



E-ISSN: 2790-068  
P-ISSN: 2790-0673  
IJLJJ 2023; 3(2): 30-34  
Received: 03-07-2023  
Accepted: 05-08-2023

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## **Foreign nationals abandon a foreign investment limited liability company: Forms of legal regulation in Indonesia**

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### **Abstract**

This article aims to analyze and identify the provision of information related to the establishment of a Foreign Investment Limited Liability Company in Indonesia and to make it known related to the regulation of sanctions for Foreign Citizens who abandon their Foreign Investment Limited Liability Company. The method used in the article related to Sanctions for Abandonment of Foreign Investment Limited Liability Company by Foreign Citizens in Indonesia is juridical-normative research, with a statutory approach used to analyze the problem of norm vacuum in this study. The discussion in this study finds that specifically related to the regulation of the obligation to establish a Limited Liability Company for Foreign Investment by foreign investors in Indonesia, the regulation is carried out in "Law Number 25 of 2007 concerning Investment" which has been clearly determined if foreign investment must be in the form of a Limited Liability Company. Furthermore, related to sanctions for Foreign Citizens who abandon their Foreign Investment Limited Liability Company, until now there has been no legal certainty related to sanctions given under the Investment Law which creates a vacuum of norms in its regulation. Therefore, special rules are needed regarding sanctions for Foreign Citizens who only utilize the establishment of a Foreign Investment Limited Liability Company only for the ease of processing a Limited Stay Permit Card. This causes an increase in the number of Foreign Investment Limited Liability Companies that are registered but not active, which will certainly correlate with the public paradigm, especially foreign investors, regarding investment and the establishment of the Foreign Investment Limited Liability Company itself in Indonesia.

**Keywords:** Sanctions, foreign investment, foreign citizen

### **Introduction**

Indonesia is a country with great potential in the world of investment because abundant natural resources certainly require high costs, unfortunately this cannot be obtained only by relying on domestic finance and technology. Of the many modern manufacturing and industrial companies in Indonesia, the majority have commercial ties with foreign capital, thus foreign investment is needed in Indonesia to support the fulfillment of the needs and needs of the company (Mukianto, 2019) <sup>[7]</sup>.

In order to create a legal certainty and legal basis for investment in 2007, Indonesia passed Law No. 25/2007 on Investment. In essence, the regulation contains everything that is urgent and has a relationship with regulations and fundamental rules in investment, of course in Indonesia. As Article 5 (2) of the Investment Law, states that if there is foreign investment in Indonesia, it is obliged to form a Limited Liability Company unless the law provides otherwise. Indonesia is part of a country that is in the process of development today, and Indonesia is also a country that has strategic conditions in conducting international relations, this can be seen from the geographical side or opportunities from natural resources to human resources which make an increase in the entry and exit of people from Indonesian territory. Globalization has resulted in an increase in the entry and exit of people between nations. National borders are easily crossed, thus, it attracts the attention of countries. Each country must have sovereignty with regard to policies regarding the movement of people in and out of their country. The policy covers everything related to just coming or staying temporarily and each country has laws and regulations in regulating these things which are known as immigration policies (Monoarfa, 2021) <sup>[6]</sup>. Immigration is an activity in providing services and enforcing and securing the traffic of every foreigner who comes in and out of Indonesia, as well as the process of monitoring foreign nationals who are in Indonesia (Monoarfa, 2021) <sup>[6]</sup>.

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The formation of a Foreign Investment Limited Liability Company is certainly related to immigration. Regardless of the element of capital originating from foreign nationals, a company must have the form of a Foreign Investment Limited Liability Company. Foreign Investment has more benefits, among others, it is long-term, has a lot to do with technology transfer, transfer of management skills, and of course can provide opportunities for employment (Sari, 2020) <sup>[8]</sup>. Employment is very important for a country categorized as a "developing country". This is because the government has limited ability to provide jobs. Indonesia as a country with the title of "investors' paradise" is a very potential market as a Limited liability company for investment. In practice, Foreign Capital Investment also encourages business expansion by businesses in Indonesia. The establishment of this Limited Company of Foreign Capital Investment is one of the legal methods in attracting foreign investors, as a container in accommodating foreign investors becomes a way used by entrepreneurs in enlarging their business (Sari, 2020) <sup>[8]</sup>.

This causes foreign nationals who establish a Limited Liability Company in Indonesia to receive facilities/incentives. One of the facilities or incentives provided if foreign nationals establish a Limited Liability Company in Indonesia is related to immigration services, namely the ease of obtaining a Limited Stay Permit Card (Temporary Residence Card). However, the Investment Law only regulates the incentives given to foreign nationals, related to sanctions from foreign nationals who abandon their Limited Company of Foreign Capital Investment just to make it easier to get a Limited Stay Permission Card until now there is no regulation. So in this case there is still a norm vacuum that causes many Limited Companies of Foreign Capital Investment that are not actively operating because the US citizen who owns the Investment Law has obtained the Limited Staying Permission Card that he needs. This action will cause a social impact and public paradigm, especially for other foreign nationals who wish to establish a Limited Foreign Capital Investment Company in Indonesia, on the intentions and objectives in the process of establishing the Limited Foreign Capital Investment Company. This will certainly hamper the investment process in Indonesia. Therefore, it is necessary to regulate the sanctions related to the abandonment of the Limited Company of Foreign Capital Investment by foreign nationals.

For this reason, this study will conduct a discussion related to matters, first, how is the regulation of the establishment of a Limited Perseroan Limited Foreign Capital Investment in Indonesia? Second, what are the sanctions for foreign nationals who abandon their Limited Perseroan Limited Foreign Capital Investment? This study aims to provide information about the establishment of a Limited Liability Company in Indonesia and to find out the sanction arrangements for foreign nationals who abandon their Limited Liability Company.

### Research Methods

This study is normative juridical research, which is a research procedure made to conduct research mainly on secondary materials (Ibrahim, 2006) <sup>[2]</sup>. This study is a normative juridical research related to the sanction of abandonment of a Limited Company of Foreign Capital Investment by its owner who is a foreign national. A study

with a normative juridical type is also referred to as a research procedure that uses the logic of legal science from the normative side so that there is a truth that can then provide an explanation regarding the regulation of sanctions for the abandonment of a Limited Company of Foreign Capital Investment by its owner who is a foreign citizen (Ibrahim, 2006) <sup>[2]</sup>. This study has a statute approach or statutory approach in the process of studying the problem under study. The legal materials processed in this research are legal materials derived from primary, secondary, and tertiary legal materials. The nature of this research is Limited Liability Company analysis, namely providing a description of Limited Liability Companies related to the issues raised in this study and analyzing related legal policies in providing solutions to the problems raised.

### Results and Discussion

#### Arrangement for the Establishment of a Limited Company of Foreign Capital Investment in Indonesia

Foreign Citizens as investors who invest in Indonesia are required to establish a legal entity based on Indonesian Law, namely a Limited Liability Company. This already has an internal policy as stipulated in Law No. 40/2007 concerning Limited Liability Companies (Cahaya *et al.*, 2021) <sup>[1]</sup>. The Limited Liability Company was formerly part of the Commercial Code, until along with the developments that occurred subsequently there was an adjustment to the conditions of the development of economic growth (Cahaya *et al.*, 2021) <sup>[1]</sup>. This is what causes the need for Foreign Direct Investment or foreign investment in Indonesia as one of the developing countries as an effort to shorten the time in organizing the economy. Foreign Investment has contributed to the industrialization of capital development and related to the formation of employment and technical skills, with this Foreign Investment has provided new opportunities and utilization of new resources. It is also related to the coverage of risks and losses in the initial stage and the Investment will then provide encouragement for local entrepreneurs in cooperation. This foreign capital will also provide assistance in reducing balance of payment problems and inflation which will strengthen the host country or the country commonly referred to as the "host country" (Yuda *et al.*, 2021) <sup>[12]</sup>.

Some of the juridical foundations of Foreign Direct Investment in Indonesia include:

1. Law Number 25 Year 2007 on Capital Investment
2. Law No. 40 of 2007 on Limited Liability Companies
3. Presidential Regulation Number 44 of 2016 Concerning the List of Business Fields that are Closed and Business Fields that are Open with Requirements in the Field of Investment (Negative Investment List/DNI)
4. Regulation of the Head of the Investment Coordinating Board of the Republic of Indonesia Number 14 of 2015 concerning Guidelines and Procedures for Investment Principle Permits (IP).
5. Regulation of the Head of the Investment Coordinating Board Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities.
6. Presidential Regulation of the Republic of Indonesia (Perpres) Number 20 of 2018 concerning the Use of Foreign Workers in Indonesia.

In Article 5(2) of the Investment Law, detailed arrangements have been made regarding the legal form of

Foreign Investment companies. Foreign Investment has an obligation to form a Limited Liability Company in this case, namely a Foreign Investment Limited Company. This is the mandate of the Investment Law, namely "foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled within the territory of the Republic of Indonesia, unless otherwise provided by law." The elements in this policy include: the Foreign Investment company is in the form of a Limited Liability Company; its juridical basis is Indonesian Law; it is domiciled in the territory of Indonesia; and carries out business activities with authorized capital that is fully divided into shares and has completed the requirements stipulated in the Investment Law and its implementing regulations. Parties that invest both domestically and Foreign Investment that carry out the process of investing in the form of a Limited Liability Company are carried out by: taking shares at the time of the establishment of the Limited Liability Company; purchasing shares; and carrying out other methods that are in accordance with the Law.

In a Foreign Investment Limited Company, both foreign nationals and foreign legal entities can establish a Foreign Investment Limited Company in Indonesia. However, on several sides of the business undertaken by a Foreign Investment Limited Company, it still requires Indonesian citizens or Indonesian legal entities in carrying out its business processes. For example, the policy on the limit of share ownership by foreigners in the DNI or "Negative Investment List" as well as the position of Personnel Director which is prohibited to be occupied by Foreign Workers (Presidential Regulation No. 44/2016 on the List of Closed Business Fields and Open Business Fields, 2016) (Presidential Regulation of the Republic of Indonesia Number 20 of 2018 on the Use of Foreign Workers, 2018).

The Principle Permit (IP) is required in an effort to establish a new business or in an effort to open a business either as a Foreign Investment or Domestic Investment and can also be in an effort to move the location of a Foreign Investment or Domestic Investment project. This depends on the size of the investment value. This principle license can be applied for at the PITSP or One-Stop Integrated Service for Investment such as the BKPM (Investment Coordinating Board) as well as the Integrated Licensing Agency located in the district / city or province. If the party holding the business shares is a foreign citizen and partly an Indonesian citizen, the IP processing can only be carried out by BKPM. If the company is not yet formed, the data or files required in the process of managing IP include:

1. Form (IP) of Principle License, completed and signed by all prospective shareholders of the Foreign Investment company.
2. Names of prospective shareholders.
3. Identity Card (for Indonesian citizen) or valid Identity Card (for foreign citizen) such as Passport.
4. NPWP (for Indonesian citizen).
5. Production Flow Chart equipped with a detailed explanation from raw materials to the final product (for industry) or description of activities and explanation of service products produced (for the service sector).
6. Recommendations from relevant government agencies if required.
7. Name of the company to be formed.
8. Line of business of the company to be formed.
9. Project location (projection).

10. Estimated production and marketing data
11. Land area required
12. Number of laborers
13. Investment plan
14. Capitalization plan
15. A statement letter that the data presented is correct.

IP requirements for the requesting party with the form of entity (Limited Liability Company) the documents required in processing IP if the authorized entity has been formed in the form of a limited liability company include:

1. Form (IP) of Principle License, completed and signed by all prospective shareholders of the Foreign Investment company
2. Name of the highest management of the company
3. Name of the company
4. Copy of Deed of Establishment
5. Copy of Business Domicile Certificate
6. Copy of NPWP
7. Copy of Letter of Authorization from the Minister of Law and Human Rights
8. Copy of SIUP
9. Copy of TDP (Company Registration Certificate)
10. Business field
11. Project Location (Projection)
12. Production and Marketing Estimation Data
13. Land Area Required
14. Number of Laborers
15. Investment Value Plan
16. Capital Plan
17. Statement Letter that the data presented is correct.

#### **Sanction Arrangements for Foreign Citizens Who Abandon Their Foreign Investment Limited Liability Company**

The form of the Indonesian government's efforts to provide certainty and also guarantee protection for foreign investors is one of them by issuing the Investment Law (Jamil & Hayati, 2020) <sup>[5]</sup>. Based on these rules, there are points relating to matters that protect foreign investors, namely rules on the provision of equal treatment to all investors, both foreign and domestic, listed in Article 6; rules on nationalization and compensation in Article 7; and rules on the process of transferring assets and transfers as well as repatriation on foreign exchange in Article 8 and Article 9. In discussing the implementation of several rules of the Investment Law relating to the protection of foreign investors against risks that may occur in the presence of foreign investors, especially with regard to non-commercial risks. Article 4 (2) letter a of the Investment Law states that when determining the fundamental rules of investment, the government provides equal treatment for domestic and foreign investors. Then, in letter b, it is stated that the government guarantees legal certainty, business, and business security for investors from the licensing process until the end of investment activities.

Regarding equal treatment for all investors, the Investment Law precisely in article 6 states that the government gives equal treatment to all investors who have origins from all over the world who carry out investment activities in Indonesia in accordance with positive law in Indonesia. This equal treatment does not apply to investors from countries that are entitled to special rights based on agreements with Indonesia. The special rights are those that are related to

customs union; free trade area; common market; monetary union; similar institutions; and agreements between the Government of Indonesia and foreign governments that are bilateral; regional; or multilateral in nature that are related to certain privileges in the process of investment.

At least there are factors that cause foreign investors to have the desire to invest in Indonesia, namely (Sari, 2020) <sup>[8]</sup>:

- a) Labor, in this case the results obtained by labor are relatively cheap, which of course can suppress funds for production, especially in countries that are classified as developing, the labor force is relatively high;
- b) Adjacent to resources / raw materials, in countries classified as developed raw resources are very few, in contrast to countries classified as developing have raw resources that have not been used optimally. Developed countries that have sufficient capital, transfer their industries to developing countries;
- c) Searching for new markets, in addition to investing, foreign investors also make efforts to gain market access to local consumers in developing countries. The method for consumers can be carried out by selling products along with spare parts;
- d) License and technology transfer, usually foreign investors follow technological developments and often through licensing procedures, the technology transfer process is carried out by licensing IPR;
- e) Incentives or facilities, as an effort to attract foreign investors in investing in Indonesia.

In essence, there are many things that can influence the interest of foreign investors in investing in a particular country. One of the factors that is a pull factor in the country that receives capital is related to the rules for providing incentives in the tax sector; the existence of qualified infrastructure; the presence of a well-skilled and disciplined workforce and things that are made easier, namely in managing a Limited Stay Permit Card (Wayan *et al.*, 2022) <sup>[11]</sup>. Efforts made to increase investment interest in Indonesia are not accompanied by guarantees of legal certainty for investment activities. For example, making arrangements related to sanctions if foreign nationals do not properly manage their Foreign Investment Limited Companies after receiving facilities in the form of facilitating the processing of Limited Stay Permit Cards (Siregar *et al.*, 2023) <sup>[9]</sup>. This has led to an increase in the number of Foreign Investment Limited Liability Companies registered but not running actively, which will certainly correlate with the public paradigm, especially foreign investors, regarding investment and the establishment of the Foreign Investment Limited Liability Company itself in Indonesia. The absence of legal certainty related to sanctions imposed under the Investment Law creates a void of norms in its regulation. Therefore, special rules are needed regarding sanctions for Foreign Citizens who only utilize the establishment of a Foreign Investment Limited Liability Company only for the ease of processing a Limited Stay Permit Card. So that there is a sense of responsibility from the Foreign Citizens themselves and provide a guarantee of legal certainty to invest in Indonesia.

The obligation of both central and local governments is to provide certainty and security in doing business for investment activities. Furthermore, in providing such guarantees, it is necessary to regulate the authority of the provincial and regency/city governments for the process of

organizing investment (Tindangen, 2016) <sup>[10]</sup>. This legal certainty is a rule that still occurs norm problems, one of which is the vacancy of norms. These problems can be referred to as problems experienced by every developing country that provides Foreign Investment in providing assistance in improving the nation's economy. Legal certainty is very much related to the issue of guarantees given by the government of the country that receives capital to foreign investors so that investors have no doubts in investing.

### Conclusions

Specifically related to the regulation of the obligation to establish a Limited Liability Company for Foreign Investment by foreign investors in Indonesia is regulated in "Law Number 25 Year 2007 on Capital Investment" which has been clearly determined if Foreign Investment must be in the form of a Limited Liability Company. Furthermore, related to sanctions for Foreign Citizens who abandon their Foreign Investment Limited Liability Company, until now there has been no legal certainty related to sanctions given under the Investment Law which creates a norm vacuum in its regulation. Therefore, there is a need for special rules related to sanctions for Foreign Citizens who only utilize the establishment of a Foreign Investment Limited Liability Company only for the ease of processing a Limited Stay Permit Card. This leads to an increase in the number of Foreign Investment Limited Liability Companies registered but not running actively, which will certainly correlate with the public paradigm, especially foreign investors related to investment and the establishment of the Foreign Investment Limited Liability Company itself in Indonesia.

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