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The Existence of Regional Investment Regulation System Based on Decentralization

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Abstract: The act number 25, year 2007 had already been determined to spur investment growth in the region. In fact even though this law has been issued, the model of regional investment regulation still varies. Consequently investment growth of each region is not the same and it highly depends on local policies as well as local regulation on both licensing, and financing. The investment of decentralization so far has not been consistent yet; therefore, the implementation of investment in every region still varies and has an impact on uncertainty investment. The fact indicates that there are still some investment problems such as the case of MNR Company in Minahasa and the case of MSN Company. This research used formative law research method supported by field studies. The results of the study show the model of regional investment regulation is still in dualism: the investment permit follows the model implemented by the central government with one door service, while the investment policy in the region follows the regional government in accordance with the spirit of regional autonomy. An arrangement of dualism investment impacts on investors who invest in an uncertain financing investment and security. For that reason, it is required the development of legal investment based on decentralization to accelerate the investment growth in North Sulawesi. To sum up, the dualism of the investment regulation model should be studied in a form of affirmation of macro and micro business investment in the division between the central and regional governments. To ensure the investments, the regional regulations in the field of investment protection are needed.

Keywords: Development; Decentralization, Investment.

1. Introduction

The inconsistencies of the capital investment with decentralization paradigm of regional government are the obstacles in the creation of the conducive investment climate. The setting system of capital investment of up to the ratification number 25, year 2007 was centralistic where the management of capital investment is still in the hands of the central government. The presidential decree number 29 year 2004 is the basis of investment policy where the authority of the investment is in the hands of board BKPM (Capital Investment Coordination Systems with *one door service*). This is contrary to the spirit of regional autonomy of the Act number 22 year 1999 and the Act number 32 year 2004 article (14) where investment is the local authority in accordance with the division of government affairs.

Consequently, the investment in every region still varies. The policy is issued by regional governments, and other aspects are emerging problems in investment in areas such as the state-owned MNR Minahasa and cases in Freeport Company in Papua and in Lapindo Brantas in Sidoarjo East Java. Those cases indicate the inconsistency of decentralization system in managing investments. Questions also kept appearing in the investment in areas such as: (a) the overlap in the regulation of the central and local investment (b) the attraction draws between Jakarta, the capital city and regency / municipality; (c) the HGU (the right to attempt to) owned by PMA (Foreign Investment) considered detrimental to the people in the area, (d) the issues of the protection of investments in the region that have not yet showed a clear model device including financing and licensing services as well as the follow-up service, after care and (e) the control of regional governments towards the activities of foreign capital investment.

2. Discussion

2.1. Decentralization in the Implementation of Capital Investment

With the ratification number 32 year 2004, hereby the implementation of government affairs including investment has been delegated to the regional government. Decentralization, according to Inu Kencana Syafie (2011) is to be interpreted as the opposite of centralization because of the prefix /de-/ means to resist centralization. The element of refusing or opposite related to regional government administration causing decentralization is an

antithesis from centralization. Theoretically decentralization mentioned is the formation of autonomous region or the certain authority given to regional government by the central government.

Philip Mawhod (1983) claims that decentralization is a subdivision of a number of the powers of government by the group in power in the central government towards other groups who each has an authority on within a particular region in a country. Internationally decentralization concepts have been set in concepts of law established by council of the United Nations especially the United Nations in Koswara (2001) as follows: “decentralization refers to the transfer of authority away from the national capital whether by de-concentration to field officers or by devolution to local authorities or local bodies.” This means that decentralization shows a transfer of the central government’s authority to regions either in the form of de-concentration or in the form of devolution. The de-concentration means the transfer of responsibility to government officials in the region to make decisions in accordance with problems faced by, but supervision remains in the central government’s authority. Article (1) number 7, the Act number 33 year 2004 shows the meaning of decentralization namely submission of the government’s authority by government to an autonomous region to regulate and take care of the administrative matters in a system of the Unity of the Republic of Indonesia. Decentralization is the nucleus of regional independency and the grant of authorization to regional government in making its own regulation as well as government administrations from the central government to regional government, and furthermore to be regional government household affair. While devolution means that all responsibilities for particular activities are handed over to regional government authority.

Smith (1985) and Hidayat (2001) claims decentralization as a process to approach to regional governments who require the delegation of power to subordinate government and the division of power to the region .The central government is required to hand over power to regional government in a form of decentralization. Said (2008) states that decentralization is a devolution process in the public sector where there is the transfer of authority from central government to the provincial government and the district. In other words, in the context of Indonesia, decentralization can be interpreted as a process of devolving power from central government to provincial governments and the district as mandated by law. Different definition as stated by Fadilla Putra (1999) notes that decentralization and devolution are two different phenomena. Decentralization is depicted in authority relationship pattern between of the organization and devolution to describe authority relationship pattern, and interrelation organization.

2.2. The Law/Draft Concept on Modal Investment

The term investment actually is the translation from English that is investment in the form of capital used in business activities. The scope of investment in economic activity either in the form of capital or labor is very broad. That is why the restriction of the meaning of investment from the perspective of law is focused on regulations of the capital investment, Ilmar (2014) explains that to understand the meaning of capital investment better, it needs to be given a clear limitation on understanding what is intended with the capital investment which aims to explain clearly and distinctively on the perception and our understanding of capital and to avoid negative meaning of the existence of the investment especially the foreign capital investment.

In a dictionary, the terms *finance and investment* are used as *investment which* means the use of capital to create money, either through facilities that produce income or through Ventura which is more oriented toward risk designed to get the capital. Investment can also mean pointed to a financial investment (where investors put money into a means of investment) pointed to investment effort or time someone who wanted to pluck advantage of the success of his work. While the Encyclopedias of Financial Economic Trade describes the term investment, capital investment is used for “the use or discharging economy sources for the production of goods of producers or consumer goods.

In the sense merely incline to financial, investment may mean the deployment of funds for companies in a relatively long period of time, to receive a well-regulated result with a maximum security. In an economic dictionary, investment has two meanings. First, investment means the purchase of shares, bonds and immovable asset, after the analysis, it will endure the modal laid out and it will give satisfactory results. Those factors distinguish investment with speculation. Secondly, investment in economic theory means the purchase of a production of objects including things for sale) with capital in the form of money.

In an Economic dictionary the terminology used for investment, capital investment, investment which means modal investment which is typically conducted in a long-term, for example in the form of assets or buying securities in order to make a profit. In a dictionary of Indonesian Language (KBBI) states, investment means first, share of money or capital in an enterprise or projects for the purpose of obtaining advantage; and second, the amount of money or capital that is grown. In the Act number 25 year 2007 on investment (UUPM) states that , investment is all forms of capital investment activities, both by domestic investment and foreign capital investment to perform the business within the territory of the Republic of Indonesia.

2.3. An Investment Model in a Region

Regional autonomy influences the regulation and investment policy in the region. The influence of local authority is associated with the greater number of investment. Local authority covers the authority to make rules, the authority to make decisions, and the implementation of investment as well as the authority to have investment relationship. A model of the investment in many regions is set out in regional regulations. Regional regulations relating to the activities of investments are the local regulation on licensing, retribution and service effort .A model

of regulation which varies is based on regional government policy and in accordance with a characteristic investment destination.

There are some changes in the capital investment in the region especially since the regional autonomy based on Act number 32 year 2004. Before the implementation of the regional autonomy law, the capital investment is controlled by the central government, but since the implementation of regional autonomy: municipalities and District, the regional government makes an effort to create similar rules with the provincial government but in the scope of District. Regional rules associated with an investment in many areas are financing retributions and also related to the licensing and retribution. The regional rules like this is not clear whether to focus on the investment, but it is made the same in which every single activity is free of charge without looking at either as investment or other effort. A model setting in the district level with enactment of Act number 32 year 2004 is still occurring dualism where licensing model has tried to adapt provincial regulations number 4 year 2007 regarding licensing on one roof service but then it was changed to one door service, however, the investment barriers are still significant because the absent of legal certainty in the field of investment financing.

In fact, although the regional autonomy has been applied, yet there are still some uncertainty to invest in the region because of the complexity and the length of obtaining licenses. Consequently this has an impact of the business permit issued by the investors who want to invest in the region. Financing uncertainty related to cost benefit that is to be acquired by investors in investing in the region. Regional regulation had to be economically valuable not only worth law (regulation). The weaknesses found in the field showed that the work of local regulations by the House of Representatives (DPR) and executives does not give much attention to the economic aspects. The regulations made only focus on the interests of government bureaucracy. The regulations should be in the form of rules and policy must also pay attention to the aspects of business interests of investors. The regulation and regional government policy in investment activity usually shaped local investment regulation

2.4. The Influence of Regional Regulations on Investors' Interest in Investing

Investors who invest in areas sometimes do not know that a paradigm of regional autonomy implementation of a policy of government investment has been submitted to the regional. Ignorance investors, particularly foreign investors often become obstacle in the investments in the region. Regional regulations in the investment sector and the local investment regulation become the need to provide protection and facility for investors.

Investors who are generally businessmen expect financial certainty because in principle when they came to their own region, they have been guaranteed by regional governments on all aspects of investment activity. With the enactment of regional autonomy, it should ease investment activity where the regional government has greater authority and role in regulating policies and investment regulations, but with a model of dualism arrangement will certainly have an influence on aspects of credible investment law where investor will feel uncomfortable to invest in the region.

In principle since the implementation of regional autonomy which has the authority in the implementation of investment, it is not understandable by many investors who invest in the region who regards investment affairs are solely in the hands of the central government and put aside regional policy. The investors who do not understand bring negative effects for investment activity in the region which results in the collapse of investment because of the emergence of a lawsuit by both regional governments and the community. The case of Newmont Company Minahasa Raya was an image of unsympathetic investors against decentralization paradigm that specifically apply in Indonesia. So do the other cases such as the case of MSM and the case of Freeport Company in Papua show that many investors are blind with the decentralization of paradigm. The failure of investment will give negative impacts on the competitiveness of regions in the domestic investment and the failure of investment will weaken Indonesian position in regional competition sector and the global becomes weak.

2.5. The Development Efforts of the Regional Investment Regulation System in Decentralization Paradigm

The model of the development of regional investment regulation in decentralization paradigm is influenced by regional government. The regional policies outlined in the regional regulation and the regulation of the head of the region which is generally the local research samples are not specific in the investment sector. This research focuses on the micro investment policies. It should be noted that with the enactment of the regional autonomy to be handed over to the regional government, the model of the investment regulation development in the decentralization paradigm rests on a number of aspects such as:

No	Policies	Impacts	Notes
1	The financing of investment affairs in the region	Handled over by local investors, they can invest profit and can clearly see their lost	Financing affairs have not been fully given to the regions
2	Investment permits	There have been a system of licensing on <i>one roof service</i> according to Act number 25 year 2007 but with the number of items of licensing impact on	Still overlap between central and regional government

		uncertainly time	
3	<i>investment sharing</i>	Not fully submitted the responsibility to the regional government <i>makes investors confused because of lack of clarity of the payment system</i>	the rise of unofficial costs
4	<i>Charges in investment activity</i>	Not fully submitted the responsibility to the regional government	<i>the rise of unofficial costs which is the obligation of the investor</i>
5	Protection against community complaining	has not been fully handed over to the regional governments because the work contract is created between the investors and the central government	Occurring resistance in investment activity
6	Central and regional relations in the investment sector	There has been no clear restriction of authority and still overlap between the central and regional government`	Being debated the authority potentially dispute
7	restrictions on macro and micro affairs in the investment sector	Unclear arrangement within the legal system of investment	Being debated and overlapping
8	Protection towards a lawsuit against a third party investors	Has not been stipulated in a regulation mechanism of the region	The uncertainty of investment activity
9	The obligation of investors towards the regional government	has not been stipulated in the regional regulation of the requirements that are causing multy- interpretations	Uncertainty invest and investors are in weak position
10	Compensation for the damage caused by violence	Has not been regulated yet specifically in regional regulation	Investors still feel anxious to invest in the regions that have the potential to the violence

Referring to the fact that investment climate in the region has not been conducive yet, although the renewal of a law investment through the Act number. 25 year 2007 has been applied; there should be *a change on setting investment model to market oriented*. The change of the setting investment model will be focused on a decentralized system underscored the investment especially regarding the local authority to regulate and take care of the implementation of investment that is completely micro. The change of this model should be in the frame of **good investment governance (GIG)**. It is to ensure the implementation of investment in the regions does not harm investors. The level of investor confidence is associated with the assurance certainty and security invest, for that as a requirement in enhancing investor confidence by applying good investment governance (GIG) in a setting investment. GIG must be applied by regional governments so that investors feel safe and comfortable in making investments in the regions.

The change of the investment setting model from the system of administrative decentralization toward political decentralization investment intended to clarify the consistency of investment decentralization in the region. The confirmation is intended so that the investment climate in the regions will be conducive and acceleration of regional economic growth can be encouraged, since the region itself that determine the format of the investment in accordance with the unique characteristics of regions. Decentralization without democratization as stated by [Cheema and Rondinelli \(1983\)](#) is not meaningful, because democracy is granting the rights to the region to determine and decide its own. In investment decentralization the frame of the Unitary State is the basis of investment system. The frame of the Unitary State is decentralization which refers to *diversity in unity* and not *the uniformity in unity*. Every region has a character and a distinctive feature which is different from one another in both tangible and intangible investment potential. Logically it is impossible to make them uniform, particularly the model and the procedure of the investment implementation in accordance with the vision of the regional government. The concept of the diversity in unity must be the basis for the change of the model of decentralization in the investment sector in which what defines of decentralization as some kind of model.

3. Conclusion

1. The model of the sample investment applied in the research area is dualism. Licensing regulation still follows the central government system as *one door service* while for investment policy is in accordance with regional government's will. The model of dualism setting has an impact on financial certainty towards investment

activities, procedural certainty within the scope of service bureaucracy against investors and security invest in the region.

2. Investors often faced with long procedures and financial uncertainty because of a model of financing arrangement investment is not clear and specifically arranged in regional regulations .Moreover, if investors are dealing with the public rejection and the problems in court, the investor cannot guarantee investors because there is no special rule about the mechanism of the settlement of investment disputes in court. Consequently, it has an impact on the interest of investors to invest, especially since the occurrence of investment disputes such as the dispute between Newmont Company with Minahasan government.
3. The development of legal investment in the decentralization paradigm must be directed to a more detailed regulation towards finance investment in the region such as investment permit, sharing investment, charges in investment activity, protection against the community complaint, central and regional relations in the investment sector, the restriction of macro and micro business investment in the investment sector, protection towards a lawsuit against third party investors , obligations on investors towards regional government, and compensation for the damage caused by violence.

4. Suggestions

1. The necessary firmness in the model of investment setting in a region especially the micro affairs in the investment sector that is supposed to be handed over to regional government. By fully delegating the authority to the regional government's investors who invest in the region will be more assured.
2. The regional government should make regional regulation specifically regulate the protection of investment so that investors feel more secure in investing in the research sample areas. With the existence of regional regulation specifically on investment sector, it is expected that a current investment in the regions will increase and accelerate the investment growth in the region.

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