LEGAL CERTAINTY OF INVESTMENT RELATED LICENCING IN PLANTATION SECTOR
(Case Study of PT Simpang Kiri Plantation Indonesia in Aceh Tamiang)

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Abstract - According to Article 4 paragraph (2) point b the Act Number 25 of 2007 on Investment, the government has an obligation to ensure legal certainty for any investor operating in Indonesia to enhance investment climate in this country. This legal certainty needs to be ensured and provided by the government from the beginning until the end of investment process. However, the fact in Aceh Tamiang District shows that legal certainty provided by the government to foreign investor PT Simpang Kiri Plantation Indonesia is not yet in line with the above stipulation. This condition becomes the main issue that will be analyzed in this article. This research aims to analyze legal certainty provided to the investor in plantation sector in Aceh Tamiang District, and to scrutinize hindrance factors faced by PT Simpang Kiri Plantation Indonesia in conducting investment in plantation sector in this District. The method used in this research is an empirical research method. The primary data used in this article was obtained through interviewing respondents and informants. Then, library research to acquire secondary data was done by reading some literatures which are related to this topic that consists of legislations, books, government documents and other scholarly works. This study found that legal certainty provided by the government to PT Simpang Kiri Plantation Indonesia is relatively low. This condition can be understood from a long bureaucracy that must be passed by this company when they need an investment licence to proceed with their investment. In addition, there are also some hindrances faced by this company in conducting its investment in Aceh Tamiang District namely hard to get new license for new investment, and long bureaucracy process from the government to proceed with any activity designed by the company including public health service. It is recommended that the government should provide better legal certainty for investor to enhance investment climate in Aceh Province especially Aceh Tamiang District. Besides, the government is suggested to take legal action to remove any hindrance factors faced by investors to speed up investment growth in this area.

Keywords : Legal Certainty, Investment, Related Licencing, Plantation Sector

INTRODUCTION
The Economy of a country depends on the number of investors in the country. The more investors or entrepreneurs in the country, the stronger its economic growth get. It is because investments have no limitation in the field of economic development and as we have learned that Indonesia has experienced ups and downs of its capital flows on economic sectors.¹

According to the research conducted by the daily news SINDO stated that, a country would become prosperous if it has minimum 2% of its citizen are entrepreneurs or investors, while Indonesian has only 0.24% of its citizens which are entrepreneurs or investors. If

compared with the US which has 11% of its citizens who become entrepreneurs or investors, Indonesia is still left way behind.

Therefore, in order to attract foreign investors, there should be a legal certainty in the country which want to invest, especially in Aceh, because the legal certainty is needed as an effort to get investors. It is characterized by the alignment of regulatory capital investment, both at national and local levels. By contrast, legal products that overlap or contradict each other to be confusing and difficult for investors in running and developing a business. Therefore, improvement of investment sector legislation needs to be done.\(^3\)

Legislation obliges to create legal certainty because it aims to create order in society. Legal certainty is a characteristic that can not be separated from the law, especially for a written legal norms. Law without the value of legal certainty would lose meaning because it can no longer be used as a code of conduct for everyone\(^4\). In the case of Aceh legal certainty has been described explicitly and clearly in Qanun No. 4 of 2013. In national level this legal certainty is obvious by stipulated in the article 3 in conjunction with Article 2 points (a), and Presidential Decree No. 97 of 2014 as well as in the Asean Comprehensive Investment Agreement (ACIA). Legal certainty has a very broad scope when viewed through the eyes of the law, that legal certainty is a matter that can be determined by law in a concrete matters.\(^5\)

Concrete matters meant in this paper is a licensing services that embody the service process fast, easy, inexpensive, transparent, certain, and affordable.\(^6\)

Licensing itself means any form of approval issued by the Government and local governments which have authority in accordance with the provisions of the legislation.\(^7\) It is also, described in Qanun No12 of 2008 that licensing is the process of granting legality to a person or legal entity specified in the consent form.\(^8\) Currently, the licensing services and the bureaucracy in Indonesia is still below Malaysia and Thailand, even very far from Singapore. "New government must be corrected immediately,\(^9\) licensing and bureaucracy must be


\(^3\)RENSTRA 2012-2017 Badan Investasi dan Promosi Aceh page 1, accessed on October 29, 2016


\(^5\)Van Apeldoorn, 1990, Pengantar Ilmu Hukum, Cetakan Kedua puluh empat, Jakarta: Pradnya Paramita, page. 24-25

\(^6\)Presidential Decree No 97 of 2014, Article 2, point (c).

\(^7\)Presidential Decree No 97 of 2014, Article 1 point 5.

\(^8\)Qanun No12 of 2008, article 1 point 18

\(^9\)Speaking of licensing, said an economist from the University of Gadjah Mada (UGM), Sri Adiningsih, in Jakarta, Wednesday (29/10). http://kemenperin.go.id/artikel/10302/Prosedur-Perizinan-dan-Birokrasi-Harus-
completed in one week, while in terms of cost is free because there are many state revenue from other sectors. "At least, licensing can be a week or 15 days finished everything," she said.\(^{10}\)

This indicates that the length of licensing process affects foreign investors of invest in Indonesia in general and particularly in Aceh, and it will affect the decline in economic growth in Indonesia and in Aceh in particular. Furthermore, it will bring great impact ie the loss of job field in Indonesia and particularly in Aceh.

PT Simpang Kiri Plantation Indonesia had experienced a decrease in turnover from 2005 to 2009, so that in 2010 there whose name transfers of shares to raise back drop in turnover in event of PT Simpang Kiri Plantation Indonesia, upon the transfer of shares, PT Simpang Kiri Plantation Indonesia maintains the new licensing for all of the companies could work with legal and easy to build business relationships with other foreign investors.\(^{11}\)

However, when making licensing in Aceh Tamiang Plantations Official, PT Simpang Kiri Plantation Indonesia experienced so long licensing bureaucracy, just imagine to be able to make licensing at Plantation Office Aceh Tamiang is up to one year that was made in 2010 and finished out the licensing in 2011.\(^{12}\)

Not only that, the next bureaucratic slowness happened when the Aceh Plantations Office in assessing the oil palm plantation company of PT Simpang Kiri Plantation Indonesia which was undertake in early 2015 resulted after two years which is in the beginning of 2017, it took a very long periods of time just for the assessment. The reason of that lack is because its assessment is together with other companies, both of the domestic company and Company Foreign capital.\(^{13}\)

With the length of time of the results of assessments issued by Aceh Plantations Official, it has hindered all company activities. The effect then was when the audit team surveyed PT Simpang Kiri Plantation Indonesia in early 2016, PT Simpang Kiri Plantation Indonesia can not show the results of the assessment which was undertake by the Aceh Plantations Official, it causes the PT Simpang Kiri Plantation Indonesia fail to raise the grade of the company from ISPO into RSPO.\(^{14}\)

\(^{10}\) Dibenahi, accessed on 11 December 2016

\(^{11}\) Ibid

\(^{12}\) Ibid

\(^{13}\) Ibid

\(^{14}\) Interview with Chief Public Relations Staff of PT Simpang Kiri Plantation Indonesia, January 16, 2017, at 010.00 AM.

\(^{14}\) Ibid
The next case is the difficulty to have permission to use the building which basically made for the public health service (Puskesmas) that can be utilized for the community around PT Simpang Kiri Plantation Indonesia, it spent over a week to be able to get licenses. The case that happen to PT Simpang Kiri Plantation Indonesia is very regrettable, though has been conveyed in Act No. 25 of 2007, Qanun No. 4 of 2013 simultaneously in the chapter Principles and Objectives, namely in article 3 in conjunction with Article 2 points (a) Legal certainty, Presidential Decree No. 97 Year 2014 in Article 1 paragraph (5) that a licensing services that embody the service process fast, easy, inexpensive, transparent, certain, and affordable, Qanun No. 6 of 2012, in the Article 40 of point 1 of The obligation of Aceh Goverment are (a) Giving protect to the investor of plantation sector, and (b) helping facilitated the result production of comercial by investor. On the point 2, there are some point at (a) Security, (b) The legal certainty, (c) the commercial certainty, and the Asean Comprehensive Investment Agreement (ACIA) article 2 point (a) provide for investment liberalisation, protection, investment promotion and facilitation.

In the case of the PT Simpang Kiri Plantation Indonesia, there is inequality of the laws that have been set. Certainly, according to the provisions a legal term das sein and das sallen that not be real which should be in the social environment, it get its the principle expediency in a social environment. Therefore, it becomes not sync among the act with field facts in the social environment into inequality in the application of the laws are implemented.

RESEARCH METHODOLOGY

The method that will be used in conducting the research is empirical legal research method. Empirical legal research method is a method of legal research that serves to see law in real sense and examines how law works in the environmental community in Aceh Tamiang. Because in this study investigated people in a relationship are living in the community then the empirical legal research methods can be said to be a sociological legal research. It can be said that the study of law drawn from the facts that exist within a society, the legal entity or Government agency. Data obtained from primary and secondary data result either through library research and field research will be processed and anylyzed by using qualitative approach.

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15 Interview with Chief Administrative Staff of PT Simpang Kiri Plantation Indonesia, January 16, 2017, at 11.00 AM.
16 Qanun No. 6 of 2012 on Plantation Sector
17 Ibid
DISCUSSION

A. LEGAL CERTAINTY OF INVESTMENT RELATED LICENCING IN PLANTATION SECTOR

1. The Legal Protection Provided To Foreign Investors In Plantation Sector.

According to Article 1 point (3) of Indonesia is law state. The Article 28 I point (5) “to uphold and to protect the appropriate human rights with law states are democratic, that implemented human rights to guaranted, to regulated, and to formulated in legislation.” and Article 2 point (a) that are giving protection and legal certainty to citizen, and Article 2 in ASEAN Comprehensive Investment Agreement or Presedential Decree No. 49 of 2011 on ratification ASEAN Comprehensive Investment Agreement point (a) said that provide for investment liberalisation, protection, investment promotion and facilitation and Article 18 point (1) Goverment provide facilitation to investor in investing. In the Article 6 said that The goverment give equality before the law to all of investors which by other state are doing investment in Indonesia by the legislation.

In according to Article 14 about investor right in The Act 25 of 2007 on investment any investors get his right (a)Certainty on right, law, and protection; (b)Free information on business fields his doing; (c) Right of services; (d)Various forms of easiness facilities according to provision in legislation. That is very clear that foreign invstors must be protect by their rights.

The essential of legal protection to investor is a protection that guarantee to an investor, that he will be investing with save situation to parties that related by law, the citizens, and other parties. Especially to get to information acceses about market situation, politic and citizen situation, etc. However, legal protection still has general scope for the word means protection, the legal protection here means a legal certainty to the foreign investor is doing investment in Aceh.

Somehow, in practice many laws arising out of events, in which when confronted with the substance of the legal norms that govern it, sometimes not obvious or less perfect that arise which different interpretations which consequently leads to legal uncertainty. While the certainty of the law is the aim, that the law itself existed certainty, for instance laws

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19 Presedential Decree No. 97 of 2014 on the One-door Integrated Services.
20 The Act No 25 of 2007 on Invesment.
decide expiry institutions it, with the passing of time of a person will get the rights or lose the right.

Therefore, that need legal certainty to attract and get foreign investor especially plantation sector in Aceh. However, the investment sector is so important to make the growth economic of Aceh. It is the investment has unlimited to build economic in Aceh. However, it is so significant which insured to executed the legislations by das salen, that are advancing and envolving Aceh economics, it could be Aceh more independent and to helped increasingly the economic in Indonesia.

2. THE HINDRANCE FACTORS FACED BY PT SIMPANG KIRI PLANTATION INDONESIA IN INVESTMENT RELATED LICENCING IN PLANTATION SECTOR IN ACEH TAMBIANG.

We were knew that the licensing and bureaucracy in indonesia still below Malaysia and Thailand, even very far from Singapore.\textsuperscript{22} It are become the weakness to Indonesia and especially Aceh. That things made the forign investor want to not doing investment especially in Aceh. Cause is building Aceh to be advanced province in the economic are many foreign investor are investing in Aceh, so many the benefit are getting by the employment sector, it will give the employment to around community, and Corporate Social Responses are giving by foreign companies to around people, it could increasing education to citizen.

Actually, PT Simpang Kiri Plantation Indonesia faced slowness bureaucracy. According to the information were said in interviewed by them, it were hindranced factors who were experienced, that were slowness on licensing when they were making it. First, PT Simpang Kiri Plantation Indonesia had experienced a decrease in turnover from 2005 to 2009, so that in 2010 there whose name transfers of shares to raise back drop in turnover in event of PT Simpang Kiri Plantation Indonesia, upon the transfer of shares, PT Simpang Kiri Plantation Indonesia maintains the new licensing for all of the companies could work with legal and easy to build business relationships with other foreign investors.\textsuperscript{23}

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\textsuperscript{23} Interview with Chief Public Relations Staff of PT Simpang Kiri Plantation Indonesia, January 16, 2017, at 010.00 AM.
and finished out the licensing in 2011. Essentially they had fulfilled procedure by the article 63 in Regulation Indonesia Investment Coordinating Board No 3 of 2012 on Procedures of Control and Guidance in Investment.24

Second, the next bureaucratic slowness is when the Aceh Plantations Office in assessing the oil palm plantation company of PT Simpang Kiri Plantation Indonesia which was undertake in early 2015 resulted after two years which is in the beginning of 2017, it took a very long periods of time just for the assessment. The reason of that lack is because its assessment is together with other companies, both of the domestic company and Company Foreign capital.25

With the length of time of the results of assessments issued by Aceh Plantations Official, it has hindered all company activities. The effect then was when the audit team surveyed PT Simpang Kiri Plantation Indonesia in early 2016, PT. Simpang Kiri Plantation Indonesia can not show the results of the assessment which was undertake by the Aceh Plantations Official, it causes the PT Simpang Kiri Plantation Indonesia fail to raise the grade of the company from ISPO into RSPO.26

Third, the next case is the difficulty to have permition to use the building which basically made for the public health service (Puskesmas) that can be utilized for the community around PT Simpang Kiri Plantation Indonesia, it spent over a week to be able to get licenses.27 That things are too has experienced in PT. Simpang Kiri Plantation Indonesia when they were making licensing there were felt discrimination by Aceh Tamiang Plantation Official.28

By the case studying, we could be analysis of case on PT Simpang Kiri Plantation Indonesia is very regrettable, though has been conveyed in Act No. 25 of 2007, Qanun No. 4 of 2013 simultaneously in the chapter Principles and Objectives, namely in article 3 in conjunction with Article 2 points (a) Legal certainty, Presidential Decree No. 97 of 2014 in Article 1 paragraph (5) that a licensing services that embody the service process fast, easy, inexpensive, transparent, certain, and affordable, in the article 40 of point 1 of The obligation of Aceh Goverment are In the article 40 of point 1 of The obligation of Aceh

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24 Ibid
25 Ibid
26 Ibid
27 Interview with Chief Administrative Staff of PT Simpang Kiri Plantation Indonesia, January 16, 2017, at 11.00 AM.
28 Interview with Chief Administrative Staff of PT Simpang Kiri Plantation Indonesia, January 16, 2017, at 11.00 AM.
Government are (a) Giving protect to the investor of plantation sector, and, (b) helping facilitated the result production of commerce by investor. On the point 2, there are some point at (a) Security, (b) The legal certainty, (c) the commerce certainty, and the Asean Comprehensive Investment Agreement (ACIA) Article 2 point (a) provide for investment liberalisation, protection, investment promotion and facilitation.

In the case of the PT Simpang Kiri Plantation Indonesia, there is inequality of the laws that have been set. Certainly, According to the provisions is the legal term das sein and das solen not be real that should be in the social environment, it get its the principle of expediency in a social environment. Therefore, it become not sync among the legislations with facts in the social field of environment into inequality in the application of the laws are implemented.

Therefore, that so need to the legal certainty to each company in field fact. With existing of the legal certainty, all of activities investing are doing all of investor will be more and more easier. Because the purposes are attracted foreign investor to do investment in Aceh. However, legal certainty must be working because if the legal certainty is not operating and that is not feeling the foreign investor. It would be making the economic of Aceh could not advanced and developed.

CONCLUSIONS

The legal protection of foreign investor is important that specifically could be grow and develop Aceh economics. It is significant which insured to executed the legislations by das solen. That are advancing and envolving Aceh econmics, it could be Aceh more independent and to could be helped increasingly the economic in Indonesia. By the legislations had clearly about the protection. Although, the specific means existed the legal certainty to foreign investor in Aceh. Therefore, that need legal certainty to attract and get foreign investor especially plantation sector in Aceh. However, the investment sector is important to make the growth economic of Aceh. It is the investment has unlimited to build economic in Aceh.

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29Qanun No. 6 of 2012 on Plantation
30Regulation Indonesia Investment Coordinating Board No 3 of 2012 on Procedures of control and Guidance in investment
31Regulation Indonesia Investment Coordinating Board No 3 of 2012 on Procedures of control and Guidance in investment
By the information of PT Simpang Kiri Plantation Indonesia, they were not felt the legal certainty\(^{32}\) in practice its. However, we knew that the legislation had been regulating about the legal protection and legal certainty. Although in the case of the PT Simpang Kiri Plantation Indonesia, there was inequality of the laws that have been set.\(^{33}\) Certainly, according to the provisions is the legal term *das sein* and *das salen* not be real that should be in the social environment, it get its the principle of expediency in a social environment. Therefore, it becomes not sync among the legislations with facts in the social field of environment into inequality in the application of the laws are implemented.

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