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Balance in Settings Local Investment Between Economic Progress and Protection of the Rights of Indigenous Peoples: Study in North Sulawesi, Indonesia

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Abstract

This research aims to find out 1) what is the position of indigenous communities in regulating investment in the region; 2) what is the function of regional government in investment development and protection of the rights of indigenous communities; and 3) 2hat is the function of local regulation or regional regulations in investment in the region? By using normative legal research methods, research is carried out focused on local investment regulations. Implemented by local government. The research results show, 1) The position of indigenous communities in investment activities is unclear from pre-contact until implementation. Indigenous communities are not involved in expressing their opinions, nor are there any regional regulations made to protect the rights of indigenous communities. 2). The regional government does not function optimally in realizing a balance of protection between the rights of investors and the rights of indigenous communities in the distribution of investment profit sharing benefits. 3). This general regulation in the investment sector causes legal uncertainty to protect the rights of indigenous peoples in investment in the region, especially in North Sulawesi as the object of study. Conclusion, Investment regulations that do not balance the interests of investors and indigenous communities will damage the investment climate and the occurrence of resistance in the form of community rejection of investment.

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1. Introduction

The success of investment growth in the regions is highly dependent on local legal instruments implemented by regional governments to provide investment protection and certainty. Local rules 'local regulation' are very important, especially since the implementation of regional autonomy, where regional authority has increased in regulating and controlling investment, according to regional characteristics in accordance with Law No. 23 of 2014. (Article 12 paragraph 2) Investment Law Number 25 of 2007 (Article 30 paragraph (1)) has stipulated that regional governments must guarantee security and ease of business for investors who invest in the region. Business security will be realized if the investment carried out is supported by indigenous communities who have remained silent and controlled the investment location for generations. Based on this, the regulatory model in region d is a determining factor in whether investment implementation is successful or not. A conducive investment climate and business climate in the regions is very dependent on the 'regulation' and 'policy' arrangements of the regional government in administering investment, this is a manifestation of the implementation of the decentralization paradigm in the administration of regional government.

The benefits of investment for indigenous communities must also be a basis for consideration in making regional regulations and investment policies carried out by regional governments, because investments related to the processing of natural resources will come into direct contact with indigenous communities who have controlled them for generations. For example, mining investments in water resources, agricultural plantations, agriculture, all come into contact with indigenous communities who own natural resources and traditions passed down from generation to generation. Investors must be given as clear an explanation as possible by the regional government regarding the rights of indigenous communities in investment which must be fulfilled by investors. Regional regulations must serve as guidelines for investors in doing business and investing in the region so as not to harm indigenous communities. The local investment regulation model implemented is a determining factor in regional superiority in competing domestically, regionally and globally. Local investment regulations consist of Regional Regulations and regional government policies. .The investment law that is implemented is a determinant of the speed of investment and economic growth in the regions. The investment law set by the government will create a policy model that is implemented both at the center and in the regions. A closed form of investment regulation will tighten or create restrictions on foreign investors through strict requirements, while an open form of investment regulation will make it easier for investors to invest (Hartono,2018.) With the implementation of regional autonomy, each region is trying to create legal instruments. in the form of Regional Regulations and Regional Head Dec rees to increase investment. The problem is how the existence of legal instruments in the form of local regulations serves as a guide for investors in investing. In reality, investment in the region still experiences obstacles due to resistance from indigenous communities, related to the neglect of community rights due to the lack of clear regulations.

Investors who invest in regions sometimes do not know that under the regional autonomy paradigm, determining investment implementation policies has been fully handed over to regional governments. Ignorance of investors, especially foreign investment, often becomes an obstacle in carrying out investment in the region. Regional Regulations in the investment sector 'Local investment regulation' is a necessity to provide protection and convenience for investors. Because in principle, since the implementation of regional autonomy, regional autonomy has had the authority

to organize investment. This is not understood by many investors who invest in regions who consider investment matters to be solely a matter for the central government and ignore regional policies. Investors' lack of understanding has had a negative impact on investment activities in the region, resulting in investment failure due to the emergence of lawsuits by both the regional government and the community. PT case. Newmont Minahasa Raya is an illustration of investors' lack of understanding of the decentralization paradigm that specifically applies in Indonesia. Likewise other cases such as the MSM case and the PT case. Freeport in Irian shows that many investors are blind to the decentralization paradigm. Investment failure will have a negative impact on regional domestic competitiveness in investment and investment failure will weaken Indonesia's position in regional and global competitive sectors (Marbun, 2020)

Investment is a determining factor in regional excellence in economic development. Increasing investment flows will have an impact on the progress of local and national economic growth. . To strengthen the competitiveness of local investment, the readiness of legal instruments in local investment activities is very important in both provinces and districts/cities. To support the ability to compete domestically, both regionally and internationally. Local investment regulations must be truly responsive to the needs of the market and indigenous communities in the region, communally indigenous communities. Have the right to investment. The basic principles of protecting the rights of indigenous peoples to investment are contained in the 1945 Constitution. Article 32 paragraph (1) of the Constitution states that "the State advances Indonesian national culture amidst world civilization by guaranteeing the people's freedom to maintain and develop their cultural values. (Attamimi, A, 2019) Other regulations such as the IPR Law (Copyright, Patents and Trademarks) do not specifically regulate the rights of indigenous peoples in traditional knowledge. This has led to a lot of exploration of the potential and property rights of indigenous communities by irresponsible parties both within and outside the country. Illegal exploration is detrimental to the community because there are no regulations regarding benefit sharing in the form of royalties for indigenous communities as the authority owners. Local protection mechanisms to protect the economic potential of indigenous communities in investment are very necessary to improve the welfare of local communities who have been marginalized.

2. Methods

This type of research is normative legal research (normative juridical), where normative legal research places law as a system of norms in the form of principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings) (Marzuki, 2005). The main characteristic of normative research is research carried out by examining library materials or secondary data (Marzuki, 2005). The collected data is arranged and categorized according to the problem, and analyzed using qualitative data analysis, namely comprehensively analyzing all secondary data obtained so that it can answer the problem. In this data analysis, a series of data that have been arranged systematically according to their classification are then described and analyzed qualitatively, namely by providing an understanding of the data in question, described in sentence by sentence form, then the results of the data analysis are interpreted in the form of inductive conclusions in the form of answers to problems based on analysis results (Marzuki, 2005).

3. Results and Discussion

The Position of Indigenous Peoples in Regional Investment

Indigenous peoples havethe right to investment held in the territory of the legal association, whether for the use of natural resources or other sources. communal wealth owned by generations, both natural resources and. Traditional knowledge as the heritage of indigenous peoples is a very valuable item throughout the world that is exclusive. Based on this, the rights of indigenous peoples must receive the highest possible respect in the form of legal protection. including traditional ones (Hartono,2018) Protection of the rights of indigenous peoples in investment is an important thing in the reform era where community rights must not be ignored. The rights of indigenous peoples such as traditional knowledge have become a new legal problem because they have not yet There are domestic legal instruments that are capable of providing optimal protection. (Indra Pilang, 2019) Investments held in one area must recognize and respect the traditional and hereditary communal rights of the people in the area

Regulations regarding the rights of indigenous peoples in investment include recognition and respect for all the potential of indigenous peoples that are related to the investment location. Regional regulations that protect the rights of indigenous peoples must be in sync with various regulations related to the communal rights of indigenous peoples. The complexity in implementation is related to harmonization and synchronization between national level regulations, local level regulations, as well as local customary regulations. Problems in protecting the rights of indigenous peoples in investment in North Sulawesi include illegal exploration of Bentenan batik cloth, which does not benefit the Belang indigenous people as owners of communal rights. The problem in Talaud Regency is related to the Manee traditions of the community, in the fisheries sector where there is no legal protection related to traditional knowledge. North Minahasa Regency is specifically related to traditional dance creations which must be institutionalized in tourism investment, South Minahasa Regency is related to traditional knowledge in the field of medicine. Minahasa district is related to Mapalus, Manado City, Manado City, and Tomohon City. War dances and traditional ceremonies in North Sulawesi Province are related to traditional institutions, benefit sharing of traditional community rights, in mining investment.

Legal protection for Indigenous communities is related to the right to obtain maximum profits and the authority to take legal action. With investment legal protection for indigenous communities, it is hoped that indigenous communities will receive the maximum benefits from investments made in their jurisdiction. According to Philipus Hadjon, legal protection is anything that enables a person to exercise and defend their rights as determined by law. With government action as the central point when related to legal protection for the people, Philips M. Hadjon, stated that there are 2 (two) types of legal protection for the people, namely (Hajon P, 2007): a) Preventive legal protection, namely legal protection preventive, the people are given the opportunity to submit objections or opinions before a government decision takes definitive form. Thus, preventive protection aims to prevent disputes from occurring. b) Repressive legal protection. In repressive legal protection, the people are given the opportunity to raise objections after the consequences of a definitive government decision in the sense that repressive protection is to resolve the problem.

Apart from preventive and repressive types of legal protection, formal and substantive legal protection is also known. Formal legal protection is legal protection that refers to the implementation of rights and is formally implemented in legislation and/or agreements. Substantive legal protection

is legal protection that refers to the implementation of rights that are substantively attached to the law. This means that even though it is not implemented in law, its implementation is attached to the person/activity. (Amirizal S., 2019) The concept of legal protection originates from state recognition based on law. The idea of the rule of law itself has long been discussed by philosophers, for example Plato in several of his works stated that the state must be free from greedy and evil leaders. To realize this ideal state according to Plato, both the state and state administrators (government) must be regulated by law.

In other previously published articles, the term protection is closely related to the concept of the rule of law. According to Tahir AzharyThe concept of the rule of law developed in Anglo-Saxon countries. The fundamental difference between rechtsstaat and rule of law is that the concept of rechtsstaat applies the state's administrative justice system, while the concept of rule of law does not use administrative justice, because public trust is very large in general justice. The rule of law applies the principle that all people have the same position before the law (equal justice under law), (Anonymous,2018.). Thus, ordinary courts are considered sufficient to try all cases of unlawful acts by the government, because the judges have very high integrity and quality.

Function of Regional Government in Investment and protecting the rights of Indigenous Peoples

The realization of a balance between investment growth and protection of indigenous communities in the regions is largely determined by the role of regional governments in creating and implementing local investment regulations. Regional government law no. 23 of 2014 has emphasized regional authority in regulating and controlling investment as a concurrent authority or authority given by the center. According to (Huseini,2014)there are three basic changes, namely changes in the authority to manage natural resources, changes in the authority to manage financial resources (taxes and levies), as well as changes in budget allocation from the center to the regions. (Hadjon P, 2017) These three changes in authority have direct implications for long-term development scenarios and regional (provincial) and local (district/city) macroeconomic indicators. These indicators are capital investment (investment), employment opportunities, regional government savings and the rate of local economic growth. (Sukisno. 2012) Changes in regional macroeconomic policies occurred as a result of the influence of changes in regional government administration patterns from centralization to decentralization. With investment, it is hoped that the management of natural resources and regional potential will provide maximum benefits for the community. Because in principle, capital investment functions as a catalyst in spurring accelerated regional economic growth and improving community welfare. (Sudarsono, 2015) Regional economic growth depends largely on capital investment in the industrial, mining and trade sectors, which absorb a lot of labor. These sectors have a lot of influence on increasing regional income which is a driving factor in the rate of local economic growth and directly influences national economic growth (Atmosudirjo P, 2018)

The presence of foreign investors is very important in supporting the rate of regional economic growth, because with the influx of investment natural resource management will be maximized. According to Gunarto Suhardi, the impact of the presence of investors on development is: a) providing employment opportunities for the population, b) with investment there is an increase/regional income and local economic growth, c) investment provides residue in the form of equipment and technology transfer, d) opens production marketing channels for exports, opening access for local entrepreneurs, in addition to providing additional foreign exchange and taxes for the country, e) providing political protection and regional security, because if investors come from strong countries, security assistance will certainly also be provided. (Suhardi G,2021) Based on this authority, regional governments must be able to make policies in controlling investment so that investment will be beneficial in economic growth and improving the welfare of regional indigenous communities.

Regional governments must improve and develop capabilities in the field of investment management, supported by developing the institutional capabilities of organizations in the regions themselves. By granting the authority to organize investments to regions, it is hoped that there will be an increase in economic growth and community welfare.

On In reality, even though investment has been delegated to the regions, it still experiences obstacles due to the uncertainty of investment guarantees by the Regional Government. According to a 2019 World Bank report which stated that: "although investment decentralization has provided benefits in several countries such as China, India, Latin American countries, and other countries in this part of the world, on the other hand it has given rise to 3 (three) The main problems are: increasing inequality (inequality), macroeconomic instability, and the risk of local authority which can cause errors in resource allocation." (WDP 1999, 5) This problem occurs because regulations made by the Regional Government are not responsive to market and community demands. Another aspect concerns the regional government's lack of authority in making economic policies that are productive and anticipatory of market demands. According to Prajudi Atmosudirdjo, regional authority must be differentiated between authority (competence, bevoegdheid) and authority (authority, gezag). What is meant by authority is what is called formal power, power that comes from legislative power (given by law) or from executive/administrative power. Furthermore, it is said that authority (which usually consists of several authorities is power over a certain group of people or power over a certain area of government (or a certain area of affairs that is rounded). Meanwhile, authority only concerns certain parts. Within authority there are authorities. Authority is the power to carry out a public legal action, for example the authority to sign or issue permits from an official on behalf of a minister. In a rule of law, there is government authority because it is regulated in the applicable laws and regulations. In this regard According to Hadjon, government authority is described as legal power (rechtsmacht), so that authority in the concept of public law will always be related to power (Jedawi 2015).

Logically, since the enactment of Law no. 32 of 2004, all authority, especially in the investment sector that applies in the regions, is the authority of the regional government, both provincial and district/city governments, which is delegated by the central government. According to Van Wijk and Konijnenbelt (Ridwan, 2004), there are three models of delegation of authority, namely, attribution, delegation and mandate. The authority obtained by attribution is original, originating from the formation of original laws. In this model, giving and receiving authority can create new authority or expand existing authority. Attribution is the authority to make decisions that directly originate from the law in a material sense. The formation of authority and distribution of authority are stipulated in statutory regulations. (Mulyosudarmo,2017)

The division of authority from the government to regional governments, either in the form of attribution or delegation, is intended so that regional governments can manage their own domestic affairs. This includes the authority to establish "own regional regulations"in order to carry out government affairs in the investment sector. With regional autonomy, the urgency of investment is in line with the need for autonomous regions to develop their potential and resources. By delegating authority to Regional Governments, it is hoped that Regional Governments will have more freedom to develop investment to support ongoing regional development.

Law no. 25 of 2007 is a merger of existing laws regarding investment, namely Law Number 11 of 1970 concerning Foreign Investment and Law Number 12 of 1970 concerning Domestic Investment until the issuance of Law No. 25 of 2007 which combines the terms foreign investment and domestic

investment into a new term, namely capital investment. Law no. 25 of 2007 concerning Foreign Investment, provides limits on the definition of investment or investment, namely:

a. Overseas means of payment which is not part of Indonesia's foreign exchange wealth. Foreign exchange is a bank balance in foreign currency that has the authority of review from Bank Indonesia (BI).
b. Company tools including new discoveries belonging to foreigners and materials imported into Indonesian territory without using the costs of Indonesia's foreign exchange wealth.
c. Share of the company's proceeds transferred for company financing in Indonesia.
d. Claims on creditors for eign private sector that is not guaranteed by a foreign government which is converted into capital investment (Anoraga,2015).

Investment management in Indonesia is regulated by the direct investment law(direct investment)what this means is that the owner of foreign capital must use and run the company in Indonesia, while the leadership staff or policies that will be taken to be declared a company are left entirely to the owner of the capital. (Kansil C, 2020) Another definition of investment is a form of cooperation between foreign parties and national foreign capital. According to there are 3 types, namely:

a. Joint enterprise
It is a form of cooperation between capital and national capital which is outlined in Indonesian legal entities.
b. Joint ventures
It is a form of joint venture between the parties to form a new or separate legal entity as a business entity, as in a joint enterprise, a joint venture can be carried out between government, private or a combination of both, cooperatives or private entities.
c. Employment contract
In this case, the foreign party forms an Indonesian legal entity which will later become a party to the agreement in question, the other party being an Indonesian legal entity with national capital.

In Law Number 25 of 2007, an important principle that must be put forward is the principle of legal certainty which is regulated in Point g as follows: "that clear provisions need to be made to meet the need for capital for national development, in addition to avoiding doubts on the part of the parties. foreign capital". So it is clear that legal certainty is a principle in the formation of the PMA Law.

With the establishment of the principle of legal certainty, it is hoped that all legal systems and rules that have been established will be clear and provide legal certainty in foreign investment activities. The philosophy of Law Number 25 of 2007 leads to government policy to provide tax concessions in the form of exemption from capital stamp duty on capital placement originating from PMA, in the form of:

1. Exemption from import duties and sales exemption on import of company equipment;
2. Exemption from transfer of name duties on ship registration deeds for the first time in Indonesia until two years after production;
3. Company tax concessions, exemption from dividend tax for two years from production on the share of profits paid to shareholders, as long as the dividends in the recipient country are not subject to tax on profits or income and to new investment entities in the production sector that receive government priority.

In this case, the Minister of Finance can exempt company taxes for a period of two years, to encourage economic growth. Relaxations in the field of taxation provided by the government to foreign and domestic investors. This monetary policy is part of the outline of tax politics, to deal with development in order to increase government savings through stimulating public savings, encouraging investment and production, and helping redistribution of income towards a more balanced climate by creating a fiscal climate for entrepreneurs and investors. (Fuadi, 2016).

Function of Local Regulations in Implementing Investments

Discussing the function of investment regulation in the area of 'investment regulation' as a determinant of creating a conducive investment climate cannot be separated from the discussion of local regulations (Perda). According to Siti Zuhro, both the Regional Government Law Number 32 of 2004 and the Law on Legislation Number 10 of 2004 do not provide a definition of Regional Regulations (Perda), but only emphasize the institutions that form both Provinces and Regencies/Cities. (Rajagukguk, E, 2016) Regional regulations or local regulations are specific and detailed implementing regulations at the regional level from various existing laws and regulations.

According to Ni Ma'tul Huda, after the enactment of Law Number 11 of 2012 the government has adjusted it by issuing a Minister of Home Affairs Regulation concerning types and regional legal products, Since regional autonomy, Minister of Home Affairs Regulation Number 16 of 2006 concerning procedures for making regional legal products and Minister of Home Affairs Regulation Number 17 of 2006 concerning Regional Gazette and Regional News have increasingly emphasized that Regional Regulations are one of the regional legal products. (Soekamto S, 2011) According to the general provisions of the Minister of Home Affairs Regulation, what is meant by regional legal products are regional regulations issued by the Regional Head in the context of regulating the administration of regional government. It is clearer in the general explanation that regional legal products are regulatory in nature. and determination as follows:

a. Regional Regulations or other designations
b. Regional Head Regulations
c. Joint Regulation of Regional Heads
d. Regional Head's Decision
e. Regional Head Instructions

From this general explanation, it is clear that there is a fundamental difference between Local Regulation and Local Legislation, where regional regulations are part of regional legal products. The preparation of regulatory regional legal products is carried out based on the Regional Legislation Program (Prolegda). The process of drafting regional legal products is carried out by the heads of regional work units. The preparation of regional legal products can be delegated to the Legal Bureau or Legal Department. The preparation of regional legal products is formed by an Inter-Regional Work Unit Team. The team is chaired by the Head of the initiating regional Work Unit or an official appointed by the regional head and the Head of the Legal Bureau or Head of the Legal Department serves as secretary. Talking about the function of regional regulations, the UNDP formulation in the guidelines published by the Department of Law and Human Rights in 2008 formulates the function of Regional Regulations, firstly as a policy instrument for implementing regional autonomy and assistance tasks, secondly as implementing regulations for higher statutory regulations, as accommodating regional specialties and diversity as well as channeling the aspirations of the people in the region, but in its arrangement it remains within the corridors of the Republic of Indonesia, and as a development tool in improving regional welfare. (Directorate General of the Department of Law, Ministry of Home Affairs 2008 35) From the explanation of the function of regional regulations, it is confirmed that regional regulations are instruments given to regional governments to implement the welfare of regional communities.

The first and second functions explain the attributive authority of the central government, that regional regulations are part of the 'tools' or instruments given to regional governments to carry out

their rights and obligations in carrying out development in their regions. More specifically regarding the second function, the Regional Regulation should naturally be an instrument for the Regional Government to elaborate on the national laws and regulations issued, while still adapting the material and substance to the Law which delegates further regulations in the Regional Regulation.

The second function is also a function that is specifically related to the implementation of regional autonomy, namely to develop the region in accordance with the specificities of each region in the context of development and improving regional welfare.

If a legal product is not based on legal and correct authority, it could result in the relevant legal product being legally defective, meaning it is null and void or can be cancelled. Null and void means that something which is declared null and void by law is a legal product which from the beginning of its existence has been legally flawed and a statement regarding its nullity requires intervention and confirmation by law enforcement officials, and as a legal consequence, all consequences that arise from the beginning are deemed to have never been There is. Can be cancelled, which means that something that can be canceled is deemed to be legally defective since the decision of the law enforcement officials was handed down which has permanent legal force, and the statement of cancellation requires intervention and confirmation from the law enforcement officials and as a legal consequence, all the consequences that have arisen since the cancellation decision it is assumed that it never existed. From an economic perspective, flawed regional regulations will create uncertainty "for business actors and investors". The existence of regional regulations, apart from being a form of legislation, also constitutes a legal basis (legality) for autonomy in regulating and managing its household affairs in the context of community services and regional development as a whole. (Rasyid R, 2015)

According to Sumantoro (Sumantoro, 2021) even though various regulations have been made, investment tends to decline. From research conducted by the Central Bureau of Statistics and BKPM, the cause of the decline in FDI is also because: a0 That the existing incentives and facilities are not appropriate again with development patterns and priorities today. b) Various regulations implementing government policy are good in their presentation but in their implementation they cause a lot of anxiety and a sense of uncertainty among investors. C) Factors related to the complexity and length of time required to complete a PMA application. Local regulation is very important to directly protect investors because it involves direct control and direct supervision. The most accurate step to overcome "misappropriation" is reducing people's rights in investment by making specific regulations at the regional level in the form of regional regulations. These regional regulations must actually regulate substantially the elements that must be protected, the rights of indigenous peoples and protection mechanisms. Good regional regulations will certainly influence the law enforcement system and legal regulations nationally.

There are three functions that can be carried out by regional governments, namely allocation, distribution and stabilization functions. (Marbun, 2020) These three functions are carried out in the context of carrying out government, services to the community and development. Allocation function, namely arranging economic resources in the form of goods and services. Distribution function, managing and controlling community income and wealth, equitable development. Stabilization functions, namely defense, security, economic and monetary functions.

These three functions can actually be carried out by the government and regional governments. In terms of the effectiveness of distribution and stabilization functions in general, it will be more effective and efficient if implemented by the government. Meanwhile, the allocation function is generally more effective if implemented by local governments. Why is the allocation function more effectively handed over to the regions? Because, in general, regions are more aware of the needs and standards of community services in their own region. The essence of these three functions is a form of implementation of welfare state law.

The regional investment management system is a subsystem of government administration. Central and regional financial relations cover a very broad understanding and can be realized in a form of horizontal or vertical justice. Central and regional financial relations are also trying to create a better government administration structure towardsclean governmentand good governance (Indra Pilang, 2019) In the development of Regional Regulations, local regulation as a regional legal instrument in controlling investment is still experiencing obstacles, especially since the emergence of various "problematic regional regulations".

Problematic Regional Regulations greatly influence the investment climate in the region, because the existence of these Regional Regulations actually becomes an obstacle to accelerating investment growth. Referring to various research results and studies from competent institutions in Indonesia such as the Department of Home Affairs (Depdagri), the Monitoring Commission for the Implementation of Regional Autonomy, the Directorate General of Regional Financial Balance, shows that there are still many problematic regional regulations in the investment sector in Indonesia.

In 2006, an evaluation of regional regulations in Indonesia was carried out. The results of an evaluation carried out by the Regional Autonomy Implementation Monitoring Commission (KPPOD) showed that of the 1,379 regional regulations that regulate tax and levy provisions, at least 31% of them hinder or damage the investment climate in the regions. This is due to the regional desire to immediately increase Regional Original Income (PAD), namely by implementing various levies in the regions which so far have only been around 10-30% of the approved APBD. Regional Autonomy Reporting Commission (KPPOD 2006,20) The spirit of regional autonomy has not had a positive impact on investment regulation because local regulations are still not responsive to market needs and investment development needs in the region. This is an obstacle to creating competitiveness and accelerating local economic growth. Even though economic experts have predicted that regional potential, both tangible and intangible, is sufficient to attract investors, as long as the legal instruments created are not responsive to the market, it will be difficult for the region to compete with other regions that are open to investment activities. The importance of legal instruments in the form of local legislation is because these regional legal instruments are a determining and influential factor in creating obstacles and difficulties in investing in the region. The unresponsiveness of regional regulations to the market resulted in 2008, the Directorate General of Regional Fiscal Balance evaluating more than 7,200 regulations and plans for regional regulations and recommending 2,000 regional regulations on taxes and levies to be revoked because they were detrimental to the public interest or conflicted with higher regulations.

(DEP KEUW 2007 20) Regional Regulations Local regulations in the investment sector are instruments that determine the good and bad of investment science in the region. Good regional regulations will accelerate the acceleration of investment growth. PERDA as one of the social "engineering" tools for investment development in the region. There are two types of regional regulations, namely regulations that are closed to the market by providing restrictions on investment activities that are restrictive in nature and regulations that are open (pro-market) where the rules made by the central government, adapted to market needs. The model of investment legal instruments applied in each region greatly influences the investment climate in the region. Regions that are open to investment activities are greatly influenced by the regulations and policies of regional governments established.

With the implementation of the decentralized paradigm in the implementation of capital investment, it should be followed by the creation of legal instruments that are pro-market and provide ease of investment. Regional Government Law No. 23 of 2014 emphasizes the division of authority

between provinces and districts/cities in the licensing sector. According to Sadi, the unclear boundaries of the provincial government's authority in the field of licensing in the investment sector is an important problem that always hampers investment activities in the regions, resulting in the saying "Autonomy in the investment sector in practice is like a snake whose head is left to walk while the tail is held by the central government".

Uncertainty as a result of the overlap of various legal instruments, including Presidential Decrees, Ministerial Decrees and Regional Regulations, results in inefficiency. The occurrence of permits above permits is of course burdensome for investors because investors who have completed the requirements and received principle permits from the provincial government must obtain location permits from the district/city government. This situation results in high costs in investment financing and lengthy procedures that must be followed. This paradox really affects legal certainty in the investment sector. Investors who are faced with difficulties because there are too many parties with an interest in investment activities will cancel investment activities due to long and complicated procedures.

4. Conclusion

1. The position of indigenous communities in investment activities is unclear, starting from pre-contact until the implementation of the investment. Indigenous communities are not involved. Indigenous communities are not involved in monitoring investment locations so that communities are always suspicious of investment activities. Regional governments do not implement investment policies and regulations that do not balance the interests of investors and indigenous communities, which will damage the investment climate. The occurrence of resistance in the form of community rejection of investment8 PT Newmont M8inahasa Raya and PT MSM are examples. The not yet optimal function of regional regulations to strengthen local and regional competitiveness is a challenge for future improvement.
2. The local investment policy model implemented by the regional government is still not responsive to balancing the demands of the market and indigenous communities, so it tends to slow down the rate of investment growth in the region. Another aspect is that regional regulations that are made still pose a high risk of investment uncertainty. The lack of optimal risk guarantees from Regional Regulations can be seen in the lack of firm regulations regarding procedural certainty, financing certainty (still high costs) and legal certainty in resolving disputes between investors, Regional Governments and indigenous communities.
3. Local regional regulations do not yet regulate the balance between investor rights and indigenous people's rights, so there are many problems in implementing investments, such as the closure of PT Newmont Minahasa Raya investment in North Sulawesi in 2011). The emergence of problematic regional regulations according to a study by the Department of Home Affairs from 2001 to 2008 shows that the function of regional regulations in strengthening regional competitiveness in the investment sector is not yet optimal. Considering that regional regulations are a determining indicator for creating a healthy and conducive investment climate. "In regional investment management, various efforts have been made, namely increasing technological human resources and infrastructure availability, but without the effectiveness of legal instruments in guaranteeing investment, it will weaken domestic regional competitiveness."

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