

An Assessing Existence of Legal Infrastructure That Supports the Development of Green Investment Indonesia

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ABSTRACT

In this paper, we describe green infrastructure as no longer a foreign concept in spatial and regional planning. The concept has become an integral part of the increasing demand for land for urban development, and the need for green open space to balance the development. This has led many countries to start implementing green infrastructure as part of the urban development "trend". The various applications are summarized in this book, with a focus on the United States, the United Kingdom, case studies of several countries in the European Union, and Singapore. The book also includes a chronological sequence of laws and regulations that support the implementation of green infrastructure in these countries, so as to illustrate how the implementation of green infrastructure requires a process to realize a strong legislative basis.

Keywords: Legal Infrastructure, Green Investment, Economic Development

INTRODUCTION

On September 25, 2015 at the United Nations (UN) Headquarters, around 193 world leaders, including Indonesia, officially ratified the Agenda for Sustainable Development Goals (Sustainable Development Goals/SDGs). The SDGs are a global action plan consisting of 17 Goals and 169 Targets that must be implemented by Indonesia and every other country present to achieve sustainable economic development. The

impetus for realizing a Green Economy is one of the strategic issues of economic development in the context of sustainable development.

The Indonesian government has realized the importance of transitioning towards a green economy. For example, Indonesia is committed to reducing greenhouse gas emissions by 31.8% by 2030 through increasing nationally determined contributions (NDC) (Ministry of Environment and Forestry, 2022) under the Paris Agreement which has also been ratified through Law no. 16 of 2016. Indonesia has also implemented a number of initiatives to promote renewable energy, such as the development of geothermal power plants and the installation of solar panels. However, Indonesia has many challenges to transition towards a green economy. One of the undeniable challenges is that Indonesia still depends on non-green investments. This results in a lack of adequate infrastructure and funding to support renewable energy and sustainable development projects. Then, the exploration of natural resources in Indonesia still often uses an exploitative style that causes damage. Major floods in South Kalimantan (Asmara, 2021) and forest and soil destruction in Riau (Jahi et al., 2013) are just two examples of the many disasters caused by over-exploitation. In addition, Indonesia is still very dependent on fossil fuels, especially coal, to meet its energy

needs. This makes it difficult to transition to a green economy without significant changes in energy and investment policies. Exploration of natural resources in Indonesia still often uses an exploitative style that causes damage. Major floods in South Kalimantan (Asmara, 2021) and forest and soil destruction in Riau (Jahi et al., 2013) are just two examples of the many disasters caused by over-exploitation. In addition, Indonesia is still very dependent on fossil fuels, especially coal, to meet its energy needs. This makes it difficult to transition to a green economy without significant changes in energy and investment policies. Exploration of natural resources in Indonesia still often uses an exploitative style that causes damage. Major floods in South Kalimantan (Asmara, 2021) and forest and soil destruction in Riau (Jahi et al., 2013) are just two examples of the many disasters caused by over-exploitation. In addition, Indonesia is still very dependent on fossil fuels, especially coal, to meet its energy needs. This makes it difficult to transition to a green economy without significant changes in energy and investment policies. especially coal, to meet its energy needs. This makes it difficult to transition to a green economy without significant changes in energy and investment policies. especially coal, to meet its energy needs. This makes it difficult to transition to a green economy without significant changes in energy and investment policies.

It is important to realize the important role of investment in driving national development and long-term economic growth (Hellen et al., 2017). Because growing national investment is an integral part of the main goal of the state, namely ensuring the welfare of its people, it is very important for the government, in its capacity as state administrator, to play an active role in this process. Sustained green investment in renewable energy and sustainable development, as well as policies and programs to promote green growth, will be

needed to achieve a truly sustainable future for Indonesia.

Given the government's efforts to increase investment in Indonesia, it is natural to wonder about the importance of green investment in the national legal order. States must recognize the inextricable link between economic development, environmental sustainability and social well-being. Leaders have an obligation to take steps in all aspects of policy, planning and investment. Indonesia's economy and development strategy can no longer follow a monetary policy based on extractive investment. There needs to be legal infrastructure support and regulatory legal products to help encourage green investment in Indonesia. For this reason, it is deemed necessary to conduct research on the role of legal products and legal infrastructure in supporting the development of green investment in Indonesia. Research around green investments is critical to determining whether this type of investment will work given the existing legal infrastructure. This study was created to answer the formulation of the problem, including around the existence of Indonesian legal infrastructure related to green investment and reserves of steps that the government can take to boost green investment in Indonesia.

The benefits of this study are divided into two, namely the theoretical benefits and practical aspects. The theoretical benefit of this study is that it can become additional literature in the scientific field of law, especially in the development of knowledge regarding the role of legal infrastructure in the form of regulation in the development of green investment. This study can also be a relevant reference for future scientific studies. The practical benefit is that this study will be useful to practitioners in the field of environmental law, the government that manages and deals with environmental issues and economic development, and social organizations that focus on environmental issues and society in general.

LITERATURE REVIEW

The main objective of economic development is to achieve the people's welfare as much as possible. If quality of life is a measure of how well basic human needs are met, then development can be seen as an effort to fulfill these basic needs. The concept and ideals of a welfare state are centered on ensuring and advancing the economic and social well-being of all its citizens (Brittanica, 2020). The constitution and constitution of the welfare state usually include clauses for various forms of welfare for the people (Marilang, 2016).

The notion of a welfare state implies that the state has the responsibility to achieve the ideals of social justice, general welfare and maximum prosperity for the people, and thus is obliged to actively participate in driving the national economy as mandated in Article 33 of the Republic of Indonesia's Constitution. Indonesia in 1945. Corresponding evidence that the government plays an important role in economic activity is contained in Article 33 paragraphs (2) and (3) of the 1945 Constitution. Paragraph (2) states that the economy does not solely depend on the public, private, or business sectors individuals, especially in the case of sectors of production that affect the livelihoods of the masses are controlled by the state. Then, paragraph (3) states that the state controls the land, water, and all the natural resources contained therein and used for the welfare of the people. Regarding the intersection of economic development and environmental welfare, it is stated in Paragraph 4 of Article 33 of the 1945 Constitution which reads: "The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity..." Clearly, this paragraph mandates the integration of sustainable development and environmentally sound economic practices into the country's overall economic structure.

Furthermore, Law no. 32 of 2009 concerning Environmental Protection and Management has emphasized that environmental protection is non-negotiable. Environmental disasters have become a nightmare for Indonesia and the rest of the world, and if we take a closer look at the normative juridical basis of the issuance of these laws, it will be seen that the two are closely related.

To achieve national development goals, it is very important to implement an economic development strategy based on the principles of sustainability supported by a strong legal infrastructure. Based on this, this study aims to examine the legal infrastructure of Indonesian government regulations related to green investment and provide reserves that can be taken to increase green investment in Indonesia.

MATERIALS & METHODS

Normative legal research is carried out by examining library materials or secondary data (Soekanto & Mamuji, 2003). Peter Mahmud Marzuki defines normative legal research as the process of searching for rules, principles and doctrines of legal entities to answer specific legal questions (Marzuki, 2010). The normative juridical method is used in this study to examine whether Indonesia has regulatory legal infrastructure products that support the development of green investment. The approach used in this study is a statute approach. This study will conduct a systematic review of the relevant literature and secondary data related to green investment. Several relevant laws and regulations are segmented using descriptive analytical methods to better understand how these laws and regulations affect the topics discussed. The information collected will be analyzed using qualitative methods, and the results will be presented in the form of descriptive analysis so that a comprehensive understanding of the topics discussed can be obtained.

RESULT

4.1. Indonesian Legal Infrastructure Relevant to Green Investment

Commitment to development is certainly an effort that requires large capital. Investment or investment is not new for Indonesia. Investment in Indonesia has been regulated since the 1960s by two laws that separate foreign investment (PMA) and domestic investment (PMDN). However, it is different with green investment. Green investment is defined by KEHATI (2021) as an investment strategy that prioritizes ESG or Environment Social Governance factors to maintain economic, population and earth health sustainability in the long term. Provisions regarding the environment are not included in the Law on Foreign Investment (UU PMA) or the Law on Domestic Investment (UU PMDN). What is understood to be the reason for this is the lack of environmental issues in discussion and dialogue in general so that they are not considered crucial in the discussions that lead to the making of the law.

Then on April 26, 2007, Law Number 25 of 2007 concerning Investment (UU PM) was passed, thus canceling the two previous Investment Laws. In this renewal, UUPM has positioned the environment in an interesting way in several ways, such as:

1. The first principle in investing is environmental awareness. UUPM mandates that "investment is carried out based on environmental principles" (Article 3 Paragraph 1 Letter h). Article after article, it is explained that the term "environmentally sound principles" refers to the idea of making financial investments while still paying attention to and prioritizing environmental issues.
2. Second, ecological factors are considered when making a negative investment list or a list of closed business fields for investment. Based on Article 12 (3) UUPM, the government can close certain economic sectors for foreign and domestic investment if this will harm health, morals, culture, the

environment, national defense, or other national interests.

3. The third consideration is the responsibility of investors to the environment. All investors have an obligation to protect the environment, as stated in Article 16 letter d UUPM. In addition, based on Article 17 UUPM, investors who work on non-renewable natural resources are required to allocate funds progressively for site rehabilitation that meets ecological standards, the implementation of which is regulated in accordance with statutory provisions. Article 17 UUPM explained to protect the environment from potential damage caused by investment activities. The elucidation of the UUPM also reaffirms the responsibilities of investors, stating: "The rights, obligations and responsibilities of investors are regulated specifically to provide legal certainty,
4. The fourth point, environmental considerations are included in the facilities offered to business actors. Investments that receive convenience in terms of infrastructure facilities are investments that protect the environment according to UUPM Article 18 paragraph 3 letter g. The same thing is also contained in Article 24 letter b UUPM, which allows the import of commodities that do not have an adverse impact on the safety, security, health, environment or morals of the nation to obtain convenience in terms of services and import licensing facilities.
5. Fifth, central government jurisdiction over investments that have high environmental risks. Investments involving non-renewable natural resources and high risk to the environment are under the authority of the central government, as stated in Article 30 paragraph 7 letter a UUPM.

Then, as a continuation of the fundamental investment policy, Presidential Regulation No. 16/2012 concerning the General Investment Plan (RUPM) issued by the

Government of the Republic of Indonesia and serves as a framework for investment policy up to 2025. Interestingly, in the RUPM, investment that is environmentally sound (green investment) is one of the provisions.

Based on what has been described above, it is clear that UUPM and RUPM consider environmental factors as an important part of investing in Indonesia. There is no denying the power of law as a preventive and enforcement tool to encourage environmental protection, especially during the development process. The existence of clear legal instruments can provide legal certainty for investors. It is hoped that this green investment legal instrument will have a broad positive impact on society and the economy. In addition, to reduce ecological risks caused by unsustainable development and implement environmental protection and management as required by Law no. 32 of 2009, legal instruments related to green investment are expected to be implemented. However, from Law no.

4.2. Reserves for Enhancing Green Investment in Indonesia

Based on the definition by Rachman (2018), "Green Investment is an investment activity that focuses on companies or investment prospects that have a commitment to natural resource conservation, production and discovery of alternative sources of new and renewable energy (EBT), implementation of water and clean air projects, as well as investment activities that are friendly to the surrounding environment." In summary, the direction of environmentally sound investment policies in Indonesia is as follows:

1. The need for increased synergies with environmental development policies and programs...;
2. Development of priority sectors and environmentally friendly technologies, as well as utilization of potential new and renewable energy sources;
3. Green economy development (Green Economy);

4. Provision of investment facilities, conveniences, and/or incentives given to investors that encourage efforts to preserve the environment...;
5. Increasing the use of environmentally friendly technology and production processes...;
6. Regional development that pays attention to spatial planning and the ability or carrying capacity of the environment.

This green investment policy direction can be a starting point for green investment growth in Indonesia. Today, green investment is an investment alternative for metropolitan communities, but the legislative framework still does not exist or does not go hand in hand (Anisah, 2020). It is very important for Indonesia to have a legal basis that focuses on regulating green investment in Indonesia, because policy direction alone is not enough and a regulatory framework that supports environmental protection is essential (Aqil, 2020). Green investment in Indonesia is expected to develop, but this will be a challenge if Indonesia only relies on UUPM without regulating legal products related to green investment when the world is starting to make a proactive commitment to environmentally friendly investments.

In addition, Indonesia's reputation for dynamic policy change is the reason for the lack of green investment. Weak and ineffective regulations are a concern for investors. The Indonesian government must strengthen the legal foundation with reforms to create a clear and consistent regulatory environment that can help overcome this deficiency (OECD, 2021).

Furthermore, in order to take advantage of local and international developments and opportunities in green investment, there must be close coordination between government, academia, the business world, and society. With strong leadership and political will from the government, Indonesia can achieve this goal (BAPPENAS, 2015). It should be remembered that even though there are legal

instruments and principles that form the basis of philosophy and action in the field, protecting and preserving the quality of the environment will not get maximum results if there is no political will or will from the government (Fadli et al., 2016).

Local government support for the legal infrastructure in the form of legislation and regulations is indispensable for the further implementation of the environment in the investment sphere. Therefore, it is important to ensure that the local legal infrastructure (including laws and regulations) supports green investment. This can be achieved by frequently monitoring the implementation of green investment development by provincial and district/city governments, and ensuring that they have green investment policies in place.

CONCLUSION

It is undeniable that green investment on a national scale can have a large impact on development policies. Promoting a green economy in line with sustainable development can be facilitated through green investment, which can ultimately contribute to economic growth. However, the shift towards green investment is unlikely to just happen. There must be a strong legal basis for green investment to increase. The National Legislation Program (Prolegnas) must include green investment because regulations or laws regarding green investment are needed to support the commitment of the Government of the Republic of Indonesia in attracting investors to the green line.

Declaration by Authors

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