

CHAPTER I

INTRODUCTION

A. Background

The vision of the ASEAN Economic Community (AEC) is the manifestation of the economic integration, as adopted in the ASEAN Vision 2020 which is to transform ASEAN into a region with free trade in goods, services, investment, skilled labor and free flow of capital¹. Acceleration of the establishment of ASEAN community from 2020 to 2015 was agreed upon by the ASEAN Head of States at the 12th ASEAN Summit. ASEAN Community in 2015 is divided into three pillars: the ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community².

ASEAN has agreed to follow the regional economic integration. Its implementation refers to the ASEAN Economic Community Blueprint that includes four main pillars, namely: (1) ASEAN as a single market and production base that is supported by elements of the free flow of goods,

¹ Wahyuningsih, 8 December 2014, "Peran Pemuda Indonesia Dalam Menghadapi ASEAN Economic Community (AEC) Atau Masyarakat Ekonomi ASEAN (MEA)", *Linkar Studi Pendidikan Universitas Sebeleas Maret*.

² Wawasan ASEAN 2020, Wikipedia, available at https://id.wikipedia.org/wiki/Wawasan_2020_ASEAN Accessed on October 25th, 2015 at 6.31 a.m.

services, investment, energy educated labor and freer flow of capital; (2) ASEAN as a region with high economic competitiveness which has the elements of competition rules, consumer protection, intellectual wealth rights, infrastructure development, taxation and e-commerce; (3) ASEAN as a region with equitable economic development which has the elements of the development of small and medium enterprises, and the initiative for ASEAN integration CMLV countries (Cambodia, Myanmar, Laos, and Vietnam); and (4) ASEAN as a region that is fully integrated by the global economy which has the elements of a coherent approach in economic relations outside of the region, and it increases the participation in global production networks³.

The four pillars of this legal basis has been agreed in the form of: ASEAN Trade in Goods Agreement (ATIGA) which regulates the flow of goods which is free, the ASEAN Framework Agreement on Services (AFAS) which regulates the flow of services that is free, the ASEAN Comprehensive Investment Agreement (ACIA) regulating the flow of investment, as well as the Chiang Mai Initiative Multilateralization (CMIM) regulating capital flows more freely.

The existence of the legal basis in the field of investment ASEAN namely ASEAN Comprehensive Investment Agreement gives benefits for the

³ Ministry of Finance, "Laporan Dampak ASEAN Economic Community Terhadap Sektor Industri Dan Jasa, Serta Tenaga Kerja Di Indonesia", July 3rd, 2015, available at <http://www.kemekeu.go.id/kajian/laporan-dampak-asean-economic-community-terhadap-sektor-industri-dan-jasa-serta-tenaga-kerja>. Accessed on October 25th, 2015 at 05.59 a.m.

investment environment and business sector. ASEAN Comprehensive Investment Agreement provides investment protection guarantee. It makes the investors ensure to invest their investment to the ASEAN region. Its business gives the investors some benefits i.e. the obligation of non-discrimination treatment, full protection and security, and cooperation from the government regarding on the investment facility for the investors from ASEAN member countries. However, to realize these benefits, the provisions in the ASEAN Comprehensive Investment Agreement have to be understood and implemented by government institutions particularly as the regulator and the business sector in the ASEAN Member Countries. The implementation of ASEAN Comprehensive Investment Agreement is effective depended on the willingness and commitment of Member States to carry out the structural reforms and regulations in accordance with the provisions of ASEAN Comprehensive Investment Agreement. Moreover, the regulatory reforms that support the simplification of procedures, licensing and other regulatory requirements will produce a favorable investment environment.

In the era of economic globalization, every country faces increasingly fierce competition in the two fields, namely: free trade and Foreign Direct Investment (hereinafter referred to as the Investment). It is marked by the implementation of free trade area agreement and investment agreement as well as the advancement of information technology, which makes the

obstacles in trades are decreasing, international financial traffic that increasingly free, and out flows of capital and investment in each country. The impact of the passing of this era of globalization will pose a tough competition between the countries. Only a country that has the ability to compete will be able to survive⁴. It requires the economic development, considering the cooperation of ASEAN countries in the industrial sector mainly developed on the basis of three forms, namely: ASEAN Industrial Projects (AIP), ASEAN Industrial Complementation (AIC), and ASEAN Industrial Joint Ventures (AIJV). Besides, efforts are also proposed to increase the flow of technology, skills and investment to ASEAN countries and the exchange of information on policies and planning national industry among ASEAN countries.

Indonesia is a country which has a wealth of natural resources, cultural diversity, and the largest population in Southeast Asia. It is the economic capital of the nation that should become the welfare of its people. One of the problems that must be resolved by Indonesia is investment. Indonesia needs capital to grow the national economy. Although the investment rules have been discussed in Law No 25 of 2007 on Investment, but the government's efforts in improving the flow of investment in Indonesia has experienced some of the differences between the Negative Investment List 2014 with the

⁴ Ridho Jusmadi, 2011, "Kebijakan Perdagangan Bebas Serta Pengaturan Merger & Akuisisi Lintas Negara Dalam Sistem Hukum Persaingan Usaha", *Unpublished*.

Negative List 2010, among others related to the policy about the ownership of foreign capital increases, decreases, as well as the presence of the addition of new areas of business that have not been regulated in the Negative Investment List 2010⁵.

The Negative Investment List 2014 sets policies on business sectors closed for investment and business fields are open with some conditions. The conditions are divided into three groups, namely: (1) line of business reserved for micro, small, medium, and cooperatives; (2) line of business as required by the partnership; business field required capital ownership, specific location, (3) and special licensing⁶. As affirmed by Hatta Rajasa, the government has four reasons for revising the Negative Investment List. Four reasons are to maintain economic growth and the anticipated impact of the global crisis through investment, simplifying the investment, adjust the existing law and the harmonization and simplification of business fields⁷.

The challenges of national economic growth need approval from ASEAN Comprehensive Investment Agreement. How ready and open a country to accept the liberalization of trade without barriers will disturb the

⁵ Renintha Karina, 2015, *Bidang Usaha Tertutup (Daftar Negatif Investasi)*, Jakarta: Gramedia Pustaka Utama.

⁶ Deby Selina Panjaitan, 2016, "Pemerintah Menerbitkan Daftar Negatif Investasi Terbaru", *Hukum Penanaman Modal*.

⁷ Hukum Online.com, "Revisi Daftar Negatif Investasi Beberapa bidang usaha yang dibatasi untuk kepemilikan asing serta pembatasan pemilikan asing yang sebelumnya dibuka dalam DNI menjadi tertutup", December 24th, 2013, available at <http://www.hukumonline.com/berita/baca/lt52b97a8279176/ini-dia-revisi-daftar-negatif-investasi>. Accessed on February 14th, 2016.

rate of the economy. The chance of becoming housework for Indonesia is to prepare the changes or improvements which hamper the domestic economy in attracting investment and improve national economic growth.

The system which is used in the National Single Windows for Investment (NSWI) has become the government's agenda for the registration and establishment of business fields. However, large variations between regions licensing, involvement of various technical institutions, and the lack of integrated information, as well as validation still remains an obstacle. With the existence of such a program is expected to ease of getting information and accelerating the process of licensing investment⁸.

It is inevitable that economic growth always creates inequality society, the symptoms that inhibit even become difficult to make the economy grow and lead to de-industrialization. Though the symptom of inequality is the result of fear for rejecting the changes cannot be avoided. With the investments that move the economic wheel, every country has a chance to improve their national economies. Deputy Minister of Planning/Deputy Head of Bappenas, Dr. Lukita Dinarsyah Tuwo stated that; to become the country with the largest state economies 7th in the world, the Indonesian government needs to do a variety of important breakthroughs in order to accelerate the

⁸ NSWI (National Single Windows For Investment), National Single Window For Investment, available at <http://nswi.bkpm.go.id/wps/portal/tentangnswi/>. Accessed on October 26th, 2015 at 6.17 a.m.

economic growth in Indonesia⁹. Strategic geographical location makes Indonesia as a country that should be taken into account by the world and the national interests of other countries to engage or collaborate with Indonesia. With these opportunities, Indonesia previously still focusing on the output of commodity should be the Indonesian industry engaged in the production output or finished goods with international standards of quality that are ready to compete with other countries through the ASEAN Economic Community as an effort to realize the welfare of the people of Indonesia and the ASEAN community as a whole.

By the formation of the ASEAN Economic Community, ASEAN will enter the final stage of economic integration. In 1961, the theory of economic integration was first published stating that there are five stages, namely the integration of preferential trading arrangements, free trade area, customs union, common market, and economic union. At this time, ASEAN has been implementing the ASEAN Free Trade Agreement (AFTA) since 1991 which has aims to eliminate trade barriers such as tariffs among members of ASEAN, and implement the ASEAN Single Window (ASW) of 2013 which aims to integrate the systems of Customs and Excise throughout the ASEAN region. By the implementation of the ASEAN Economic Community in 2015

⁹ Lukita D Tuwo, 17 April 2014, "Pada 2030 Indonesia Akan Jadi Negara Dengan Ekonomi Terbesar Ke-7", *Unpublished*.

then basically ASEAN will implement a common market and economic union at the same time¹⁰.

Seeing the problems faced by Indonesia as a member of the ASEAN countries and involved in the ASEAN Economic Community, the researcher tries to examine the investment provisions of the convention according to the ASEAN Comprehensive Investment Agreement and procedures for establishing a foreign investment in ASEAN Economic Community era in Indonesia.

B. Research Questions

1. How are the investment principles according to the ASEAN Comprehensive Investment Agreement (ACIA)?
2. How are the procedures for establishing of foreign investment company in ASEAN Economic Community era in Indonesia?

C. Objectives of Research

1. To find out the investment principles according to the ASEAN Comprehensive Investment Agreement (ACIA).

¹⁰ Ahmad Redi, Laporan Dampak ASEAN Economic Community Terhadap Sektor Industri Dan Jasa, Serta Tenaga Kerja Di Indonesia, Jakarta: Kementerian Keuangan RI, (2014), p. 4-5.

2. To find out the procedures for establishing of foreign investment company in ASEAN Economic Community era in Indonesia.

D. Benefits of Research

The benefits of research are:

1. Theoretical Benefit

This research will provide the understanding of foreign investment, in such legal concerning investment in Indonesia, ASEAN, ASEAN Comprehensive Investment Agreement, ASEAN Economic Community. This research will open the view of the foreign investment in Indonesia.

2. Practical Benefit

This research will describe some understanding of concepts that the researcher studied to develop the field of research, particularly in the areas of investment in Indonesia from procedures of foreign investment, with the regulations and legal in accordance with the issues that examined by the researcher.