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Balancing the Role of Foreign Investment in Economic Growth and Achieving Prosperity, Study in Indonesian Law and Experience

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Abstract

Foreign investment can increase economic growth and create prosperity in a country. However, sometimes foreign investment can increase economic growth and fail to create prosperity. This problem is of course related to the laws governing foreign investment. This article wants to discuss the regulations in law regarding the role of foreign investments in increasing economic growth and creating prosperity in Indonesia. Regulations in Indonesian law and experience show that foreign investment is widely open to enter Indonesia so it is felt to be able to encourage economic growth. However, Indonesia's experience in practice shows that things often happen that cause some people to suffer because of the presence of foreign investment. From the results of the research and discussion, it can be concluded that the regulations in the foreign investment law in Indonesia still prioritize economic growth, while the aspect of achieving people's welfare from the presence of foreign investment receives less attention. Therefore, it would be better if the investment laws were revised to create a balance between economic growth and prosperity. In other words, investment laws must be able to encourage economic growth and create prosperity simultaneously. There must be a balance between growth and prosperity.

Keywords: Balancing, Role of Foreign Investment, Economic Growth, Welfare

1. Introduction

Every area of human life has legal rules that regulate it, namely through norms in these rules. This is in line with the classic expression *ubi societas ibi ius* which means "where there is society, there is law" (Marzuki, 2008: 41). Through norms (in law), the law extends to almost all areas of human life. Legal regulations, which sometimes limit various powers and interests in society, conflict with the powers and interests that exist within society itself so the law has involved itself in the political arena (Rahadjo, 1980: 15-16).

One of the various areas of human life is investment activities. Investment is often differentiated into domestic investment and foreign direct investment. The term investment here, both domestic investment and foreign investment, refers to the meaning of direct investment, which means investing by establishing and operating a company (for example in Indonesia). So it is not an investment in the form of a portfolio (shares or other securities) in the capital market. So, the foreign investment referred to in this research is foreign direct investment, not investment in the form of a portfolio in the capital market.

Foreign investment as part of activities in human life also needs to be regulated by law. Therefore, foreign investment becomes an object of legal politics in the country. M. Solly Lubis, succinctly, defines legal politics as a political policy that determines what legal rules should apply to regulate various matters of social and state life (Lubis, 1989: 100). Meanwhile, Bintan R. Saragih explains that in general legal politics is state policy by forming or establishing legal rules so that the administration of the state and government can take place well and orderly so that state goals (such as the welfare of the people) can be realized gradually and in a planned manner (Saragih, 2006: 17).

Hikmahanto Juwana interprets legal politics from two sides, namely the objectives and reasons that form the basis for the formation of legislation. The purpose of the law in question is to realize justice, legal certainty, or the benefits to be achieved. Meanwhile, the reasons revolve around why the legislation was formed, why the content is like that, and for what purpose the legislation was formed. That is legal politics (Saidin, O.K., 2016: 25).

Foreign investment is carried out to produce certain goods or services that are necessary for human life. As a business and economic activity, foreign investment can be seen from two major perspectives. Firstly, from the investor's perspective, namely, the investor's motivation to invest their capital. In general, the main motivation for foreign investors to invest capital (carry out business activities) is to gain profits from producing goods or services. Foreign investors (entrepreneurs) will use the resources available in the country where the investment is made, including natural resources, human resources (labor), and other resources.

The second is from the perspective of the benefits of foreign investment for the host country's economy. Sentosa Sembiring stated that theoretically, foreign investment in a country has quite broad benefits (multiplier effect), namely that it can absorb labor; create demand for domestic products as raw materials; increase foreign exchange, especially export-oriented investment; can increase state revenue from the tax sector; as well as the transfer of technology and transfer of knowledge (Sembiring, 2007: 24). Erman Rajagukguk said, based on various studies on foreign investment, it shows that the motive for companies or foreign investors to invest their capital in a country (which is generally developing countries) is to seek profit. The opportunity to make a profit in the host country is due to various factors, including cheap labor wages, raw material sources, a wide market, etc. (Rajagukguk, 2009: 1).

However, apart from the view that the presence of foreign investment can provide positive benefits for the host country, there is also a view that thinks that foreign investment is a new form of colonialism-imperialism that will only encourage dependence and exploitation of the host country's natural resources, which in turn ultimately it will be detrimental to the host country. The results of Paul Baran's study of the impact of colonialism in India, which he outlined in his book *The Political Economy of Growth*, show that the touch of capitalist countries in underdeveloped pre-capitalist countries causes underdeveloped countries to have their progress hampered and will continue to live in backwardness. The presence of strong foreign capital from Western countries to developing countries has created surpluses in Western countries. Because, foreign investors come to developing countries to look for cheap raw materials to bring home, look for workers with cheap wages to employ in the factories they set up, then industrialized countries that have developed to sell their industrial goods (Budiman, 2000: 57-59), including developing countries. Meanwhile, developing countries are only able to produce and sell (export) raw materials to advanced industrial countries. In this situation, the one who benefits from a higher value than the selling price of the product is of course the capitalist country. As a result, those who enjoy a surplus in trade relations between advanced industrial countries (capitalist) and developing countries are of course capitalist countries (advanced industrial countries).

Leyla Davarnejad said that the beneficial effects of foreign direct investment on development are not self-evident. Foreign investment does not only promote the (economic) development of a country. However, sometimes the impact of a bilateral agreement in the field of foreign investment is relatively small and the results are mixed. Many countries conclude that international agreements or agreements in the field of investment aim to attract foreign investment and at the same time limit their space in carrying out national policies in the field of investment. It is a challenge, especially for developing countries, to achieve a balance between attracting foreign investment and maintaining national policy autonomy (Davarnejad, 2008: 4).

Laura Alfaro also said that foreign investment is a manifestation of capital, technology, and knowledge, and there is potential for the host country to benefit from the spillover impact of this investment. Spillover mechanisms include direct knowledge transfer through partnerships, opportunities to learn from foreign companies' innovations and experiences, and interactions and movement in the labor market. If a foreign company introduces a new product or process to the domestic market, the domestic company can benefit from the diffusion of the technology. In some cases, domestic companies simply benefit from observing foreign companies. In other cases, technology diffusion can occur when domestic workers move from foreign companies to domestic companies. There is also the potential to create links between foreign and domestic companies. However, there is also the potential for sacrifice (Alfaro, 2014: 7-8).

Apart from that, negative impacts from foreign investment activities also often occur in the form of environmental damage and negative impacts on the communities around which the company operates. So in the end, even though foreign investment may encourage economic growth for the host country, on the other hand, it does not promote people's welfare but instead causes suffering. This is certainly an interesting problem to research. There needs to be a balance between economic growth and people's welfare. Economic growth yes, prosperity too yes. How the regulations regarding investment in the law in the host country are seen from these problems, is an interesting study in this research.

Regulations regarding foreign investment in law are related to the theory of legal objectives so the theory of legal objectives becomes important as a foundation in the formation of legislative regulations, including in determining laws that regulate foreign investment. The theory of legal objectives is relevant and needs to be implied in the formation of laws regarding foreign investment. In this case, lawmakers must pay attention to aspects of justice, expediency, and certainty as outlined in the law being formed.

According to Gustav Radbruch, there are three basic values as legal objectives which are priorities for legal objectives. Gustav Radbruch's theory of legal objectives states that the first thing that must be realized is justice, followed by expediency, and then legal certainty. It is hoped that these three basic values as legal objectives can be realized together, but if this is not possible then justice must be prioritized first, then benefits, and then certainty. (Mas, 2004:74). The three basic values as legal objectives according to Gustav Radbruch above also have their theories, so there is the theory of justice, the theory of utility, and the theory of legal certainty.

In the aspect of justice, there is a theory of justice that teaches that the law must be fair to everyone. The theory of justice has existed since ancient Greece, pioneered by Plato and Aristotle. Aristotle divided justice into corrective or commutative justice and distributive justice (Wacks, 1987: 179). Commutative justice is justice that gives each person the same amount without looking at each person's services. There are similarities in the achievements obtained by each person without taking into account the services provided. Meanwhile, distributive justice is justice that gives each person an achievement or quota according to the services provided. Here, each person does not receive the same share, but rather proportionally according to one's services (Mas, 2004: 73).

In the aspect of utility, the theory of utility teaches that the law must provide benefits (happiness) to many people. Benefit theory teaches that the law must provide benefits (happiness) to many people. The popular and main figure in this theory of utility is Jeremy Bentham. He said that the law aims to guarantee the greatest happiness for the greatest number of people. Indonesian scholar Subekti also agrees with Bentham. According to Subekti, the purpose of the law is to serve the goals of the state, namely to bring prosperity and happiness to the people. The aim of the law should be to provide the broadest and greatest benefits to the citizens of society (Mas, *Ibid.*).

In the aspect of certainty, the theory of legal certainty teaches that the law must guarantee certainty for everyone so that justice will be realized. Thus, this theory of legal objectives is important as a foundation in legal politics (the formation of statutory regulations in which there are laws), including in determining the law (legislation) that regulates investment activities (investment legal politics). Legal certainty contains two meanings. First, the existence of general rules means that each individual knows what actions they can or cannot do. Second, in the form of individual legal security from government arbitrariness because with the existence of general rules, individuals can know what the state can impose or do on individuals. Legal certainty is not only in the form of articles in the law but also consistency in judges' decisions between one judge's decision and another judge's decision for similar cases that have been decided. Roscoe Pound said that legal certainty allows for predictability.

2. Research Methods

This research is normative legal research. As normative legal research, the data used is secondary data, namely books, statutory regulations, and other relevant and needed secondary data. Meanwhile, the approaches used are conceptual, statutory, and historical approaches. All secondary data is collected systematically according to the problem and then analyzed qualitatively.

3. Result and Discussions

3.1. At the Level of the Law

Realizing that foreign investment is an activity that needs to be regulated by law, Indonesia has also issued several laws regulating foreign investment. Since the beginning of Indonesia's independence (1945) until now (2023), there have been six laws that have been formed, namely Law Number 78 of 1958 concerning Foreign Investment, Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment, Law Number 1 of 1967 concerning Foreign Investment, Law Number 25 of 2007 concerning Investment, Law Number 11 of 2020 concerning Job Creation, and Law Number 6 of 2023 concerning Establishment of Government Regulations in Lieu of Laws Number 2 of 2022 concerning Job Creation Become Law.

Law Number 78 of 1958 concerning Foreign Investment as the first law in the field of foreign investment, was issued during the enactment of the 1950 Provisional Constitution (UUDS 1950). At this time, Indonesia adhered to liberal democracy with a parliamentary system of government (Mahfud, 2001: 41). There are three important considerations describe the philosophical, sociological, and juridical foundations of Law Number 78 of 1958, namely:

- a. capital is very necessary to accelerate economic development, increase national production, and improve people's welfare;
- b. domestic capital needed to accelerate economic development, increase national production, and improve people's welfare is not sufficient, so it is necessary to encourage foreign investment in Indonesia; and
- c. It is necessary to establish clear regulations to provide legal certainty for foreign investors so that they do not hesitate to invest their capital in Indonesia.

In 1965, Law Number 78 of 1958 concerning Foreign Investment was repealed by Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment. Then, in 1967 Law Number 1 of 1967 concerning Foreign Investment was established. In the preamble to Law Number 1 of 1967, the philosophical, sociological, and juridical foundations are outlined as the basis for consideration by the makers of this law. Philosophically, it is stated that Pancasila is the ideal foundation for developing the Indonesian economic system so it must always be reflected in every economic policy. Sociologically, Law Number 1 of 1967 was necessary because economic conditions at that time required the presence of foreign investment.

Furthermore, in 2007 a new law was formed, namely Law Number 25 of 2007 concerning Investment which replaced Law Number 1 of 1967 concerning Foreign Investment. Based on Law Number 25 of 2007 concerning Investment, investment can come from abroad and can originate from within the country. Foreign investment is

an investment climate that is considered not yet conducive, so it is necessary to improve the business climate in a conducive direction. Budiman Ginting stated that what needs to be done to attract foreign investors to invest is to carry out updates or changes to the laws governing the economy and law enforcement. In the context of legal reform as a means of facilitating investment to support the economy, it should be oriented towards legal guarantees and certainty by what is desired by both investors and the host country (Ginting, 2008: 16). Therefore, in Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium Term Development Plan, the President stipulates 5 (five) strategies for implementing the *Nawacita* mission and achieving the targets of the Indonesian Vision 2045. One of the five strategies is simplifying regulations by omnibus law approach, mainly issuing two laws, namely the law that regulates job creation and the law that regulates the empowerment of micro, small, and medium enterprises (MSMEs). This strategy is also in the context of economic expansion in 2020-2024, which primarily encourages increased investment which is targeted to grow 6.6 - 7.0 percent per year. To achieve this target, private investment (foreign and domestic) is encouraged through the deregulation of investment procedures, and the synchronization and harmonization of licensing regulations.

As a breakthrough in creating a conducive investment climate to encourage investment growth, the government submitted an omnibus law Draft Law on Job Creation (RUU CK) to the House of Representatives of the Republic of Indonesia (DPR RI) for joint discussion so that it could become law. Finally, at the DPR RI Plenary Session on October 5, 2020, the omnibus law RUU CK was then approved to become law, namely Law Number 11 of 2020 concerning Job Creation. However, Law Number 11 of 2020 concerning Job Creation was canceled by the Constitutional Court through Decision Number 91/PUU-XVIII/2020 with the conditional unconstitutional dictum because its formation was formally flawed, there was a mechanism that was violated by the legislators. The Constitutional Court gave lawmakers two years to amend Law Number 11 of 2020 concerning Job Creation. This time was considered unattainable so President Joko Widodo then issued Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation. Furthermore, Government Regulation in Lieu of Law No. 2 of 2022 was approved by the DPR and then became Law No. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation Becomes Law.

The philosophical basis for the formation of Law Number 11 of 2020 concerning Job Creation, as is the case with Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, is to realize the goal of establishing the Indonesian State Government, namely creating a justice and prosperity Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In this case, the state needs to make various efforts to fulfill citizens' rights to work and a decent living for humanity, including through job creation.

This philosophical foundation is related to capital investment, which is formulated in Article 3 of Law Number 11 of 2020 concerning Job Creation. Among other things, the purpose of establishing this law is formulated, namely to make adjustments to various regulatory aspects related to improving a capable investment ecosystem that can provide ease of doing business and encourage the acceleration of national strategic projects that are oriented towards national interests while still being guided by the Pancasila ideology. To achieve this goal, this Law regulates strategic policies to improve the investment ecosystem through ease of doing business.

In general, every policy of foreign investment law adopted since the beginning of independence until the current reform era reflects the application of the theory of legal objectives, namely the aspects of justice, benefit, and legal certainty. This can be explained by various laws that have been and are currently in force which regulate foreign investment, below:

a. Law No. 78 of 1958 concerning Foreign Investment:

- 1) Aspect of justice. There is a balance between foreign investors and domestic investors in operating business fields by providing restrictions for foreign investors and those that can only be operated by domestic investors [Article 2 and Article 4 paragraph (1)].
- 2) Benefit aspect. To accelerate economic development and increase national production to improve people's livelihoods, capital is needed where domestic capital is currently insufficient so it is deemed beneficial to attract foreign capital to invest in Indonesia (Consideration letters a and b).

- 3) Aspect of certainty. Foreign companies can be given a guarantee that their company will not be owned by the state or converted into national property, for a maximum period of 20 years and plantations for 30 years (Article 13).
- b. Law Number 1 of 1967 concerning Foreign Investment:
- 1) Aspect of justice. Foreign investment companies are obliged to fulfill their workforce needs with Indonesian citizens, except for leaders or experts who cannot yet be filled by Indonesian workers (Article 10 in conjunction with Article 11).
 - 2) Benefit aspect. The use of foreign capital needs to be utilized optimally to accelerate Indonesia's economic development and used in fields and sectors that have not been and/or cannot be implemented by Indonesian capital itself (consideration letter f).
 - 3) Aspect of certainty. A foreign investment permit is determined by a validity period of not more than 30 (thirty) years (Article 18). The government will not carry out nationalization or actions that reduce the right to control and/or manage foreign companies unless the law and the interests of the state require such action (Article 21).
- c. Law Number 25 of 2007 concerning Investment:
- 1) Aspect of justice. Investments must (are obliged to) prioritize Indonesian citizen workers and have the right to use foreign national experts for certain positions and expertise.
 - 2) Benefit aspect. Benefits from carrying out capital investment will be achieved by achieving objectives, including a. economic growth; b. creating jobs; c. increasing the competitiveness of national companies; d. improving national technology; e. encouraging the people's economy; and f. improving community welfare [Article 3 paragraph (2)].
 - 3) Aspect of certainty. Every investor has the right to the certainty of rights, law, and protection (Article 14 letter a). The government will not take action to nationalize or take over the ownership rights of investors, except by law and by providing compensation whose amount is determined based on market prices (Article 7).
- d. Law No. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation Becoming Law:
- 1) Aspect of justice. Guaranteeing that citizens obtain employment and receive fair and appropriate compensation and treatment in employment relationships (Article 3 letter b). Providing convenience, protection, and empowerment for Cooperatives and MSMEs as well as national industry and trade by paying attention to balance and progress between regions in national economic unity (Article 3 letter a).
 - 2) Benefit aspect. Creating and increasing employment opportunities to absorb the largest possible Indonesian workforce (Article 3 letter a).
 - 3) Aspect of certainty. Arrangements with support, strengthening, and protection for Cooperatives and MSMEs as well as national industry (Article 3 letter c). Increasing the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by the Pancasila ideology (Article 3 letter d).

Based on this information, every law that regulates foreign investment seems to have implemented the theory of legal objectives containing three aspects, namely justice, expediency, and certainty. However, this is not the case. If you look closely at article by article as a whole, sometimes there are norms (articles) that are not in line with the theory of legal objectives.

The paradigm and direction or political line of foreign investment law in the period 1958-1965, even though they both used Pancasila and the 1945 Constitution of the Republic of Indonesia, there were differences in political lines that were very sharp and fundamental or contradictory. If Law Number 78 of 1958 concerning Foreign Investment opens up foreign investment, Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment rejects foreign investment. This concerns the consistency of the Indonesian people regarding the ideology and constitution adopted in the state structure, which should be implemented properly because of fundamental problems in the state. Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment does not apply to the theory of legal objectives at all. The legal political line in the issuance of Law Number 16 of 1965 is not a theory of legal objectives, but rather a purely confrontational political approach.

Since 1967 until now the Indonesian investment law has opened up the presence of foreign investment in the Indonesian economy, as regulated in Law No. 1 of 1967 concerning Foreign Investment, Law No. 25 of 2007 concerning Investment, continued in Law No. 11 of 2020 concerning Job Creation, and Law No. 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation Becoming Law. However, in the 1967-2023 period, there were also weaknesses.

First, from a constitutional perspective, there are inconsistencies in the policies in the foreign investment law, especially with Article 33 of the 1945 Constitution of the Republic of Indonesia, namely regarding branches of production that are important for the country and which affect the lives of many people. Law No. 25 of 2007 concerning Investment and continued in Law No. 11 of 2020 concerning Job Creation increasingly opens up business fields that foreign investors can pursue. The background that encouraged the birth of investment law politics in Law No. 25 of 2007 concerning Investment and Law No. 11 of 2020 concerning Job Creation is indeed full of orientation to pursue economic growth which contains the benefits of creating jobs. However, when you only think about economic growth, including efforts to create jobs, without thinking about the long term, such as the Indonesian economy being continuously dominated by foreigners could backfire on the Indonesian economy; does not educate or encourage the birth of national business forces.

Second, control over foreign investment companies' compliance with environmental laws directly with the Investment Coordinating Board (BKPM) in Jakarta. There is no role for the provincial government. The problem is, is it possible for BKPM to be able to control if there are environmental violations spread throughout the vast country? Of course not.

Third, there were two cancellations by the Constitutional Court of laws regulating investment, namely: (1) through decision No. 21-22/PUU-V/2007 regarding several articles in Law No. 25 of 2007 including Article 22 which regulates land rights up to 95 years. The problem is that the material aspect of the provisions of Article 22 is unconstitutional because the term of land rights which reaches 95 years and is extended in advance can reduce people's opportunities to access land that is used to improve their welfare; and (2) Constitutional Court decision No. 91/PUU-XVIII/2020 which decides that Law No. 11 of 2020 concerning Job Creation is conditionally unconstitutional because from a formal perspective the formation of the law, Law No. 11 of 2020 concerning Job Creation is considered to violate the mechanism for forming laws.

Fourth, in Law No. 11 of 2020 concerning Job Creation and continued in Law No. 6 of 2023 some regulations change the rules that have been regulated by law, changes which do not strengthen but weaken the position of the community regarding their rights so that they have the potential to harm the interests of the community on the one hand and strengthen and benefit the position of business actors (investors) on the other hand. For example, Article 22 of Law No. 22 of 2019 concerning Sustainable Agricultural Cultural Systems determines that for the use of a certain area of land on customary rights land, business actors are obliged to hold consultations with customary law communities holding customary rights to obtain approval. In Law No. 11 of 2020 and Law No. 6 of 2023 concerning Job Creation, the rules of Article 22 of Law No. 22 of 2019 were changed to "Business actors using customary land rights who do not consult with customary law communities holding customary rights to obtain approval are subject to administrative sanctions in the form of a. Temporary suspension of activities; b. imposition of administrative fines; c. Government coercion; d. Suspension of Business Licensing; and/or e. Revocation of Business License." Indeed, business actors who carry out business activities on the customary law community's customary land without the consent of the customary law community will be subject to several administrative fines, however, the fate of customary law communities on customary land that has been managed is not regulated at all. This shows that the legal political framework is not based on the theory of legal objectives (justice, expediency, and certainty).

There are several weaknesses in the foreign investment law the solution is to create an ideal foreign investment law so that the investment law maintains a balance between economic growth and prosperity. It can be described for example, say there is an increase in foreign investment in very large amounts. so that this will automatically encourage the creation of economic growth at an ideal rate for the country. Of course, high economic growth will

be accompanied by the absorption of large amounts of labor (and the unemployment rate will decrease), state revenues in the form of taxes will also increase, export volume will increase (accompanied by an increase in foreign exchange), and technology transfer can take place (from foreign investment). Here, the presence of large amounts of foreign investment provides positive benefits for the country. However, it must be ensured that the law regarding foreign investment can create people's prosperity.

3.2. At Practice Level

At a practical level, the presence of foreign investment in the Indonesian economy cannot be denied that it has benefits in triggering Indonesia's economic growth. For example, the results of Purwanto & Mangeswuri's research, using secondary data from 1981 to 2010, show that three components significantly influenced Indonesia's economic growth to reach 5 percent, namely foreign debt, foreign investment (FDI), and domestic savings. FDI has a positive and significant influence on GDP. If GDP increases, it will encourage the creation of FDI. One of the motives for investors or multinational companies to invest is to get high returns in a country with a high level of economic growth (Purwanto & Mangeswuri, 2011: 698, 700).

However, the number of benefits obtained does not necessarily stop there. However, it can also cause several bad consequences in other areas. The occurrence of bad consequences in other areas does not provide any benefits but instead brings "disaster", especially for the community around which the company is located.

The Mining Advocacy Network (Jatam), for example, reports that foreign investment activities in the nickel ore mining sector in Indonesia are often a source of conflict, criminalization of society, and environmental destruction. This happens in various nickel ore mining operation locations in Indonesia, such as in Sulawesi, the Maluku Islands, and Papua. Melky, Chair of the Jatam Campaign, said that based on his findings in the field there were several negative impacts from the presence of investment that exploited nickel ore, namely (Laila, 2021):

- a. Farming communities lose production space due to land conversion, either through legal procedures or land confiscation. When someone refuses to sell their land, farmers experience intimidation and are forced to give up their land. This happened in Central Halmahera Regency, North Maluku.
- b. The indigenous Tobelo Dalam tribe who live nomadic lives around the forests of North Halmahera, North Maluku, for example, experienced land confiscation by a nickel company that built a road into the tribe's territory.

The negative impacts resulting from the presence of large-scale foreign investment are also felt in Papua. In 2017, the Indonesian Forum for the Environment (Walhi) Papua reported that during the 50 years that PT Freeport Indonesia had been operating in Timika, Papua, it had caused many unresolved environmental and social problems. Environmental destruction occurs in the form of changes in the physical condition of the environment due to mining waste disposal activities on the traditional lands of the Amungme tribe and the traditional lands of the Komoro tribe. This waste disposal disrupts the livelihoods of residents as fishermen. As a further consequence, the social life of the people of the two tribes worsened because of the existence of PT Freeport. The environmental damage from PT Freeport Indonesia's activities was also responded to by the Director of Walhi Papua, Aiesh Rumbekwan, who said: "... there is no clarity regarding who should be responsible for this condition. What is also unclear is whether the work contract that has been made between the Indonesian Government and PT Freeport states which party should be responsible if there are legal, human rights, or environmental problems." "Therefore, we demand accountability from the Indonesian Government and PT. Freeport Indonesia repairs various environmental damage that occurred on the customary land of the Amungme and Kamoro tribes." "And also, before continuing to make a new contract, it is necessary to seriously resolve the future problems of the lives of the existing indigenous peoples of the two tribes" (Suchahyo, 2017).

The negative impact experienced by society as a consequence of the presence of foreign investment in the cases that occurred in Maluku and Papua as stated above, clearly shows a dilemma. There is no possibility that the experiences of the people in these two areas are only a small example among the thousands of companies that manage natural resources spread throughout Indonesia.

Once the presence of foreign investment in carrying out business activities hurts society, at the same time it also creates injustice for society. This means that when people in Maluku and Timika (Papua) do not benefit from the presence of mining activities in their area, they will undoubtedly experience injustice from the presence of investment.

So, should we just reject foreign investment? Of course not. The state must be present. The law must be able to provide justice, benefit, and legal certainty for society, wherever and whenever. The state must have a legal policy that can provide justice, benefit, and certainty for its people. Foreign investment as an economic and business institution is very important within the framework of the national economy so it needs to be regulated in such a way that foreign investment can provide justice, benefit, and certainty so that the people become prosperous.

4. Conclusions and Suggestions

Based on the discussion above, it can be concluded that the regulations in foreign investment law in Indonesia still prioritize achieving economic growth, while the aspect of achieving people's welfare from the presence of foreign investment receives less attention. Therefore, it would be better if the investment laws were revised to create a balance between economic growth and prosperity. In other words, investment laws must be able to encourage economic growth and create prosperity simultaneously or simultaneously. There must be a balance between growth and prosperity.

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