

CHAPTER I

INTRODUCTION

A. Context of the study

Investment is one of the most important instrument in the economic system of state, this is not surprisingly that in the developing state or in Indonesia tries optimally to be the house state for foreign investor to get in, in order to run the wheel of economic system which also related to the productivity, trade activity, and also open the employment.¹

Investor does investment based on their capital, and they are looking for profit which can be obtained from the business activity that have done by them. The way they carrying their business, investor themselves needs employee in order to help and support them in running the business maybe fir instance for production the goods.

Investor in Indonesia is regulated under Law number 25 of 2007 about investment, and the matter about labor is regulated under Law number 13 of 2003 on Labor. The foreign or domestic investor are obligated to protect their labor as long as their company is running.² So this is the very main obligation for the investor if they want to do investment in Indonesia.

Foreign direct investor or shortened by FDI, can be found in Law number 25 of 2007 about investment in article 1 point 6 which stated

¹SicilliaMohede, "Perlindungan Hukum Terhadap Investasi Daerah Minahasa Selatan Sehubungan dengan Otonomi Daerah", *IPI Jurnal Hukum UNSRAT* Vol.XXI/No.3/April-Juni /2013, p.57

² Article 16 point e , Law Number 25 of 2007 on Investment stated that "*create a safe, health, comfort and welfare of worker.*"

“Foreign Investors are foreign individuals, foreign corporation, and / or a foreign government makes an investment in the territory of the Republic of Indonesia.”³

If there is obligation that stated like in the Law number 25 of 2007 about the relationship of investor with the labor, it means there is also relationship between Investor with the law which regulated about the labor itself, in this matter, the investor have to carry out the Law number 13 of 2003 about Labor, and also the article 16 of Law on Investment here emphasizes that investor is submissive and obedient to the Law number 13 of 2003 on Labor.

In Indonesia specially in Law Number 13 of 2003 on Labor, the law does not recognize the word “investor” but the word which appear is Employer. The investor or Employer and labors are two parties which cannot be separated, where labor work for investor and investor works for labor.

Law number 13 of 2003 on Labor is acting as a legal protection for the labor in Indonesia. The goal of labor law is implementing of social justice in the implementation of organized labor and by protecting workers against the unlimited power of the employers.⁴

Labor in this world specially in Indonesia is not small issue, they always do demonstration which famous called as *mayday*. The urgency of labor in this modern world is very important or significant, because we also learn about labor itself in Law school, it means that labor world is having crucial place in our daily

³Article 1 point 6, Law number 25 of 2007 on Investment

⁴Dedi Ismatullah, Hukum Ketenagakerjaan, PustakaSetia, Bandung, 2013, p.49

activity. They are labor, is any person who is able to work in order to produce goods and / or services, both for their subsistence and for the community.⁵

An employer's second most powerful economic weapon is the legal right to replace economic strikers,⁶ therefore investor can be said has a weapon for every aspect in investment. Investor gives a state so much advantage. Every investor who invest in Indonesia, they will establish or create any pabrique for the productivity, and of course they need workers/labors to run the pabrique and also who work for them to produce any kind of stuffs. Principally, labors in direct Investment, they shall use labor form Indonesia, except for the certain position and certain expertise which have not overpowered by labor from Indonesia itself.⁷ Therefore, there have to be indonesianization of the manpower through job training and transfer of technology.

Labor and employer are the two parties which cannot be separated, the dependency of each party is very strong. Employers need workers working for production or produce goods for the purposes factory, while requiring employers need fatherly get wages for workers given in producing goods employer. In the world of business, we can say that employer is the majority party where they have so big authority regarding the company that employ the labor, where the labor is minority party who do the instruction by the employers.

When we read the Law number 13 of 2003 on Labor, we can say that so many privileges which given by our government through that law. For example, if

⁵Article 1 point 2, Law number 13 of 2003 on Labor

⁶Michael Evan Gold, *An Introduction to Labor Law*, ILR Press, New York, 1998, p.49

⁷Rahmi Jened, *Teori dan Kebijakan Hukum Investasi Langsung (Direct Investment)*, Kencana, Jakarta, 2016, p.193

the Labor is terminated (termination/layoff) which already decide by Settlement Body of Industrial Relationship, they will got some amount of money based on Law Number 13 of 2003.⁸

The other privileges which can be obtained by the labor which guaranteed by the Law number 13 of 2003 on Labor and Transmigration Number 232/MEN/2003 about Legal Impact of Illegal strike is the right to do Strike or in Indonesia term called as *Mogok Kerja*. Strike is a fundamental right of workers / laborers and trade unions / labor unions carried out legally, orderly, and peaceful as a result of the failure of negotiations.⁹

Many people believe that contribution of FDI to a country is as a source of funding from abroad as well as the booster or driver of economic growth in the country. The behavior of multinationals and FDI regulations in the country are some of the issues that must be addressed by policy makers in the country.¹⁰ But also we have to believe that the support which can be given by the foreign investor to this country also need other support in the aspect of labor, they invest their assets in Indonesia, establish a new pabrique, do a production, all of that actions cannot be done only by the investor itself, where they need manpower to protect it.

Nowadays. Our government under President JokoWidodo is endlessly to invite foreign investor to come here in order expand the employment for the

⁸Article 156 point 1, Law number 13 of 2003 on Labor

⁹Article 137, Law number 13 of 2003 on Labor

¹⁰José De Gregorio, "The Role of Foreign Direct Investment and Natural Resources in Economic Development", in book of *Multinationals and Foreign Investment in Economic Development* which arranged by Edward M.Graham (eds), USA: Palgrave Macmillan, 2005, p. 179.

manpower. According to Rahmadi Supanca, one of the various factors that cause the occurrence of investment climate being not conducive is many number of cases demonstration/strike in the field of employment. Neo Classical Theory of Economic Growth said economic growth depends on the development of the factors of production, namely; capital, labor and technology¹¹

Strike is fundamental right of course, and for any labor who want to do strike have some regulation or conditions which have to obeyed by them before doing the strike itself (Law number 13 of 2003 and Decision of Minister on Manpower and Transmigration Number 232/MEN/2003 about Legal Impact of Illegal strike) which in this two statutes, instruct the labor to inform the institution that they will want to do strike.¹² One of the procedure which has to be fulfilled by the labor when they want to do strike is decide the start of strike and the end of the strike.¹³ but there is not limitation time for labor to do the strike, which means that labor can does strike as long as they want, which it will inhibits the production of the company and give loss to the investor.

So many scholars put the matter of manpower or labor is one of the factor which include as the factor that influence the investment climate. Nowadays, Labor has become a decisive catalyst for the influx of investment in Indonesia.¹⁴ Labor here have a very crucial position in deciding the economic condition of one state.

¹¹Chairul Nizar, *et.al*, “Pengaruh Investasi dan Tenaga Kerja Terhadap Pertumbuhan Ekonomi Serta Hubungannya Terhadap Tingkat Kemiskinan di Indonesia”, Vol.1 Number 2, *Pasca Sarjana Ekonomi Universitas Syiah Kuala Banda Aceh*, 2015, p.1

¹²Article 140 point 1, Law number 13 of 2003 on Labor

¹³Article 140 point 2, Law number 13 of 2003 on Labor

¹⁴Sofjan Wanandi (Chairman of the Indonesian Employers Association) statement on <http://industri.bisnis.com/read/20131029/12/183501/mogok-kerja-dapat-hambat-investasi-2014>, accessed December 19 2016

The case of strike in Indonesia, is not a rare event at all, because the strike itself happen so many times in the industrial zone. In Indonesia, there are some industrial zone, for example in Batam which have large of industrial zone such as Industrial Zone of BatamindoMukakuning, where from the beginning until the middle of 2014 there are already three big foreign companies revoke their investment and leave Batam.¹⁵ In the beginning of last year there PT Siemens Hearing System, a German company that decided to leave since the strike of trade unions and led to the closure of access to the enterprise.¹⁶

Strike does not only recognize in Indonesia, where strike also happen in many countries, but the impact is same, always damage the investor regarding their asset, and also their productivity because they labor stop their working for temporary. Strike only can be done if there is mutual agreeent between the company and the labor and to do it there are some regulation which have to be obeyed by the labor. But, also some happen illegal strike which means to will-imposed and self-imposed. Like what happen in Magelang in 2014, PT. MAJ does termination or layoff (PHK) for around 350 labor because they did illegal strike to the government.

The case of illegal strike which ever happened for example is of PT. Doosan Cipta Buana Jaya against their labor, National Strike which also illegal cause there is no regulation which regulated about the strike against government,

¹⁵<https://batamekbiz.com/aksi-mogok-pengaruhi-iklim-investasi/>, accessed December 19 2016

¹⁶<http://bisnis.liputan6.com/read/2409497/perusahaan-cabut-dari-batam-karena-demo-ini-kata-kepala-bkpm>, accessed December 19 2016

also the case of PT. Yupi Indo Jelly Gum against their labor, PT. Adyawinsa Stamping Industries against their labour, etc.

So, FDI needs a legal protection for the strike itself because still many strike which exist and happen illegally because the will-imposed from the labor and labor organization, where Indonesia government already stated that ensure legal certainty, certainty and security attempted to investors since the licensing process until the expiry of investment activity.¹⁷

B. Problem Formulation

1. How is the Legal Protection of Foreign Investor in the Relation to labor with the Right to do Direct Action ?
2. How is the impact of labor have the Right to do Strike on Investment of Indonesia ?

C. Research Objective

1. To know about the Investor Legal Protection in the Relation to labor with the Right to do Prolonged Direct Action on the failure of the negotiation between the labor and employers,
2. To identify the influence of the strike which always done so many times by the labor for the growth of Investment in Indonesia.

¹⁷Article 4 Paragraph 4, Law Number 25 of 2007 on Investment

D. Theoretical Review

The development of legal knowledge cannot be separated from the legal theory as a basis and the task of legal theory is to explaining legal values and it postulates until the very basic of the its philosophy.¹⁸ Therefore this thesis will not separate from the legal theory itself.

The legal system must be effective. No complex of norms count as a currently valid legal system unless they are observed in practice. Of course not every law need to be effective in every instance to which it applies. But the system must, in conjunction with other social systems such as private and public morality.¹⁹

According to SoedjonoDirdjosisworo, the definition of law can be divided into 8 defintions, which are law in the meaning of authority holder, law in the meaning of officer, law in the meaning of action, law in the meaning of norm, law in the meaning of values, law in the meaning of legal structure, law in the meaning of legal knowledge, and law in the meaning of legal discipline.²⁰ The various of definitions of law here means that law is not only written legislation and law enforcement officials, but law also includes the things which is exist in people interaction.

Literally, the word “protection” means the act of protecting.²¹ Generally, protection means protect something from dangerous things, it can be in the form of interest, or goods. Its also can be concluded as a protect from the powerful person to another weak person. So protection

¹⁸W.Friedman, *Teori dan Filsafat Hukum*, RajaGrafindo, Jakarta, p.2

¹⁹Tony Honore, *Making Law Bind*, Clarendon Press, Oxford, 1987, p.2

²⁰Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*, RajaGrafindo, Jakarta, 2008, p.25-43

²¹Bryan A. Garner, *Black's Law Dictionary*, West, St.Paul, 2009. p.1343

means that every effort of government to its citizens so that their rights as citizens are not violated, and for the violator, they will be given sanction or punishment in accordance with applicable regulations.²²

Definition of Legal Protection is a protection afforded to subjects of law in the form of legal instruments both preventive and repressive, both written or unwritten. In other words, legal protection as a description of an overview of the legal function, which is legal concept which can give a justice, order, certainty, usefulness, and peace.²³

The ambiguities and contradictions that are inherent in the concept of law are related to the fact that legal rules, as well as the enforcement of the law, serve different functions. One might, somewhat arbitrarily, distinguish ; the law is a means of governance, a way of shaping the behaviour of the citizens, it is a device for distributing resources and burdens in society, it serves to safeguard expectations, it deals with conflict and contributes to their solution, it express ideals and values.²⁴ Fulfilling and securing of social expectations is the most important task of the law.²⁵

Law have function to seek justice, beside it the law itself have to seek the order and security. The term order will be used in describing the formal structure of legal systems, especially the propensity of the law to

²²“Pemegang Paten Perlu Perlindungan Hukum”, *Republika*, May 24, 2004

²³Rahayu, 2009, *Pengangkutan Orang*, etd.eprints.ums.ac.id.Peraturan Pemerintah RI Nomor 2 Tahun 2002 bout the Victim and Witness Protection Procedures In Human Rights Major Violations (UU Nomor 23 of 2004 on the elimination of domestic violence

²⁴Vilhelm Aubert, *In Search of Law*, Martin Robertson & Company Ltd, Oxford, 1983, p.28

²⁵Luhmann (Germany Sociologist) opinion in the book of VilhelmAubert, *In Search of Law*, Martin Robertson & Company Ltd, Oxford, 1983, p.29

employ general rules, standards, and principle in discharging its task of regulating human affairs. Security, on the other hand, will be treated as a material value which justice in social relations must seek to promote, it is also related to the contents of legal norms concerned with the protection of human beings against acts of aggression, spoliation, and depredation and, to a less urgent degree perhaps, with mitigating the effect of certain hardships, vicissitudes, and hazards incident to human existence.²⁶

Any discussion of industrial relations and the law involves problems of definition. One of the weaknesses of many such discussion is a failure to appreciate the full extend of the subject matter of industrial relations. Like what is stated above in the background of the study, there is an article which obliged the investor to create safe, health, comfort and welfare of the manpower, which here means that there is relationship between these two parties. And if there is any investor who want to obey the article 16 of law number 25 of 2007 on investment it means that they have to obey the law on manpower here which regulate anything that instruct by the article 16 itself.

Article 1 paragraph 3 of Constitution 1945 states that Indonesia is Law state. Therefore, Indonesia guarantees the rights and legal protections for the people who deserves it based on the legislation. There are some definitions of legal protection according to some scholars ;

²⁶Edgar Bodenheimer, *Jurisprudence, The Philosophy and Method of Law*, Harvard University Press, Cambridge, 1978, p.171

1. According to Muchsin, legal protection is the activity to protect individual with coordinate the relation of values which incarnate in attitude and actions in order to create human life order in society.²⁷
2. According to Satjipto Rahardjo, legal protection is effort to protect one's interests by allocating him a power to act in the framework of these interests.²⁸
3. According to Muktie, A. Fadjar, legal protection is narrowing the meaning of protection, in this case the only protection by the law itself. The protection afforded by the law, is also related to their rights and obligations, in this case that of humans have as subjects of law in its interaction with fellow human beings and the environment. As the subject of human law has the right and obligation to do something legal action.²⁹

And also there is legal purpose, the legal purpose itself is protecting the institution of society, and not just visible ones like parliament, but invisibles ones, and also law have function to punish fairly and equitably.³⁰

A main concern to invest in developing countries is the assurance to find a good environment for FDI in terms of political and social stability and the presence of rules and laws that assure legal certainty in

²⁷Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, Thesis Magister in Faculty of Law of Universitas Sebelas Maret, 2003, p.14

²⁸Satjipto Rahardjo, *Sisi-sisi lain dari Hukum di Indonesia*, Kompas, Jakarta, 2003, p.121

²⁹<http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/>, accessed March 21, 2017

³⁰Paul Denham, *Law a Modern Introduction*, 4th Edition, Hodder and Stoughton, London, 1999, p.22

carry on the investment itself. Because legal uncertainty can be detrimental to FDI.³¹

More specifically we can distinguish five basic principles, which can be considered fundamental components of a macro-legal environment for FDI in developing countries, as follows :

1. Publicity of the rule of law, which enables all concerned parties to have access to the laws they have to abide.
2. Clarity and certainty of the legal framework, which allows such parties to understand which law are applicable to their situation and what their specific meaning is.
3. Predictability in the application of the rule of law, which reduces the risks linked to changing interpretation, implementation or enforcement of the laws.
4. Stability of the legal, political and policy frameworks, which provides investors assurances that the local government will not unilaterally and unfavorably change the basic conditions underlying their investment decisions.
5. Fairness, in particular the possibility of legal recourse and due process, with access to independent judiciary and dispute settlement mechanism.³²

³¹Martin Zagler, Foreign direct investment to developing economies, legal uncertainty and corporate income taxation on ftp.zew.de/pub/zewdocs/veranstaltungen/VS_ResearchSeminar_Zagler.pdf accessed March 25, 2017

³²*Ibid*

An analysis of the effect of corporate income taxation on FDI cannot be done without considering the overall impact that legal uncertainty has on this relationship. In order to reach a beneficial environment for FDI, harmonization (same legal systems) and clarity of law inside these countries is a prerequisite. The need for this harmonization derives in part from the costs of legal diversity and the legal uncertainty that possibly results from it for particular groups. Broadly, “legal certainty” would imply dynamic and efficient substantive laws clearly stating the rights, obligations, and liabilities of all business parties, rule-based business transactions, procedural law providing prompt and inexpensive means to the courts, an institutional framework that supports business development and sustainability, strict adherence to the principles of ‘rule of law’ and ‘supremacy of the law’, and an efficient and independent judiciary. Legal uncertainty on the other hands always occurs when individual actors are uncertain of the effects of the provisions of the dominant legal system on the results of their actions.³³

The term “legal uncertainty” covers both “subjective” and “objective” aspects. The term “subjective legal uncertainty” refers here to the subjective assessment of marginal costs and marginal utility, which differs from individual to individual. Subjective legal uncertainty can also be referred to as “uncertainty as to what the law is”.³⁴

³³Martin Zagler and Cristiana Zanzottera, “Corporate Income Taxation Uncertainty and Direct Foreign Investment”, *WU International Taxation Research Paper Series*, No. 2012-07, 2012, p.3

³⁴*Ibid*

Therefore in the industrial relationship, there will be some roots of conflict which can be happen, because in every relationship there are rights and obligations of that party, it also applies for the investor and labor. In the preventing any conflict Indonesia Government already made any legal basis in the form of statue of each party, where for the investor is the Law number 25 of 2007 on investment and for the labor the legal basis the law number 13 of 2003 on Labor. Absolutely, in each f the statutory, there shall be any protection in this matter is legal protection in order to protect each party for any kind of unlawful action which done by the opposite party in their relationship.

E. Research Method

1. Research Object

Research objects are the things that will be examined, which include illegal and Prolonged Strike

2. Research Sources

This research will using sources :

a. Primary Legal Sources, the primary data here means binding legal materials that relate to the object of research :

1). Law Number 25 of 2007 on Investment

2). Law Number 13 of 2003 on Labor

3).Decision of Minister on Manpower and Transmigration Number 232/MEN/2003 about Legal Impact of Illegal strike UU2/PNPS/1964

4). Law number 2 of 2004 on Settlement on Industrial Relationship

Dispute

Secondary Legal Materials, , which consists of :

- 1). Jurisprudence
- 2). Expert Opinion
- 3). Journal
- 4). Article
- 5). Internet
- 6). And books which related to this research object

3. Method of Data collection

This research will using approach of statute and conceptual approach. Statute approach here means that the writer will try to do some approaching into statutes with analyze which relating to the research object. And conceptual approach here means that the writer will analyze any doctrines or maybe expert opinion which is related to this research object.

4. Approach of the study

This Research was a juridical normative research which identified legal norms and legal views. The objective was to understand and answer the object of study by using juridical normative approach

5. Processing and analyze Legal Materials

The data was organized by selecting the data related to the discussed problem in this research. It is structures descriptively in order answer the problem in a descriptive analysis. The data were collected, managed, and used to answer the problems. The method of data analyzing was qualitative method. It means that the data achieved were not in the form of numbers and statistic, but analyze qualitatively and descriptively. Moreover, it also portrays facts, legal enforcement, and bears with the applicable legal aspects. The steps are defined as follows :

- a. Classification of the data collection based on the problems of the research
- b. Systematic of Data Collection
- c. Systematic data is analyzed to achieve conclusion

F. Structure of Writing

Chapter I contains an introduction which encompasses these following parts : Context of Study, Problem Formulation, Research Objective, Theoretical Review, Research Method, and Structure of Writing.

Chapter II contains theoretical Review which discussing the Study of Investment based on Law Number 25 of 2007 on Investment and Study of Labor based on Law Number 13 of 2003 on Labor.

Chapter III contains of two discussion as follows :The Impact of Strike from Labor to Foreign Direct Investment in Indonesia and Legal Protection for Foreign Investor form the Illegal and Prolonged Strike in Indonesia.

Chapter IV contains of the conclusion and Recommendation which is obtained by the previous analysis which has been done.

