Journalof Arts & Humanities

Volume 08, Issue 06, 2019: 93-103
Article Received: 22-05-2019
Accepted: 09-06-2019
Available Online: 22-06-2019
ISSN: 2167-9045 (Print), 2167-9053 (Online)
DOI: http://dx.doi.org/10.18533/journal.v8i6.1659

External Legal Protection for Capital Investors from Political Risk

Fitria Dewi Navisa[1], Suhariningsih[2], Bambang Winarno[3], Siti Hamidah[4]

ABSTRACT

The Constitution states that economic development in Indonesia has to be performed by taking into account people's participation. The development can take part by investing capital since the investment could contribute to the development. The absence of protection can bring implication to uncertainty of law in investment. Through insurance company, investment is required to provide protection for investors against political risks where compensation can be provided when risks take their toll. Risk transfer should impose responsibility on the parties involved in the transfer and the risk transfer must be under an agreement commonly known as insurance agreement. In other words, it is essential that external protection be provided for capital investors. To answer the research problems, several legal theories such as legal protection, legal certainty, investment, and insurance theories were employed to analyse the problems. Normative-juridical method was involved supported by statute, conceptual, case, and comparative approaches. This study is categorized as analytical descriptive research, where phenomena of certain aspects were studied to vividly learn the conditions. Several measures need to be taken by the government to assure that the law and regulation dealing with investment, small and medium enterprises comply with clear, transparent, accessible implementation and enforcement, leaving unnecessary burden; it is important that the government pay attention to uncertainty of policy that involves both predictability and transparency that are deemed huge hurdles in investment.

Keywords: External, legal protection, capital investors, political risk.

1. Introduction

Constitution has clearly stated that economic development in Indonesia must involve participation of the society (Sihombing, 2010), as reflected in Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia after its amendment, states:

[1]Ph.D Student at Faculty of Law, Universitas Brawijaya, Indonesia. Email: fd.navisa @yahoo.com
[2]Professor at Faculty of Law, Universitas Brawijaya, Indonesia. Email: suhariningsih@ub.ac.id
[3]Associate Professor at Faculty of Law, Universitas Brawijaya, Indonesia. Email: bambang.winarno@ub.ac.id
[4] Associate Professor at Faculty of Law, Universitas Brawijaya, Indonesia Email: siti.hamidah@ub.ac.id

"The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy."

Furthermore, Act Number 25 of 2004 concerning Planning System of National Development clearly confirms that national development in Indonesia involves all components of the state of Indonesia to achieve the objectives of the state. The definition of the principle of togetherness stated in Article 33 Paragraph (4) of the Constitution should be viewed from wider perspective. The society should be aware that finance and capacity of the government still present an issue in the economic development since the development is a complex matter. It is expected that the people of the state are involved along with the government to achieve the success of the national development. The principle of togetherness enacted in Article 33 Paragraph (4) of the Constitution basically implies that the burden of the national development does not only lie on the government's shoulders, but it should also take the people of the state and business (Wisnumurti, Darma, &Suasih, 2018, p. 327.).

Investment can be one of ways given to help the national development, either it is domestic investment or the foreign one. However, it is commonly known that investment is inextricable from political risk (World Bank, 2014). Political risks are highly influential in investment growth and economic development in Indonesia. Investment insurance existing as legal protection for investors must be intended to protect investors' interests against political risks to gain investment benefits by managing and restricting other interests conflicting with the investors' interests in the investment (Rahardjo, 2000, p. 53). As a consequence, legal protection for investors must be able to create supportive atmosphere to achieve just, efficient, and reliable investment practices in Indonesia to help with the development of the economy of the state.

Investment plays an essential role in shaping economic development although some people are still reluctant to invest due to high investment risks and absence of protection guarantee. Investing will be more inviting when insurance protection from the company against political risks is provided. The need for insurance service is growing among both individuals and corporates in Indonesia. Financial Services Authority Regulation Number 23/POJK.05/2015 concerning insurance product and its Marketing, several concepts of protections against risks regarding investment outcomes either in the form of unit or non-unit are given, but those concepts are not fully covered in this study. Insurance is a financial platform in domestic household to face basic risks such as death or risks related with assets owned (Darmawi, 2001, p. 1).

In juridical scope, since insurance management and fund raising from society through insurance and improvement of social welfare are seen essential, it is quite often that the government is seen more involved in insurance businesses. Insurance program held by the government is usually binding and is provided in the form of social security since its aim is mostly to improve the social welfare for the citizens of Indonesia. In short, government's involvement is mainly intended to improve the social welfare of the state.

The juridical problem is that there has not been any regulation aimed to enhance the welfare of the people regarding investment insurance (legal loophole); as a consequence, there has not been any protection for investors while the existence of the regulation is deemed important for the development. In developed countries, insurance is put to the fore for the sake of state development, supported by the development of the insurance per se. Insurance serves as an umbrella under which life and development are progressing.

The philosophical issue is that investment stimulates economic growth. The absence of protection will lead to legal uncertainty in investment. Through insurance company, investment insurance can be transferred by providing compensation when risks take place. Investment insurance is required to deliver protection for investors against political risks.

Every individual has different reasons to invest, different time (time horizon) to achieve what investment can give, different preference to select instrument as part of his/her unique need, and he/she responds to the risk differently, where most people will transfer the risk of the investment.

Risk transfer will require the parties who transfer the risk to be embedded to some liabilities under an insurance agreement. Therefore, it is necessary that the investors be provided with external protection.

2. Methodology

Normative juridical method was employed, where the normative method involved literature review or normative data. The latter was aimed to study literature or secondary data which comprised primary and secondary data.

This normative-based research was conducted by studying legal inventory, finding legal principles and in concreto history of law, and by employing statute approach where the regulations directly related to investment were also studied (Marzuki, 2011). Normative-juridical-based research studies, examines, and applies legal principles and the general principles of law related to capital investment.

This research involved statute, conceptual, case, and comparative approaches.

No data involved in normative-based approach to give solutions to the issues and to explain what sources of research are required, while the legal sources in this dissertation involved both primary and secondary materials.

This research was mainly conducted based on literature review, where the materials were obtained from literature study involving not only the literature per se but also documents. The legal materials were collected in the following way: (1) exploring the norms regulating insurance, and (2) profoundly analysing the data to present the solutions to the problems.

This research was also based on descriptive analysis where the phenomena are completely presented to clearly discover the existing condition, while the analysis was conducted to help solve the problem with similar and different phenomena found, to measure the dimension of a phenomenon, to set standard, and to set the correlation among the phenomena discovered.

3. Results and discussion

These days, law has been discussed along with other topics, including those concerning legal protection. Some discussions are indirectly linked to the lawmakers. The existence of legal protection is considered vital in the state of law since the state is formed along with its law to regulate its citizens. It is common that reciprocal deeds always run among its citizens in the state, imposing rights and responsibilities on another. Legal protection will become the right of each citizen. On the other hand, legal protection can also be the citizens' responsibility. This condition emphasises that it is essential for the state to provide legal protection. Moreover, understanding the definition of legal protection is equally important to the essence of the legal protection; legal protection presents exceptional description on the role of law itself, which highlights the concept that law provides justice, policy, certainty, merit, and peace.

Satjipto Rahardjo (2000, p. 53) argues that law exists to integrate and put together interests that may clash. Integrating and coordinating those interests are performed by restricting and protecting the interests. Law protects individual interests by authorising the individual to act to meet the interests. Authorising the individual, or commonly known as to give right, is performed accordingly.

Legal protection studied in this research is defined as an attempt to meet the rights and risk transfer for the sake of investors' security. Legal protection is given to investors as legal subject in both internal and external protections. In other words, legal protection is deemed to give exceptional description of the legal function itself, and it has the concept highlighting that law provides justice, policy, certainty, merit, and peace.

This research breaks legal protection down to two:

1. Internal legal protection where it is delivered internally among individual investors/ group of investors within a corporate where the investors run their investment and they protect each other in their investment agreement from any political risks, which is connected with investment insurance company.

2. External legal protection is defined as the protection given by the government in form of investment insurance, where individual investors/or a group of investors can be the insured.

Conceptually, legal protection provided for investors is a form of implementation of principles of recognition and protection for human dignity based on Pancasila (Five Principles) and the state of law that complies with Pancasila. Principally, all human beings have their right to be protected by law since all legal protections are to be protected by law and the legal protections exist in many forms.

However, the legal protection against political risks seems less common among other types of protection, and the protection for investors has not been regulated in Act Number 25 of 2007 concerning Capital Investment.

The principle of legal protection, as linked to measures taken by the government, stems from the concept of recognition and protection of human rights because the birth of the concept, according to western history, is more addressed to restriction and imposition of responsibility on people and the government (Siadari, 2015). The dominant aspect in the western concept regarding human rights is mostly emphasised on the existence of rights and freedom embedded to the nature of human being and their status as individuals. The rights are above the state and above all political organisations that are absolute and final. Due to this concept, there has been some criticism that western concept is deemed individual. With the coming wave of social, economic, and cultural rights, there has been tendency showing that the characteristic of individual is eroded from the western concept. Formulating the principles of legal protection in Indonesia is based on Pancasila as the ideology and philosophy of the state. The legal protection concept for western people has stemmed from the concept of Rechtstaat and Rule of the Law. With the western concept as the framework based on Pancasila as its fundamental, the principle of legal protection in Indonesia is the principle of recognition and protection for human dignity that stems from the Pancasila. The principle of legal protection as linked to government's measures is based on the concept of recognition and protection of human rights since the birth of concepts concerning both recognition and protection of human rights are addressed to restricting and imposing responsibilities on people and the government (Hadjon, 1987, p. 6).

During the climate of investment in the last decade from 1997 – 1998, the government has shown some progress in creating a sphere of legal protection policy for both domestic and foreign investments (Tambunan, 2006). The Act Number 25 of 2007 concerning Capital Investment suggesting national treatment for foreign investors and compensation based on market values in case of expropriation. An analysis of investment policy in Indonesia is conducted based on relevant questions set in the policy framework for investment serving as a general context in considering the main policy (Japan International Cooperation Agency, (n.d)).

The investment policy is aimed to mobilise private investment that is intended to support economic growth and sustainable development. The intention is to contribute to the welfare of the country and its people and to eradicate poverty (Global Green Growth Institute, 2018). Referring to practices of Organisation for Economic Cooperation and Development (OECD) and the economy of non-members, policy framework presents policies for ten different fields identified in the consensus of Nations Monterrey concerning Finance for Development as essential to improve environmental quality of a country for investment (United Nation ESCAP, 2008). It allows policy makers to raise relevant questions regarding economy, institution, and policy management to identify priority, develop a set of effective policies, and evaluate progress. This framework was developed by OECD and the non-members under the task formed by the committee of investment of OECD as part of an initiative of OECD concerning investment for development introduced in Johannesburg in 2008 (OECD, 2007). This framework was welcome by ministers from member states in OECD summit in 2006. Member states and non-members are expected to cooperate, work with World Bank and United Nations and other parties involved in organisations and actively in businesses, employment, and other civil organisations to support effective use and development of framework in the future. The measures taken by the government to assure that laws and regulations related to investment and investors, including small and medium enterprises, should hold transparent implementation and enforcement and they should also be accessible and only impose minimum burden.

Uncertainty in policies either those related to predictability or those to transparency serve as a huge barrier to investment. Companies need to know the regulations and guarantee than the regulations remain unchanged when investors invest their money. Perspective from investors is needed when policies are improved and revised. When things exceed the existing regulations and policies, implementation and enforcement must be made clear and transparent. It is essential that investors understand practical implications of the regulations that regulate their investment in terms of meeting certain requirement, procedures, public review or possibility to appeal when disputes take place.

Some regulations regarding Act concerning Capital Investment and sectorial regulations are still in the process. Principally, implementing regulation must be carried out a year before the Act to which investors refer takes into effect. Article 7 Act Number 25 of 2007 concerning Capital Investment states that government will take no action to nationalise or take over the right of ownership of the investors unless the law allows. In the case of nationalisation, compensation must be provided as relevant to market values. This is the point that is not explicitly elaborated in previous Act concerning Capital Investment (Act Number 1 of 1967). The new Act does not regulate the procedures required in the compensation regarding the time and effectiveness. The details regarding this case are provided in bilateral investment agreement that regulates the necessary details according to international law. Nationalisation and similar steps as in those in nationalisation must be addressed for public, must be under the legal process, non-discriminative, and must offer quickly provided, proportional, and effective compensation. Indonesia signed the bilateral investment agreement as a form of investment protection. The compensation for nationalisation has to be based on fair investment market values right before the nationalisation or takeover is scented by the public. The interest must be paid at normal commercial rate, which also provides better protection for investors more than just their responsibility to pay the interest. The payment must be performed without any unnecessary delay; it must be realised effectively and must be transferrable. National standard in regards to compensation is only applicable among parties bound in investment contract due to armed conflict, national emergency, insurgencies, civil disruption, or other similar situations. Certain steps taken regarding taxation can give similar effects to nationalisation, but when the parties involved agree that tax imposition is not considered as nationalisation, investors should not go any further to international arbitration.

Theory by Alan M. Rugman highlights that Foreign Direct Investment (FDI) is affected by environment and internalisation variables. The three environment variables involve economy, non-economy, and government (Pramono, 2006, pp. 7-8). The economic variable consists of workforce and capital, technology and availability of natural resources and management skill. Arranging production system as a whole unity of the state can be defined as to comprise all factors coming from the society. The non-economic variable comprises political, social, and cultural variables, where each state comes with its unique culture, or it can be understood that each state has its own specific characteristics. The third variable is government variable that receives attention from foreign investment companies to which foreign capital is addressed. Each state has uniqueness in its political condition, and politicians serve as the identity of the specific location of a state. Government intervention in international business (investment) comes in varied forms.

The government should take some measures to set the non-discrimination standard as a general principle that serves as the basis of laws and regulations that regulate investment. In terms of executing the rights, regulate, and provide public services, the government should hold the mechanism that helps it assure the transparency of discriminative restriction to international investment and regularly review the budget regarding public objectives as intended. The government should also observe any restriction that affects capital transfer and free profits and its effects in terms of international investment. Substantially, Indonesia has liberated its investment regime since the mid of 1980s as once discussed and it has rejected the voice for protectionism of both during the financial crisis in Asia and during the globalisation like today (Aswicahyono& Anas, 2011, p. 11). There is no substantive discrimination in agreement process of international investment and major restriction for foreign investors regarding varied foreign equity among sectors ranging from 49% to 95% (Cahyani, 2018 November).

Based on Article 4 Paragraph (2) of Act concerning Capital Investment, Indonesian government should treat both domestic and foreign investors in a fair way in terms of the basic policy that regulates investment by considering national interest. There should be no separated filtering of foreign investment in all fields. Capital Investment Coordinating Board (BKPM) watches business registration by both domestic and foreign investors to assure that they abide by the law. In several sectors (especially in services) limited foreign capital is still an issue among foreign investors, but in most cases foreign investors are allowed to hold the majority of shares. There seems to be long investment list of sectors encountered by foreign investors than that of other countries or even the one issued by the government, but this is, however, the consequence of transparency.

Negative investment list adds to the transparency of investment regulation and it even serves as the improvement of positive investment list used in Indonesia till 1989. Principally, it is mentioned in the negative investment list that restriction applies for all sectors although there is at least a restriction regarding telecommunication tower where incremental restriction not stated in the list of 2007 is enforced. Investors have been added to the new Negative Investment List 2010. The principle of setting Negative Investment List is stated in Presidential Decree Number 76 of 2007 where criteria and requirement are made to set the list of sectors and type of restriction in the Negative Investment List (OECD, 2010). This is aimed, as intended in Article 3, to set a permanent legal principle to formulate the regulation concerning investment, to assure transparency for the process, and to provide guidelines for the formulation, arrangement, and review of items on the list, and to provide guidelines regarding gaps between sectorial policies and negative investment list. Under Article 17, the Co-ordinating Ministry for Economic Affairs (CMEA) is liable to coordinate regular evaluation of negative investment list in the economic development and ever-growing national interests. The ministry forms national team for export and investment promotion (PEPI) to assess, format, evaluate, and accomplish the list. This all is intended to restrict the list of business fields related to national interests and to promote legal certainty by restricting any possibility of change that may take place.

The authority of policy regarding investment should work along with its associated partners of other states to help expand international agreement concerning promotion and investment protection. It is essential that the government review the existing international agreement and commitment at regular basis to set any provisions aimed to attract investors to get involved in investment. A measure that has been taken is aimed to assure effective law-abiding behaviour regarding the state commitment under international investment agreement. Indonesia has signed 65 bilateral investment agreements, including improved agreement, twenty of which are in waiting list to be applied. Most agreements were signed in the 1990s, while five of them have been signed since the beginning of 2005 (OECD, 2010). Several investors in Indonesia have not signed their agreement with Indonesia, including Hong Kong (China) and Taipei. The agreements are aimed to protect protection by the government for the rights of the investors, and to offer national treatment, protection from arbitrary nationalisation, compensation for loss, right to transfer, and tax exemption. Involved parties are expected to cooperate to promote the investment.

Indonesia is bound to several regional agreements that cover risk protection and investment protection such as comprehensive investment agreement of ASEAN, ASEAN-Korea Investment Agreement, ASEAN-China Investment Agreement and ASEAN Free Trade Agreement between Australia and New Zealand. Japan has recently signed partnership agreement of economy with Indonesia concerning investment. Investors from Japan have access to Indonesia through affiliation within countries that have been involved in the investment agreement with Indonesia. Today, Indonesia has 58 bilateral agreements concerning Double Tax Avoidance, rising from 47 agreements in 1997 (Ministry of International Trade and Industry, (n.d), p.1-3).

Indonesia has actively promoted and facilitated investment as investment climate reform entirely. In terms of its role of promotion and administration of national investment organisation, Capital Investment Coordinating Board (BKPM) needs to be reviewed in terms of administrative simplification in the system of decentralisation. Incentive investment provided by the government also needs to be elaborated concerning Special Economic Zones recently approved.

Investment promotion and facilities including incentive can serve as effective instruments to attract more investors, as long as they are willing to fix market failure and develop it based on influential capacities of the investment sphere of a country. Indonesia has actively expanded its investment promotion and the facilities as part of a whole investment climate reform since 2004. The steps taken have been focused more on reducing burden on administrative investors, especially related to one-stop services at central and local level (Damanik, 2014, p.14). The implementation of these services has obtained its momentum, where government with powerful and careful leadership regarding implementation of plan required in the consultation with investors will contribute to more efficient and predictable investment administrative services.

Act concerning Capital Investment has set legal framework for investment policy, consolidate the act/regulation concerning time-consuming capital investment, and combine decentralised governmental structures. Investment promotion and facilities are essential part of Act concerning Capital Investment that elaborates the role of investment administration and agency responsible for promotion in Indonesia, the BKPM, and any possible forms, and criteria of eligibility of incentive investment. Continuing with review of several types of existing incentive including local-based and incentive export will justify the cost needed in the provision of incentive. National Team on Export and Investment Promotion (PEPI) is well positioned to execute such a review. In decentralised economy, the government holds more responsibilities and flexibility to trigger the climate among local investors. Ambitious government has introduced innovative policy reform and has actively promoted investment to attract more projects at local level. This healthy competition is expected to spread good examples of practices nationally. Central government has encouraged some measures to local governments by elaborating functions/ responsibilities between central and local government, providing guidelines to enforce laws/regulations in central government at local level, and facilitate learning and exchanges among local governments. The Government puts development of relationship in investment between foreign affiliations and local companies to the fore, which helps introducing several steps for investment policy. In terms of widely covering policy, there have been some essential capacities of local companies developed to gain potential business opportunities with foreign affiliations along with the role of the Indonesian government that facilitates business matching. Program of increasing capacity should be developed in the consultation/close association with private sectors.

The steps taken by the government are intended to enforce the principle of transparency and procedural justice for all investors, to bargain over contract of infrastructure, and to protect the rights of investors from any arbitrary changes in terms and conditions of the contract. The financial crisis in Asia has left suspicion between private investors of infrastructure and the Indonesian government and public. Several projects have been cancelled and some disputes are taken to arbitration. The government has now intentionally positioned legislatives and institutional framework to accommodate private investment in Indonesia that has learned risk division between government and investors since 1990. The government will no longer provide full guarantee but still offers explicit guarantee only for particular infrastructure projects. Some structures have been established, finally aimed to assist domestic capital mobilisation. The new legislative framework is intended to accommodate the Presidential Decree concerning Public-Private Association in the Provisions of Infrastructure Number 67 of 2005 that suggests that transparency and justice by all projects between private and public sectors involve pre-feasibility studies public consultation, and investment is given through open bidding. This regulation has also encourages the central government to provide the following: direct support for projects conducted based on socio-economic principles. However, this will not be well conducted without any contribution coming from the government as agreed upon in advance and support or contingency from State Budget for specific risk that cannot be managed or mitigated efficiently by private investors and lenders. The regulation does not provide any corner for government support for sub-national projects. Presidential Decree along with the Regulation of Finance Minister Number 38 of 2005 concerning Risk Management of Infrastructure Providers defines how fiscal risk contingency and related payment are managed. Presidential Decree Number 13 of 2010, an amendment of Presidential Decree Number 67 of 2005 concerning Government Partnership with enterprises in Infrastructure Provision to reflect feedback from investors, discuss all problems identified by investors such as government support and clear procedure. As part of its support, the government has provided a land as source of fund to enable it to obtain the land before the process of bidding takes place, in which the land can be set as a collateral or investment fund for infrastructure needed in development projects that also require involvement of private sectors. The new regulation simplifies procurement process and enables offer. Institutional structure is established to mobilise investment risk and the government has taken some measures to draw investors to infrastructure sector, in addition to the government's performance to manage what is needed by the contingency.

The government has set target to extend the coverage of infrastructure to make sure that all people can gain benefit from infrastructure provision. To maintain public support in the form of their involvement in infrastructure procurement, the government has reformed and implemented Public Service Obligation (PSO) and its responsibility to provide universal services (Universal Service Obligation or USO) to tackle any imbalance that disrupts infrastructure by taking out things that are not beneficial (although it is socially wanted) from basic services of commercial operation. The government has found a way to identify the most efficient mechanism to provide subsidy through the PSO. Thus, it is expected that hidden practice of subsidising be replaced by direct compensation given to infrastructure providers according to difference between tariff and supply cost.

This research considers issues faced by companies running abroad, which is characterised by weak government. The research is mainly focused on extortion based on threat of nationalisation and violation of bureaucracy. Bureaucrats hold bargaining position with general extortion method as adopted from optimal bidding theory from Myerson (R.B, 1981, p. 50-58).This characteristic is used to analyse factors determining governance and this characteristic is escalated by investment insurance. This insurance cuts the income of bureaucrats earned from corruption but it can also increase the risk of seizure and bribery.

With the issuance of Act regulating bribery in 2010, how corruption can be warded off has been the concern for companies. Under the new regime, scope of jurisdiction has stretched to further extent regarding the criminal exposure for business entity. In this context, the value of Multi National Corporate (MNC) has been linked to the complaints about passive bribery, bribery as paid to public officials, and companies claim that investors are sued while they are actually the victims of extortion. In response to companies operating in countries with weak governments, insurance contract or investment insurance/political risk insurance has been developed and provided by public entities. Meanwhile, extortion-related issues have been the main concern for Multi National Corporate (MNC), an international aid organisation has been officially in a fight against corruption for recent decades. What should be questioned is does it have something to do with public intervention in political risk insurance sector?

In a series of surveys as assigned by Multilateral Investment Guarantee Agreement (MIGA), business actors argue that MIGA is concerned about political risk, two of which are breach of contract by the state and nationalisation (regulation takeover and obvious nationalisation). In MIGA, based on political risk survey conducted in 2010, there were almost 45% of respondents saying that political risk was the biggest obstacle in their business, while seventy per cent of respondents in Russia mentioned intervention with government, followed by 65% and 55% in India and China for the same response respectively. Expression of involvement with government is euphemism for all types of influence and corruption-related activities.

The companies involved in the survey reported that they were forced not to get involved in corruption to minimise the risk and especially to avoid any takeover and violation of bureaucracy. However, this issue represents serious concern about business and challenge regarding aid for development, while it receives little attention in economic literature. The knowledge and understanding of extortion is at stable level. This research proposes framework for a better understanding regarding the mechanism of how extortion is delivered and affects companies that operate in countries with weak governments.

Another study uses the term takeover to refer to both expropriation and violation. Thus, takeover of the whole companies is not a credible decision for the host countries. The second reason is that by putting companies in competition mode, disruptive power is usually more significant to bureaucrats than from exclusive focus on companies that are undoubtedly harmful. This nature is learned by comparing the foreign companies operating in some countries, and some bureaucracy enterprises can take over from political obstacles to the bureaucrats.

Some ways can be performed to minimise this political obstacle. First, bureaucrats are restricted to time and resources to take over or violate companies, and the threat to take over is not credible. Second, takeover is considered as a signal coming from extortion practices in countries regarding how much the bribery is. Bigger possibility of extortion will only serve as obstacle to investing in a state. When this is the case, political obstacle is considered practical and is simple to perform. This can be performed to introduce competition among companies and to restrict bargaining position of the bureaucrats.

The second part of this dissertation is aimed to introduce investment insurance. Investment insurance is intended as compensation guarantee for companies that cause loss due to violation committed by bureaucrats. In line with common practice, compensation is taken as measured values of investment (general) and personal profits (private).

Exogenous insurance contract and companies do not pay premium, and some studies offer some consideration of symmetrical and general situation in companies that can adjust insurance contract and analyse the best answers for the whole range of contract (linier). It is seen that the impact caused by the rising compensation of fixed insurance in a company in terms of the entire takeover risk is always positive, but the impact of marginal insurance company is highly reliant on specific values of companies where bureaucrats arbitrarily use their power. When the profits gained by bureaucrats are faced as a threat, higher marginal insurance compensation always raises the risk. When takeover involves huge cost for bureaucrats, the risk falls with marginal insurance compensation. Higher insurance compensation given to companies is linked to risk reallocation among different companies. Higher fixed insurance compensation for companies always increases risk takeover for companies and when political obstacle increases, it reduces the risk of takeover for other companies. When certain values of bureaucrats violate particular firms, marginal insurance compensation of the companies always reduce risk takeover and when the political obstacle increases, the risk faced by other companies will also rise. On the contrary, when the values for bureaucrats are positive, the impact of increase of marginal insurance compensation varies during intervals of the profits of the companies. Moreover, when the companies increase their marginal insurance compensation, the risk of takeover for other companies can rise or fall depending on the real profits with higher marginal insurance compensation.

A study found that company's attention is fully addressed to seizure (it takes place when transfer is costly when it applies in bureaucracy). Political Risk Insurance (PRI) gives positive externality to governmental quality that justifies subsidy of insurance premium such as Multilateral Investment and Guarantee Agreement (MIGA) by which Political Risk Insurance is provided at low cost.

In countries with high cases of corruption, seizure of asset is the main concern in companies. This research also underlines an important role played by values taken from asset to bureaucrat. When there is positive expropriation, the risk transfer increases along with the compensation of marginal investment insurance, and when the values obtained from seizure are significant, the bribe paid by rich companies can also rise. Therefore, there are some considerations performed by investment insurance companies to reduce the chance of value transfer, one of which is by involving bureaucrat to recover assets. Multilateral Investment Guarantee Agreement (MIGA) has paid most of its attention to central government to recover asset. When the central government can hold the responsibility of the bureaucrat (when value transfer for bureaucrat is reduced effectively), the final result can bring positive effect of Political Risk Insurance (PRI) to the local government performance.

The researcher also aims to show how insurance affects the size of extorted bribe. When the obstacle of political risk increases, the potential for the company to give more amount of bribe to another company will be higher. However, increasing amount of fixed or big insurance compensation given always reduces the money earned from corruption by bureaucrats, where this criminal corruption can involve takeover and bribery. Furthermore, the discussion about extortion is included in organised economic crime, where the main focus lies on credibility although violation of bureaucrat seeps into companies and society, and this conduct involves renting fee and economic transition with significant consequences on social economy (Mishra & Ackerman (Ed), 2006).

Investment insurance has run in several countries with weak governments and a bureaucracy (neutral risk) of government officials that could sue regarding bribery from companies. The term seizure is used to refer to company rent takeover in wider scope, including seizure of companies' assets in terms of conventional ownership divestment. Seizure has gone further and so has abuse through regulation. The author has assumed that bureaucrats do not receive proper information on embedded values in the case of non-takeover of companies. Bureaucrats are aware of values of each company, and they have potential to extort by threatening companies that do not obey their order. Political obstacle is the main determinant for bargaining position of the bureaucrats. This indicates that takeover is a natural resource that needs great deal of time, and it opens more access to bribery.

The quality of governance also represents the whole risk of seizure as reflected from threshold values of non-takeover. The probability of takeover is relevant to the probability of complete denial by a company regarding its assets. The bribe is paid by each company according to the takeover of partial profit of the company. Rejection regarding takeover of part of asset sale takes place. Bureaucrats earn not only from bribery but also from takeover. The total value of earning from bribery is an indicator of business profitability that violates ownership.

The risk of overall takeover and that of the earning of bureaucrats are always lower than the lower values gained from takeover of other companies. However, reducing the value of what has been seized from some companies can also disadvantage other companies. This research has found that takeover (in conventional scope) becomes concern in sectors with intensive capital such as in crude oil and mining sectors, but less than 5% of all foreign companies were seized in 1960 and 1976. Unfortunately, there is no evidence of the characteristics of companies as victims of violation by bureaucracy.

Political boundary limits the capacity of bureaucrats to perform takeover. When they intend to take over the companies as much as they expect, the optimal mechanism for the takeover depends on other companies. The real problem is that when the probability of takeover and bribery extracted from each company is higher. When takeover cannot be performed, bribery will take place to give access to it, and bureaucrats will receive higher profits from takeover since they have a number of institutions that hold power to execute the takeover. It is learned from this research that the quality of the governance decreases in terms of the values obtained by bureaucrats from takeover, and the total of companies can be a threat to takeover. Rich countries with great natural resources can attract more foreign countries with their physical capital from which the government of the host countries can perform takeover. It is obvious that there are more practices of expropriation and extortion in countries with weak governments, leading to negative influence on the quality of the government. The government here does not consider the decision made by companies regarding the extent of the insurance and other features of insurance market, and insurance does not require any cost spent by companies. This is a simplification but it is legitimated that the state government has massively contributed subsidy as a policy aimed to encourage World Bank in foreign investment in several countries.

4. Conclusion

Government of each state should require investors to protect their investment through investment insurance. This insurance is a security in the form of compensation for companies given due to loss triggered by power abuse by bureaucrat. Along with general practice, the compensation is calculated by means of valued number (general knowledge) of investment and profit gained by individual (personal knowledge). In research, it is essential to consider symmetrical and general condition regarding which company can get insurance contract, and to analyse the most appropriate answer for the whole contract range (linear). It is seen that the effect of the rising amount of compensation in fixed insurance in a company regarding the total risk stays positive, but the impact of marginal insurance compensation relies on specific value of the company when bureaucrat abuses power. When bureaucrat exists as a threat, higher marginal insurance compensation always escalates risks. If not, transfer will be too costly for bureaucrat, impacting the marginal compensation. Higher insurance compensation leads to risk transfer between two different companies. Bigger compensation in fixed insurance for the company will always increase risk transfer for the company and when political hurdles escalate, it will reduce the risk transfer for another company. When the values to the power of bureaucrat violate a certain firm, the increase in the marginal compensation of the company always reduces risk transfer, and escalating political hurdles means increasing risks another company faces. Conversely, when the intensity of power abuse by bureaucrat is positive, the impact of the increase in marginal insurance company will vary regarding the company profit. In other words, when a company increases the marginal compensation, the risk transfer to another company will also rise or decrease, depending on the actual profit in regards to higher marginal insurance compensation. When political risks escalate, higher insurance in a company can trigger more significant amount of bribe for another company. The increase in fixed or significant insurance compensation will always reduce revenue expected by bureaucrat from corruption: optimal combination of transfer and bribery.

Political risk policy is mostly based on the global strategies of companies, and they are meant to ward off political risks from happening. Investors must consider this method where local culture interprets investment strategies as long as it is acceptable (despite the difference from what has been initially planned), and as long as the investors hold the commitment and patience to respond with global strategies and political risks regarding policy.

References

Act Number 25 of 2004 concerning Planning System of National Development

Act Number 25 of 2007 concerning Capital Investment

Aswicahyono, H., & Anas, T. (2011, p. 11). Haryo Aswicahyono and Titik Anas, Towards a Liberalized Trade Regime: Indonesia Trade Policies Review. -: CSIS Working Paper Series,.

Cahyani, D. R. (2018 November). Darmin: Investasi Asing 100 Persen Hanya Boleh di 25 Usaha. -: Tempo Newspaper.

Damanik, M. I. (2014, p.14). Reformasi Birokrasi Daerah: Sebuah Semangat Pertumbuhan Ekonomidari Daerah. -: KPPOD Brief, edisi January-March.

Darmawi, H. (2001). Manajemen Asuransi. Jakarta: BumiAksara.

Global Green Growth Institute. (2018). Mendorong Investasiuntuk Mewujudkan Pertumbuhan Hijaubagi Indonesia: Pemerintah Indonesia dan Program PertumbuhanHijau GGGI Fase II: 2016-2020. Jakarta: Global Green Growth Institute.

Hadjon, P. M. (1987). Perlindungan Hukum Bagi Rakyat di Indonesia. Jakarta: Bina Ilmu.

Japan International Cooperation Agency. ((n.d)). Kebijakan Investasi dan Kebijakan Industri di Indonesia. Electronic references: Retrieved May 18, 2019, from http://open_jicareport.jica.go.jp/pdf/11844230_02.pdf.

Marzuki, P. M. (2011). Penelitian Hukum. Jakarta: Kencana Prenada Media Group.

Ministry of International Trade and Industry. ((n.d), p.1-3). ASEAN's Bilateral Free Trade Areas. -: from https://www.miti.gov.my/miti/resources/fileupload/ASEAN%27s%20Bilateral%20FTA%20(website).pdf.

Mishra, A., & Ackerman (Ed), S. R. (2006). Corruption, Hierarchies and Beraucratic Structure, International Handbook On The Economics Of Corruption. UK: Edward Elgar Publishing Limited.

OECD. (2007). OECD, Investment for Development, Annual Report. Paris: Retrieved 18 May, 2019 from https://www.oecd.org/daf/inv/investmentfordevelopment/39958918.pdf.

OECD. (2010). OECD Investment Policy Reviews: Indonesia 2010. Paris: OECD Publishing.

Pramono, N. (2006). Perkembangan ArusInvestasi Ditinjau Dan Perspektif Hukum Bisnis. Jurnal Legislasi Indonesia, 3.

R.B, M. (1981, p. 50-58). Optimal Auction Design. -: Mathematics of Operation Research, 6, (1).

Rahardjo, S. (2000). IlmuHukum. Bandung: PT. Citra Aditya Bakti.

Siadari, R. P. (2015, April 4). Teori Perlindungnan Hukum. Retrieved May 14, 2019, from http://raypratama.blogspot.co.id/2015/04/teori-perlindungan-hukum.html.

Sihombing, J. (2010). Peran dan AspekHukumDalam Pembangunan Ekonomi. Bandung: PT Alumni.

Tambunan, T. (2006). IklimInvestasi Di Indonesia: Masalah Tantangan dan Potensi . Kadin-Indonesia : Retrieved May 18, 2019, from Tulus Tambunan, IklimInvestasi Di Indonesia: Masalah, Tantangan Dan Potensi, Kadin-Indonesia – Jetro, 2006, retrieved from http://www.kadin-indonesia.or.id/id/doc/opini/Iklim_Investasi_Di_Indonesia_Masalah,Tantangan_Dan_Poten.

United Nation ESCAP. (2008). Implementing the Monterrey Consensus in Asia dan the Pasific Issues, Challenges and Action. Thailand: United Nation.

Wisnumurti, A. A., Darma, I. K., & Suasih, N. R. (2018, p. 327.). Government Policy of Indonesia to Managing Demographic Bonus and Creating Indonesia Gold in 2045. -: Journal of Humanities and Social Science.

World Bank. (2014). World Investment Trends and Corporate Perspectives: The Political Risk Insurance Industry. Washington DC: The International Bank for Reconstruction and Development, The World Bank.