

FOREIGN INVESTMENT POLICY IN RENEWABLE ENERGY POST JOB CREATION LAW

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Abstrak

Kepastian hukum dalam investasi asing bidang energi terbarukan merupakan faktor prioritas dan paling relevan untuk investasi. Menimbang hal tersebut, Undang-Undang Cipta Kerja lahir untuk mengatasi persoalan tumpang tindih dan over regulasi. Melalui pendekatan yuridis normatif yang bersifat deskriptif analisis, dihasilkan penelitian bahwa kebijakan investasi asing bidang energi terbarukan pasca Undang-Undang Cipta Kerja mengalami perubahan signifikan dalam hal persyaratan investor asing, jenis bidang usaha yang tertutup untuk investasi, pihak pemberi fasilitas investor, dan penyederhanaan ketentuan investasi, sebagai strategi mempermudah masuknya investasi asing guna peningkatan ekosistem investasi di Indonesia.

Kata Kunci: Investasi Asing, Energi Terbarukan, Undang-Undang Cipta Kerja

Abstract

Legal certainty in foreign investment in renewable energy is a priority factor and the most relevant for investment. Considering this, the Job Creation Law was born to overcome the problem of overlap and overregulation. Through a normative juridical approach that is descriptive in analysis, research has produced that the policy of foreign investment in the field of renewable energy after the Job Creation Law has undergone significant changes in terms of foreign investor requirements, types of business fields that are closed for investment, investor facilities, and simplification of investment provisions, as a strategy to facilitate the entry of foreign investment in order to improve the investment ecosystem in Indonesia.

Keywords: Foreign Investment, Renewable Energy, Job Creation Law

INTRODUCTION

Background

The development of renewable energy in Indonesia targets a renewable energy mix of 23% by 2025 and 31% by 2050 from the final energy mix in accordance with the national energy policy (Government Regulation Number 79 of 2014 concerning National Energy Policy) mainly from the power generation sector. This is to be achieved through strategies: (a) Strengthening coordination between domestic institutional structures, especially to overcome problems of licensing and land acquisition; (b) Implementing emission tax C; (c) Providing renewable energy (ET) investment support; (d) Provide support for the development of the domestic ET industry and exemption from import taxes on renewable energy equipment; (e) Implement *feed in renewable energy tariffs* that have been set by the government; (f) Provide education to the public regarding the application of renewable energy.¹

In view of the Law of the Republic of Indonesia Number 30 of 2007 concerning Energy, the government carries out the construction of renewable energy power plants,

¹ Fikry Adzikri, Didik Notosudjono, and Dede Suhendi, "Strategi Pengembangan Energi Terbarukan di Indonesia," *Jurnal Online Mahasiswa (Jom) Bidang Teknik Elektro* 1, No. 1 (2017): 1–13, http://jom.unpak.ac.id/index.php/teknikelektro/article/view/667.



especially to overcome the problem of electrification ratios, support the regulation of renewable energy regulations, maximize the institutions of the National Energy Council and other institutions, set specific targets, to hold forms of bilateral cooperation at the international level, to maximize the mix of new and renewable energy.²

In order to achieve the foregoing, considering that Indonesia needs assistance in the development and management of energy resources and new and renewable energy, Indonesia cooperates with other countries, such as member countries of the *International Renewable Energy Agency* (IRENA)³ also opens up opportunities for foreign investors⁴ for the sake of increasing human resources for the management of technology and knowledge about new and renewable energy, exploration and exploitation of energy resources, and obtaining investment in the development of new and renewable energy.

Foreign investors are urgently needed to invest in areas of Indonesia that have the potential for new and renewable energy resources, because for the development of renewable energy, funds are very much in need because the cost of tools and management is quite expensive in the early stages. It will take investment for the development of 402 trillion renewable energy in the next 5 years. To achieve this target, the Government of Indonesia also provides incentives for investors who want to invest in the form of ease of licensing to increase the price of new and renewable energy.⁵

Amid an increasingly competitive world economic competition and the demands of economic globalization, job creation is needed to create an increase in the investment ecosystem. Responding to the challenges of this era, Law Number 11 of 2020 concerning Job Creation (Job Creation Law) was born which accommodates the concept of *Omnibus Law* as a form of simplifying regulations by revising and repealing several laws at once (as a solution to problems that arise because there are often regulatory overlaps and the phenomenon of *over-regulation*).⁶ The Job Creation Law was born with the mission of creating jobs. More precisely, the Job Creation Law was born with the urgency to adjust various aspects of the rules related to the convenience, protection and empowerment of MSMEs, improvement of the investment ecosystem, acceleration of national projects and improvement of protection and welfare of workers.

Legal Issues

Considering the background above, it becomes urgent to research foreign investment policies in the field of renewable energy after the Job Creation Law.

² Savira Ayu Arsita, Guntur Eko Saputro, and Susanto Susanto, "Perkembangan Kebijakan Energi Nasional Dan Energi Baru Terbarukan Indonesia," *Jurnal Syntax Transformation* 2, No. 12 (2021): 1779–88, https://doi.org/10.46799/jst.v2i12.473.

³ Zulfadli, "Kepentingan Indonesia Bergabung dengan Irena (International Renewable Energy Agency) Tahun 2014," *Jom FISIP* 3, No. 1 (2016): 1–15.

⁴ H. B. Tina Amelia, *Dinamika Hukum Investasi di Indonesia* (Jakarta: Kaya Ilmu Bermanfaat, 2021).

⁵ Zulfadli, "Kepentingan Indonesia Bergabung dengan Irena (International Renewable Energy Agency) Tahun 2014."

⁶ Weppy Susetiyo and Anik Iftitah, "Peranan dan Tanggungjawab Pemerintah dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja," *Jurnal Supremasi*, August 31, 2021, 92–106, https://doi.org/10.35457/supremasi.v11i2.1648.



RESEARCH METHODS

This paper is presented through a normative juridical approach that is descriptive analysis, using the technique of collecting literature review data from secondary data sources with three legal materials, namely primary, secondary, and tertiary legal materials.⁷ The approach used in this study is a *conceptual approach*, a *statute* approach. Primary legal materials consist of laws and regulations relating to foreign investment in renewable energy after the Job Creation Law, including Law Number 25 of 2007 concerning Investment; Law Number 11 of 2020 concerning Job Creation; Presidential Regulation of the Republic of Indonesia Number 76 of 2007 and Presidential Regulation of the Republic of Indonesia Number 44 of 2016 concerning Criteria and List of Closed and Open Business Fields with Requirements in the Field of Investment; Presidential Regulation of the Republic of Indonesia Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing; Presidential Regulation of the Republic of Indonesia Number 10 of 2021 concerning the Investment Business Sector; and Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing and Investment Facilities. The data collection technique used by the authors in this study is a desk study (bibliography study). The processing technique of legal materials that have been collected is carried out in stages: inventory, identification, classification, and carrying out systematization. This stage of systematization is carried out so that there are no contradictions between one legal material and another. Legal materials that have been collected and grouped are then studied using a conceptual approach and a statutory approach, and other approaches to obtain an overview or answer to the problems that are the focus of the study research. The analysis used in this study uses a qualitative analysis method, namely by comparing (comparing) the legal materials that have been processed.8

DISCUSSION

The Government of Indonesia seeks to overcome energy problems by formulating the National Energy Policy (KEN) in Government Regulation Number 79 of 2014 concerning the National Energy Policy and is described in more detail in Presidential Regulation Number 22 of 2017 concerning the National Energy General Plan (RUEN). In KEN, the Government sets National Energy Development Priorities based on the principle of:

1) maximize the use of renewable energy by paying attention to the level of the economy;

2) minimizing the use of petroleum;

3) optimizing the utilization of natural gas and new energy; and

⁷ T. I. Susetiyo, W., Zainul Ichwan, M., Iftitah, Anik, & Dievar, "Kepastian Hukum Undang-Undang Cipta Kerja Bidang Kesehatan Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020," *Jurnal Supremasi* 12, No. 2 (2022), https://doi.org/https://doi.org/10.35457/supremasi.v12i2.2315.

⁸ M. H. Hakim, R., & Mezak, "Jenis, Metode, dan Pendekatan dalam Penelitian Hukum," *Law Review. Fakultas Hukum Universitas Pelita Harapan* V, No. 3 (2013), https://www.mendeley.com/catalogue/7aeb293a-e012-31ea-ae62-

¹bb987cb5a3b/?utm_source=desktop&utm_medium=1.19.8&utm_campaign=open_catalog&user DocumentId=%7Bd2760f77-3803-41d5-a816-592bac22cfab%7D.



4) using coal as the mainstay of the national energy supply.

The four principles in the National Energy Development Priorities are prepared in order to achieve the optimal primary energy mix target as follows:

1) the role of New and Renewable Energy (NRE) in 2025 will be at least 23% and at least 31% by 2030 as long as the economy is met;

2) the role of petroleum is less than 25% by 2025 and to be less than 20% by 2050;

3) the role of coal is at least 30% in 2025 and at least 25% in 2050;

4) the role of natural gas is at least 22% by 2025 and at least 24% by 2050.⁹

NRE is a type of energy that can continue to be provided by nature; it is sourced from water energy, geothermal, wind, solar, biomass, organic waste, wind energy, and marine energy. These sources are then processed to produce energy in various forms, especially in the form of electricity, heat, chemicals, or mechanical strength. The use of NRE sources in power plants, for example, is based on the availability of unlimited or depleted energy sources for a relatively longer time than non-renewable energy such as fossil energy. In addition, the amount of waste generated through the use of NRE is very small or even non-existent, thus supporting Indonesia's commitment to reducing world emissions. In implementing the use of NRE in Indonesia, for example as the energy base for power plants, the government faces limitations both in terms of budget and technology owned.¹⁰

Considering this, investment from the private sector, especially in the form of *foreign direct investment* (FDI) based on NRE is very necessary. FDI is one of the important sources of financing, especially for developing countries. In general, FDI has a real influence on development through its support for economic growth. This support is reflected in 4 things,¹¹ namely:

- 1. the construction of new factories that are directly proportional to the increase in output and lead to an increase in GDP, total exports, and employment opportunities;
- 2. increased domestic demand for capital goods, semi-finished goods, raw materials and other inputs;
- 3. increased employment opportunities have implications for increasing people's spending ability; and
- 4. the transfer of technology and other skills (*knowledge*) through local workers who work in FDI companies or through production links or *subcontracting* between FDI and local companies including MSMEs.

However, the investment attractiveness of the renewable energy sector in Indonesia is still quite low compared to other countries. In 2018, Indonesia ranked 36th out of 40 countries surveyed by the *Renewable Energy Country Attractiveness Index* (RECAI) regarding investment attractiveness in the renewable energy sector. Of the 3 Southeast

⁹ Muhammad Aziz Ali Mutia; Ayatun Nurjanah, "Evaluasi Kebijakan Indonesia: Peningkatan Investasi Asing di Sektor Kelistrikan Berbasis Green Energy," *Jurnal PPI Dunia* 2, No. Vol 2 No 1 (2019) (2019): 32–38, https://ejournal.ppi.id/index.php/oisaa/article/view/39/8.

¹⁰ Nurjanah.

¹¹ Tambunan Tulus, "Daya Saing Indonesia dalam Menarik Investasi Asing," Seminar Bank Indonesia, 2007.



Asian countries surveyed, Indonesia's position was at the bottom with a *RECAI score* lower than the Philippines and Thailand.

Considering the foregoing, various legal reform efforts in Indonesia were carried out massively by the President to invite foreign investment. In line with the policy politics of the development era of President Joko Widodo (President Jokowi), that the investment sector, especially foreign investment, is one of the most relied upon sectors in carrying out the wheels of Indonesia's economic development.¹² In the First Period and the Second Period, the President enthusiastically invited foreign investors to invest in Indonesia, such as carrying out legal reforms by issuing two Legal Policy Packages (PKH), namely PKH Volume I and PKH Volume II and Economic Policy Packages (PKE) I to PKE XVI, consisting of legal products in a massive amount; no less than 347 Government Regulations (PP) and 533 Presidential Regulations (Perpres) and 434 regulations under it, such as Ministerial Regulations, Director General Regulations, Regulations of the Head of the Investment Agency, and others launched by President Jokowi through the two packages. Not quite there, entering the Second Term President Jokowi also initiated amendments to 79 laws and realized them through the Omnibus Law in the Job Creation Law.

The Job Creation Law is expected to accelerate economic recovery starting in 2021 and be able to streamline *hyper-regulation* which has been an obstacle to Indonesia's investment growth so far.¹³ The Job Creation Law is expected to provide five benefits for the Indonesian economy, namely: *first*, job creation which is projected to be as much as 2.7-3 million per year. *Second*, increased competence of job seekers and the welfare of workers. *Third*, an increase in worker productivity, which has an effect on increasing investment and economic growth. *Fourth*, the projected increase in investment of 6.6-7.0% to build new businesses or develop *existing* businesses that will create new jobs and improve worker welfare thus it will encourage increased consumption (5.4-5.6%). *Fifth* empowerment of MSMEs and cooperatives, which supports an increase in the contribution of MSMEs to GDP which is estimated to be 65% and an increase in the contribution of cooperatives to GDP to 5.5%.¹⁴

The foregoing is in line with realizing one of President Jokowi's visions in his second term, which is to create a friendly investment climate to create jobs and eliminate convoluted administrative processes and illegal levies. The essence of legal reform in the era of President Jokowi was to remove, or at least reduce barriers to the entry of investment, especially foreign investment, using deregulation and debirocratization

¹² Nandang Sutrisno and Sigar Aji Poerana, "Reformasi Hukum dan Realisasi Investasi Asing Pada Era Presiden Joko Widodo," *Undang: Jurnal Hukum* 3, No. 2 (2020): 237–66, https://doi.org/10.22437/ujh.3.2.237-266.

¹³ Susetiyo and Iftitah, "Peranan dan Tanggungjawab Pemerintah dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja."

¹⁴ Sony Hendra Permana, "Proyeksi Dampak Omnibus Law Undang-Undang Cipta Kerja Terhadap Ekonomi Indonesia," *Pusat Penelitian Badan Keahlian DPR RI. Bidang Ekonomi Dan Kebijakan Publik.* XII, No. 9 (2020).



through simplification of licensing requirements and procedures and providing incentives, including tax incentives.¹⁵

There are 45 government regulations and 4 presidential regulations as derivative rules for the enactment of the Job Creation Law.¹⁶ After the enactment of the Job Creation Law, foreign investment policies, including those related to the renewable energy sector, have undergone significant changes. The change is contained in the differences in foreign investment arrangements in Indonesia, which were previously subject to the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment (Investment Law).

After the Job Creation Law, domestic investment requirements with foreign investment conditions are not distinguished (Article 12: Business fields closed to investment as referred to in paragraph (1) include: a. cultivation and narcotics industry class I; b. all forms of gambling and/or casino activities; c. fishing of fish species listed in *Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora (crrES)*; d. utilization or retrieval of corals and utilization or retrieval of corals from nature used for building materials of lime, calcium, aquariums, and souvenirs/jewelry, as well as live corals or *recent death corals* from nature; e. chemical weapons manufacturing industry; and f. chemical industry and ozone-depleting substances industry. Article 12 paragraphs (3), (4), and (5) of the Investment Law are eliminated, so that the regulation is more simplified in the Job Creation Law. Before the Job Creation Law, there were differences in domestic investment requirements with foreign investment requirements (Article 12: Business fields that were closed to foreign investors were: a. production of weapons, machinery, explosive devices, and war equipment; and b. business fields that were explicitly declared closed under the law).

The absence of differences in domestic investment requirements with foreign investment conditions, which further facilitates the practice of foreign investment in Indonesia, is indeed in line with *the borderless* times. Research on the influence of the company's ownership structure and liquidity of Sharia and non-sharia stocks in Indonesia shows the phenomenon that the ownership of foreign institutions does not have a significant effect on the depth of non-sharia stocks.¹⁷ This certainly gives an understanding that in the phenomenon of the influence of the company's ownership structure, both domestic and foreign ownership on stock liquidity, domestic and foreign elements, it is not an element that must be distinguished, but deserves to be equally elaborated and collaborated.

After the Job Creation Law, which provides facilities for investors who invest is the central government, where the provisions for the implementation of investment are set by the central government (Article 13: Guidance and development of cooperatives and micro, small, and medium enterprises provide HR training and provide access to

¹⁵ Permana.

¹⁶ Susetiyo, W., & Iftitah, Anik. "Peranan dan Tanggungjawab Pemerintah dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja," *Jurnal Supremasi* 11, No. 2 (2021): 92–106, https://doi.org/10.35457/supremasi.v11i2.1648.

¹⁷ N. A. Madyan, M., Wisudanto, & Firdausi, "Corporate Ownership Structure and Stock Liquidity of Islamic and Non-Islamic Stocks: The Indonesian Experience," *International Journal of Innovation, Creativity and Change* 9, No. 8 (2019).



financing). There are business requirements in Article 13 of the Investment Law, and in the Job Creation Law, it provides ease of doing business. Before the Job Creation Law, which provided facilities to investors who invested was the Government (Article 13 of the Investment Law: Guidance and development of micro, small, medium enterprises, and cooperatives did not provide HR training and provide access to financing).

After the Job Creation Law, the investment that received facilities included the development of tourism businesses. The Central Government provides protection and empowerment of cooperatives and micro, small, and medium enterprises. Simplification and the form of facilities provided for investment are carried out in accordance with the provisions of laws and regulations in the field of taxation. Before the Job Creation Law, the government required that businesses open to large businesses must cooperate with micro, small, medium enterprises, and cooperatives.

After the Job Creation Law, the central government or local governments in accordance with their authority provide convenience for cooperatives and micro, small, and medium enterprises. Prior to the Job Creation Law, the investment that received facilities did not include the tourism sector. The provisions of cooperatives, micro, small and medium enterprises are still very standard and rigid, so they do not provide convenience. The provisions regarding the form of facilities provided to investment still contain complexities.

After the Job Creation Law, Article 25: Norms, standards, procedures, and criteria for Investment Companies are set by the Central Government. Prior to the Job Creation Law, Article 25: Investment companies were determined by the agency that owned unless otherwise specified in the law. In the essence of the foregoing, there is clearly a simplification of investment provisions in the Job Creation Law.

Furthermore, in the context of foreign investment, Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (Perpres 10/2021) is the main reference for the implementation of the Job Creation Law. Several changes in the business sector are regulated in Presidential Regulation 10/2021, including regarding new provisions which state that all business fields in investment activities are basically open unless the business field is explicitly declared closed or is part of the business field that can only be done by the Central Government. Furthermore, the latest breakthrough that is very visible in Presidential Regulation 10/2021 is the creation of the concept of priority business fields. In addition, the ease of entering investment activities in Indonesia that is quite felt is the reduction of restrictions on business fields that can be explored by investors.

With the increase in foreign investment in renewable energy in Indonesia, the increase in investment is believed to boost the nation's economic development. In macroeconomics, investment also plays a role as one of the components of national *income*, *Gross Domestic Product* (GDP). Investment has a positive relationship with GDP or national income, if investment rises, then GDP will rise, and vice versa, when investment falls, GDP will also fall. In the same context, Harrod-Domar put forward a very legendary theory that to grow an economy requires capital formation as additional capital stock. The formation of capital is seen as an expenditure that will increase the



ability of an economy to produce goods and as an expenditure that will increase the effective demand of the entire community.¹⁸

The increase in foreign investment, which focuses on renewable energy, is a solutive step to reduce or minimize the presence of more investment in other non-renewable energy fields, which tends to lead to more economic activity, thereby increasing energy consumption and carbon dioxide emission levels that negatively affect environmental health. By optimizing the use of renewable energy, it becomes urgent to reduce carbon dioxide emissions, so that it becomes the life-carrying capacity of all creatures.¹⁹

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With the ease and simplification of the influx of foreign investment in the renewable energy sector in Indonesia, it is expected to attract the interest and desire of foreign investors to invest in the renewable energy sector in Indonesia. However, research on its impact and efforts to formulate and enforce smart policies for the survival of all beings are urgent to continue to be carried out, so that a balance between economic growth and development and ecosystem balance is always realized.

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¹⁸ Abel Tasman Marbun, Dkk. "Investasi Asing dan Tenaga Kerja Asing di Indonesia Kerja," *Jurnal Lex Specialis* 1, No. 2 (2020): 164–65.

¹⁹ Tika Widiastuti et al., "Do Foreign Investments and Renewable Energy Consumption Affect the Air Quality? Case Study of Asean Countries," *Journal of Security and Sustainability Issues* 9, No. 3 (2020): 1057–63, https://doi.org/10.9770/jssi.2020.9.3(29).



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