

INVESTOR LEGAL PROTECTION IN THE INDONESIAN INDUSTRIAL 4.0**Wahyudi**

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Industry 4.0 its a combination of automation technology and cyber technology that is inevitable especially for the advancement of industry in Indonesia. The hospitality of foreign investment is very necessary for investors to invest in Indonesia, especially the existence of legal protection for security of investments in the framework of industrial development 4.0. The form of legal protection provided by the Government of Indonesia is with various kinds of regulations that support foreign investment, one of which is Constitution Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Constitution Number 25 of 2007 concerning Investment and Communication Ministerial Regulations No 20 of 2016 concerning Protection of Personal Data and the existence of a Personal Data Protection legislation.

Keywords: *Industry 4.0; Investor Legal Protection***INTRODUCTION**

Human knowledge has continued to increase since the stone age to high-tech in helping all human needs, in the world of industry the use of human power is not much needed with the presence of a variety of mechanical and digital technologies. The beginning of industrialization in the world began at the end of the 18th century with the advent of steam power engines and the discovery of the power of looms, the effects of these discoveries changed how goods were produced. One hundred years later, electricity discovery and assembly lines facilitate production in a way that is better than human power, this is

often referred to as the era of the second industrial revolution. Around the 1970s, the third industrial revolution began when advances in computer-powered automation enabled us to program machines and networks.

The fourth industrial revolution in this case called Indusrti 4.0 is inevitable, the public must be prepared to face this era which can change the legal, economic, social, work, and even society's order. Industry 4.0 is a combination of automation technology and cyber technology. The merger automatically becomes the mode of everything and the exchange of data in the technology of making goods or ser-

vices with machines or human hands. This also includes the Internet of Things (IoT). With the industry 4.0 the growth of digital companies is advancing rapidly because it can be integrated with systems that can communicate, analyze, and use data to encourage intelligent action in the physical world. Simply put, this industrial revolution 4.0 instills technology that is intelligent and connected in a company and human life in the present.

Industry 4.0 in addition to having benefits that greatly help humans also have challenges that must be anticipated, namely the community, community readiness for industrial progress 4.0 is a challenge, the level of utilization of these technologies can be optimally absorbed or lagging behind. Then the next challenge is strategy, technology and experts. The government as the holder of power plays an important role related to the direction of policy in supporting industry 4.0, providing domestic experts is important so that technology transfer goes according to expectations.

The next challenge from the application of industry 4.0 is the risk of information technology security to industrial systems. This online network connection will provide room for security violations and data leaks. The secrecy aspect of data

is very important for industrial progress 4.0 because in digital technology companies it is very confidential that the internal policy and strategy formula for managing the company is also important for personal data security so that it is safe and comfortable in carrying out its business.

The challenge aspect that greatly influences a country's business is capital. Capital as one of the important business drivers in carrying out the development and progress of the business underway. The acquisition of capital obtained from within the country requires a long time due to limited financial capabilities and knowledge of technology that supports industry 4.0. The existence of foreign investment provides a number of benefits for the government, which can absorb labor in the recipient country, can create demands for domestic products as raw materials, increase foreign exchange especially export-oriented foreign investors, can increase state income from the tax sector, transfer of technology and knowledge transfer.

The Wall Street Journal in 2015 issued related data, there were several challenges and difficulties for investors to do business in Indonesia. First, the rules in Indonesia are often unclear. Policy in Indonesia is considered often unclear and

vague, and it takes a long time to find out and implement it, for example the ban on the use of foreign currencies whose rules have been compiled since 2011, can only be implemented in 2015, and some companies are still confused clearly the rules apply widely. Investors who work well in Indonesia tend to have a high tolerance for uncertainty over these regulations. Second, the rules are considered to be changing rapidly. The Indonesian government is considered to often change the rules suddenly, and cause uncertainty. Especially the tax sector, investors often face levies outside official taxes. Third, policy makers are sometimes considered to focus on national interests. Based on information and experience from several companies, government officials are seen as emphasizing national economic policies. An example is the ban on the export of raw minerals, which are intended to develop domestic processing industry facilities. But because Indonesia does not yet have adequate facilities, several mining companies are currently in place. Fourth, labor problems. Indonesia wants to accelerate investment in manufacturing, construction of factories, industries and the like. Some companies say that it requires more investment in terms of human resources. Entrepreneurs complain of wages rising

while on the other hand workers are still demanding for wage increases and restrictions on foreign labor add to Indonesia's lack of interest. Fifth, infrastructure is still minimal. Slow development of infrastructure makes investors spend a lot of additional costs.

National development, especially in the economic field, still desperately needs the role of foreigners or foreign aid who further investment in Indonesia. Foreign investment is an activity to invest in doing business in the territory of the Republic of Indonesia which is carried out by foreign investors, both those who use foreign capital fully and those who are associated with domestic investment.

Investments are carried out based on the principle:

- a. Legal certainty
- b. Openness
- c. Accountability
- d. The same treatment and does not differentiate national origin
- e. Togetherness
- f. Fair efficiency
- g. Sustainable
- h. Environmentally friendly
- i. Independence, and
- j. Balance of progress and unity of the national economy.

The attractiveness of foreign investors to invest in Indonesia will greatly depend on the legal system being implemented. The legal system must be able to create predictability, fairness and efficiency, even in the era of now economic globalization, these three elements are becoming increasingly important, among others, with the development of market mechanisms. This factor in legal certainty is the basis for foreign investors to trust in investing their capital in Indonesia.

DISCUSSION

Development of Industry 4.0 needs support from all elements, both from human resources and capital elements. Human resource factor is an important factor so that the implementation of automation technology and digital cyber technology can be carried out well, besides that, there is also the need for financial support from inside and outside the country. Foreign investment in the development of industry 4.0 must also be supported by the Indonesian government so that foreign investors can protect their investments in Indonesia.

Protection of foreign investors has been made with the establishment of a law on investment. The establishment of the regulation is based on the spirit to create a conducive investment climate so that the

security of investment is guaranteed for businesses with foreign capital. The investment law regulates matters such as basic investment policies, forms of business entities, treatment of investment, business fields, and the linkages between economic development and populist economic actors embodied in regulations concerning the development of investment for micro-enterprises, small, medium, and cooperative, rights, obligations, and responsibilities of investors, as well as investment facilities, ratification and licensing, coordination and implementation of investment policies which regulate institutions, implement investment affairs, and provisions governing settlement dispute.

In the industrial era 4.0 the treatment of foreign investment related to rights and obligations must be clear in order to ensure that investments and security of business development prospects are guaranteed. The sector of automation technology and cyber technology is superior in industry development 4.0, which is basically the law concerning investment has accommodated it mainly in the protection of foreign investors who invest their capital in the territory of Indonesia which guarantees equal treatment in the context of domestic and foreign investment.

In addition, the role of the Indonesian Government in accommodating investment interests was formed by the BKPM or Indonesian Investment Coordinating Board is a Non-Ministerial Government Agency, which in charge of implementing policy and service coordination in investment in accordance with the provisions of the regulations. As the primary interface between business and government, BKPM is mandated to boost domestic and foreign direct investment through creating a conducive investment climate. Restored to ministry level status in 2009, and reporting directly to the President of the Republic of Indonesia, this investment promotion agency's goal is not only to seek more domestic and foreign investment but also seek quality investments that may drive the Indonesian economy and absorb a lot of manpower.

Indonesian Investment Coordinating Board main duty to coordinate policies and services in the field of investment based on the provisions of laws and legislation. Indonesian Investment Coordinating Board functions

1. Analysing and proposing national investment planning

2. Coordinating implementation of national policies in the field of investment
3. Analysing and proposing a policy of investment services
4. Determining norms, standards, and procedures for the implementation of investment services
5. To Develop opportunities and potential investments in the region by empowering business entity
6. Creating investment maps in Indonesia
7. Coordinating promotional activities and investment cooperation
8. Developing sector on investment through fostered investment. among others, promoting partnerships, improving competitiveness, creating healthy competition, and desiminating the broadest information in term of investment activity
9. Fostering implementation of the investment, and aid the completion of various obstacles and consulting problems faced by investors in carrying out investment activities

10. Coordinating and implementation of one stop service
 11. Coordinating domestic investors are running the planter investment outside the territory of Indonesia
 12. Providing licensing services and investment facilities
 13. Fostering and serving general administration in the areas of planning, administration, organization and governance, employment, education and training, finance, law, public relations, archiving, data and information processing, and household equipment; and
 14. Implementing other functions in the field of investments in accordance with the provisions of the legislation.
- foreign investment, namely equal treatment based on National Treatment Principle, Treatment same in the context of national treatment in Constitution No. 25 of 2007 concerning Investment is a guarantee of equal treatment from the government both for foreign investment and domestic investment as stipulated in Article 4 paragraph (2), namely in stipulating the basic policy as referred to in paragraph (1), the Government gives treatment that same for domestic investors and foreign investors while taking into account national interests; guarantee legal certainty, business certainty, and business security for investors from the process of managing permits to the expiration of investment activities in accordance with the provisions of laws and regulations; and open opportunities for development and provide protection to micro, small, medium and cooperative businesses.

The role and function of the Indonesian Investment Coordinating Board in maintaining the stability of investment in a single door that can facilitate domestic and foreign investment. Legal protection for foreign investors is needed so that the business climate is increasingly developing and further guarantees the continuity of foreign investment as the principles of international trade regulated in GATT-WTO which have become the principle of

The guarantee of legal certainty from the Indonesian Government in protecting foreign investment makes foreign investors feel safe in investing their capital in the industrial 4.0 era. in addition, the same treatment is based on the national principle of Most Favored Nation. 25 of 2007 concerning Investment also regulates the application of equal treatment in the sense of the most favorite nations, as stat-

ed in Article 6 paragraph (1), namely that the government gives equal treatment to all investors originating from any country that carries out investment activities in Indonesia in accordance with the provisions of the legislation. In principle, the Indonesian government will not provide special treatment or better treatment of one investor from a particular country compared to investors from other countries. The application of the principles of the most favorite nations in Constitution No. 25 of 2007 concerning Investments contains exceptions, namely in Article 6 paragraph (2) that the treatment as referred to in paragraph (1) does not apply to investors from a country who obtain special rights based on an agreement with Indonesia. In the explanation of Article 6 paragraph (2) it is stated that the definition of privileges as customs units, free trade areas, common markets, monetary units, similar institutions, and agreements between the Indonesian government and foreign governments that are bilateral, regional or multilateral relating to certain privileges in the implementation of investment. The national treatment principle and the most favored national principle are central principles compared to other principles in the GATT. In the GATT system, the principle of national treatment

and the principle of most favorite national guarantees the absence of discriminatory measures applied by member countries. Both of these principles became the principle in regulating the fields of trade that were born in the Uruguay round agreement. Both of these principles also apply in the General Agreement on Trade in Service (GATS). In GATS, WTO member countries are required to impose equal treatment of services or service providers from one country to another. The Indonesian government has signed the MIGA Convention in which one of the clauses therein is that states that sign the Convention may not create discrimination for domestic growers against foreign investors. In the GATT-WTO agreement specifically relating to trade and investment, the so-called Trade Related Investment Measures (TRIMs) also stipulated that each country signing an agreement on TRIMs should not differentiate between domestic investors and foreign investors.

Legal protection of foreign investors is also included in Constitution Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In the regulation, foreign investors in the event of a dispute, especially in a business dispute, can choose the dispute resolution process through arbitration, in the law ar-

bitration is a way of resolving a dispute outside the general court based on a written agreement from the party in dispute, but not all disputes can be resolved through arbitration, but only disputes concerning rights that are legally controlled by the parties to the dispute on the basis of their agreement / both parties. Arbitration institutions have advantages compared to judicial institutions, where these advantages are: a. guaranteed confidentiality of the disputes of the parties, b. can be avoided due to procedural and administrative delays; c. the parties may choose an arbitrator who, according to his belief, has sufficient knowledge, experience and background regarding disputed, honest and fair issues, d. the parties can determine the choice of law to resolve the problem as well as the process and venue for arbitration, and e. the arbitrator's decision is a decision that binds the parties and is simply or directly implemented.

If in commercial arbitration disputes that are resolved by arbitration are issues of commercial law or business law, then in investment arbitration, what is resolved are investment law issues specifically related to the actions of the State on investors or investors, especially foreign investors. So that investment arbitration is often

referred to as the Investor-State Dispute Settlement (ISDS).

Just like commercial arbitration, in investment arbitration the foundation is an arbitration agreement between the State and the Investor. It's just that in a commercial arbitration an arbitration agreement is contained in a commercial agreement, then in an investment arbitration the agreement or arbitration clause does not have to be stated in the commercial agreement. The arbitration agreement can be listed in a treaty or treaty or in the national law of the country or in the investment agreement given by the state to investors when investors will invest capital in a country.

Before 2013, for example in each foreign investment agreement issued by the Government of Indonesia, there was always an arbitration clause which read more or less as follows "In the event of a dispute between the company and the government of the Republic of Indonesia which cannot be resolved by deliberation, the Indonesian Government is willing to follow the settlement according provisions of the convention concerning the settlement of disputes between countries and foreign nationals regarding investment in accordance with Constitution Number 5 of 1968 "

With this clause, if there is a dispute between a foreign investor and the Government of the Republic of Indonesia, foreign investors can submit an arbitration request to ICSID (International Convention on Settlement of Investment Disputes). This is because the Republic of Indonesia has ratified this convention with Constitution Number 5 of 1968 concerning the Settlement of Disputes between States and Foreign Citizens concerning Investment.

In addition, the arbitration clause can also be contained or written in both bilateral and multilateral treaties made by or ratified by the Republic of Indonesia. For example, as follows:

In the ASEAN Comprehensive Investment Agreement Article 32 paragraph (1) it is stated that the disputing investor can submit a claim as referred to in Article 32 (Claims by Investors of a Member State) based on the choice of the disputing investor :

- a) to a court or administrative court in a disputing Member State, on the condition that the court or said court has jurisdiction over those claims; or
- b) based on the ICSID Convention and ICSID Rules concerning Procedures for Arbitration Processes,

provided that both the disputing Member State and the non-disputing Member State are parties to the ICSID Convention; or

- c) based on ICSID Additional Facility Rules, provided that either a disputing Member State or a non-disputing Member State is a party to the intended ICSID Convention; or
- d) based on UNCITRAL Arbitration Rules; or
- e) to the Regional Center for Arbitration in Kuala Lumpur or the regional center for other arbitration proceedings in ASEAN; or
- f) if the parties to the dispute agree to each other arbitration institution, for the Philippines, submitting a claim to the ICSID and ICSID Rules regarding the Procedure for an Arbitration Process shall be based on a written agreement between the parties to the dispute when an investment dispute occurs. provided that the selection of any arbitrary rules or forums based on paragraphs (a) to (f) must not include the selection of rules or other arbitration forums."

Foreign investors in investing in Indonesia have certainly expected profits,

but in carrying out their business, especially in the sector of automation and cyber technology sometimes have problems both with other companies and with the Indonesian government. Therefore Constitution Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has been able to protect foreign investors and these regulations are still relevant to industry development 4.0.

The confidentiality of personal data and data from automation and cyber technology companies in industry 4.0 is very important because it involves the trust of users of these technologies. In response to this, the Government of Indonesia issued Communication Ministerial Regulations No 20 of 2016 concerning Protection of Personal Data providing protection for individuals and companies as Article 26 outlines personal data, namely having the right to the confidentiality of personal data, filing complaints in order to resolve personal data disputes, gaining access for the history of his personal data and request the destruction of certain personal data in his electronic system.

Industry 4.0 in utilizing information technology systems, such as the implementation of electronic commerce (e-commerce) in the trade / business sector, electronic education (e-education) in the

field of education, electronic health (e-health) in the field of health, electronic government (e-government) in the field of government and information technology that is utilized in other fields. The use of information technology results in a person's personal data very easily collected and transferred from one party to another without the knowledge of the owner of the personal data, thus threatening the right to one's privacy. Protection of personal data is included in the protection of human rights, thus, the regulation concerning the right to privacy of personal data is a manifestation of the recognition and protection of basic human rights. The existence of an Act concerning the Protection of Personal Data is a necessity that cannot be delayed anymore because it is very urgent for various national interests. Indonesian international association also demands protection of Personal Data. Such protection can facilitate trade, industry, and transnational investment.

As a form of the Indonesian government's seriousness in protecting the personal data, Communication Ministerial Regulations No 20 of 2016 concerning Protection of Personal Data was upgraded to a draft law on the protection of personal data which was mandated by Article 28G paragraph (1) of the Republic of Indonesia

Constitution Year 1945 which states that: "every person has the right to personal, family, honor, dignity and property under his control, and has the right to security and protection from the threat of fear of doing or not doing something which is a human right" . The issue of protection of personal data arises because of concerns about violations of privacy that can be experienced by people and / or legal entities. Violations of privacy can cause losses that are not only material but also moral, in the form of the destruction of the reputation of a person, company or institution.

The formulation of rules regarding Privacy of Personal Data can be understood because of the need to protect individual rights in the community in connection with the management and processing of personal data whether done electronically or manually using data processing devices. Adequate protection of privacy regarding personal data will be able to provide public trust to provide personal data for various interests of the greater community without being misused or violating his personal rights. Thus, this arrangement will create a balance between the rights of individuals and the people represented by the interests of the state. This arrangement of privacy for personal data will contribute greatly to the creation

of order and progress in the information society.

CONCLUSION

The Indonesian government together with the House of Representatives has issued three legislative products as a form of legal protection for foreign investors who want to invest their capital in Indonesia. The guarantee of legal certainty for investors is from various rules, terms, conditions, guarantees for foreign investors in investing in Indonesia in accordance with Constitution Number 25 of 2007 concerning Investment, Constitution Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Communication Ministerial Regulations No 20 of 2016 concerning Protection of Personal Data and Draft Law concerning the Protection of Personal Data. The four regulations are a form of readiness of the Indonesian Government towards industrial development.

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