



The abundance of natural resources and attractive investment opportunity in Indonesia have not made this country the sweetheart of the investor. Since 1999, foreign direct investments flowing into Indonesia has been negative. In 2005 the ASEAN Secretariat stated that foreign direct investment in Indonesia between 1999-2003 is 2,745 million United States Dollars; 4,550 million United States Dollars (2000); 3,279 million United States Dollars (2001); 145 million United States Dollars (2002); and 596 million United States Dollars (2003). This decrease is due especially to the uncertainty with respect to various regulations, regarding contracts and implementation thereof by the authorized institution.

As reported by Kompas on 25 January 2006, in the breakfast gathering with the Vice President in Tokyo, the Japanese investors utter that they are ready to invest in Indonesia. However, considering the huge capital invested, the investors request the guarantee on the legal certainty.

The domestic and international community has all too often witnessed the vagueness and inconsistency of our judiciary in rendering judgments that tends to twist the facts and validity of legal transactions. We need to immediately reform the various regulations and institutions and show the domestic and offshore investment community that we will do it in a consistent manner.

Investment Opportunities

In the wake of the January 2005 Infrastructure Summit, The Indonesian Government has begun

the tender process for a number of infrastructure projects. It is hoped that the infrastructure project would improve economic performance by attracting direct investments and create employment. The Indonesian Chamber of Commerce (KADIN) cited this Summit 2005, Indonesian Government brought to the market an estimated US\$ 21 billion worth for civil projects that are now in process of being prepared for tender.

Furthermore, Kadin predicts that Indonesia's infrastructure industry is set to expand by US\$ 145 billion over the next 5 years. This will include landmark projects in civic construction, energy exploration and distribution, rail systems urban and national, toll roads and ports, water and waste management, hospitals and a wide range of other industries central to Indonesia's continued growth.

The Indonesian Government has targeted an economic growth of 7,9% by the year 2009. Growth is to be achieved through capital investments and domestic consumption. Such growth rate is crucial to counteract the affects of unemployment in four years. Domestic consumption now cannot be expected to create adequate employment, and this clearly exerts pressure on Indonesia to attract more new investments, particularly from overseas, in order to cover deficits.

A new study launched by the Asian Development Bank, JBIC, and World Bank last March, titled ***Asia Connecting East: A new Framework for Infrastructure*** also stated that the level of policy and regulatory certainty constitutes a crucial requisite to attract direct investments for infrastructure projects. The report also stated that the lack of legal certainty, inconsistent regulations, judiciary system and corruption hampers investments in the infrastructure sector.

The flow of foreign capital will rise in line with Indonesia's seriousness in creating a fair and comprehensive legal system. Naturally, this must be followed by a high level of transparency and accountability throughout all legal institutions that could instill a sense of certainty among the domestic and overseas investment community, who demand effective and dependable performance out of legal institutions in order to reduce the risks of investing in Indonesia. If this is not carried out soon, the government is at risk from and economic growth shortfall.

Failure to carry out a series of changes would force the government to give additional security (which would affect the State budget) in order to attract investors to primary infrastructure projects. Such funds could better serve the government elsewhere, such as for basic public needs, health, education, natural disaster alleviation, and other projects, than to be tied up as security for infrastructure projects.

Legal Reform

The issue of reform and legal certainty is not something new. The Government has even issued

a number of regulations as part of the legal reform process. The problem lies with the inconsistent execution of such regulations in the field. Investors often experience difficulties in settling contractual agreements and payments when they adhere to the Indonesian legal system. Various court judgments are often inconsistent in evaluating the facts and the available evidence.

In addition, Indonesian courts, more specifically District Courts and High Courts, often disregard the wording of agreements between the related parties, either intentionally or unintentionally, including with respects to a number of cases in which the transactions had already been carried out. This attitude of the judiciary that do not honor the sanctity of a contract, has cast Indonesia's commitment to legal reform and enforcement of justice in an unfavorable light. A number of cases, including those of Manulife, Prudential, PT Danareksa Jakarta, PT Tripolyta, and Asia Pulp & Paper and its subsidiaries in Indonesia, illustrates the indifference of the courts with regard to the legitimacy of commercial transactions base on international agreements. This condition has a substantial effect on the level of risk attributed to Indonesia in the international capital markets and direct in flow of capital.

In line with the intention of law reform, the Government has released draft of the Company Law and the Capital Investment Law. These two Laws are expected to be more investment friendly.

The new Company Law is set to be the comprehensive and perfection of the existing company law. The new law is mandated to rearrange the good corporate governance and corporate responsibility of the management. This will result in the increase of accountability and transparency which will correspond with the increase of legal certainty.

The draft Capital Investment Law also has specifically addressed the legal certainty, openness, accountability and non discrimination. The concerns of investors such as expatriate and incentive facilities are also covered in this draft Law. The Law also requires regional and local governments to provide incentives to promote capital investment. However, in order to evade debate on authority in the future, the new Law should be equipped with clause that could specifically diminish the vague of authority of central and regional government.

Another important thing that should be carried out is the making of implementing regulations of the above Laws. Critics say that the implementing regulations are often made so slow. This situation should be avoided since it will bring about the vague and unstable legal framework.

Nevertheless, we must keep in mind that the new laws without strong commitment could very well turn the regulation into an empty and meaningless documents.

Institutional Reform

Reform at the institutional level requires time, which unfortunately, we do not have. The legal risks of engaging in commercial transactions in Indonesia continues to increase, as illustrated by the higher demand for coupon rates in bonds and the higher rate of return. The cost of legal compliance in Indonesia continues to rise due to the uncertainty and inefficiency of legal process.

The fact that Indonesia is the only major ASEAN player that experienced negative foreign investment flow in 1999 and 2003 highlights the urgency of reforming the judicial institution as part of a comprehensive reform program in the context of attracting foreign investment. During last January's the infrastructure summit, The Coordinating Minister for Economics and the Minister of Law and Human Rights declared that the government would embark on legal reforms as part of a comprehensive infrastructure development program.

Indonesia must be aware that now the whole world is watching such reform process. The government has a strong mandate and needs to show its resolve and commitment in carrying out the institutional reform as soon as possible.

The journey ahead is very arduous. Therefore, it is necessary to have a road map for the reform process, which shows realistic and achievable goals. With a realistic road map, the Government would send a strong signal with respect to its commitment to carry out the reform process in Indonesia.

Now, we could only let the hope on the shoulder of the leader of this nation in order that he could perform as a respected and resolute conductor that could lead his member of orchestra to work in a harmony and play a beautiful song for the investor.