

Legal Certainty in Guaranteeing Foreign Investment in Timor Leste to Improve The National Economy

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ABSTRACT

Background: The ASEAN Economic Community (AEC) serves as a platform for economic integration in Southeast Asia, aiming for broader global economic synergy. Its blueprint envisions unrestricted movement of goods, services, capital, and investment across national borders. Investment is critical in enhancing Timor-Leste's national economy. However, achieving this requires an efficient licensing bureaucracy, a conducive investment climate, and government commitment to ensuring legal certainty.

Objective: This study aims to analyze the role of legal certainty in attracting foreign investment in Timor-Leste, addressing the challenges posed by the ASEAN Economic Community.

Methodology: A normative approach was employed, focusing on legal norms and their role in guaranteeing investment security in Timor-Leste within the AEC framework.

Findings: First, the government must establish legal certainty to ensure a secure environment for investors, with consistent implementation of existing laws. Second, the establishment of an arbitration body is essential for swift and transparent business dispute resolution, meeting investor expectations. Third, prioritizing strategic economic sectors can effectively attract foreign investment.

Conclusion: Legal certainty plays a pivotal role in attracting investors to Timor-Leste. Transparent dispute resolution through arbitration and promotion of priority sectors significantly enhance the country's appeal to foreign investors.

KEYWORDS

ASEAN Economic Community, Arbitration, Foreign Investment, Investment Climate, Legal Certainty.

INTRODUCTION

Legal certainty is a dream for investors to invest in the country where they invest their capital (Safiullin dkk., 2020). Therefore, Timor-Leste is a country based on law in accordance with the constitution aims to create a safe and peaceful society (Thammasat University Research Unit in Industrial Statistics and Operational Research, Faculty of Engineering, Thammasat School of Engineering, Thammasat University, Thailand dkk., 2023). As well as guaranteeing all citizens equally before the law,

Citation: Marsal, P. A., Silva, D. B. E., Cruz, D. C., & Quintas, L. (2024). Legal Certainty in Guaranteeing Foreign Investment in Timor Leste to Improve The National Economy. *Rechtsnormen Journal of Law*, 2(4), 466–474.

<https://doi.org/10.70177/rjl.v2i4.1693>

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Received: December 7, 2024

Accepted: December 17, 2024

Published: December 30, 2024



and also guaranteeing foreign nationals who invest in the country of Timor Leste as well as foreign nationals who want to come and travel in the State of Timor Leste.

The ASEAN economic community is a vehicle for economic integration that has great potential in the Southeast Asian Region, and more broadly integration with the global economy (Dudin & Shkodinsky, 2022). In accordance with the blueprint of the ASEAN Economic Community (AEC) (Hartini, 2014). Where goods and services as well as capital and investment will move without being restricted by national borders. Investment has an important role in improving the national economy (L. Wang & Shao, 2024). Therefore, the responsibility of the government must be to create legal certainty in Timor Leste facing the ASEAN economic community, including creating an easy licensing bureaucracy, conducive investment. The implementation of national development requires enormous financial support, not only from income from natural resources, but very importantly from investment, both domestic investment and foreign investment (SI «M. I. Dolishniy Institute of Regional Research of the National Academy of Sciences of Ukraine» dkk., 2021). Investment has a very strategic role for both parties, both investors and recipients will benefit each other. Automatically accelerate domestic economic growth, and provide jobs for citizens, and will increase state revenue in tax

Legal certainty in Timor Leste is still not maximal, economic activity does not run for 24 hours, while only running from 6 to 9 pm, all business activities in the national capital stop, such a phenomenon shows that legal certainty in Timor Leste is still weak (Leffel dkk., 2023). Both business disputes between workers and those who provide workers with the process are not complete and are only resolved through an institution called SEPOPE, a body for distributing workers abroad established by the government (M. S. Khan dkk., 2022). And at the same time as a forum for complaints of disputes between workers and employers.

Viewed from the geographical location, Timor Leste is located in a very strategic position, between two major countries, namely Indonesia and Australia (H. Chen dkk., 2022). As two countries with very high economies, and also the 5th largest population of Indonesia in the world after China, America and India are very potential market bases to attract investment from both countries, it is certainly possible to become a crossroads of world traffic, both air and sea traffic (Koval dkk., 2021). Timor Leste, as a crossroads point of world economic activity, trade between Indonesia, Australia and New Zealand will pass through the territory of Timor Leste.

Indonesian President Jokowi met with Timor-Leste president Francisco Guterres Luolo at Bogor Palace, West Java in 2018, and said that Indonesia is committed to becoming an economic development partner in Timor Leste by pouring investment that continues to increase, reaching 595 million US dollars (Zhang & Ran, 2023). However, Indonesian President Jokowi hopes that the Timor-Leste government will create legal certainty for investments that have been poured into Timor-Leste, this is a warning to Timor-Leste in creating political stability and the application of the law must be improved again, and it is expected that legal practitioners such as prosecutors and police and government institutions that handle investment permits must be fast and not difficult for investors (Xiao dkk., 2022). All elements involved in investment matters must obey the rules and carry out as well as possible in order to provide convenience and ensure a sense of security for foreign investors in Timor Leste.

Law No. 14/2011 regulates foreign investment in Timor Leste handled by the secretary of state for private affairs, the requirement to invest in Timor Leste for investors to have a minimum capital of 1,500,000.00 (One Hundred Fifty Thousand US Dollars) for joint ventures (Lee & Kim, 2022). Money to take care of administrative completeness amounted to 2,000.00 Two Thousand US

Dollars, the time given for the management of investment permits for 30 days starting from the completeness of documents.

Timor Leste has several potential sectors to attract foreign investors to invest in Timor Leste, there are 4 types (Yi, 2020). First investment in the area of oil and gas, Second investment in agriculture, Third investment in fishing and Fourth investment in tourism. investment in the oil and gas section because Timor-Leste has oil landings on the south coast that are very potential. In 2019 the Timor-Leste government and the Australian government signed an agreement to manage oil and gas resources in Greater Sunrise, but until now it has not been realized. The Timorese government had to work very hard to cooperate with the Australian government to realize the treaty. Because of the very potential source of wealth. The oil and natural gas in Greater Sunrise are more than 5 trillion cubic feet of Natural Gas, and 200 million barrels of crude oil.

RESEARCH METHODOLOGY

The type of research used is normative research with legal, conceptual, comparative, and case approaches. Normative research generally examines the philosophy of norms related to the subject under study. In this research (Y. Wang dkk., 2020). The subject of discussion is legal norms regarding legal certainty in guaranteeing investment in the country of Timor Leste to face the economic community ASEAN (MEA). The data sources were taken from both primary and secondary legal materials (Nechifor dkk., 2022). The primary legal material consisted of legislation or official records or minutes in the making of legislation found in legislation to legal certainty, application of law and dispute resolution bodies in investment (L. Chen & Zhu, 2022). The secondary legal materials were all law publication, such as books, textbooks, legal dictionaries, legal journals, and comments on court decision on the issues raised.

The collection of legal materials is an effort to search and find legal materials that have relevance to the legal issues at hand following the approach used to answer legal issues in the field of legal certainty, application of law and dispute resolution bodies in investing in the era of the ASEAN economic community (Daubaraite-Radikiene & Startiene, 2022). Primary and secondary legal materials that have been collected were then grouped and studied to obtain basic knowledge as perspectives and applied sciences. As a perceptive science, legal material studies are the legal objectives of justice values, validation of legal rules, legal concepts, and legal norms (Duile, 2020). As an applied science, legal materials establish standard procedures in implementing perceptive legal rules. Legal science analysis is conducted to find the truth of pragmatism or coherence.

RESULT AND DISCUSSION

Legal Certainty to Attract Investment into Timor-Leste

The idea of legal certainty was first introduced by a legal expert named Gustav Radbruch in his book entitled *Einführung in die Rechtswissenschaften*, in general the legal objectives to be achieved are 3 important points: first legal justice, second legal expediency, and the last is legal certainty (Nikonenko dkk., 2021). All business actors, including investors, are more focused on legal certainty, because a country carries out legal certainty well by everyone, both the government and all citizens, the sense of security for foreign investment will be very happy to invest in Timor Leste.

The principle of legal certainty is actually interpreted as a condition where everything is in accordance with the purpose of the law that has been carried out concretely (Wojnarowski & Williams, 2020). The principle of legal certainty is a form of protection against arbitrary measures in certain circumstances. This statement is in accordance with Van Apeldoorn's statement that legal

certainty has two aspects that can be determined by concrete law. This means that those seeking legal certainty want to know what is the problem affecting legal certainty in the country of Timor Leste.

Legal certainty becomes a feature that cannot be separated from the law itself, especially for unwritten legal norms, laws whose categories do not meet legal certainty must lose meaning in the application of a rule in Timor Leste (H. Wang dkk., 2024). So, these norms are no longer guidelines and guidelines for the government and society in carrying out legal certainty. Legal certainty is closely related to legal determination. There is a regularity in which people live with certainty in doing business and investing wherever they like.

Legal certainty in Timor Leste still does not provide certainty for foreign investors and domestic investors, judging from the aspect of economic activity rotation in the city of Dili only runs from morning to 8.30 pm above 9 pm the wheels of the economy are not running. Problems like this are certainly a challenge for Timor Leste to attract foreign investors to invest in countries where legal certainty is not conducive (Butzbach dkk., 2020). This should be a serious concern of the Timorese government to create security in investing. East Timorese people still lack respect for the law, often vigilante in resolving business disputes, and also sometimes impartial law enforcement for foreigners investing in Timor-Leste.

Law No. 14/2011 on personal investment in Timor Leste from article 1 to article 38 has been very accommodating to the interests and rights of investors. However, in the application of the law sometimes inconsistent and even violates existing rules for example foreign investors who want to invest in Timor Leste must have an authorized capital of 1 billion rupiah the size of the US dollar exchange rate, However, the implementation is not in accordance with the capital specified in the Investment Law (Reigstad dkk., 2022). For example, many Chinese citizens who dominate the economy of Timor Leste, sometimes many come just to open the basic capital not up to \$ 10,000, of course, problems like this, show that legal certainty is not carried out properly. Problems like this, the government and the agency that oversees investment permits in Timor-Leste must take a scarce of concrete things to be able to reorganize foreigners who invest in Timor-Leste.

Political Stability is An Important Factor in Foreign Investment, to Increase Economic Growth in Timor Leste

Political and economic stability is key to investment sustainability. Because no matter how attractive an investment is to increase the economy, without this stability investors will go out and look for safer and more promising investment places. Timor-Leste's political instability was from 2017 to 2019 because the Fretilin party won the election (Nakouwo dkk., 2023). However, the lack of a majority controlling parliament influencing the report of the country's financial program was rejected in accordance with Timor-Leste's constitution automatically the government no longer had legitimacy, so the president was given 90 terms by the constitution to prepare for re-election. This certainly affects political and economic stability.

Data from world global finance in 2023 Timor Leste is ranked 31st with Gross Domestic (GDP) and Purchasing Power parity (PPP) figures of 3,637 categories as the poorest country in the world. Data taken from September 30, 2023, Timor-Leste's economic situation in general is still weak because the political situation in the country is still unstable, and the economic development carried out is still overlapping undirected and systematic (Y. Wang dkk., 2022), and does not specify priority sectors, on the contrary, state finances are squandered on unproductive matters, such as the procurement of official cars for parliamentarians, General Director up to the Minister, even though the condition of the existing service model is still feasible for the next 5 years.

Investment is very vital because its existence can sustain sustainable development, and create added value, encourage economic justice and even, help create economic democracy. Therefore, Timor Leste must prepare several elements such as regulatory clarity, land availability, and infrastructure readiness, coordination between institutions that are related to business licenses (Muth, 2023). And prepare human resources (HR). The existence of investment is the backbone of the economy because it not only creates jobs and produces goods and services, but helps create added value for Timor Leste's economy.

Settlement of Investment Business Disputes in Timor-Leste Facing The Asean Economic Community (AEC)

Rapid economic growth will certainly give birth to various forms of business cooperation. Given the increasing business activities, it is impossible to avoid disputes between the parties involved (Novignon dkk., 2021). Disputes arise for various reasons from affecting problems mainly due to conflicts of interest between the parties, because the issue of resolving business disputes in Timor Leste is categorized as one of the elements of legal certainty to attract investors into Timor Leste. There are various ways The three ways of resolution can be used so that disputes can be resolved as soon as possible. i.e. mediation, negotiation, and arbitration.

Business disputes are conflicts or conflicts of interest in the field of business, investment or investment. According to the opinion of Komar Kantaatmadja in his book entitled some problems in the application of ADR DI Indonesia in the spec and implementation of arbitration in Indonesia . Dispute is a condition where the parties to the business effort have a problem, and look for a quick alternative in resolving business disputes through non-litigation not through court (Sharma & Gupta, 2020). entitled Anthropology of law. Disputes can also mean no agreement between the parties because the rights of the other party are disturbed or violated.

The way of resolving business disputes is divided into two types, namely from the point of view of decision makers, and from the point of process. From the point of view of the decision maker it is divided into 3 parts, 1. Adjudicative, 2. Consensual or compromised, and to 3 Quasi-adjudicative (Buonomo dkk., 2022). While viewed from the point of view the process is divided into two kinds. Namely litigation and non-litigation, Litigation is a dispute resolution mechanism through court channels using a formal legal approach. Meanwhile, settlement through non-litigation is a dispute resolution mechanism outside the court channel and does not use a formal legal approach.

In the era of the ASEAN Economic Community (AEC). the parties involved in business disputes choose alternative dispute resolution outside the court, namely arbitration rather than a general court. First, the parties to the dispute are guaranteed confidentiality. Second, it can avoid delays caused by convoluted procedures and long-winded administrative problems (Zhai dkk., 2021). All three parties may select arbitrators who the parties believe have sufficient knowledge, experience and background on the disputed matter, are honest and fair. Fourth, the parties may determine the choice of law to resolve the issue, as well as the process and venue of the arbitration organizer. The five arbitral awards are binding awards on the party, and the procedure is simple, and can be immediately enforced.

Potential Investment Sector in Timor-Leste

Timor Leste has 3 areas that become priority sectors to attract investors to invest in Timor Leste. First investment in Oil and Gas, Second investment in Tourism, Third investment in Agriculture. Investment in oil and gas is one of the prime investments for the country of Timor Leste, there are three potential sources of the Timor Strait, first the source of parrot eagles, the second source of Bayu udan and the largest source, namely Greater Sunrise (Mungila Hillemane,

2020) . Until now, there has been no final agreement with the Australian government to spore sources at Geater Sunrise until now it has not been realized. From data obtained from NGO Lao Hamutuk Natural gas in Gerater Sunrise is about 5 trillion cubic feet of natural gas and there are also 200 million barrels of crude oil.

Investment in oil and natural gas requires a very large budget, therefore the government must be careful in making contracts with foreign companies that are interested in managing oil and gas wealth owned by the state of Timor Leste, must maintain the sovereignty of the state of Timor Leste, as a host country that has wealth, do not be fooled by the distribution of proceeds that only on paper Timor Leste gets a larger presentation (M. A. Khan dkk., 2022), but must also look at the benefits of other aspects, for example if the refining center is on the mainland of Timor Leste automatically income will increase, such as taxes, opening jobs, increasing in the hospitality sector will grow automatically and state income will increase.

Investment in tourism, Timor Leste has a very beautiful natural panorama to attract foreign tourists to visit Timor Leste. So far, the government has not paid attention to the tourism sector even though many countries in the world are more invested in tourism to increase state income, places in Timor Leste that are potential for foreign tourists, such as Christ Rei, White Sand, Beach on Atauro island, Marobo hot spring and many other interesting places (International Islamic Academy of Uzbekistan (IIAU) dkk., 2021)., all of this needs an integrated government policy in the management of tourist attractions in Timor Leste.

Investment in agriculture, until now the government has stopped and has shown no progress. Even though Timor Leste has been independent for more than 2 decades, the government has never invested state finances into this priority sector, although there are but not maximized (Zhu & Luo, 2021). Because the potential lands that currently exist become idle and unproductive land, compared to when Timor Leste was still part of the Republic of Indonesia, rice produced from farmers in East Timor could meet the needs of the East Timorese people at that time. However, currently, Timor Leste is an importing country of rice from Vietnam. And other Southeast Asian countries. Affected by government politics that do not identify the priority sectors in investing.

CONCLUSION

Legal certainty is a determining factor to attract investors into Timor Leste in order to increase economic growth and create jobs, especially the application of the law must be consistent with Law No.14 of 2011 concerning Foreign Investment in Timor Leste. Therefore, every policy of the government in the field of investment must pay attention to priority investment, namely investment in oil and natural gas, investment in agriculture, investment, in tourism. Because these 3 fields are very potential and also as excellent income for Timor Leste if the government is serious about creating legal certainty and directing foreign investors to invest capital in these 3 sectors.

The problem of resolving business disputes in Timor Leste, in the era of the ASEAN Economic Community will certainly face conflicts in the fields of business and investment. In the objectives of the law there are three, namely justice, legal expediency and certainty, for investors they prioritize legal certainty rather than justice or expediency, therefore the Timorese government is expected to establish a national arbitration body to handle business disputes that will occur in the era of the ASEAN economic community with the aim of attracting investors to invest in Timor Leste.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

Author 3: Data curation; Investigation.

Author 4: Formal analysis; Methodology; Writing - original draft.

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