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## **Analysis of Investment Policy in Indonesia After the Ratification of the Protocol To Amend The Asean Comprehensive Investment Agreement**

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### **Abstract**

The Government of Indonesia in an effort to increase Foreign Direct Investment (FDI) and increase trade between ASEAN member countries (intra-ASEAN Trade) ratified the protocol to amend the asean comprehensive investment agreement in the form of Presidential Regulation of the Republic of Indonesia Number 92 of 2015. Constrained by regulations concerning legalization and licensing at the center and in the area of accelerating efforts, the Investment Coordinating Board is given the task of coordinating the implementation of policies. Moving on from that, the problem was formulated regarding how the substance and investment policies in Indonesia after the ratification of the protocol to amend the asean comprehensive investment agreement. The substance of the protocol to amend the ASEAN comprehensive investment agreement is to create a free and open investment regime in ASEAN, through investment regimes, increased protection, increased transparency and predictability of rules, with fair competition and non-discrimination treatment. With the transition from the existence of the understanding of liberalism, efforts must be made to strengthen the family principle in accordance with Article 33 paragraph (1) of the Constitution. Globalization should be harmonized by considering the entire foundation and a material study of the academic community with the aim of defending the nation's ideology. Then the application of the Triple Helix concept as a transformation effort.

**Kata Kunci:** Investment Policy; Protocol To Amend The Asean Comprehensive Investment Agreement; Triple Helix Concept.

### **I. INTRODUCTION**

Today the direction of increasing economic globalization is pushing Indonesia to play an active role at the international level to work with various countries. Economic cooperation between countries is carried out as a form of efforts to advance the welfare of the Indonesian nation as stated in the 1945 Constitution. The ASEAN Economic Community is a form of ASEAN economic integration, namely the existence of a free trade system between ASEAN countries. The definition of ASEAN economic integration in general is the removal or removal of economic frontiers between the economies of ASEAN countries. Operationally, ASEAN economic integration can be defined as revocation of discrimination and unification of politics (policies) such as norms, regulations, and procedures. The aim of ASEAN economic integration is to increase the volume of trade in goods and services, increase the mobility of capital and labor, increase production, increase production efficiency and improve the competitiveness of products produced (Hidayah & Roisah, 2017).

The Indonesian government has supported the existence of trade in services starting from Indonesia ratifying the establishment of the World Trade Organization (WTO) and becoming one of the 153

countries that have been registered as WTO members through Law No. 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization, then through Presidential Decree Number 88 of 1995 Concerning Ratification of the ASEAN Framework Agreement on Services. The importance of the role of investment in the economy of a region causes the need for a forum for cooperation to attract investment so that countries that are members of the region can mutually support the region's attractiveness to investors. The establishment of the ASEAN Investment Forum is a forum for ASEAN countries to encourage increased investment in the ASEAN region. The ASEAN Investment Forum, which began on November 16, 2011 and is located in Nusa Dua, Bali, is one of the side events in the series of the 19th ASEAN Summit aimed at preparing investment institutions to improve the investment climate in the Southeast Asian region. This forum is very important because it will support the creation of free flow of investment in order to realize ASEAN as a single market and production base as one of the components of the ASEAN Economic Community 2015 (Koestanto, 2011).

The Government of Indonesia has made various policies aimed at facilitating the process of trade in goods and services in the AEC era, but also to reduce barriers which are obstacles for the government and Indonesian business actors as well as foreign business actors in the current trade liberalization. The influence of these policies will have an impact on investment policies in the ASEAN economic community that are currently underway. The positive and negative impacts arising from various policies taken by the Indonesian government will determine the next policy direction of the Indonesian government in facing market challenges in the ASEAN region in order to create efficient trade and fair competition. The creation of a protocol to amend the ASEAN comprehensive investment agreement occurred since the formation of the ASEAN Free Trade Area (AFTA) initially only consisted of Indonesia, Malaysia, Singapore, Brunei, Thailand, and the Philippines. Even so, in 1995 Vietnam joined, Laos and Myanmar in 1997, and Cambodia in 1999, making all ASEAN countries become members. AFTA has objectives, among others:

Making the ASEAN region a competitive production site so that ASEAN products have strong competitiveness in the global market;

Attract more Foreign Direct Investment (FDI);

Increasing trade between ASEAN member countries (*intra-ASEAN Trade*).

AFTA is an agreement of ASEAN countries to establish a trade-free zone in order to increase the economic competitiveness of the regional region by making the ASEAN region a world production base. Regarding the protocol to amend the ASEAN comprehensive investment agreement, there are several important topics discussed in the forum, including investment promotion, investment services, after-care for investment, fiscal and non-fiscal incentives, co-investment, and Public-Private Partnership (Effendi & Suska, 2011). The birth of the ASEAN-China Free Trade Agreement (ACFTA) was marked by a proposal from Zhu Rongji, former Chinese Prime Minister at the 6th ASEAN Summit in 2000 (Chesterman, 2015). The partner relationship between ASEAN and China is the most important and profitable relationship for China. ASEAN is the community chosen by China because it is considered to be a large market for Chinese export activities and a supplier of the needs of Chinese-owned industries. ACFTA began in 2001 at the ASEAN-China Summit in Bandar Seri Begawan, Brunei Darussalam. There are 13 focus of cooperation that binds ASEAN and China in ACFTA, one of which is foreign investment. This meeting was followed up by a meeting between the Ministers of Economy at the 2002 ASEAN-China Summit in Phnom Penh, Vietnam. This meeting agreed on the Framework Agreement on Comprehensive Economic Cooperation (CEC), which also included an FTA agreement. In addressing ACFTA, as one of the ASEAN members, Indonesia is certainly expected to be able to prepare itself to face ACFTA. One form of the seriousness of the Indonesian government in welcoming ACFTA can be found in Presidential Decree Number 48 of 2004 as a sign that Indonesia has ratified ACFTA, precisely on June 15, 2004. Article 1 of Presidential Decree Number 48 of 2004 states that: "Ratifying the framework Agreement on Comprehensive Economic Cooperation between the Association of the South East Asian Nations and the People's Republic of China (Framework Agreement on Comprehensive Economic Cooperation between the Member States of the Association of Southeast Asian Nations and the People's Republic of China), which has been signed by the Government of the Republic of Indonesia in Phnom Penh, Cambodia, on November 4, 2002, as a result of negotiations between representatives of the Members of the Association of Southeast Asian Nations and the Government of the People's

Republic of China”.

This Presidential Decree can be said as an early sign that Indonesia is ready in facing ACFTA. One logical consequence when Indonesia has decided to ratify the agreement is the birth of an obligation for Indonesia to implement the provisions stipulated in the ACFTA. The results of discussions in the forum stated, related to investment promotion, it was concluded that investment promotion activities must be carried out in an integrated manner by the central and regional governments. The focus of promotional activities should be directed at countries that have high outward investment potential and significant industrial progress. Regarding investment services, one-stop service is a significant form of innovation in order to improve public services in the investment administration process. Regarding after-care for investment, it discusses common obstacles which include the complexity of bureaucracy, disputes between shareholders and the government, disputes with the community, and environmental damage. While the contemporary topic of investment concerns both fiscal and non-fiscal incentives that serve as sweeteners for potential investors to invest in domestic businesses.

The basic policy of Indonesian investment, it was formed based on the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment, which states that by creating certainty, fairness and efficiency, it is expected to be able to restore the confidence of foreign investors to re-invest their capital in Indonesia. Based on Chapter III Article 4 of the Investment Law states that the Government establishes a basic investment policy for:

Encouraging the creation of a conducive national business climate for investment to strengthen economic competitiveness; and

Accelerate the increase in investment But in setting these basic policies.

The main problems faced by investors in starting a business in Indonesia are heeded by this Act so that there are regulations regarding authorization and licensing in which there is a regulation on one-stop integrated services. With this system, it is hoped that integrated services at the center and in the regions can create simplification of licensing and accelerated completion. In addition to investment services in the regions, the Investment Coordinating Board is given the task of coordinating the implementation of investor policies. The Investment Coordinating Board is led by a head who reports directly to the President. Outlining the main tasks and functions of the Investment Coordinating Board basically strengthens the role of the agency to overcome investment barriers, increases the certainty of providing facilities to investors, and strengthens the role of investors. Increasing the role of investment must remain in the corridor of national development policies planned with the stage of observing macroeconomic stability and economic balance between regions, sectors, business actors, and community groups, supporting the role of national businesses, and meeting the principles of good corporate governance ).

Moving on from an investment policy analysis in Indonesia after the ratification of the protocol to amend the asean comprehensive investment agreement, the authors formulated the problem as follows: first, How is the substance of the protocol to amend the asean comprehensive investment agreement that has been ratified based on Presidential Regulation of the Republic of Indonesia Number 92 Year 2015? second, how is the investment policy in Indonesia after the ratification of the protocol to amend the asean comprehensive investment agreement based on Presidential Regulation of the Republic of Indonesia Number 92 Year 2015.

## **II. METHOD**

This type of research used in this paper is normative legal research, where this research is also often called doctrinal law research. Moving on from the obscurity of legal norms in terms of policy after the ratification of the protocol to amend the asean comprehensive investment agreement. This type of approach is a problem-solving process through the stages that have been determined, so as to achieve research objectives. In this study, researchers used: The Statute Approach, and the Analytical & Conceptual Approach Approach (Susanti, 2014). Sources of legal materials in this writing are sourced from legal materials obtained through library research in the form of: Primary legal materials, secondary legal materials and Tertiary Legal Materials.

## **III.RESULT AND DISCUSSION**

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***The substance of the Protocol To Amend The Asean Comprehensive Investment Agreement That Has Been Ratified Based on Presidential Regulation of the Republic of Indonesia Number 92 of 2015***

The protocol to amend the asean comprehensive investment agreement is the second amendment to the Presidential Regulation of the Republic of Indonesia Number 49 of 2011 concerning Ratification of the Asean Comprehensive Investment Agreement in Cha-am, Thailand, on February 26, 2009. Investment approval ASEAN was attended by the Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the People's Democratic Republic of Laos, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam. Recalling the decisions at the 39th ASEAN Economic Ministers Meeting ("AEM") held in Makati City, Philippines, on August 23, 2007 to revise the Framework Agreement on the ASEAN Investment Area signed in Makati City, Philippines, on October 7, 1998 The AIA Agreement, as amended, becomes a comprehensive, forward-looking investment agreement, with improved forms and conditions, in line with the best international practices in order to increase investment among countries. ASEAN countries and to enhance the competitiveness of ASEAN countries in attracting investment inflows into ASEAN.

That different levels of development within ASEAN Member Countries, especially in underdeveloped Member Countries which require flexibility, including special and differentiating treatment, to achieve a more integrated and interdependent ASEAN future, require a step forward from the AIA Agreement and the ASEAN Agreement to increase and protection of investment in order to further enhance regional integration to realize the vision of the ASEAN Economic Community (AEC). That the inflow of new investments and sustainable reinvestment will enhance and ensure dynamic economic development and create a conducive investment environment that will increase capital flows, goods and services, technology and human resources more freely, as well as economic and social development as a whole in ASEAN. After the enactment by President Joko Widodo on August 12, 2015 concerning Presidential Regulation of the Republic of Indonesia Number 92 of 2015 concerning Ratification of the Protocol To Amend The Asean Comprehensive Investment Agreement (Protocol to Change the Approval of Whole ASEAN Investment). That on August 26, 2014 in Nay Pyi Taw Myanmar, the Government of the Republic of Indonesia signed the Protocol to Amend the ASEAN Comprehensive Investment Agreement to Change the Comprehensive Investment Agreement of ASEAN as a result of negotiations between the delegations of the Governments of the Members of the Association of Southeast Asian Nations (ASEAN). The protocol is intended to harmonize the modification procedures and requirements related to the mechanism and settlement set out in the ASEAN comprehensive investment agreement.

The purpose of this Agreement is to create a free and open investment regime in ASEAN, through the following matters:

- progressive liberalization of investment regimes in Member States;
- provisions for the improvement of better protection of investors from all Member States and their investment;
- increase transparency and predictability of rules, regulations, and investment procedures that are conducive to increasing investment in Member States;
- joint promotion of the area as an integrated investment area; and
- cooperation to create favorable conditions for investment carried out by investors of a Member State in the territory of other Member States.

The purpose of this objective is that each Member State is obliged to give investors from every other Member State no less favorable treatment than that given, in similar circumstances, as given to its own capital investors with respect to licensing, establishment, expropriation, expansion, management, implementation, operation and sale or release of other investments in the area. Explicitly other Member States can invest in all ASEAN Member Countries with and without exception.

Seeing the above objectives, it is clear that the Protocol to Amend the ASEAN Comprehensive Investment Agreement seeks equal treatment (fair competition) as stipulated in Article 6 which states that each Member State must provide investment made by investors from other Member Countries. the

same (fair), in similar circumstances, for investments made in the region. Every treatment, preference or preference resulting from other Member State investors has the obligation to comply:

Any intermediate and interregional arrangements made between Member States; or

Every existing agreement as notified by Member States to the AIA Council in accordance with Article 8 paragraph 3 of the ASEAN Investment Area (AIA) Agreement.

The fair competition treatment of each Member State shall provide fair and balanced treatment and full protection and security for investments that are protected from the investors of each other Member State. Protected investment to ensure certainty in fair and balanced treatment, requires each Member State not to reject justice in any legal or administrative process in accordance with the provisions of the Protocol to the ASEAN Comprehensive Investment Agreement and full protection and security requires each Member States to take such actions as may be needed to avoid doubts in accepting any policy or modify any of its requirements based on a schedule agreed upon by the AIA Council that is 6 months.

With the Protocol to Amend the ASEAN Comprehensive Investment Agreement regulations, and national policies on immigration and labor related to permits for entry, temporary residence, permission to work, each Member State must provide entry permits, temporary residence and permission to work for the investors, executives, managers, and members of the board of directors of a legal entity from each other Member State, with a view to establishing, developing, managing, or recommending operation, in the territory of the Member State referred to their investment, or a legal entity of Other Member States employ executives, managers, and members of their board of directors, who have committed or are in the process of committing to a substantial amount of capital or a number of other sources. Member States recognize the importance of providing preferential treatment, through:

Technical assistance to strengthen its capacity related to policies and increase investment, including in areas such as human resource development;

Commitments in areas of interest to ASEAN Member States; and

Recognizing that the commitments of each New ASEAN Member State can be carried out in accordance with their respective stages of development.

Empirically, standing, growing and developing the Protocol to Amend the ASEAN Comprehensive Investment Agreement are lessons to later form integrated and competitive regional economic cooperation.

Since ASEAN has developed an integrated regional market, ASEAN requires a regulatory regime that can facilitate the free movement of intra-ASEAN trade and investment. Where the authors see that there will be competition in accordance with open regionalism, because basically it is impartial and without discrimination, for example there is no distinction between Foreign Investors and Domestic Modala Investors. Therefore, the development of competition law and regional policies that enhance fair competition among companies doing business in the region can also provide economic benefits for ASEAN for the entry of a foreign investor based on competition, rather than through the means of discrimination criteria used in the procedure - filtering procedure. In this way, national competition policies and regional policies will play a multifunctional role, namely the free flow of trade and investment, monitoring the actions of companies, and evaluating the economic role or potential domination of transnational companies from outside ASEAN in the region.

There are two urgencies regarding the very important Protocol to Amend the ASEAN Comprehensive Investment Agreement. First, since ASEAN's objectives to strengthen economic integration in the region, cooperation is needed to support the implementation and elaboration of trade and investment liberalization in the ASEAN market. Interaction between the government, consumers and producers. Secondly in the emergence of ASEAN's free market economy (progressive liberalization), monopolies and restrictive business practices are seen as undesirable, tend to distort prices and hamper efficient allocation of resources. Thus, there is a call for competition to ensure that free entry and pressure from new competitors can function properly. When competition arises, the Angota State adopts a policy in favor of consumers (its people) which basically consolidates social welfare and welfare for consumers..

Regarding foreign investment, the application of competition law in ASEAN countries will result in

further benefits, regardless of incoming liberalization, the formation and operation of foreign investors. Competition law will regulate and control mergers and acquisitions and violations of the dominant market position in the ASEAN economy. This might be a better way to deal with the fear of economic conquest by the power of foreign multinational companies from the screening process that is becoming a trend now in all ASEAN countries. The implementation of competition law and policies in the ASEAN region will be a key factor in removing investment laws and regulations which are currently rather strict, although it is recognized that a number of investment restrictions tend to be applied in almost all countries, not only in ASEAN. Implementation of competition law in ASEAN countries in the same direction as in other countries may open the way for possible future general agreement on regulations for foreign direct investment (FDI) (Drexl, Bakhoun, Fox, Gal, & Gerber, 2012).

***Investment Policy in Indonesia After the Ratification of the Protocol To Amend The Asean Comprehensive Investment Agreement Based on Presidential Regulation of the Republic of Indonesia Number 92 Year 2015***

Moving on from the Regulation of the President of the Republic of Indonesia Number 92 Year 2015 Regarding Ratification of the Protocol To Amend The Asean Comprehensive Investment Agreement, one of the logical consequences when Indonesia has decided to ratify the agreement is the birth of an obligation for Indonesia to create an obligation for Indonesia. applying the provisions stipulated in the Protocol To Amend The Asean Comprehensive Investment Agreement is certain. Sadly when compared to other ASEAN members such as Singapore, Malaysia, Thailand and Vietnam, the flow of foreign investment into Indonesia is still relatively low based on the 2015 ASEAN Integration Report, stating that one of the reasons ASEAN partners are reluctant to invest in a country is the lack of investment protection that is set out in the principle of fair and equitable treatment (ASEAN Secretariat News, 2015). This is often related to the investment barriers imposed in a country. Indonesia is one of the countries that has a number of FDI Restrictions that are relatively large compared to other ASEAN member countries, such as regulations, taxes, human resources, infrastructure, and others.

**Tabel 1**  
FDI Regulatory Restrictiveness Index

ASEAN Member States	Index
Cambodia	0,049
Indonesia	0,192
Laos	0,265
Malaysia	0,212
Myanmar	0,356
Philippines	0,425
Singapore	0,047
Thailand	0,291
Vietnam	0,214

*Sumber: (ASEAN Secretariat News, 2015)*

The existence of different obstacles in each ASEAN member shows the results of different investment flows also after the enactment of the Republic of Indonesia's Presidential Regulation No. 92/2015 concerning Ratification of the Protocol to Amend The Asean Comprehensive Investment Agreement (Protocol to Change the Comprehensive Investment Agreement for ASEAN Asean ). the rate of foreign investment in Indonesia is still low after the Philippines, compared to other ASEAN member countries, such as Thailand, Malaysia and Vietnam. This fact is consistent with what was stated by the Investment Coordinating Board (BKPM), that the percentage of investment from outside to Indonesia after the Ratification of the Protocol To Amend The Asean Comprehensive Investment Agreement has not shown an increase. In contrast to Indonesia, many other ASEAN member countries are actually able to utilize the Protocol To Amend The Asean Comprehensive Investment Agreement to increase the rate of foreign investment in their countries, such as Thailand and Vietnam. As developing countries, Thailand and Vietnam are able to utilize the Protocol To Amend The Asean Comprehensive Investment Agreement in terms of investment in the country (Xin, 2017).

Indonesia's hierarchical regulation in the Constitution to implementing regulations indeed prioritizes the principle of kinship which is the antithesis of liberalism, it is implied in Article 33 paragraph (1) of



the Constitution which states "The economy is structured as a joint effort based on the principle of kinship". This foundation is not merely an economic factor as is the case with the liberals or capitalists, but it is also based on good moral values (morality / good character) because it contains God values. If the capitalists tend to be exploitative in managing the factors of production, and the liberalists do not value individual ownership of the factors of production, the Indonesian economic system still gives full rights to individuals to have ownership rights to both the factors of production and consumer goods but not wants economic exploitation by the owners of capital. The family system requires equality in accordance with humanitarian principles. The notion of the principle of kinship in the economic system is arguably the result of historical experience of the failure or weakness of the liberal and capitalist systems.

It is worth noting that the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment has several principles or principles in it, such as the principle of openness, the principle of legal certainty, and the principle of equal treatment. These three principles are a reflection of the application of the principle of investor protection (fair and equitable treatment). The principle of fair and equitable treatment essentially talks about the obligations of the host country to provide guarantees of transparency, stability and legitimate expectations to investors. The principle of openness talks about providing transparency of investment to the community and investors themselves. The principle of legal certainty talks about how investors feel protected by investment law in the State of Indonesia. The principle of equal treatment means that there are non-discrimination actions against domestic investors and foreign investors in a country. Providing protection for investors will foster the interest of foreign investors to invest their capital in Indonesia. Conversely, the absence of protection for investors will make foreign investors reluctant to increase their investment. For this reason, legal certainty and protection for all parties, both the community and the state and foreign investors are needed so that the benefits can be felt by all. Not implementing this fair and equitable principle will affect the investment climate which is not good between investors and the host country. This is because this principle is a minimum standard as well as a legal standard that must be implemented by the recipient country. Moreover, when this principle is applied in free trade which is part of the Protocol To Amend The Asean Comprehensive Investment Agreement which provides investment liberalization to the countries bound in it, then investors will certainly continue to look for investment venues that can provide justice and security for himself.

The author will try to describe the policy considerations between the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment with the Protocol To Amend The Asean Comprehensive Investment Agreement using the triple helix collaborative approach to realize increased FDI in the Indonesian State. The Triple Helix concept is an interaction between universities, industry and government that was developed in the 1990s (Etzkowitz & Leydesdorff, 2000). This concept is often used as a normative framework between researchers for understanding the interactions between key actors in the innovation of a system. It also becomes a general strategy used by the government in developing innovative policies. One of the main claims of the Triple Helix thesis is that between academia, industry and government provides optimal conditions for innovation in increasing FDI.

Moving on from the author's thought in an effort to make policy each element must include the academic community. The goal is the flow of investment in the State of Indonesia does not necessarily follow the results of ratification regulations. Because every country has ultimate sovereignty. In making policies issued by the Executive, they must take into account the formal requirements of the Investment Coordinating Board and the material requirements of the Academic Community. In addition to providing benefits for all stakeholders, it also provides certainty in investment for foreign investors. Is it feasible in the area (the Size of the State of Indonesia 1,905 m2) is invested in a particular field. The Academic Community Study will provide an objective foundation for the survival of all parties. Besides that, a policy in the form of a decision should consider the economic foundation.

#### **IV. CONCLUSION**

Based on the explanation above, the authors conclude that the substance of the protocol to amend the ASEAN comprehensive investment agreement that has been ratified under the Republic of Indonesia Presidential Regulation Number 92 of 2015 to create a free and open investment regime in ASEAN,

through investment regimes, increased protection, increase transparency and predictability of rules, regulations, and investment procedures, joint promotion and cooperation to create favorable conditions for investment carried out by investors with fair competition treatment of each Member State and must provide appropriate treatment fair (non-discrimination) and balanced and full protection and security for investments that are protected from investors of each other Member State. Investment policy in Indonesia after the ratification of the protocol to amend the ASEAN comprehensive investment agreement based on Presidential Regulation of the Republic of Indonesia Number 92 of 2015 is a transition from the existence of liberalism, efforts must be made to strengthen the principle of kinship in accordance with Article 33 paragraph (1) of the Constitution. Globalization should be harmonized by considering the entire foundation and a material study of the academic community with the aim of defending the nation's ideology. Then the application of the Triple Helix concept as a transformation effort.

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