

CHAPTER I

INTRODUCTION

1.1 Background

The rapid development of the economy in the post-independence era is far different from the current era of globalization. Foreign investment dominates and has a positive impact on the development of the nation and state in Indonesia. Foreign Investment (PMA) is an investment activity to conduct business in the territory of Indonesia which is carried out by foreign investors, either by using fully foreign capital or in a joint venture with domestic investors.

PMA has a very large influence in various fields of national and social life, such as in the workforce, the community's economy, increasing regional income, and increasing the country's foreign exchange. This is in line with the purpose of capital administration as regulated in Law Number 25 of 2007 concerning Capital Investment. Additionally, Indonesia is quite accessible to business and investment because of its large workforce and richness of natural resources. Infrastructure, agriculture, industry, maritime, tourism, Special Economic Zones (SEZs) and Industrial Estates, as well as the digital economy, are some of the government's priority investment sectors based on the 2015-2019 Investment Strategic Plan. These sectors are particularly open to PMA.

The government considers that investment is intended for the continuity of national development, so the state is actively opening up opportunities and

openness to investment and PMA.¹ This situation will encourage the state to make every effort to attract PMA to Indonesia. To increase the amount of PMA, strategic steps are needed, as has been done by the current government, namely by amending Law Number 25 of 2007 concerning Capital Investment with Law Number 11 of 2020 concerning Job Creation. Law Number 11 of 2020 concerning Job Creation is one of the legal products that aims to improve the scope and regulation of investment and encourage investment ease and ease of PMA in partnering and determining their ownership status.

According to Law Number 25 of 2007, foreign capital invested in Indonesia by foreign investors must be based on the substance, procedures and conditions that have been determined in the prevailing laws and regulations and are stipulated by the Indonesian government. So, it is certain that the rules regarding regulations and other technical matters related to PMA follow the system of laws and regulations in Indonesia. It is because the purpose of implementing investment is to have an impact on national economic growth and increase sustainable development and improve people's welfare, it is appropriate for the government to give more encouragement to this investment sector, especially to investors who can process potential economics into real economic strength by using funds that come from both within the country and from abroad.

¹ Sri Yulianti, "Analisis Hukum Tentang Kepemilikan Saham Pada Perusahaan Penanaman Modal Asing", *Premise Law Journal*, Vol. 3, (2013), page 3.

The government has established basic policies for investment, which include:²

1. give equal treatment to domestic investors and foreign investors while still taking into account the national interest.
2. guarantee legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities in accordance with the provisions of laws and regulations; and
3. opening up opportunities for development and providing protection to micro, small, medium and cooperative enterprises.

Based on the BPS assessment on the accumulation of Investment Realization data,³ the number of realized foreign investment investments continues to increase in Indonesia. This is in line with the opinion of William A. Fennel and Joseph W. Tyler⁴ that PMA has more advantages when compared to domestic investment. This is because the nature of PMA is more directed at long-term investment, contributes a lot in technology, management skills, and creates new job opportunities. This job opportunity is very important for developing countries considering the limited ability of the government to provide employment opportunities.

² Power Point, “Hukum Penanaman Modal Menurut Undang-Undang Terkait”. <https://staff.universitaspahlawan.ac.id/web/upload/materials/587-materials.pdf>, Accessed on 22 August 2022.

³ Badan Pusat Statistik, “Realisasi Investasi Penanaman Modal Luar Negeri Menurut Provinsi (Juta US\$)”. <https://www.bps.go.id/indicator/13/1840/1/realisasi-investasi-penanaman-modal-luar-negeri-menurut-provinsi.html>, Accessed on 22 August 2022.

⁴ Rahayu Hartini, “Analisis Yuridis UU No. 25 Tahun 2007 tentang Penanaman Modal”, Jurnal Humanity, Vol. 5, No. 1 September 2009, page 54.

As explained earlier, PMA is one of the important factors related to the creation of job opportunities. The economic value of a PMA is not only seen from the addition of output, it must also be seen from the number of workers that can be employed, because PMA is not only intended for economic growth but also to reduce poverty and unemployment.⁵ Various studies have been conducted to look at the impact of FDI on employment. A study by Greenaway, Morgan and Wright⁶ shows the positive impact of PMA in developing countries, including higher economic growth than before. In addition, direct investment from foreign capital creates new job opportunities for the unemployed in developing countries.⁷

The meaning of employment is very important with the presence of various PMA, given the limited ability of the government to provide employment opportunities in Indonesia. Talking about employment opportunities, with the inclusion of PMA, it is certain that it is possible to enter and use Indonesian workers in the practice of implementing PMA⁸. Human Resources or in a company also known as manpower, is one of the main components that must be prepared to carry out business activities, including Foreign Investment Listed Companies (PT PMA) in Indonesia. Regulations governing manpower in terms of investment are regulated in Chapter VI concerning Manpower, specifically in Article 10 and Article 11 of

⁵ Syamsudin and Anton A. Setiawan, "Foreign Direct Investment (FDI), Kebijakan Industri Dan Masalah Pengangguran Studi Empirik di Indonesia", *Jurnal Ekonomi Pembangunan UMS*, Vol 9, No. 1 Juni 2008, page. 48.

⁶ David Greenaway, Wyn Morgan and Peter Wright, "Trade liberalization and growth in developing countries", *Journal of Development Economics*, Vol. 67, (2002), page 229-244.

⁷ Vanda Ningrum, "Penanaman Modal Asing dan Penyerapan Tenaga Kerja di Sektor Industri", *Jurnal Kependudukan Indonesia*, Vol. 3, (2008), page 32

⁸ Pandji Anoraga, *Perusahaan Multinasional dan Penanaman Modal Asing*, (Jakarta: Pustaka Jaya, 1995), page 46.

Law Number 25 of 2007 concerning Capital Investment as last amended by Law no. 11 of 2020 concerning Job Creation. As for the Article on manpower in the Investment Law, namely:

Article 10

1. In meeting its needs for manpower, an investment business has an obligation to give priority to Indonesian manpower.
2. The investment business may utilize foreign experts for particular positions and skills in accordance with prevailing laws and regulations.
3. The investment business is obliged to increase the competencies of Indonesian manpower through training in accordance with the provisions of laws and regulations.
4. The investment business that employs foreign manpower shall conduct training and transfer of technology to Indonesian manpower in accordance with laws and regulations.

Article 11

1. A serious effort to settle industrial disputes shall be made through deliberation towards consensus between the capital investment company and manpower.
2. If such settlement as stipulated in paragraph (1) fails, the settlement shall be conducted through a tripartite mechanism.
3. If such settlement as stipulated in paragraph (2) fails, the investment business and manpower shall settle the industrial dispute through the industrial court.

When viewed from the rules and regulations contained in the investment law, between PT PMDN and PT PMA there is no difference in regulations regarding employment. We can see this especially in Article 10 of the Investment Law. The article explains that investment companies must prioritize Indonesian citizens (WNI) workers.⁹ However, this does not rule out the use of foreign country experts for certain expertise, as long as they do not conflict with the law. Then the company is obliged to improve the competence of Indonesian workers through job

⁹ Siti Faridah, “Pengaturan Ketenagakerjaan Dalam Penanaman Modal Asing Di Indonesia”. <https://yuklegal.com/pengaturan-ketenagakerjaan-dalam-penanaman-modal-asing-di-indonesia/>, Accessed on 10 September 2022.

training and transfer technology to Indonesian workers in accordance with the provisions of the applicable laws and regulations.¹⁰

In addition to the investment law, other laws that regulate labor are Law Number 13 of 2003 concerning Manpower which was amended by Law no. 11 of 2020 concerning Job Creation. However, regarding the number of comparisons between foreign workers and Indonesian workers in a company in Indonesia, the regulation does not provide exact figures for the comparison of the number of workers between Indonesian citizens and foreigners. For the use of foreign workers, the benchmark is only for certain positions, for a certain time, included in the Plan for the Use of Foreign Workers (RPTKA), companies providing jobs (sponsoring companies), and there must be transfer of technology and transfer of expertise to Indonesian workers.¹¹ This is a challenge itself for Indonesia, it is necessary to arrange a cooperation agreement in the field of labor that includes things as intended by PMA later.

Employment law provides an understanding that labor is everyone who is able to do work to produce goods and or services both to meet their own needs and for the needs of the community.¹² Juridically, workers are free to choose and determine their fate to choose and determine the work they are interested in. This can be understood because the principle of employment in Indonesia is: “no one should be enslaved and dispossessed”. This is because slavery is an act that violates

¹⁰ *Ibid.*

¹¹ Aprilia, Haris Retno Susmiyati dan Erna Susanti, “Implementasi Peraturan Daerah Tentang Tenaga Kerja Lokal Pada Perusahaan Pertambangan Batubara di Kabupaten Berau Provinsi Kalimantan Timur”, *Risalah Hukum*, Vol. 15, No. 1 Juni 2019, page 17.

¹² Article 1 Number 2 of Law No. 13 of 2003 as last amended by Law no. 11 of 2020 concerning Job Creation.

human rights. Sociologically, workers are considered as people who are not free, because workers are forced to work and follow companies or superiors who give instructions. It is the company and superiors who determine the working conditions, it can even be said that the entrepreneur determines the sustainability of the work system for the workforce.

A work agreement is one of the derivatives of an agreement, each of which has special characteristics that distinguish it from the others, and all forms of agreements must have legal principles, the validity of an agreement, the subject and object of the agreement. Article 1 number 14 of Law Number 13 of 2003 concerning Manpower, provides the understanding that:

"A work agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains working conditions, the rights and obligations of both parties".¹³

Work agreements can be made by anyone and at any time, including work agreements made by employers and foreign companies (in this case PMA). The principle is the same as the work agreement made by employers and companies with domestic workers. The core emphasis of this work agreement must be made on the basis of an agreement agreed by both parties and the work set forth in the agreement must not conflict with the provisions of the work agreement, public order, decency and applicable laws and regulations.¹⁴

Article 51 Paragraph (1) of Law Number 13 of 2003 concerning Manpower states that a work agreement can be in oral and/or written form. Normatively, the

¹³ Sentosa Sembiring, *Himpunan Peraturan Perundang-Undang Republik Indonesia Tentang Ketenagakerjaan*, (Bandung: CV. Nuansa Aulia, 2005), page 17.

¹⁴ Lalu Husni, *Dasar-Dasar Hukum Perburuhan*, (Jakarta: Raja Grafindo Persada, 2006), page 86.

written form guarantees the certainty of the rights and obligations of the parties, so that if a dispute occurs, it will greatly assist the evidentiary process. By law and legislation, there are two work agreements, namely a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT). This is stated in Article 56 of Law Number 13 of 2003 concerning Manpower which reads:

1. A working agreement shall be made for a specified or unspecified period.
2. The working agreement for the specified period as meant in paragraph (1) shall be based on:
 - a. The period; or
 - b. Completion of a certain job

Based on Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning a Specified Period of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, the meaning of PKWT as stated in Article 1 Number 10 is a employment agreement between a Worker/Laborer and an Employer to establish an Employment Relationship for a specified period of time or for a certain job. Meanwhile, the definition of PKWTT in accordance with the provisions of Article 1 Point 11 is an employment agreement between a worker/laborer and an employer to establish a permanent employment relationship. However, the problem that then arises is the dilemma of investment and PMA development in Indonesia, namely problems and obstacles including complicated regulations and difficulty to interpret PMA, difficulty of land acquisition, unequal public infrastructure, taxes and other non-fiscal incentives that is not supporting, as

well as the complexity of labor relations and the existence of contracts or work agreements between PMA and workers¹⁵.

Company A is one of the PMA companies in Indonesia. They are located in Jakarta, and originating from the Republic of Korea, they are a company engaging in the advertising field. The main issues that become the topic of writing this report are problems that occur in the internal polemic of Company A in describing the working relationship and in the formulation of PKWT between Company A and employees. Furthermore, the legal aspect that is also related to the problem of Company A is a problem that stems from differences in regulations with the country of origin and the lack of knowledge that Company A has on labor law and also investment and investment arrangements in Indonesia.

The lack of knowledge of Company A is interpreted based on different regulations, laws that are not understood substantively, differences in customs and movements of capital, goods and services at the international level and up to the political, economic, and monetary differences of the Indonesian state from the company's origin state. Company A, who is making a PMA company, makes them have to understand and analyze the extent and how the arrangements for the formation of PMA up to the work agreement that will be made. Therefore, the main problem related to the work agreement in the investment sector is the arrangement and construction of the cooperation that will be built in the future. Because basically

¹⁵ Hilma Meilani, "Hambatan Dalam Meningkatkan Investasi Asing Di Indonesia Dan Solusinya", Info Singkat Bidang Ekonomi dan Kebijakan Publik Pusat Penelitian Badan Keahlian DPR RI, Vol. 11, No.19 Oktober 2019.

the formulation of work agreements in practice can affect the development and running of the company.

Determination of the appointment of Indonesian employees, investment with the inclusion of national capital, participation of domestic investment companies, as well as prudence in the preparation of work agreements are the main streams and keys in the preparation of PMA. These clauses can be the root of disputes and trigger factors for the destruction of a company if they are not considered carefully and in detail. In the design of a work agreement, the legal aspects must be considered so that gaps and disputes in the future can be avoided. Generally, the weakness in the substance of the agreement is often detrimental to one of the parties, either to the Indonesian side, which in this case is the workers, or the foreigner side, Company A. Based on experience and field practice that occurs, the substance of the work agreement needs to be fully and accurately bound.

Seeing the complexity of the legal relationship that will occur between workers and Company A, they are faced with the interests of the free labor market (globalization and liberalization) and national interests after the presence of various foreign companies in Indonesia. It is only appropriate to make a work agreement between the foreign company concerned and the prospective workers like a work agreement in general with the substance of the work agreement being complete and accurate by prioritizing the principles of protection and benefit. The formulation of the work agreement that will be made in principle will contain PKWT which leads to the fulfillment of basic rights and protections for workers and at the same time can create conditions conducive to company stability and the development of the

business world in the economy. Therefore, this report will further discuss work agreements in the perspective of Indonesia Labor Law.

1.2 Formulation of Issue

1. How are the compliance of Company A's PKWT based on Law no. 13 of 2003 concerning Manpower?
2. How can Company A provide legal protection to its employees through its Work Agreement?

1.3 Purpose of Internship

The Internship itself has been regulated in Law no. 13 of 2003 concerning Manpower in Articles 21-30. There are several things that become the purpose of doing an internship, which are:

1. Internship activities are carried out to fulfill internship courses as well as one of the requirements for graduating from the Law study program and obtaining a Bachelor of Law (S.H) degree at Universitas Pelita Harapan
2. To increase knowledge as a student. In order to balance the theory that has been learned at university, practical learning is needed. By choosing to do an internship, the theory that has been learned can be implemented directly in the field and will add new knowledge and experience.
3. Expand the student's network. So not only knowledge and skills are obtained, but also a wide network by meeting new people.

4. Improve quality as a student. Internship activities can train students to get used to dealing with work problems. With that, students will be better prepared to face the real world of work.

1.4 Benefits of Internship

1.4.1 Theoretical benefits

1. Add, develop, and deepen a better understanding of the Indonesian Labor Law, particularly regarding the making of a Specific Time Work Agreement.
2. Experiences from the internship can be used as a reference for the future that is relevant to the student's job in a more detailed, clear, and in-depth scope.
3. The results of this Internship report can be a reference or theoretical study, especially in the field of labor for Law students.

1.4.2 Practical benefits

1. For students, they can gain an understanding of the relationship between theory on campus and its application in the field. Develop the habit of working professionally. Get to know and learn with professionals
2. For University, Demonstrating the university's concern for education in law and showing its support through student performance in the world of work. Also provide internship opportunities for next batch students at UPH, especially in the Department of Law.

3. For Agung Nugroho Law Firm, become a consideration for them in terms of assessing the quality of students.

1.5 Time and Location of Internship

The internship period is conducted for 4 months at Agung Nugroho Law Firm which is domiciled on Equity Tower 49th Floor, Jl. General Sudirman No. Kav. 52-53, RT.5/RW.3, Senayan, Kec. Kby. Baru, South Jakarta City, Special Capital Region of Jakarta 12190 starting from August 15, 2022 until December 14, 2022.

1.6 Systematic of Writing

CHAPTER I INTRODUCTION

In this section, the author describes the background that drives the author in conducting internship and writing this internship report. This section also contains the formulation of the problem, the purpose of writing, and the benefits of internship.

CHAPTER II THEORITICAL FRAMEWORK

In this chapter, the author will describe the theoretical framework related to the problems raised in this report.

CHAPTER III OVERVIEW OF INTERNSHIP INSTITUTION

This chapter describes the company profile of the internship institution including how long has the law firm been established and what are their specialties.

CHAPTER IV DISCUSSION

In this chapter, the author will describe or explain the results of the internship and discuss further the problems raised in the background and problem formulation.

CHAPTER V CONCLUSION AND SUGGESTION

This chapter contains conclusions, suggestions or recommendations. The conclusion briefly presents all research findings that are related to the formulation of the research problem. Conclusions are obtained from the analysis and interpretation of legal sources or materials that have been described in previous chapters. Suggestions are formulated based on the results of the research which contains a description of what steps or processes need to be taken by certain parties with the results of the research.

