

ANALYSIS OF THE IMPACT OF CHANGES IN THE NEGATIVE INVESTMENT LIST ON THE FILM INDUSTRY IN INDONESIA

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ABSTRACT

This study aims first to understand the implementation of Presidential Regulation Number 44 of 2016 for the film industry in Indonesia and, secondly, to identify and assess the impact of changes in the negative investment list on the film industry in Indonesia. The study utilizes a normative juridical research methodology, combining legal and conceptual approaches. The findings indicate that enforcing Presidential Regulation Number 44 of 2016 in the Indonesian film industry resulted in the absence of international film companies operating in Indonesia before the regulation was implemented. However, this situation changed after films were removed from the Negative Investment List (DNI) as stipulated in Presidential Regulation Number 44 of 2016, an amendment to Presidential Regulation Number 39 of 2014 regarding categorizing closed and open business sectors with investment requirements. Modifying the negative investment list for the film industry in Indonesia has both positive and negative consequences. On the positive side, it has increased foreign investment, contributing to economic growth. Conversely, local investors need help competing with foreign investors due to financial resource disparities. The implementation of Presidential Regulation No. 44 of 2016 has had a significant impact on the investment landscape. Specifically, there has been an increase in foreign capital investment. However, it is worth noting that the number of Foreign Direct Investment (FDI) projects exceeds that of Domestic Direct Investment (DDI) projects. This difference can be attributed to the inability of domestic investors to compete effectively in the market.

Keywords: *Negative Investment List, Film, Indonesia*

INTRODUCTION

The acceleration of national economic development can be achieved by adding capital investment, facilitating the conversion of economic potential into tangible strength. It can be realized by mobilizing capital from both domestic and foreign sources. Maximizing the inflow of capital and investment is a crucial goal for all countries, encompassing underdeveloped and developing countries. Due to the continuously changing global economic landscape and Indonesia's participation in various international partnerships, Indonesia needs to create an investment-friendly business climate, provide adequate legal protection that is fair and efficient, and take into account national economic interests.¹

Developing countries must meet three crucial conditions to attract investors effectively. First, Economic opportunities are significant, as investments must offer tangible economic benefits to potential investors. Second, Political stability is crucial because the prevailing political climate significantly influences investment decisions. Third, Legal certainty is essential to ensure a

¹Johnny W. Situmorang. 2011. *Menguak Iklim Investasi Pasca Krisis*, Jakarta: Erlangga, hlm. 5.

predictable and secure environment for investment activities. In investment decision-making, legal certainty is often seen as a primary consideration for investors.²

The current Indonesian government is making efforts to create a conducive investment environment. Steps are being taken to address various factors that could hinder foreign investment. These steps include establishing legal certainty in the investment sector, ensuring economically competitive prices by enhancing coordination between federal and state entities, simplifying administrative processes, fostering a business-friendly environment that promotes employment and business security, and maintaining efficient bureaucracy.

To ensure fair treatment for domestic and foreign investors while safeguarding national interests, all sectors and types of businesses are eligible for investment, with exceptions for sectors and types explicitly designated as closed or conditionally open. Regulations for domestic and international investors are determined by various factors outlined in Article 12 of the Investment Law. These factors are determined by multiple outlined in Article 12 of the Investment Law. The regulations issued by the President govern the criteria, standards, and classification of closed and open business sectors, along with their prerequisites.

The strategy commonly referred to as the Negative Investment List (DNI) is related to establishing a comprehensive set of criteria to classify economic sectors as closed or open. The DNI, or Negative Investment List, is a crucial reference for investors to determine the normative classification or regulations applicable in the investment services sector. The creation of the DNI aims to protect the Indonesian economy and broaden the economic prospects available to investors. Therefore, before investing in Indonesia, investors must educate themselves about the Negative Investment List (DNI). It will enable investors to ensure access to specific business sectors with particular prerequisites and identify strictly prohibited sectors.³

The current “Negative Investment List Law” in Indonesia is outlined in “Presidential Regulation Number 44 of 2016.” One industry falling under the jurisdiction of the National Investment Coordinating Board (BKPM) is the tourism industry. This specific sector is a business domain accessible to investors, albeit with particular prerequisites such as restrictions on foreign ownership. Modifications made to the DNI policy outlined in “Presidential Regulation Number 44 of 2016” aim to enhance investment efforts domestically and internationally, aiming for development.⁴ Simultaneously, these adjustments aim to increase protection for “Micro, Small, and Medium Enterprises (MSMEs) and Cooperatives.” Therefore, if the tourism industry experiences an increase in the foreign ownership threshold, it may adversely impact domestic investors. Consequently, these DNI modifications primarily benefit foreign investors.

Based on the phenomena described, the author is interested in conducting a study regarding the impact of changes in the Negative Investment List on the film industry in Indonesia.

METHOD

This study uses a normative juridical research methodology, which has a legal and philosophical position. This research used literature-based research methods. This study concentrates on normative juridical principles by scrutinizing scientific journals, books, laws, and other pertinent sources. Normative legal science is closely related to legal practice,

²“Hendrik Budi Untung. 2010. *Hukum Investasi*. Jakarta: Sinar Grafika, hlm. 48”

³“Sulistiowati dan Paripurna, Mempertahankan Tujuan Peraturan Daftar Negatif Investasi dalam Mengendalikan Domikasi Kepemilikan Asing (Studi Kasus pada Industri Telekomunikasi), *Jurnal Dinamika Hukum*, Vol. 14 No. 2 Mei 2014, hlm. 204”.

⁴“Konsiderans Menimbang huruf b UU tentang Penanaman Modal”.

which includes two main aspects: the development of legislation and the application of legal principles.⁵

This study covers three categories of legal sources, namely “primary, secondary, and tertiary legal sources”. Primary legal material includes regulations relating to the consequences of modifications made to the negative investment list pertaining to the film industry in Indonesia. Secondary legal materials include publications related to law that do not have official status, such as books, journals, essays, and other scientific works. On the other hand, tertiary legal materials refer to sources such as the internet, encyclopedias, and similar sources. This discussion will discuss how the library research model is implemented to collect legal sources.⁶

The methodology used to analyze this legal material is content analysis. The term “content analysis” describes a set of procedures designed to examine and assess the actual content of data. The secondary data collected is the main focus of this investigation. After collecting all the information, this research continued by examining the data logically, methodically, and rigorously. The term “logical” refers to analyzing facts obtained according to the rules of deductive logic, which involves concluding the general issue to the specific problem at hand. The term “systematic” refers to evaluating data by establishing relationships between related and interdependent information. Next, a juridical analysis is carried out on the existing facts, starting with examining the relevant rules and their relationship with substantive law.

DISCUSSION

1. Implementation of Presidential Regulation Number 44 of 2016 for the Film Industry in Indonesia

The effort to increase domestic and foreign investment capital is aimed at accelerating development, leading to the issuance of “Presidential Regulation Number 44 of 2016” to organize closed and open sectors with requirements in the field of capital investment. According to this regulation, the energy and resources sector is one of the open sectors with specified requirements involving limitations on foreign and domestic funds.⁷

The regulation, particularly in the second section, specifically addresses business sectors. Article 2, paragraph (1), emphasizes that the business sectors in investment activities consist of Open Business Sectors, Closed Business Sectors, and Open Business Sectors with Requirements. The latter includes sectors open with requirements, such as reserved sectors or partnerships with micro, small, and medium enterprises (MSMEs) and cooperatives. Sectors open with specific requirements like foreign ownership limits, particular locations, special permits, 100% domestic capital, and limitations on ownership within the framework of the Association of Southeast Asian Nations (ASEAN) cooperation.

Based on “Presidential Regulation No. 44 of 2016, amending Presidential Regulation No. 39 of 2014 on the arrangement of closed and open sectors with requirements in the field of capital investment,” there will likely be an influx of film investors in Indonesia. The proposed amendments aim to facilitate the participation of various international film companies in the Indonesian film industry, enabling them to invest and produce films mostly or entirely shot in Indonesia for global distribution.

⁵“Rusli, Hardijan. Metode Penelitian Hukum Normatif: Bagaimana?, *Law Review* Fakultas Hukum Universitas Pelita Harapan, Volume V No. 3 Tahun 2006, hlm. 50”.

⁶“Ibrahim, Jhonny. 2006. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Banyumedia Publishing”.

⁷“Kementerian Energi dan Sumber Daya Mineral. 2019. *Mengenal Daftar Negatif Investasi*”. <https://migas.esdm.go.id/post/read/mengenal-daftar-negatif-investasi-1>, diakses pada tanggal 25 September 2023.

Twenty industries are declared open to foreign investors with certain limitations, while twenty other sectors are removed from the Negative Investment List (DNI) in Presidential Regulation No. 44 of 2016. Typically, service-based businesses receive foreign investment, with only two mentioned industries considered manufacturing. The rest include construction consultants, tourism, e-commerce, cold storage, and the film industry. The new regulation aims to boost domestic and international investment activities and accelerate growth following the revocation of Presidential Regulation No. 39 of 2014. This change will also enhance protection for national institutions such as cooperatives and small businesses. The ASEAN Economic Community and ongoing economic globalization dynamics drive the shift.⁸

The Negative Investment List (DNI) policy aligns with investment policy directions aiming to improve the investment climate, as outlined in Appendix I of Presidential Regulation No. 16 of 2012 on the General Investment Plan. The review and refinement of the DNI, according to Presidential Regulation No. 44 of 2016, are adjusted based on the existing economic developments. Specifically, it aims to encourage Foreign Direct Investment (FDI) in Indonesia, thereby enhancing the domestic investment environment. According to Article 5 of Presidential Regulation No. 76/2007, this DNI update adheres to the principle of compliance with international agreements or responsibilities. This is due to changes in the DNI through Presidential Regulation No. 44/2016, which is intended to fulfil ASEAN obligations.

According to the Annex of Presidential Regulation No. 44/2016, changes made to the Negative Investment List (DNI) in the tourism sector aim to increase the foreign direct investment (FDI) threshold allowed. Specifically, the foreign ownership limit for certain entities like restaurants, bars, cafes, sports arenas, and the film industry has been raised from 49% to 67%. Furthermore, if these entities collaborate with Micro, Small, and Medium Enterprises (MSMEs), the FDI limit can go up to 51%, provided they comply with regional regulations and avoid conflicts. The revised maximum Foreign Direct Investment (FDI) for various sectors, including museum management, travel agencies, catering services, hotels, motels, billiard houses, bowling alleys, golf courses, impresario services, karaoke, skill games, and spas, has been increased from 51% to 67%. However, it is crucial to note that these revised FDI limits must not violate any regional regulations.

2. Impact of Changes in the Negative Investment List on the Film Industry in Indonesia

The medium of film encompasses various aspects of human expression, serving not only as a contemporary art form but also as a product of time, culture, society, economics, and politics. Film has been a popular form of entertainment in Indonesia since the colonial era. However, during that period, the Indonesian film industry needed more development.⁹

The film serves as a new medium for entertainment dissemination, including various genres such as shows, dramas, comedies, and other presentation forms to engage audiences. The emergence of political awareness has shaped the evolution of Indonesian literature, although the influence of political awareness on film production is limited. However, during the Japanese occupation, films were mainly used as a means of spreading political propaganda. The production of films during the Japanese occupation introduced a revitalization element to the filmmaking process. Despite the absence of professional filmmaking resources, Japan successfully developed a comprehensive understanding of the role of film as a mass communication tool. This understanding later facilitated the establishment and growth of the National Film Industry during the post-independence era.¹⁰

⁸“Konsiderans Menimbang huruf b Peraturan Presiden Nomor 44 Tahun 2016”

⁹“Novia, Lambannya Pertumbuhan Perfilman Indonesia. *Jurnal Ilmu Sosial dan Ilmu Politik*, Vol. 9 No. 3 (Maret 2006), 271-272”.

¹⁰*Ibid.*, hlm. 55.

Film industry efforts in Indonesia are regulated in “Presidential Regulation Number 44 of 2016, derived from Article 12, paragraph (1) of Law Number 25 of 2007 concerning Capital Investment.” According to the explanation in Article 12, paragraph (1), it is stated that:

“The business sectors or types of business that are closed and open with requirements are determined by the President’s Regulation, arranged in a list based on classification standards regarding business sectors or types of business applicable in Indonesia, namely Classification based on the Indonesian Standard Industrial Field and the International Standard for Industrial Classification (ISIC).”

Furthermore, paragraph (2) of the law specifically describes the closure of certain business sectors for specific reasons. Business sectors restricted for foreign investors include the production of weapons, machinery, explosives, and other war equipment, as well as conducting business in areas explicitly prohibited by law. Not all areas can be part of the economic business sector run by owners or companies; thus, the government may close these business areas for strategic reasons.

Presidential Regulation No. 44 of 2016 states that investors can “obtain guidance in choosing an appropriate business field by looking at the list of closed business fields and the list of open business fields with predetermined requirements.” Regulations and criteria for creating separate “closed” and “open” markets are currently being formulated. The purpose of these regulations is to:

- a. Establish a clear legal basis for the formulation of regulations relating to investment;
- b. Ensuring transparency in the process of formulating a comprehensive inventory of restricted and unrestricted business fields, along with their requirements;
- c. Offering guidance regarding the preparation and determination of restricted and unrestricted business fields, along with the requirements;
- d. Provide instructions for conducting a thorough review of a comprehensive inventory of restricted and unrestricted business fields, along with their respective requirements;
- e. Guide in the event that there are differences in interpretation of the comprehensive inventory of restricted and unrestricted business fields, along with their respective requirements.

The Indonesian Government has made amendments to the negative investment list, especially in the film sector, by increasing the maximum foreign ownership limit. This change, guided by Presidential Regulation Number 44 of 2016, is an important factor influencing investors’ decision-making process when considering investment opportunities in Indonesia.

According to Article 12, paragraph 5 of the Investment Law, any changes to the DNI must take into account the needs and desires of domestic investors and the use of domestic resources. Under this clause, the Government, using criteria based on national interest, decides which industries are available for private investment.

Presidential Regulation Number 44 of 2016 makes changes to the DNI (Negative Investment List) in the film sector. Still, the author believes that this change needs to show an effort to prioritize domestic capital and national interests. The implementation of this policy shows this.

Changes to the Negative Investment List (DNI) in Indonesia have had a significant positive impact on the film industry in this country, especially in terms of the influx of capital and the use of cinematography techniques from abroad. DNI is a list that regulates economic sectors that are open or restricted to foreign investors. In the context of the film industry, changes to the DNI have opened the door to foreign investment and increased international collaboration in several ways. First, changes to the DNI have encouraged the entry of foreign capital into the Indonesian film industry. By allowing foreign investors to participate more actively in film production, the Indonesian film industry has gained access to greater financial resources. This

enables the production of larger, higher quality films, as well as expanding market coverage both at home and abroad.¹¹

Second, changes to the DNI also help introduce more sophisticated and innovative cinematography techniques. With wider international collaboration, Indonesian film professionals can learn and work with cinematography experts abroad. Indonesian film will open up opportunities for exchanging knowledge and experience and improving technical capabilities in film production. The result is higher quality Indonesian films using more advanced technology. Besides that, foreign investment in the film industry also increases economic growth by creating new job opportunities and introducing Indonesian culture to the international world.

Meanwhile, national film production will increase, but this will also have a negative impact if there is no transfer of technology in the film industry, and if this happens, it will be difficult for Indonesia to host it in its own country. Without technology transfer, some of the impacts might occur. First, a lack of technology transfer means a lack of innovation in film production. Technology is developing rapidly in the film industry, and without access to the latest technology, Indonesia may have difficulty competing in terms of the quality and attractiveness of its film productions. This could result in a decline in audience interest, both domestically and in the international market, which could be detrimental to the Indonesian film industry.¹²

Second, the need for more technology transfer can limit the development of the talents and abilities of film professionals in Indonesia. Local filmmakers and crew may need to learn from experienced practitioners abroad. This could hinder the growth of the film industry and negatively impact related sectors such as production design, special effects, and editing. Third, the lack of technology transfer can also limit the ability of Indonesian film production to collaborate with large producers and studios abroad. This kind of collaboration could provide a great opportunity to increase the scale of Indonesian film production and distribution and expand international reach. However, foreign film producers may be less interested in investing in Indonesia without the relevant technology and knowledge.

Another negative impact is the inability to promote Indonesian culture effectively through films. With the latest technology, special effects, and sophisticated cinematography techniques, films can be a powerful tool for sharing stories and cultural values. Without access to this technology, Indonesian films may be less able to communicate cultural messages effectively to local and international audiences.

The author's conclusion from the explanation provided shows that changes to the DNI relating to the film sector are rooted in Presidential Regulation 44 of 2016. Specifically, this change involves increasing limits on foreign capital ownership. Changes in Foreign Direct Investment (PMA) at the implementation level greatly affect capital investment. In contrast, the number of projects under Foreign Direct Investment (PMA) exceeds those under the Domestic Investment (PMDN) category. These differences arise due to the inability of domestic investors to compete effectively.

CONCLUSION

In conclusion, implementing Presidential Regulation No. 44 of 2016 in the Indonesian film industry indicates a positive shift. Before this regulation, international film companies were not operating in Indonesia, as the film industry was part of the Negative Investment List. With

¹¹Purba, A. Z. U., & SH, L. M. (2022). *Perjanjian TRIP's dan beberapa isu strategis*. Penerbit Alumni.

¹²Mahardika, A. (2022). *Film Dokumenter Itu Membosankan? Strategi-Strategi Komunitas Dokumenter Dalam Membangun Infrastruktur Perfilman Dokumenter Indonesia*. Pascal Books".

removing the film industry from the DNI, the situation concerning investment in the sector has improved. The amendment is anticipated to attract global film investors, facilitating film production set in Indonesia for international distribution.

While the Negative Investment List changes have positively impacted the film industry, allowing increased foreign investment and the adoption of advanced cinematography techniques, there are concerns. These include potential challenges for local investors, a need for more technology transfer, and difficulties in promoting Indonesian culture effectively through film.

The implementation of Presidential Regulation No. 44 of 2016 has had a tangible impact on investment dynamics, notably with increased foreign direct investment. However, the number of Foreign Direct Investment (FDI) projects surpassing Domestic Direct Investment (PMDN) projects suggests domestic investors' challenges in effective market competition.

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