

Kepastian hukum penanaman modal asing dalam hukum penanaman modal di Indonesia : studi banding peraturan penanaman modal di Indonesia dan Thailand = Legal certainty of foreign investment in investment law in Indonesia comparative : study of investment regulation in Indonesia and Thailand

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Abstrak

Penelitian ini membahas tentang kepastian hukum penanaman modal asing dalam hukum penanaman modal di Indonesia yaitu dengan membandingkan peraturan penanaman modal asing di Indonesia dan Thailand, yaitu Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal dan The Investment Promotion Act. B.E. 2560, serta melihat juga kepastian hukum terhadap Penanaman Modal Asing di bidang Pertambangan Mineral dan Batubara menurut Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perbandingan hukum dan pendekatan perundang-undangan, sehingga diketahui bahwa terdapat ketidakjelasan mengenai pengaturan penanaman modal asing di Indonesia, yang menimbulkan tumpang tindih antara peraturan pemerintah pusat dan pemerintah daerah, serta menimbulkan ketidakjelasan birokrasi. Kemudian dalam penanaman modal asing di bidang pertambangan mineral dan batubara, pemerintah seharusnya dapat mengontrol dalam pengelolaannya karena mineral dan batubara berperan penting dalam kemakmuran dan kesejahteraan rakyat. Kemudian terdapat perbedaan dan persamaan antara Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal dan The Investment Promotion Act. B.E. 2560 di Thailand. Persamaannya terdapat pada pemberlakuan undang-undang, adanya lembaga khusus, dan pemberian fasilitas serta insentif dalam kegiatan penanaman modal. Perbedaannya, terdapat pada substansi undang-undang, bentuk badan usaha, koordinasi dan pengawasan serta evaluasi terhadap kegiatan penanaman modal asing. Dengan demikian, diperlukan ketentuan yang ada harus jelas dan detail, dari peraturan tertinggi hingga peraturan pelaksanaannya harus sesuai dan dapat direalisasikan, khususnya ketentuan mengenai perizinan dan koordinasi antara pemerintah pusat dan daerah, serta pengawasan terhadap penegakan hukum juga harus tetap dilaksanakan dan berkelanjutan.

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This research discusses the legal certainty of foreign investment in investment law in Indonesia by comparing the regulations of foreign investment in Indonesia and Thailand, under The Act Number 25 of 2007 on Investment and The Investment Promotion Act. B.E. 2560, and also see legal certainty to Foreign Capital Investment in Mineral and Coal Mining according to The Act Number 4 of 2009 about Mineral and Coal Mining. This research uses normative juridical research method with comparative law approach and statutory approach, there is unclear about foreign investment arrangement in Indonesia, causing overlap between central and local government regulations, and causing bureaucratic uncertainty. Then in foreign investment of mineral and coal mining, the government should be able to control in its management because mineral and coal have an important role in prosperity. There are differences and similarities between The Act Number 25 of 2007 on Investment and The Investment Promotion Act. B.E. 2560 in Thailand. The similarities are in the enactment of the law, the existence of special institutions, and the provision of

facilities and incentives in investment activities. The difference is in the substance of the law, the form of business entity, coordination and supervision and evaluation of foreign investment activities. Therefore, the necessary provisions must be clear and detailed, from the highest regulation to the implementing regulations to be appropriate and realizable, in particular provisions on licensing and coordination between central and local government, and supervision of law enforcement must also be implemented and sustained.