
Legal Issues Regarding Foreign Investment and the Implementation of the Japan-Indonesia Economic Partnership Agreement

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The entry into force of the Japan-Indonesia Economic Partnership Agreement on July 1, 2008, is highly expected to boost Japan's investment in Indonesia due to the fact that it is the most comprehensive bilateral agreement between the two countries. The JIEPA covers most areas of economic cooperation, including: taxation, trade in goods, trade in services, movement of natural persons, government procurement, intellectual property, investment etc. Some potential legal issues are anticipated during the implementation of the JIEPA due to some differences between the JIEPA and the Indonesian legal system. This article focuses on issues related to foreign investment related law, namely: instrument of ratification and its legal implications; review mechanism; legal certainty; continuation of business activities; termination of business activities; protection and guarantee of foreign investment such as minimum standard of treatment; investment risks; and disputes settlement mechanism.

Keywords

JIEPA, Foreign Investment Law, Investment Risks, ICSID, Strategic Investment Action Plan

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1. Background

The signing of the historic Japan-Indonesia Economic Partnership Agreement (“JIEPA”) marks a new era of economic cooperation between the two countries. JIEPA is the most comprehensive bilateral agreement consisting of 15 chapters with 154 articles. It covers most areas of economic cooperation including foreign investment. JIEPA is equipped with Implementation Agreement and a “Strategic Investment Action Plan.”¹

With the ratification by the two countries, JIEPA effectively entered into force on July 1, 2008. Although there is a high expectation that JIEPA would boost Japan’s investment in Indonesia, it is also concerned that there might be some constraints on its implementation due to some differences between the JIEPA and Indonesian laws.

This article explores and analyzes foreign investment laws related to the implementation of the JIEPA. The main topics of this paper are as follows:

- a. Possible legal constraints on the implementation of JIEPA in relations with existing national laws on investment and other relevant laws;
- b. A comparative analysis between existing laws and practice on standards of treatment to investors (both local and foreign), the JIEPA and in relation to international Standard of Treatment;
- c. Investment related dispute settlement mechanism in general and as it relates to Foreign Direct Investment in Indonesia (“FDI”) in Indonesia, both through adjudication and non adjudication process, including its law enforcement mechanism;
- d. Possible commercial and non-commercial risk on FDI in Indonesia; and
- e. Some recommendations for implementing the JIEPA.

2. An Overview of Indonesian Investment Laws and JIEPA’s Provisions and Implementing Agreement Related to Foreign Investment

A. The Existing Conditions of Investment Laws and Policies in Indonesia

Despite that the Indonesian Government has been working very hard to improve the investment climate through a series of policies and regulatory reforms,² little progress

¹ See Implementing Agreement between the Government of the Republic of Indonesia and the Government of Japan pursuant to the Article 13 of the Agreement between Republic of Indonesia and Japan the for an Economic Partnership, Japan-Indonesia, Aug. 20, 2007, available at [http://ditjenkpi.depdag.go.id/Website_tr/Preferential%20Tariff/IJ-EPA/Implementing%20Agreement%20\(ID\).pdf](http://ditjenkpi.depdag.go.id/Website_tr/Preferential%20Tariff/IJ-EPA/Implementing%20Agreement%20(ID).pdf) (last visited on Apr. 4, 2011). The Implementing Agreement with Annexes on Strategic Investment Plan covers: taxation, customs, labor, infrastructure and competitiveness. For a full reference and elaboration, see the Gaikindo website, available at www.gaikindo.or.id (last visited on Apr. 4, 2011).

² Some policies and regulations reflecting the Government’s efforts to improve investment climates are as follows: