Supervision Aspect as The Instrument of Law Enforcement in The Activity of Foreign Investment

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Abstract— As a developing country, Indonesia requires a very large capital for the establishment of all aspects of Indonesian people. To implement the development, if only relying on capital and funding from Government, almost certainly rather difficult to achieve the goals envisioned by the founders of this Republic. It is necessary to look for other funding sources. One of the other sources of funds that can be used is foreign investment. This study aimed to examine the legal issues that arose due to the existence of foreign investment activities in Indonesia. As for the objective of this study is to describe and analyze the enforcement efforts by using supervision aspects of the implementation of foreign investment in Indonesia. As for the research method used is normative legal research through two types of approaches that are Statute Approach and Conceptual Approach. Based on the research findings the instruments which should be prepared in the law enforcement process are a legal instrument which provide legal certainty and supervision instruments by the government and the law enforcement officials. With the optimization of control measures as a follow up of the permission granted for the implementation of foreign investment in Indonesia then the violation can be minimized.

Keywords—Aspects of Supervision, Law Enforcement, Foreign Investment.

I. INTRODUCTION

Investment, especially foreign investment until now remains became one of important factors to mobilize and to sustain economic growth. In mid of 1997 Indonesia experienced monetary crisis. This monetary crisis begun by the depreciated of Rupiah exchange towards US dolar. The depreciation of Rupiah exchange more and more significant so that the monetary crisis that arose continued to be economic crisis which caused the economic growth running very slow [1].

One of the ways to re-generate or to re-mobilize national economy such as it used to formerly before monetary economic occurred is a policy to invite investment in Indonesia. Investment, especially foreign investment until today is an important factor to mobilize and foster economic growth.

There are many factors which caused the arousal of indisposition of the investment to get into Indonesia. The factors that can support the investment flows to get into a country, like security insurance, political stability, and law assurance, apparently became a particular problem for Indonesia. The current regional autonomy that even being implemented in Indonesia consider to be a new problem in the investment activity in several regions.

Due to the prevailing of Act, law No. 22/1999th jo Act No. 32/2004th regard with Regional Government, Indonesia got into a new era in relation to the inter-center government and regional government. Indonesia had been entering the regional autonomy era. New condition really had into an account by the investors concerned with the negative effect that emerged by it.

In the reformation era, Government attempted precisely to attract foreign investment as much as possible through the sequence of national visitation abroad, privatization of State-owned Enterprises, law supremacy enforcement, and revision towards various Act, Law regard with business and tax investment, state strcture and so on and so forth. All these attempts surely aimed to create a world business climate in the country which is more conducive in order to increase capital inflow which in its turn expected to increase society welfare.

Participation of foreign enterprises in investment activity in Indonesia were meant to be as a complementer to fill the labor sectors and industry which is unable to be fully conducted yet by national private party, whether the reason is technology, management or financial capital. Foreign capital expected can stimulate the climate or world labor life directly or indirectly as well, and also able to be used as attempt to break through the international marketing network through the link they had. The next is foreign
capital expected can foster the process of economic growth of Indonesia directly.

The main consideration of a country to optimize the investment role whether it is foreign or domestic is to alter the economic competence into real economic power I order to increase economic growth. The role of investment was not merely as the best alternative of funding sources for establishment compare to foreign loans, but also crucial as the tool to integrate economic of a nation in global economy [2]. Besides, investment can produce multiplayer effect towards national economic establishment not merely transferring capital and goods, but also to transfer knowledge and human resources [3], expanding work field, developing import substitution industry, to economize foreign exchange/devisa, sustaining non-oil and gas export to gain foreign exchange, technology transfer, building infrastructure, and developing underdeveloped regions. Therefore there are a lot of countries, unexceptionally Indonesia, which made investment activity as the part of its national economic organizing [4].

It is recognized that investment activity was really needed by a country in sustaining the process of eastablishment. However, behind the necessity of that investment, there are some main problems that need to be taken onto consideration by the government and requires a serious handling. One of the matters is regard with law enforcement [5].

Law enforcement in Indonesia viewed still weak since until present day there are some investment law cases that had not been enforced yet such as PT. Lapindo Brantas, Porong, Sidoarjo East Java and case of PT. Newmont Minahasa Raya at the Buyat Bay, North Sulawesi.

Law enforcement in various cases of polluting and violating nature through supervision instrument that valued as weak, caused by the complexity of aspect that arouse in the process of nature law enforcement. So many cases which frequently experience over suppressed towards social, economy, and politic factors which notably fully human creation [6]. From this phenomenon then the handling of polluting becomes a peculiar problem and requires inter-sectoral handling efforts [7].

From the background elaboration then the problems of this research were formulated as follow: (1). How is the law enforcement effort towards investment in Indonesia? (2). What is the implication of supervision aspect as the instrument of law enforcement at the foreign investment activity?

II. RESEARCH METHODS

This research used normative law research method, which was an investigation recognized generally in law science to investigate/ to learn the positive law substance textually (not merely towards norms, but also principles, even value contained in it) [8].

Research approaching method which used in this research is approach that customized with research type that being conducted, whereas, this research is normative judiciary research (legal research). As stated by reference [8] there are 5 (five) approaches which used in the law study, which are constitutional approach (statute approach), case approach, historical approach, comparative approach, and conceptual approach.

Based on indicator contained in this research and various approach methods in law research, so that the approach which used more focused on 2 (two) approach methods that are statute approach and conceptual approach [9].

Legal material which required are in the form of whether it is primer material, secondary legal material, or tertiary legal material yet in for all the problems which had been formulated can be sloved well, then in order to complete it, requires an explanation, information, or opinion which directly attained from the law experts [10].

Thus, legal material technique which used in this research is library research technique that collecting, learning and investigating legal material that relevant with the formulated problems, whether it is primer material, secondary legal material, or tertiary legal material.

Primer legal material consists of Constitution of the Republic of Indonesia 1945, constitutional regulation law which are Act, Law No. 25 2007 about investment, Act, Law No 32 2004 about Regional Government, Government Regulation No. 38 2007 concerned with Divisions of Governmental Affairs inter-Governments, Province Government, and regional government District/City, President Decree No 27 2009 concern with Integrated One Door Service, regulation of head of Capital Investment Coordinating Board No 11 2009 about the mechanism of Conduction, Executing, Advising, and Reporting Integrated One Door Service in Investment Field and other constitutional regulation concerned with this research. Secondary Legal Material is legal material which explained about primer legal material to aiding analyze the problems so that the deep comprehension concern with statute regulation could be found. Therefore, it requires literature books, journal regard with the topic research which obtained through website or blogs of law experts, and another law witing which relevant with the problem.

In this research, legal material obtained presented, categorized, and Compiled sistematically for then later would be analyzed with the technique of abstracting regulation of Act, Law existed so that it can answer the question or solve the problems in this research. This analysis is Judiciary qualitative analysis that refers to research materials that leads to theoretical investigation concern with concepts, norms, or law. Analysis of legal material which is analytical descriptive. In qualitative judiciary analysis method, the legal material or research object not merely described as it is, but also will be given an argument regard with aspect of supervision as the instrument of law enforcement at the capital investment activity [10].

III. RESULTS AND DISCUSSION

As explained on the background above can be seen that the existence of investment was not merely give positive effect but also negative towards host country (capital receiver). The negative effect which arouse become a must to have a full attention not merely from central government but also regional government and wide society [11].

Basically, multi-national enterprises that came to a country aimed to seek for advantages. Which in the activity
they "absorbed" the natural resources existed, dominating market (whether the existed one and beneficial or the new emerged one) and presses production cost by mobilize cheap laborer in the developing country [11]. For instance, Foreign Direct Investment-FDI like this are Canadian mining enterprises which opened mining in Indonesia or palm oil company Malay which take over palm garden in Indonesia. Cargill, Exxon, BP, Heidelberg Cement, Newmont, Rio Tinto dan Freeport McMoRan, dan INCO those are possessed direct investment in Indonesia [12].

Viewing the main purpose of these foreign enterprises, which in its principle seeking benefit at the particular developing country so that it is frequently found various violatations which committed by the foreign investor which directly or indirectly also engaging government whether central or regional. The activity of foreign investment strongly concerns with the lisence. Whether lisence given by the central government or regional government. So that through the lisence that given by government then a capital investing enterprise able to commit its business activity in Indonesia.

A. The Attempt to Enforcing Law of Capital Investment in Indonesia

Indonesia is law-state. This concept is in accordance with what mandated in Constitution of Republic of Indonesia 1945 which is at the Chapter 1 alinea (3) which stated that "Indonesia is a law-state". As the consequence of Indonesia as the law-state which based on Pancasila and Constitution of Republic of Indonesia 1945, then all aspect of life and society division, the nationality and state including government must always based on the law.

As the law-state, then in the conduction of state government eventually unseparable with the Statute Regulation as the positive law which prevailed in Indonesia.

Law-state Concept had born a year before Christ, whereas this concept developed by Plato and Aristotile, and then at the 19th century, concept of Law-State more developed by AV Dicey with his concept Rule of Law yang developed in the continental Europe Nations, and Frederich Julius Stahl with his concept Rechtsstaat which developed in Anglo Saxen countries.

In its development the concept of law-state then experienced improvement, and generally can be seen as follow:
1. The state government system which based on people authority;
2. That government in running his duty and responsible should be based on law or statute regulation;
3. There is a warrantee towards human rights (citizen);
4. There is a power distribution in the state;
5. There is a supervision from rechterlijke controle which is free and independent, in other words that court institution/ judicial was impartial and not being under executive control;
6. There is a real role from people or citizen to engaged together supervising the creating and conduction of wisdom which committed by the Government; there is economy system which able to guarantee the prevalence distribution of resources needed for the citizen’s welfare.

Conceptionally, then the essence and meaning of law enforcement is at the activity of matching the relation of translated values in the steady principles manifest and the attitude as the final sequence of value description, to create, preserving, and maintaining peaceful life kinship.

The essence of law enforcement actually was on the factors that probably affecting it. The factors meant neutral, so that the positive or negative effect were on the content of those factors. Those factors are as follow:
1. Its own law factor, in this case bound by mere Act, law.
2. Factor of law enforcing, which are the parties who formed or implementing law.
3. Factor of infrastructure which supported law enforcing.
4. Factor of people, which is neighborhood where that law prevailed or implemented.
5. Cultural factor, which is as the work result, creation, and feeling which based on will of human in living the life.

Those five factors are correlated strongly, since it was the essence of law enforcer, a standard of law enforcement effectiveness as well.

In the development of law-state concept experienced a perfecting action, which generally areas follow, (1) Government state system were based on people sovereignty, (2) that government in conducting duty and responsible should be based on constitution, (3) thereias an insurance towards human rights (citizen), (4) there is power distribution in the state (5) there is a supervision from rechterlijke control which is free and independent, in terms of court institution really impartial and not being under executive control, (6) there is a real role from the members of society or citizen to altogether engaging in supervising the creation and conduction of wisdom which committed by the government, (7) there is economic system which can assure the prevalence distribution of resources which required for the welfare of the citizen

B. Aspect of Supervision as the Instrument of Law Enforcement at the Foreign Investment

Based on Chapter 27 Act, Law No. 25/2007 about capital investment, then government coordinating the policy of capital investment, whether inter-instances coordination with Bank of Indonesia, inter-government instances with regional government, or inter-regional government. Coordination of execution of capital investment were committed by Capital Investment Coordinating Board (BKPM). BKPM is an independent and non-department instance which responsible directly towards President. President then determined Presiden Decree No. 90/2007 about Capital Investment Coordinating Board on September 3rd 2007 ("Perpres No. 90/2007").

In accordance with chapter 28th Act, Law No. 25/2007 about Capital Investment and Chapter 2 President Decree (Perpres) No. 90/2007, then BKPM have the main duty to execute coordinating of the policy and the service in the capital investment based on rules and constitution.

With the authority which given to him, BKPM released regulation Head Regulation BKPM No. 13/2009 regard with the guideline and mechanism of Conduction controlling the execution of capital investment at Desember 23rd 2009 (''Perka BKPM No. 13/2009. Controlling of Capital Implementation was aimed implementing
monitoring, coaching, and supervision towards the implementation of capital investment according to the rights, obligation and responsibility of the investor.

The aims of capital implementation controlling is in order to be able:
1. To obtain data development on realization of capital investment and information of problems and obstacles that are facing by the enterprise;
2. To guiding and facilitating problems solving and obstacle that the enterprise is dealing with;
3. Supervising the implementation of capital investment regulation and utilizing of fiscal facility and taking further action towards the deviation that committed by the enterprise.

Thus, expected that the smoothness and appropriateness of capital investment implementation would be achieved and also the availability of capital investment realization data as well.

The controlling of capital investment was an instrument of law enforcement. As an instrument of law enforcement so that the regulation on supervision of investment implementation were regulated chapter 6th letter (c) Perka BKPM No. 13/2009 and conducted through:
1) The research and evaluation on information of capital investment provision implementation and facility that had been given;
2) The observation at the location of capital investment project; and
3) Further follow up towards the deviation of capital investment provision.

The board that authorized on the implementation of capital investment are:

a. Regional device District/City Division Capital Investment (“PDKPM”) towards the whole activity of capital investing in the district/city;

b. Regional device Province Division Capital Investment (“PDPPM”) towards the investment which the activity is cross-district/city and based on legislation were become the authorized of province government;

c. BKPM towards fiscal facility using of capital investment which become government authority;

d. Technical instance towards the implementation of capital investment in accordance with the provision regulation which regulate the business activity.

In implementing supervision as mentioned above, PDKPM committing coordination with the instance of the regarded region. Meanwhile, PDPPM conducting coordinating with PDKPM and instance of regarded region, whereas BKPM committing coordination with PDKPM, PDPPM and instance related.

The implementation of investment in this case foreign investment definitely requires a set of licence whether released by instance of central government or regional government. As the consequence of the releasing licence in order to investing foreign capital investment so then it requires a supervision action. Supervision at its principle was conducted as the preventive attempt whether the activity of capital investment had been implemented and according to the provision existed.

As the supervision commonly committed at the enterprise activity of foreign investment in mining sector.

When the enterprise earned the mining business licence (IUP) then the supervision function must also been implemented as well. Supervision at the mining business management on its principle aiming IUP holder more directed in committing the activity in its sequence with mining business, so that it would not deviate from the order and prohibition that were determined in the licence.

Theoretically George R. Terry stated that supervision was aimed to determine what had been achieved, evaluate and applying corrective action if needed to assure the result as planned.

Relevant with that thought, then the supervision absolutely required in the sequence with the management of mining business in accordance with the principle of supervision objective which is not deviate from the command and prohibition that were determined in the licence. Therefore, as the part of management function, the planning become crucial for the effectiveness of supervision duty and as realization from the law enforcement as mandated by legislation.

Planning is absolutely required to begin the implementation of supervision to realize law desire which contained command and prohibition in the capital investment law, particularly foreign investment. Supervision naturally were pointed to prevent misunderstanding and showing way and the right objective.

In the foreign capital investment which notably directed most of its activity on mining activity hence the instrument of supervision is crucial to be done considering if that supervision did not run well then, the consequence is we will lose most of the natural resources existed.

IV. CONCLUSION

The attempt of law enforcement basically refers to the factors that affecting it and meaning as neutral, the factors meant are as follow: (1). Its own law factor, in this case restricted merely by the legislation. (2). Law enforcer factor, which is the parties that formed or implemented the law. (3). Infrastructure and facility factor which favored law enforcement. (4). Society’ factor, which is neighborhood whereas that law prevailed or implemented. (5). Cultural factor, which is as the masterpiece, creation, and feeling that based on human will in living life.

As the the developing country, which enclosed themselves towards the entrance of foreign investment to sustain the establishment so that Indonesia requires to complete the legislation regulation device existed in the investment sector which contained law insurance. Had not so, then various problems will arise which can harm the nation and country affairs.

Beside readiness of legislation device in the process of enforcing the law so that one of another instruments that should be prepared is instrument of supervision. By the existence of otimalization of supervision act as the further action of the given licence for the implementation of foreign investment activity in Indonesia then the overruling action towards the implementation of PMA can be minimized.

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REFERENCES


