

# National Investment Policy For The Implementation Of Asean Comprehensive Investment Agreement (ACIA)

Rubiyanto<sup>1\*</sup>, Sri Purwaningsih<sup>2</sup>, Sri Retno Widyorini<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, University of 17 August 1945 Semarang, Indonesia

\* Corresponding author:

Email: [rubiyanto.151161@gmail.com](mailto:rubiyanto.151161@gmail.com)

---

## **Abstract.**

*The 2009 ASEAN Comprehensive Investment Agreement (ACIA) itself is one of the elements in supporting the establishment of the ASEAN Economic Community in 2015. This ACIA applies to investments that have existed on the effective date of this Agreement and investments made after the entry into force of this Agreement. The implementation of the ASEAN Comprehensive Investment Agreement (ACIA) provisions requires that all ASEAN member countries ratify this instrument. Indonesia ratified ACIA through Presidential Regulation of the Republic of Indonesia Number 49 of 2011 concerning Ratification of the ASEAN Comprehensive Investment Agreement, so it must commit to wide open the door to liberalization in the investment sector based on the ASEAN Comprehensive Investment Agreement. The approach method used in this research is a normative juridical approach. The approach used in this research is a juridical analysis. The juridical analysis approach method is intended to study the meaning and purpose of various legal rules and regulations. The results of this study show that the ASEAN Comprehensive Investment Agreement is one of the important pillars in the effort to realize the ASEAN Economic Community, which aims to increase investment activities among ASEAN member countries and make the ASEAN region competitive so that it becomes one of the destinations for investors in the world. National investment policy in the context of implementing the ASEAN Comprehensive Investment Agreement is carried out by issuing Presidential Regulation of the Republic of Indonesia Number 49 of 2011 concerning Ratification of the ASEAN Comprehensive Investment Agreement.*

**Keywords:** Policy, investment, implementation, ASEAN Comprehensive Investment Agreement (ACIA)

---

## **1. INTRODUCTION**

Investment is one of the main capitals for a country under a government to build and develop the national economic, social and cultural life of the country concerned to realize its national ideals. Investment can be obtained through policies that encourage an increase in domestic investment and foreign investment, which are aimed at converting economic potential into real economic strength, to accelerate national economic development while at the same time encouraging the realization of economic development goals.

Foreign investment is an alternative to meet development capital needs, however, three conditions must be met to be interested in investing in Indonesia, namely:

1. Economic opportunity

To attract foreign investors to invest in Indonesia, it can be done if Indonesia has potential economic opportunities. This can be done by providing adequate sources of raw materials, increasing people's purchasing power for manufactured goods, and providing labor at an affordable cost.

2. Political stability

Political stability is the second requirement so as not to disturb the foreign investment climate. The state of the country can maintain political stability despite the shocks, but only temporarily.

3. Legal certainty

Legal certainty is the third requirement for investors to be interested or interested in entering a country. Countries without legal certainty will hinder the entry of investment.

To provide legal certainty for the entry of foreign investment into the country, Indonesia issued a regulation in the form of Law Number 25 of 2007 concerning State Investment of the Republic of Indonesia. Regulation This is formulated as a response to changes in the global economy. Taking into account Indonesia's participation in various international collaborations, it is necessary to create a conducive, encouraging, and investment environment that can provide legal certainty. certainty, accuracy, and efficiency. At the same time considering the relevance of the national economy.

Indonesia in the regional scope participates as a member of ASEAN so that every decision made by the ASEAN Summit in its various forms must be followed by each member, including in the economic field. ASEAN countries in the economic field have the vision to realize the ASEAN Economic Community (AEC) by 2015 so that the ASEAN region can become a competitive, prosperous, and stable economy. Through the MEA, it was agreed that there would be free-market liberalization within ASEAN in various fields including trade and investment.

Due to the positive synergy between regional integration and direct investment that can increase investment, investment is one of the open sectors of the ASEAN Economic Community, which aspires to integrate investment flows in ASEAN member countries [1]. On February 26, 2009, ASEAN member countries signed the ASEAN Comprehensive Investment Agreement (ACIA) in Cha-am, Thailand, to liberalize the investment or investment sector [2].

ASEAN Comprehensive Investment Agreement or ACIA is a combination of efforts to apply liberal principles in the investment sector in the ASEAN region and efforts to protect investment activities in the ASEAN region. According to Sonaraja, ACIA has a vision and mission to create a balance between investment protection and investment protection regulations under the control of national interests [3]. The 2009 ASEAN Comprehensive Investment Agreement (ACIA) includes 49 articles that aim to build a free and open investment system in ASEAN [4].

Indonesia has had an investment law since 2007. Like it or not, you have to follow the developments of the ASEAN region. Implementation of the ACIA

provisions requires the ratification of all ASEAN member states [5]. Indonesia approved the ACIA on August 8, 2011, through Presidential Regulation No. 49 of 2011 concerning the ASEAN Comprehensive Investment Agreement of the Republic of Indonesia. Therefore, Indonesia must be committed to opening the door to liberalization in the ACIA-based investment sector.

This research focuses on Indonesia's commitment as an ASEAN member in realizing a comprehensive investment for ASEAN member countries in the territory of the Unitary State of the Republic of Indonesia and its impact on long-term domestic business continuity

## II. METHODS

The approach used in this research is normative juridical, namely an approach that prioritizes secondary data or library data as research sources in the form of primary legal materials, secondary legal materials, and tertiary legal materials related to legal principles and legal harmonization.

## III. RESULT AND DISCUSSION

### 1. Development of ASEAN Investment Liberalization Through ACIA (ASEAN Comprehensive Investment Agreement)

Since the beginning of the liberalization of ASEAN in 2007, through the 13th ASEAN Summit the Signing of the "ASEAN Charter and Blueprint of the ASEAN Economic Community" which took place in Singapore from 19 to 22 November 2007, resulted in two important agendas[6].

At the XIV ASEAN Summit meeting on 27 February 2009 in Cha-am, Thailand, two agreements were born which became the momentum for the implementation of ASEAN market liberalization, namely:

a. ASEAN Trade in Goods Agreement (ATIGA)

ASEAN Trade in Goods Agreement (ATIGA) is the final draft of an agreement on the liberalization and facilitation of trade in goods (Trade in Goods) in ASEAN. The ASEAN Trade in Goods Agreement (ATIGA) is a unified whole and is in line with the blueprint of the ASEAN Economic Community (AEC), with one of its elements being the free flow of goods, forming a single market and regional production trade agreement.

b. ASEAN Comprehensive Investment Agreement (ACIA)

The ASEAN Comprehensive Investment Agreement (ACIA) is a revision and a combination of 2 (two) investment agreements that have been previously reached by ASEAN, namely the ASEAN Investment Area Framework Agreement (AIA Agreement) 1998 and the 1998 ASEAN Investment Framework Agreement. Regional Agreement or AIA Promotion and Promotion Agreement The 1987 ASEAN Investment Protection Agreement were called the ASEAN Investment Guarantee Agreement (ASEAN IGA).

In addition to the ASEAN Trade in Goods Agreement (ATIGA), the ASEAN Comprehensive Investment Agreement (ACIA) is one of the important pillars for the realization of the ASEAN Economic Community (AEC). The overall objective of the ASEAN Comprehensive Investment Agreement (ACIA) is to increase investment activities among ASEAN member countries, make the ASEAN region competitive, and make it a destination for investors in the world [7].

ASEAN member countries are expected to create a "free, convenient, transparent, and competitive" investment environment through the *ASEAN Comprehensive Investment Agreement (ACIA)*, promoting technology and sharing related to new technologies generated by the industrial sector [8]. The industry sector makes a significant contribution. Implementation Public Economy ASEAN 2015, presents its challenges for Indonesia either external or internal [9].

The "ASEAN Comprehensive Investment Agreement" (ACIA) also aims to "gradually liberalize investment rules or arrangements within the framework of the ASEAN Economic Community, ASEAN member states have adopted the following measures to achieve investment in a free and open investment environment[10]:

- a. Except for a few exceptions, provide non-discriminatory treatment to ASEAN investors, including national treatment and most-favored-nation treatment; minimize and eliminate such exceptions when possible;
- b. Reduce and, where possible, remove restrictions on investment access to priority integrated sectors covering goods; And
- c. Reduce and where possible eliminate restrictive investment measures and other barriers, including performance requirements.

According to the Directorate General of Cooperation of the Ministry of Foreign Affairs, steps will be taken to expand non-discrimination, including national treatment and the most favorable country treatment for ASEAN investors, reducing and if possible eliminating investment barriers in priority integration sectors, including commodities. and; Reduce and where possible remove investment restrictions and other barriers, including investment achievement requirements [11].

## **2. National Investment Policy for the Implementation of the ASEAN Comprehensive Investment Agreement (ACIA)**

Long before the signing of the ASEAN Comprehensive Investment Agreement (ACIA) and ratification by ASEAN member countries including Indonesia, the policy of attracting foreign investment or foreign investment had become Indonesia's concern to strengthen national development. At the beginning of the New Order government, the Government had issued Law no. 1 of 1967 concerning Foreign Investment. The birth of Law No. 1 of 1967 concerning Foreign Investment shows that the government is aware of the importance of the role of foreign investment in accelerating national development, especially in the economic sector, considering that it is impossible to fulfill a large enough budget requirement from within the country itself.

The policy of attracting foreign investment to enter the country requires special strategies or tips that can convince investors to be interested in investing in Indonesia. In subsequent developments, based on the dynamic conditions of the global economy that lead to the concepts and principles of globalization and market liberalization, the government considers it necessary to make adjustments to foreign investment policies. Policy adjustments are made mainly because of the existence of binding international agreements, especially for countries that have signed it, are obliged to ratify and implement them in their respective countries, including Indonesia.

One of the competitiveness for the entry of investment into a country is the basic macroeconomic conditions such as economic growth. Economic growth is an indication of the ability to return capital to foreign investors. Economic growth is known through the gross domestic product indicator. The high and low per capita income of the state can affect people's incomes, while the high and low incomes of the people will affect the amount of demand for goods and services. The high demand for goods and services can provide benefits for the company which will eventually attract foreign investors to invest in the country where the company concerned is located. According to Erni Panca Kurniasih, the entry of foreign investors can directly stimulate the country's economic growth for the following reasons [12]:

- a. Transfer technology is improving;
- b. The productivity of domestic companies becomes more optimal;
- c. The need for financial capital becomes higher;
- d. Can create job opportunities;
- e. In the end, it can increase economic growth.

The influx of foreign investment can also be affected by the political stability of a country. Political instability can affect the loss of investment opportunities, thereby hampering economic growth. Political instability caused by changes in government, laws, and regulations can affect the decision-making of foreign investors.

As previously mentioned, the Law of the Republic of Indonesia No. 25 of 2007 concerning Investment regulates foreign investment policies. Investment Law of the Republic of Indonesia No. February 25, 2007, was born 2 (two) years before the signing of the *ASEAN Comprehensive Investment Agreement (ACIA)*.

The Law of the Republic of Indonesia Number 25 concerning Investment in 2007 provided many conveniences for the entry of domestic and foreign investors which led to the liberalization of investment. Investment Law Number 25 of 2007 of the Republic of Indonesia provides many conveniences for the entry of domestic and foreign investors, thereby realizing investment liberalization. The Law of the Republic of Indonesia Number 25 of 2007 concerning Investment not only uses various incentives to attract investors who want to invest in Indonesia but is also expected to prevent investors from being persuaded by other countries to invest there. The

investment attractiveness of a country includes not only pro-investor policies but also the movement of incentive plans related to certain investments.

The Government of the Republic of Indonesia on August 8, 2011, issued Presidential Regulation of the Republic of Indonesia Number 49 of 2011 concerning Ratification of the ASEAN Comprehensive Investment Agreement, which means that Indonesia must open the door wide for liberalization in the investment sector based on the ACIA.

The implementation of ACIA directly or indirectly has an impact on Indonesia in policy aspects, both in the legal, economic, social, cultural, political, and other aspects. The ASEAN Comprehensive Investment Agreement (ACIA), in general, has two impacts on the sustainability of domestic and foreign businesses, namely:

**a. Positive impact**

The implementation of the ASEAN Comprehensive Investment Agreement (ACIA), will be followed by government policies to ratify it so that its validity is truly binding on the country concerned so that a domestic policy regarding incoming foreign investment is needed. This policy is comprehensive and detailed with consistent guidance, supervision, and enforcement functions that are oriented towards the national interest.

The ASEAN Comprehensive Investment Agreement (ACIA), can have a good impact on ASEAN member countries including Indonesia, including:

- 1) Creating job opportunities for domestic workers;
- 2) Improving the ability of human resources and certain abilities of Household Work;
- 3) The emergence of entrepreneurship of domestic business actors has an impact on increasing sufficient and decent income;
- 4) Increase the participation of domestic companies in the production of higher quality goods and services;
- 5) Increase state revenue through fiscal/taxation, including income tax or value-added tax for various business activities.

**b. Negative impact**

Implementation of the ASEAN Comprehensive Investment Agreement (ACIA), in addition to having a positive impact on investment destination countries, has the potential to cause negative impacts from the inclusion of this investment liberalization policy. The government's policy that opens the door to investment based on liberalization of ASEAN investment requires regulatory adjustments that often conflict with national interests. Weak institutional regulations and institutional functions can harm the implementation of investment liberalization, among others:

- 1) Investment institutions and permit holders as authority holders do not carry out the functions of supervision, guidance, and joint action;

- 2) Existing policies and regulations comprehensively do not regulate technical matters that facilitate guidance, supervision, and law enforcement;
- 3) The government's obligation to detect what may be embedded in the presence of foreign investment.

In summary, the impact of investment liberalization on a country has both positive and negative impacts. The Indonesian Government's policy in implementing investment liberalization based on the ASEAN Comprehensive Investment Agreement (ACIA), must continue to prioritize national interests. Investment to a certain extent is necessary, but the negative impact of investment needs to be absorbed to protect domestic business actors and the national interest.

Regulations relating to investment liberalization in Indonesia must continue to prioritize national interests, not only serve the internationalization of capital, and do not conflict with the constitution. Currently, the government is providing foreign capital to control product that concerns the livelihoods of many people (people/Indonesian citizens in general). Currently, the prevailing laws and regulations have not protected the rights of the Indonesian people, especially workers who are easily laid off due to changes in capital flight that has closed their companies. detrimental to the interests of the Indonesian nation. Community and country.

#### IV. CONCLUSION

In summary, it can be concluded that the ASEAN Comprehensive Investment Agreement (ACIA) is an important pillar for the realization of the ASEAN Economic Community (AEC) which aims to increase investment activities among ASEAN countries and make the ASEAN region more competitive. Become one of the best places for world investors to invest in ASEAN. In the framework of implementing the ASEAN Comprehensive Investment Agreement (ACIA), national investment policies are implemented through the issuance of Presidential Regulation of the Republic of Indonesia Number 49 of 2011 concerning Ratification of the ASEAN Comprehensive Investment Agreement (ACIA) which requires Indonesia to be based on ACIA to open the door to liberalization in the investment sector.

#### REFERENCES

- [1] D. W. Te Velde and D. Bezemer, "Regional integration and foreign direct investment in developing countries," *Transnational Corporations*, vol. 15, no. 2, 2006.
- [2] Delfianti, "Persetujuan Penanaman Modal Menyeluruh Asean (Acia) Dalam Rangka Liberalisasi Penanaman Modal Pada Masyarakat Ekonomi Asean," *Journal of Bina Mulia Hukum*, vol. 1, no. 2, 2017, doi: 10.23920/jbmh.v1n2.7.
- [3] M. Sornarajah, *The International Law on Foreign Investment*. 2021.
- [4] M. Sornarajah, *Resistance and change in the international law on foreign investment*. 2015.



- [5] “Perjanjian Asean Comprehensive Investment Agreement (Acia) Tahun 2009: Prospek Dan Tantangannya Bagi Indonesia,” *Perjanjian Asean Comprehensive Investment Agreement (Acia) Tahun 2009: Prospek Dan Tantangannya Bagi Indonesia*, vol. 43, no. 4, 2014, doi: 10.14710/mmh.43.4.2014.460-467.
- [6] Delfiyanti, “The Policy Of Asean Comprehensive Investment Agreement (Acia) In The Law Of Indonesia’s Capital Investment On The Asean Economic Community,” in *The International Conference on ASEAN 2019*, 2020.
- [7] Priskila Pratita Penasthika, “The Issues on Personal Status of Investor in the ASEAN Comprehensive Investment Agreement from the Perspective of Private International Law,” *Indonesian Law Journal*, vol. 6, pp. 67–85, 2013.
- [8] Bishwanath Goldar ; Etsuro Ishigami, “Foreign Direct Investment in Asia,” *Economic and Political Weekly*, vol. 34, no. 22, pp. M50–M60, 1999, [Online]. Available: <https://www.jstor.org/stable/4408017>.
- [9] F. N. Hidayah and K. Roisah, “Analisis Dampak Kebijakan Pemerintah Indonesia Terhadap Persaingan Perdagangan Jasa Di Bidang Konstruksi Dalam Rangka Masyarakat Ekonomi Asean,” *LAW REFORM*, vol. 13, no. 1, 2017, doi: 10.14710/lr.v13i1.15950.
- [10] *Roadmap for an ASEAN Community 2009-2015*. Jakarta: ASEAN secretariat, 2011.
- [11] *ASEAN Economic Community Blueprint*. 2018.
- [12] Erni Panca Kurniasih, “Perkembangan Investasi Asing di Negara ASEAN,” *Proceedings of the Annual Academic Seminar on Economics and Development Studies*, 2020.