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Harmonization of Investment Provisions in Indonesia within the AEC Framework:

Study in Riau Province

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Abstract—Riau is one of the provinces in Indonesia that borders directly with several ASEAN countries. Apart from that, Riau has abundant natural resources that give benefits for improving the welfare of the people of Riau. Almost all districts have the potential to find natural resources, such as coal, granite, kaolin, etcetera, as well as plantation products such as oil palm, rubber and cocoa, and various other investment potentials. After going through a long process, the implementation of the AEC (ASEAN Economic Community) is a must and Indonesia must be prepared to face existing challenges, especially in investment negotiations. The research method used is legal, sociological research, and by using primary legal materials and secondary regional materials. The Riau Provincial Government has issued regional regulations aimed at encouraging investment in Riau. However, government regulations regarding other investments must be harmonious with the provisions of the AEC while taking into account national regulations and the interests and potential of the Riau Province.

Keywords: harmonization, investment, AEC, Riau Province

I. INTRODUCTION

The development of the world community, especially in Southeast Asia, which leads to policies that are borderless, eventually gave birth to the ASEAN Economic Community (AEC) or the ASEAN Economic Community. AEC is an economic community that was built in the ASEAN region to increase economic stability in the ASEAN region and is expected to be able to overcome economic problems between ASEAN countries.

The formation of the ASEAN Economic Community (AEC) originated from the agreement of ASEAN leaders at the High-Level Conference (Summit) in December 1997 in Kuala Lumpur, Malaysia. This agreement aims to increase the competitiveness of ASEAN and can compete with China and India to attract foreign investment. Foreign capital is needed to increase the employment and welfare of ASEAN citizens. At the next summit, which took place in Bali in October 2003, ASEAN officials declared that the establishment of the AEC in 2015 [1].

Some of the impacts of the AEC consequences, namely the impact of the free flow of goods for ASEAN countries, the impact of the free flow of services, the impact of the free flow of investment, the impact of the flow of skilled labour, and the impact of free flow of capital [2].

Arya Baskoro said that on the investment side, the AEC could create a climate that supports the entry of Foreign Direct Investment (FDI) that can spur economic growth through technological development, job creation, human capital development, and easier access to markets. Nevertheless, he also believes that these conditions can lead to exploitation risk. Indonesia still has a less binding level of regulation that can lead to large-scale exploitation actions against the availability of natural resources by foreign companies entering Indonesia as a country that has abundant natural resources compared to other ASEAN countries. It is also feared that exploitation by foreign companies can damage the ecosystem in Indonesia, while the existing investment regulations in Indonesia are not strong enough to maintain natural conditions including the availability of natural resources [3].

Riau Province is a province that is safe enough to invest. Riau Province has a very strategic location, located in the corridor area of Sumatra, close to the world trade routes in the Malacca Strait, and close to the economic countries in Southeast Asia, Riau is very safe and comfortable compared to other provinces. There were no tsunamis and earthquakes in Riau. The community is quite harmonious, and there is no turmoil between religions, ethnic groups, community conflicts like other provinces. That makes Riau Province safe to invest in.

Besides, Riau Province is one of the provinces rich in natural mining resources in Indonesia. In addition to oil and gas, Riau is also rich in, among others, gold, coal, bauxite, tin, Pelalawan Regency, for example, is estimated to have coal potential in the Langgam District and Ukui District. While Kuantan Singingi Regency has potential in gold and coal mining. Likewise, Rokan Hulu Regency and Inderagiri Hulu

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Regency which have coal reserves and other mining materials in their respective regions.

The Riau Province Mining and Energy Office, for example, noted that Indragiri Hulu Regency has coal reserves of more than 16,000,000 tons, which are spread across Siberida District, Peranap District to Kemuning District in Indragiri Hilir District [4].

The mining management regime, which now has a licensing system, has also had an influence on mining management in the region. It is due to the existence of regional autonomy resulting in the regional government; especially, the provincial government has the authority to permit the management and exploitation of mining materials. Whereas previously, mining management was carried out through contracts or concessions between entrepreneurs/investors and the central government only.

Other investments that contributed substantially to producers of Riau Province were investments in plantations, including oil palm plantations in 2004 producing 3.8 billion tons of oil palm, 303 million tons of rubber, cocoa totalling 10,000 tons and other yields is a potential for investment in Riau Province [4].

Riau Province has begun to specifically regulate investment provisions in its region, namely by issuing Regional Regulation No. 10 of 2017 concerning the provision of incentives and facilities for investment [5], Regional Regulation No. 7 of 2018 concerning Investment in Riau Province [6], and Governor Regulation no. 6 of 2019 concerning the General Investment Plan of Riau Province in 2019-2025.

With the regulations related to investment both at the central and regional levels, it is necessary to examine whether the existing national provisions, especially at the regional level, in this case, the Province of Riau, are in harmony with national provisions and provisions at the ASEAN level.

II. LITERATURE REVIEW

ACIA's (ASEAN Comprehensive Investment Agreement) aim is to create "a liberal, facilitative, transparent and competitive investment environment in ASEAN." This is to be achieved by adhering to certain principles such as providing for investment liberalization, protection, promotion and facilitation; b. Benefiting investors and their investments based in ASEAN; c. Maintaining and according to preferential treatment among the ASEAN Member States; and d. Preserving (or "no back-tracking") of commitments made under the Framework Agreement on the ASEAN Investment Area (AIA Agreement) and the ASEAN Investment Guarantee Agreement (ASEAN IGA) [1].

The ACIA serves as a guide for ASEAN member countries in implementing the follow-up to the ASEAN investment pillar. Through ACIA, both ASEAN investors and ASEAN-based foreign investors can benefit from greater investment liberalization, investment facilitation, and improved investment protection.

As part of international treaties in the field of investment, the state parties, in this case, ASEAN countries, must stipulate

these ACIA provisions in their national law. Indonesia has done so by ratifying through Presidential Regulation No. 44 of 2011. Thus the provisions of ACIA bind Indonesia to be implemented.

III. RESEARCH METHOD

The research method used in this article is the normative legal research method, namely research on legal principles [7]. This research-based on secondary data, in the field of investment, particularly on statutory regulations both at the central level and regulations in Riau Province.

IV. RESULTS AND DISCUSSION

Riau Province is one of the provinces that is quite fast in making regulations related to investment in the regions. Based on Regional Regulation No. 7 of 2018 concerning Investment in Riau Province, and Regional Regulation No. 7 of 2018 concerning Investment in Riau Province, these have been regulated on simplification and ease in the management of investment permits [6]. Business sectors get many facilities, and it includes the plantation business, specifically the development of the downstream processing of plantation products, the mineral mining business sector, which is related to the downstream development of coal products and the construction of mineral refineries, forestry businesses, which prioritize businesses that support exports and businesses that partner with micro, small, medium and cooperative businesses.

Another provision that must be considered is the dispute resolution mechanism, Perda No. 7 of 2018 states that dispute resolution that occurs is made through deliberation and consensus and if no agreement is reached, then the way that the parties can take is through non-litigation, namely through the national arbitration mechanism or alternative dispute resolution, as well as other means namely by litigation [6].

However, this regulation does not specify whether investors can submit disputes to international arbitration institutions, even though the dispute resolution mechanism needs to be regulated more clearly.

V. CONCLUSION

Local regulations on investment in Riau Province and the provision of investment incentives have made it easier to make investments, especially in Riau Province, this is in line with the ACIA provisions so that ASEAN countries can provide convenience in investing. However, the provisions of dispute resolution need to be clarified, in order to provide legal certainty for all parties, especially investors.

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