizen experts for certain positions and expertise. Even so, there is still an obligation to organize training and transfer technology to Indonesian citizens.

Law No. 10/2012/QH13 concerning the Labor Code (Labour Code) it explains employment, including for foreign investors who want to hire workers in Vietnam. Broadly speaking, Article 3 of the Law on the Labor Code states that a "worker" is a person who is at least 15 years old, has the ability to work, works under an employment contract, is paid and managed and controlled by an employer or company. Then, there is a provision on Vietnamese Employees working abroad, employees of foreign organizations and individuals in Vietnam in Article 168 of the Law on the Labor Code, in paragraph (2) of Article 168 of the Law on the Labor Code states that Vietnamese citizens who work in foreign companies in Vietnam, in industrial zones, economic zones, processing zones, in foreign or international institutions and organizations in Vietnam, or working for an individual who is a foreign citizen in Vietnam, must comply with Vietnamese law, and must be protected by the law

Article 170 also explains the provisions for hiring foreign nationals. In

granting of permits for foreign workers to enter Indonesia is still given terms and conditions, namely mandatory training and technology sharing.

All requirements regarding this labor force are not regulated in the Investment Law in Vietnam, even the Vietnamese state actually provides visa-free facilities for foreign workers with the note that the foreign workers are obliged to provide information related to their work activities in Vietnam.

			<p>paragraph (2) of Article 170 of the Law on the Labor Code, it is explained that foreign companies, agents, organizations, individuals and contractors before hiring foreigners to work in the territory of Vietnam are required to provide an explanation of their request to employ foreign workers and to obtain written approval from the competent state authorities. This is related to the existence of a work permit exemption facility for foreign nationals working in Vietnam.</p>
5	<p>Capital Planting Institution s</p>	<p>The Investment Coordinating Board (BKPM) in Indonesia as an institution that manages investment is listed in Law Number 25 of 2007 concerning Investment.</p>	<p>In contrast to Indonesia, in Vietnam itself, investment agencies/institutions are divided into four, namely: First, Vietnam Business Forum (VBF), Second, Vietnam Trade Promotion Agency (VIETRADE), Third, Ministry of Planning and Investment (MPI), and Finally, American Chamber of Commerce (AMCHAM) which is an independent association of American and international businesses.</p>

Advantages and Disadvantages of the Implementation of Foreign Investment in Each Country between Vietnam and Indonesia

The implementation of investment specifically is not regulated in Law Number 25 of 2007 concerning Investment, but the legal basis that regulates this is the Regulation of the Investment Coordinating Board Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities (hereinafter referred to as "BKPM Regulation No.6/2018) and Regulation of the Investment Coordinating Board Number 5

of 2019 concerning Amendments to the Regulation of the Coordinating Board Investment Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities (hereinafter referred to as "BKPM Regulation No.5/2019). BKPM Regulation No.6/2018 regulates the procedures, implementation and also criteria for Business Licensing and Investment Facilities. Meanwhile, BKPM Regulation No.5/2019 regarding changes in the provisions between number 19 and number 20 of Article 1 is inserted 1 (one) number, namely number 19a, and number 22 Article 1 is deleted (BKPM, 2020).

Foreign investors can make the following forms of investment in Vietnam, divided into two types: Direct Investment and Indirect Investment. For direct investment, investors must (1) Establish a new legal entity; (2) Investment through contractual arrangements; (3) A Business Cooperation Contract (BCC) is signed with the other. Local or foreign investors; (4) PPP contracts with Vietnamese state bodies (e.g. Build Operate Transfer (BOT), Build Transfer Operate (BTO) and Build Transfer (BT) Agreements); and (5) Investing through shares/acquisition of capital of existing entities. For indirect investments, investors must (1) Buy stocks, stock certificates, bonds, and other securities traded on the stock exchange; (2) Through securities investment funds; and (3) Investment through other intermediary financial institutions.

The Indonesian government controls foreign investment through a series of methods. The controls are mainly carried out under the supervision of the Investment Coordinating Board (BKPM) in contrast to Vietnam, where in general, there are specific factors that the government will consider before approving foreign investment in Vietnam. In particular, FDI restrictions are provided in World Trade Organization (WTO) commitments and international or bilateral agreements and other domestic laws, including those related to national security, antitrust, and corporate approvals. In Indonesia at this stage: (1) An application for Foreign Investment Registration can be submitted with a foreign business entity or a foreign business entity together with an Indonesian Citizen (WNI) or an Indonesian legal entity. (2) After knowing the criteria for the business field, the next for PMAs: Individuals; required is a valid passport record, Foreign Business Entity: the required document is a record of the Articles of Association in English or a translation by a sworn translator. (3) Submitting an application for foreign investment using Model I/PMA made in two copies shown to the Investment Coordinating Board (BKPM) located in Jakarta, Indonesia; (4) BKPM will evaluate and examine the application, then if the application is approved, the head of BKPM with all authority at his disposal will issue a Foreign Investment Approval Letter (SP PMA) no later than 10 (ten) working days after the file is received which is declared complete; (5) After having an SP PMA, the foreign investor officially has a temporary license to carry out his business activities in Indonesia; (6) Meanwhile, foreign investors must apply for a follow-up implementation permit to make a Deed of Establishment of a Limited Liability Company (PT) with PMA status.

Based on this description, it can be interpreted that in the implementation of investment both in Indonesia and in Vietnam has advantages and disadvantages:

1. Advantages of investing in Indonesia:

- a. The political security situation in Indonesia is relatively more stable than other ASEAN countries.

When compared to countries in the Southeast Asian region, such as Vietnam, Myanmar, the Philippines, and even Thailand, it is certain that Indonesia is a country in Southeast Asia that tends to have a more stable political situation than these countries. It is very rare for political upheaval to cause a lasting impact that

occurs in Indonesia. For example, in Myanmar, there are often political upheavals even to the point of implementing a curfew. Likewise with the Philippines, which is quite often in political upheaval, or Vietnam, which applies the principle of a communist state, political upheaval can occur at any time (Marsh 2019).

The Indonesian government strongly supports foreign investment activities even in a position that benefits much more than domestic investors;

In recent times, the Indonesian government's focus has been on bringing in foreign investors, especially since the construction of a new capital city in East Kalimantan which urgently needs the role of investors, especially foreign investors. Therefore, several regulations regarding foreign investment have been changed and reconditioned to provide convenience for foreign investors. An example is related to investment for the IKN project, the government has made special rules with the aim of providing convenience for foreign investors (Nurhidayati 2022).

The natural and non-natural potential in Indonesia is much more potential for foreign investors to develop.

Indonesia is known by countries in the world as a rich country. In the state of Indonesia, there are a variety of natural and non-natural resources that can be processed into something valuable. For example, in Indonesia it contains minerals, oil, gold and so on where these contents can be mined to then be used as gold jewelry, vehicle fuel and so on which have the potential to bring profits. This natural wealth is not owned by other countries such as Vietnam, therefore this is one of the advantages that Indonesia has to offer to foreign investors.

The character of the Indonesian population is friendly and friendly, so it is suitable if foreign investors come to Indonesia because of the situation of the receiving population.

Indonesia is known as a country whose population is very friendly even for newcomers including foreigners. This is something that other countries such as Vietnam do not have. Including the security of the Indonesian state which is much safer than Vietnam or other countries in the ASEAN region. This potential or advantage can attract foreign investors to come to Indonesia, because of the friendly population conditions and a fairly good level of security.

- b. The availability of resources in Indonesia is very large, especially human resources, so that it can provide assistance in the form of labor for investors.

Indonesia has a fairly large population compared to ASEAN countries such as Vietnam. Therefore, it can be ascertained that the availability of Human Resources in Indonesia is much more adequate and even abundant compared to Vietnam.

2. Disadvantages of Investment in Indonesia:

- a. Investment in Indonesia is not yet widely open to foreign investors, it is evident that Indonesia still has a list of investments that foreign countries are not allowed to enter;

In the provisions of Presidential Regulation Number 49 of 2021, amendments to Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector are regulated regarding several fields that are open and closed to foreign investors. An example of a closed business sector is the national security and defense sector. The existence of this provision actually has the purpose of keeping crucial areas related to state secrets safe. But on the other hand, this actually makes

investors feel that their investment movement is limited, which ultimately makes them reluctant to invest in Indonesia (Putu Sudarma Sumadi 2014).

- b. Regulations or legal rules in Indonesia tend to still lack a strong position so that they have the potential to cause losses to foreign investors;

In the rules of the Investment Law as described in the previous section, it can be seen that in some parts of the article there are rules that tend to hinder the investment process of foreign investors in Indonesia, such as regarding closed business fields for investors, provisions regarding the mandatory form of limited liability companies and so on. These rules are indeed drafted to benefit Indonesia's position, but for foreign investors it tends to make it difficult for investors with restrictions on the rules by the Indonesian Government (Effendy 2014).

The government has not provided wide access for foreign investors to invest in Indonesia.

As previously explained, foreign investors cannot fully invest in Indonesia, because there are restrictions on several fields that are prohibited for foreign investors to enter. This means that the government has not fully provided wide access for foreign investors.

3. Advantages of Investing in Vietnam:

- a. Vietnam has a much stronger legal basis than regulations in Indonesia;

In the comparison table mentioned above, it can be seen that basically the regulations regarding investment in Vietnam tend to be stronger than Indonesia. This can be seen from the existence of a number of rules that make it easier for foreign investors to position themselves in Vietnam, such as the provision of visa exemption for foreign investors.

- b. The Vietnamese government opens the widest possible investment opportunities for foreign investors;

In terms of investment regulations in Vietnam, there are no rules regarding restrictions on fields that foreign investors are not allowed to enter like in Indonesia. This means that the Vietnamese government provides the widest access for foreign investors to invest in any field in Vietnam.

- c. Vietnam provides several very favorable facilities for foreign investors.

As previously stated, Vietnam provides several facilities that benefit foreign investors, one of which is the provision of visa-free. So that foreign investors who will invest in Vietnam do not need to bother with visa processing.

4. Disadvantages of Investing in Vietnam:

- a. The characteristics of the Vietnamese population tend to be less friendly and hard-tempered so that the potential for friction with local residents is quite large;

Vietnam is one of the countries that has communist ideas that are heavily influenced by Chinese culture. As a country that has communist ideas, its people tend to be harsh and a little indifferent to immigrants unlike Indonesia whose eastern culture is very high so that the friendly and accepting attitude of immigrants is more applied in Indonesia than Vietnam.

- b. The unstable political and government conditions in Vietnam plus Vietnam's historical background related to the communist state;

As previously informed, Vietnam is one of the countries in the ASEAN region whose political conditions are often unstable. This is due to the dominance of a single party in Vietnam, namely the communist party, which makes people have to submit to

communist regulations, even though there are some people who do not agree with the concept who then carry out upheavals until a heated political situation arises.

c. The development of life in Vietnam tends to be sluggish because Vietnam has communist ideas that tend to reject any significant changes in the lives of its people.

When compared to Indonesia, it is clear that community development along with facilities and infrastructure in Vietnam tends to lag behind more than Indonesia. For example, in terms of infrastructure development, it is very rare to find high-rise buildings in the capital region of Vietnam.

Conclusion

Based on this description, it can be concluded that each rule or provision regarding investment in both Indonesia and Vietnam has its characteristics and advantages and disadvantages. However, from the description of all aspects that have been described above, it can be concluded that among the FDI rules in Indonesia and Vietnam, the better is the regulation of FDI in Vietnam. This is because FDI rules in Vietnam tend to be more detailed that can accommodate the needs of foreign investors, for example, in Vietnam there are four special institutions or bodies that handle investment, where each of these bodies has authority, this is different from Indonesia which only has one agency that handles investment so that it lacks focus on handling foreign investors. In addition, the advantages of foreign labor regulations in Vietnam with the provision of visa-free and foreign workers are also not charged as in Indonesia which requires several things.

On the basis of this conclusion, it can be suggested that the Indonesian government should start more in-depth negotiations on regulations related to foreign investment, perhaps one of them can learn from the country of Vietnam where these two countries have the same characteristics, namely both growing as developing countries. It is hoped that with this regulatory change, it can provide a foreign investment climate in Indonesia that is more competitive with Vietnam and even superior to Vietnam.

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