

## Reconstruction of foreign investment policy in indonesia based on social justice values

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### Abstract

Foreign investment in Indonesia, as a member of the ASEAN (*Association of South East Asia Nations*) still does not show a level of balance, especially in the level of domestic product domination in Indonesia when compared to the value/amount of domestic investment (PMDN), or in words another level of capital dependence from foreign investment activities in Indonesia is still very high and significant. It is becoming the basis of the author in the making work of the scientific is the fundamental problem of how to reconstruct foreign investment policy system in Indonesia, by promoting the theory/concept of distributive justice which is better than procedural justice/formality.

To be able to analyze the subject matter well, the authors in conducting research adheres to the paradigm of constructivism, using sociological juridical legal research. Research data sources consist of primary data sources and secondary data sources, and qualitative descriptive analysis

Results of the research showed that to be able to reconstruct the policy system of foreign investment in Indonesia the Indonesian Government needs to take action in the form of a policy system of foreign investment reconstruction in Indonesia, by putting forward the theory/concept of distributive justice rather than procedural justice/formalities. In the concept of distributive-substantive justice, the portion of the division of non-renewable natural resource business sectors, as well as the share ownership of *Joint venture/enterprise* and the portion of granting tax relief and other fiscal relief policies must also be given to domestic investors, especially those of MSMEs and cooperatives. The Government of Indonesia is still pragmatic and prefers the position of PMA investors as 'special guests' of the national investment forefront, so it is absolutely necessary to get preferential treatment compared to domestic investors. So that the presence of PMA investors at a certain point must be positioned as a complementary party (Complementary) and not the main target of treatment to get policies / facilities over investment facilities that are too excessive.

**Keywords:** reconstruction, policies, foreign investment, justice

### Introduction

Foreign investment in Indonesia, as a member of the ASEAN (*Association of south east asia nations*) still does not show a level of balance, especially the level of domestic domination of Indonesia when compared to the value/amount of domestic investment (PMDN), or in words another level of capital dependence from foreign investment activities in Indonesia is still very high and significant. Great hope to get the opportunity to try together (In the form of *joint ventures* and *joint enterprises*) with the *European Union (European Union)* with the concept of *mutual benefit*, which needs to be adjusted to global demands, apparently has not yet gotten equitable results, even proven policies still tend to benefit only the perpetrators of FDI activities in Indonesia.

The expectation of the entry of FDI into the territory of the Republic of Indonesia from member countries of the European Union Community through the flow of supply and investment supporting components for joint business activities, which can be in the form of: capital (*Capital*), training of human resources (*skilled man power*), area opportunities marketing (*market opportunities zone*), and most important is in the field of transfer of knowledge and technology (*Transfer of knowledge and technology*) to the territory of Indonesia is indeed proven to have happened, but the benefits (*Benefits share*) expected and targeted by the Government of Indonesia through the Agency

Investment Coordination (BKPM) has not yet been reached. Several work project variables that are urgent to be implemented through cooperation in the activities of PMA in Indonesia, such as: agriculture, plantation, forestry, industrial-manufacturing, real sector, transportation, communication and services including business tourism <sup>[1]</sup>, are proof that foreign interests and majority share ownership still dominated by foreign parties. In practice PMA activities in Indonesia, there are still many imbalances, gaps, and even injustice on issues related to providing operational facilities compared to facilities provided to PMDN as local business actors even against state-owned business actors (SOEs) though.

This is the basis of the author in making this scientific work with the main issue of how to reconstruct the foreign investment policy system in Indonesia, by promoting the theory/concept of justice that is more distinctive that is distributive-substantive justice, compared to the model of procedural/formal justice

### Method of Research

To be able to analyze the subject matter well, the authors in conducting research adheres to the paradigm of constructivism, using sociological juridical legal research.

<sup>1</sup> Sornarajah, 2010, *The International Law on Foreign Investment*, IIIrd Edition, Cambridge University Press, Cambridge, p.74

Research data sources consist of primary data sources and secondary data sources, and qualitative descriptive analysis [2]

## Discussion

From the results of studies by both examining data from the field as well as from the literature on the operation of PMA activities in Indonesia, it is found that there are still some gaps/weaknesses in the form of violations/discrepancies with existing laws and regulations, especially those currently in existence. The most dominant are: *Article 4 Paragraph (2) letters a and c*, which up to the time period of investment in Indonesia for ± 61 (sixty one) years, have not yet been effectively effective towards the level of achievement of Indonesia's economic growth (Macro scale), as well as poverty alleviation of the people of Indonesia (On a micro scale), which until the first quarter of 2019, still amounted to 9.41% of the total population of Indonesia or ± 25.140,000 residents, with open unemployment of 6,500,000 residents. Departing from this rationale, there are some crucial things that need special attention, especially the factors that cause this to happen.

In accordance with the standard of perfection in a process of making laws and regulations, the existence of a legal principle is a must. The principle of law is more *Abstract* which is nothing but the soul and spirit of the power of a form of statutory regulation, while the legal regulations are more *concrete* or real. When the enactment of a concrete legislation is apparently ineffective and far from the goal of achieving justice, then the function of the legal principle is needed to provide a solution so that the function of the rule of law is fair. The noble value of a statutory regulation will be understood from the existence of the principle -as legal principles, which are usually listed in the articles of the said laws and regulations. Contradictions in a statutory regulation caused by the contradiction between one legal principle and several other legal principles will lead to legal disharmony/disharmony.

The Foreign Investment Law No.25 of 2007 contains several principles, one of which is very closely related to the goal of achieving foreign investment activities in Indonesia, namely: "*Fair efficiency*". In the explanation section, it is explained that the meaning of the 'principle of equitable efficiency' is the principle that underlies the implementation of investment by promoting fair efficiency in an effort to create a fair, conducive and competitive business climate [3]. The main keywords of this principle is focused on the understanding that the Government of Indonesia wants to "*Create a fair business climate*".

The implementation of the meaning of realizing a fair business climate when linked in PMA activities together with PMDN, is that the role, position and portion that should be given to investment business actors in Indonesia, namely between local/domestic investors and foreign parties must be fair and balanced. The balance must be translated into several points/criteria for the distribution of business opportunities, namely the balance in obtaining a portion of the business in accordance with the business sectors offered in Presidential Regulation No. 44 of 2016 concerning

business fields that are open, open with requirements, or closed by absolute. However, what happened during the enactment of Presidential Regulation No. 77 of 2007 and its successor, namely Presidential Regulation No.44 of 2016, actually provided greater investment/business opportunities to the PMA in the economic sectors of *non-renewable* natural resources that control the lives of the people a lot, namely between 67% - 95% to PMA investors. It is very clear that the principle of fairness that already looks very idealistic, turns out to be inadequate/inaccurate in its implementation regulations. There is a big gap between the basic rules (PM Law No.25 of 2007) and the implementing regulations (President regulation No.44 of 2016). Required steps and serious efforts by the Government of Indonesia in terms of solving the problem of:

1. The pressure of the International Convention on the National Investment System must be Advised wisely. With the still strong and existing international conventions that pressure the Government of Indonesia in every formulation of national policies in the field of PMA, particularly such as, *First: Letter of Intent* of 1989 between the IMF and the Government of Indonesia in 1989, which

### Points most pressing the Government of Indonesia are

- a. Article IV Section 3.a:" States that the IMF has the right to oversee the monetary policies adopted by members, including overseeing member countries' compliance with IMF rules";
- b. Article VIII Section 5:" States that as a member, Indonesia must always report to the IMF on matters relating to: gold reserves, gold production, gold export-imports, international trade balance (including foreign investment) and other details";
- c. Article V Section 1:" Stating that the IMF is only related to the Central Bank (or similar institutions, but not the government) of member countries".

In addition, the Government of the Republic of Indonesia must add shares that are released to the public from a State-Owned Enterprise (BUMN), at least this must be done for companies engaged in domestic and international telecommunications. PMA thickened large corporate interests, other large country government, and foreign institutions (Foreign corporatocracy), which is dictated sovereignty of Indonesia in the field of economics. Aside from that, the Government of Indonesia was forced to revoke the regulation prohibiting PMA shares in national banks, which had already gone *public*. The points of the Indonesia agreement with the IMF further add to the long list of evidence of the release of the economic and monetary sovereignty of the Republic of Indonesia.

Various forms of political and economic pressures imposed by the European Union on ASEAN including on Indonesia as the *host country* of investment, through pressure in the form of reducing grants, monetary loan assistance through fiscal policies from international financial institutions such as: *International Monetary Funds (IMF)* and *International Finance Cooperation (IFC)* as a subsidiary of the *World Bank*, where the European Union is also domiciled as shareholders, increasingly makes Indonesia influenced/pressured in policy making, especially in terms of formulating tolerance limits for PMA shareholding in Indonesian activities. especially in the types and sectors of

<sup>2</sup> Bertalanffy, Ludwig Von, 1971, *General System Theory, Foundation Development Application*, Penguin Books, Middlesex.

<sup>3</sup> Hadi Susastro, 2004, *Kebijakan Persaingan, Daya Saing, Liberalisasi, Globalisasi, Regionalisasi dan Semua Itu*, Jakarta, CSIS Working Paper Series;

business that originate from *non-renewable* raw materials/natural resources or *long-term renewable*, which ultimately harm the PMDN and even SOEs who also equally need natural resources in carrying out business activities that are similar to those of activities PMA production but. Debates and differences of opinion regarding the existence of PMA activities in Indonesia have become a prolonged polemic, especially when the *host country* as the legislator tries to express the positive aspects and aspects of PMA activities in Indonesia. While on the other hand, the victims or subjects receiving negative effects from PMA activities felt not fully agreed (*Not-welcomed*) to the arrival of the foreign investors.

The Pancasila economic system is believed to play a role as the cornerstone of the economic reform paradigm, but so far every Indonesian national economic policy that is implemented only bases on aspects of national economic growth / numbers but still ignores the principle of the value of social welfare for all Indonesians. It is necessary to anticipate immediately through strategic steps in the economic field that are urgent to be taken immediately, namely in aspects / fields: (1). Strengthening national food security, (2). National economic rehabilitation and recovery program<sup>[4]</sup>.

Supervision of PMA practices operating in the Republic of Indonesia accompanied by a spirit of preventive protection for PMA shareholders from local Indonesian citizens, as well as protection for PMDNs who are similarly carrying out business activities with the PMA, is an absolute must for immediate improvement. and restructured. This is felt to be very urgent, bearing in mind that PMDN as biological children of Indonesian-owned businesses must first be protected and prioritized in terms of obtaining natural resources as well as human resources, namely the perpetrators of the production process, so as to be able to get an *output* product out economic value, economical and quality. The practices of issuing laws and regulations which are more favorable and favoring foreign investors should be reconstructed to become more pro-people investment policies and regulations in the context of achieving the social welfare of domestic-local business people (PMDN) towards Indonesia as the welfare state (*Welfare state*). Provision of facilities and incentives that are too excessive for PMA as a foreign investor, without any control from the local shareholders (if the PMA is a joint venture/joint venture company), it will further alienate the concept of Indonesia as an independent and sovereign country in the economic and political fields internationally. The existence of political and economic pressure from the governments of these foreign investor countries through international financial donors which turned out to be recognized is capable of destabilizing the national political economy system, which can be in the form of actions/actions to reduce grants, subsidies, or loans, even international assistance to the Government of Indonesia as a *host country investee*, it should be immediately addressed and anticipated through methods and systems of economic resilience and national economic democracy, namely by changing the paradigm of dependency on national development financing sources, which were originally derived from aid or loans from international financial institutions/countries became

the paradigm of empowering the strength of national economic income, through increasing profits/dividends from hundreds of SOEs and their subsidiaries. So that national development funding sources no longer depend on international investors/foreign countries anymore.

The Government of the Republic of Indonesia as the executive body has full authority to regulate the activities and operations of PMA in Indonesia, through means of establishing and at the same time implementing regulations at the level / level below the law, so that the Government of Indonesia is determined and courage in determining the type or types of investment models that are allowed to operate in the Republic of Indonesia, both investments that are direct (*Foreign direct investment*) or abbreviated "FDI", or investments that are indirect (*Portfolio Investment*) or abbreviated "PI". the provisions on the submission of these foreign capital companies to investment country regulations are regulated through the regulation "The Draft Code of Conduct of Transnational Corporation" which states that: "The state has the right to regulate the entry and establishment of transnational corporations including the role of the corporation. including determining the role that such a corporation may play in economic and social development and prohibiting or limiting the extent of their presence in specific sectors"<sup>[5]</sup>

Second, the *Washington Consensus* in 1989, initiated by the United States through the process of 'borrowing hands' of the IMF and the *World Bank*, to describe ten economic policies which according to him need to be a standard of reform for developing countries (including Indonesia, as a member of the IMF and the *World Bank*) which was recently hit by an economic crisis<sup>[6]</sup> This consensus recommends:

1. Discipline of the Government Budget
2. Directing government spending from subsidies to public sector spending, especially the education, infrastructure and health sectors, as a support for growth and service for the middle and lower class people
3. Tax reform by expanding the tax collection base
4. The interest rate is determined by the market and must be kept positive in real terms; (5). Competitive exchange rates
5. Market liberalization by removing quantitative restrictions
6. Applying the same treatment between foreign investment and domestic investment as an incentive to attract foreign direct investment
7. BUMN privatization
8. Deregulation to remove barriers for new economic actors and encourage markets to be more competitive
9. Legal security for ownership rights.

From the participation / submission of the Government of the Republic of Indonesia to these two international conventions, all of which are the concepts of two major international financial institutions, namely the IMF and the

<sup>5</sup>United Nations Country Team, 1998, *Proposed Text of The Draft Code of Conduct on Transnational Corporation*, E/1998/39/Add.I, p.39.

<sup>6</sup> John H Schmid, 1976, *Arbitration under the Auspices of the International Centre for the Settlement of Investment Disputes (ICSID): Implications of The Decision on Jurisdiction Alcoa Minerals of Jamaica Vs. Jamaica Government*, 17 *Harvard International L.J.*;

<sup>4</sup> Kaelan, 2003, *Pendidikan Pancasila*, Penerbit Paradigma, Yogyakarta, p.258.

*World Bank*, so that the economic sovereignty of the Republic of Indonesia becomes hostage, shackled by foreign international interests, it is very impossible if we are asked to recognize that Indonesia's political economic policy is pro-small people of the UMKM-Cooperative, moreover we must recognize that the Government of Indonesia has worked towards achieving social justice goals. This is still at the level of achieving formal/procedural justice, while at the level of substantive/material justice the value is still far from that expectation. A "*Distributed*" justice system is needed<sup>[7]</sup>, so that the design of PMA policy must be made in such a way as to be able to produce equitably distributed and well-managed economic justice, which provides/allows significant capital and natural resource ownership facilities for all Indonesian people. So that there is a need for a constitution and regulations/policies that are fair and ensure equality in carrying out economic activities for all citizens. With the majority portion of shares between 67% to 95% in the energy, mining, petroleum-gas, fisheries, electricity, mineral, and telecommunications and financial services sectors to the PMA, at least the ESDM sector policy has occurred at the bottom of it, the SDA that controls the livelihoods of many people and belongs to the type of *non-renewable* SDA, so it is evident that the concept of justice offered by the Government of Indonesia, especially in the last decade, is still at the level of procedural/formal justice values and has not yet reached the level of value of substantive/distributive justice. It takes a strong courage from executives of the Government of the Republic of Indonesia to immediately dare to get out of pressure, shackles and the confinement of international financial institutions, such as the IMF, *World Bank*, and WTO to return to the independence of Indonesia's economic sovereignty by starting to think of alternatives to search for other more world-class financial institutions pro-populist economy, which is not controlled by these pro-investor foreign institutions which is actually just an extension of the economic power of pro-capitalist-liberalist western countries, which is very far from the values and concepts of democratic economic democracy, which is a genuine characteristic of the Indonesian economy since the archipelago era.

The procurement of raw materials as raw materials for the production process obtained from natural resources (SDA) of Indonesian biodiversity which includes *long-term renewable* criteria is unbalanced when compared to the acquisition of natural resources for PMDN, which is none other than companies owned by Indonesian citizens as host (*Host country*) the implementation of these PMA activities. So that this is felt as a result has reduced and adversely affected the performance of PMDN and SOEs in Indonesia. Although in the beginning, it was planned that even operational relations in the field of FDI had been achieved between ASEAN member countries and the European Union (EU) in September 2001, through communication with the theme " *A Strategic Framework For Enhance Partnership*" which is even more so in the momentum that the EU has identify the ASEAN region as a key partner community (*key partners community*), especially in the economic, political as a sector and the priority region in the

<sup>7</sup> John Rawls, 2006, *Teori Keadilan Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Negara*, (Real Title: A Theory of Justice), Indonesian translated by Uzair Fauzan and Heru Prasetyo, Pustaka Pelajar, Yogyakarta, p.502.

Asian continent in general<sup>[8]</sup>. Even the agreement/understanding can finally be actualized through collaborative activities with the theme " *A New Partnerships With South East Asia Nations*" with the real form of cooperation that is given an identity under the name " *The Trans-Regional EU-ASEAN Trade Initiative*", or better known as the abbreviation "TREATY". The focus of this collaborative study on TREATY is focused on priority areas: sanitation, agro-food industry, fishery products, product quality standards, product protection techniques to be traded, the forestry industry, and products made from wood from forestry products. The provision of trade facilities and investment cooperation has been directed as a crucial issue that must be found to solve solutions to problems between the EU and ASEAN, so that the position *of the country* and *host country* investors is no more beneficial to the investor countries than the host<sup>[9]</sup>.

## 2. Urgency and the Need for the Principle of Justice in the Formulation of Foreign Investment Policies.

In accordance with the standard of perfection in a process of making laws and regulations, the existence of a legal principle is a requirement or a requirement. The principle of law is more *abstract* which is nothing but the soul and spirit of the power of a form of statutory regulation, while the legal regulations are more *concrete* or real. When the enactment of a concrete law is apparently ineffective and far from the goal of achieving justice, then the function of the legal principle is needed to provide a solution so that the function of the rule of law is fair.

The noble value of a statutory regulation will be understood from the existence of legal principles, which are usually listed in the articles of the law. Contradictions in a statutory regulation caused by the contradiction between one legal principle and several other legal principles will lead to legal disharmony/disharmony.

Foreign Investment Law No. 25/2007 contains several principles, which have one principle that is very closely related to the goal of achieving foreign investment activities in Indonesia, namely: "*equitable efficiency*" (Law No. 25/2007 Chapter II, Article 3 letter f). In the explanation section, it is explained that the meaning of the 'principle of equitable efficiency' is the principle that underlies the implementation of investment by promoting fair efficiency in an effort to create a fair, conducive and competitive business climate. The main key words of this principle if the concise author is focused on the understanding that the Government of the Republic of Indonesia wants to "*create a fair business climate*".

The implementation of the meaning of realizing a fair business climate when linked in PMA activities together with PMDN, is that the role, position and portion that should be given to investment business actors in Indonesia, namely between local/domestic investors and foreign parties must be fair and balanced. The balance must be translated into several points/criteria for the distribution of business

<sup>8</sup> Paul Davidson dan Frabca Ciambella, 1995, *Investment in South East Asia, Law and Policy*, Butterworth-Heinemann Asia, Singapore, p.233.

<sup>9</sup> Wolfgang G. Friedmann and George Kalmanof, argued that the concept of a joint venture is considered to be more secure and permanent, so that the parties working together have a balanced position, as the owner of capital / shareholders. See: Wolfgang G. Friedmann And George Kalmanoff (Eds.).1961, *Joint International Business Ventures*. Pp. xi, 558. New York: Columbia University Press, Colombia.

opportunities, namely the balance in obtaining a portion of the business in accordance with the business sectors offered in Presidential Regulation No.44 of 2016 concerning business fields that are open, open with requirements, or closed by absolute. However, what happened during the enactment of Presidential Regulation No. 77 of 2007 and its successor, namely Presidential Regulation No.44 of 2016, actually provided greater investment/business opportunities to the PMA in the economic sectors of *non-renewable* natural resources that control the lives of the people a lot, namely between 67% - 95% to PMA investors. It is very clear that the principle of fairness that already looks very idealistic, turns out to be inadequate/inaccurate in its implementation regulations. There is a big gap between the basic rules (PM Law No.25 of 2007) and the implementing regulations (Perpres RI No.44 of 2016).

Legal protection efforts for domestic and domestic PMDN investors, as well as MSMEs and Cooperatives which for ± 61 years are still a minority shareholder class, against the existence of PMA investor activities that are recognized to be stronger/dominant in terms of capital, high *technology* implementation, and governance management Like the company in accordance with the principles of *Good Corporate Governance (GCG) management*<sup>[10]</sup>, then at least anticipatory efforts that can be taken as *problem solving* to overcome the minority situation, are as follows

1. Forms of foreign and domestic capital investment, may take the form and include: (a). cash / capital cash (b). production tools for the manufacturing business sector (c). new *high technology* invention / innovation (d). land / land of business (e). services;
2. The more dominant factors causing the realization of local investor ownership of PMDN/MSME cooperatives, in *joint venture/joint enterprise* projects are:
  - a. The unavailability of funds is sufficient to purchase shares of the *joint venture*, due to the high level of the JV's share price
  - b. There is reluctance/intentional FDI investors to transfer their shares to local investors PMDN/UKMK Cooperative
  - c. It is still difficult for national local investors to control the majority of foreign JV shares, due to pressure from international financial institutions.

#### **A. Transferring technology, can be done in two ways by PMA to PMDN, through**

- a. The granting of usage rights over intellectual property rights in the form of: licenses, patents and trademarks
- b. Through technical assistance, namely through: employing experts/technocrats from foreign countries, providing training for Indonesian local HR workers both at home and abroad.

D. percentage of share ownership of the company in the *joint venture/joint enterprise* concept between local PMDN investors and PMA investors, which can be ensured that conditions will occur where one party will be the majority shareholder, while on the one party will be a minority shareholder, this will caused the occurrence, position/

position of majority shareholders who would be more dominant in supervising, controlling and managing the *joint enterprise*. In this context a system of protection is required for minority shareholders, based on the provisions stipulated in Law No.40 of 2007, concerning Limited Liability Companies.

Implementation regulations are needed under Law No.40 of 2007, both in the form of a Presidential Regulation/Republic of Indonesia Government Regulation which simplifies and facilitates the process of transfer of shares (reduction of PMA investor shares) in a *joint enterprise* cooperation system, so as to reduce the dominance of FDI. In the context of reconstruction PMA policy based on the value of justice, so if it is related to the written basic rules contained in the provisions of Article 3 Paragraph (1), letter f, of Law No. 25 of 2007, which explains that Investment is conducted based on the principle of Efficiency. This is explained through *memorie van toelichting* from the Act that, the principle of just efficiency is the principle that underlies the implementation of investment by promoting fair efficiency, in an effort to create a fair, conducive and competitive business climate. The key word to this principle is none other than" *Creating a fair business climate*". In this case it is clear that the President of Indonesia and the Indonesian Investment Coordinating Board (BKPM RI) have applied the principle of fair efficiency unfairly, because the percentage distribution of the natural resources exploration business sector, such as: natural oil, natural gas, mining, energy and minerals as well as telecommunications is more inclined to be provided with a percentage portion which is greater to the PMA investors, which is between 67% - 95%. Which means that PMDN investors only have the opportunity to get a share of ownership of the remaining percentage of between 5% - 33% if they want to try to use the *joint venture/ joint enterprises* model.

Ideally, an actualization of the value of justice is if the material of justice is distributed materially with the substance of justice material that is truly felt directly by the community of PMDN business actors in the non-renewable sector. It is not just a formality/procedural that the local-domestic PMDN investment actor has already gotten a portion of the minority, without considering the percentage value of the share ownership balance in the *joint enterprise* cooperation model. In this case the Government of Indonesia still applies unfairly, which is more concerned with compliance with international convention rules rather than applying the provisions of Article 33 and 34 of the 1945 Constitution.

#### **The reconstruction of a fair value-based foreign investment policy will have implications for two aspects, namely**

1. Theoretical Implications: The results of this study will further strengthen and confirm the assumption that, the issuance of various foreign investment policies in the economic region of Indonesia is not only based on the procedural-formal justice analysis model, but must be bold to change frontally to the distributive-substantial justice analysis model, so that the value of justice is able felt directly by the entire community of investors.
2. Practical Implications: The concept of 'distributive-substantive justice' must be included in the texts of articles of Law No. 25 of 2007. Further construction, is

<sup>10</sup> Salim HS dan Budi Sutrisno,2012,*Hukum Investasi di Indonesia*, Rajawali Press, Jakarta, p.382

structurally by forming a business group model of limited liability company legal entities, whose shareholders are BUMDes and/or KUD is incorporated into a limited liability company model. Strength of the unification of BUMDes and Village Unit Cooperatives<sup>[11]</sup> his is in the context of forming a new economic power on the part of domestic investors, in order to synergize/cooperate in the form of a joint enterprise with PMA investors.

### Conclusion

The results of the study indicate that the Government of the Republic of Indonesia needs to take action in the form of reconstructing the foreign investment policy system in Indonesia, by promoting theories/concepts of justice that are more characteristic of distributive-substantive justice, compared to the model of procedural/formality justice. In the concept of distributive-substantive justice, the portion of the distribution of non-renewable natural resource business sectors, as well as the portion of *Joint venture/enterprise* shares as well as the portion of granting tax relief and other fiscal relief policies must also be given to the domestic investors, especially the SME cooperatives. The Government of Indonesia is still paradigmatic and prefers the position of PMA investors as 'special guests' of the national investment locomotive, so it is absolutely necessary to get preferential treatment compared to domestic investors. So that the existence of foreign investors at a certain point must be positioned as a complementary party (complementary) and not the main target of treatment to get policies acilities that are too excessive investment.

In addition to the need for a justice value-based policy reconstruction, the Government of Indonesia also urgently needs to reconstruct Articles in the PM Law No. 25 of 2007, especially those articles that are not in accordance with the general direction and policies of Indonesia's national investment, namely: (1). Article 4 Paragraph (2) letters c, (2). Article 8 Paragraph (3) letters b, (3). Article 12 Paragraph (5), and (4). Article 32 Paragraph (4). These articles are related to: (a). the concept of 'providing protection to investment in the MSME and Cooperative sectors', (b). the concept of restriction / rearrangement of the ease of transfer rights and repatriation of income of PMA investors, (c). the concept of establishing open and closed business sectors, especially the non-renewable natural resource sector, which must be reduced to foreign investors, (d). the concept of selecting arbitration institutions from International arbitration institutions are changed to National Arbitration Institutions (BANI).

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<sup>11</sup> David Firma Setiawan, Toebagus Galang Windi Pratama, Aryan Eka Prastya Nugraha, Ibnu Fatkhu Royana, 2018, Analisis Peran UU No 6 Tahun 2014 di Dalam Mewujudkan Administrasi Desa yang Efektif dan Efisien, Jurnal Dinamika Volume 3 Issue 2 Year 2018