

Responsive Local Policy for Capital Investment in Perspective Public Welfare

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ABSTRACT

Purpose: The purpose of this research is to describe local area policies in supporting investment and to contribute to the development of regional policies that are more responsive to the needs of the community.

Method: This research approach uses a doctrinal or normative juridical method that conceptualizes law in the realm of law about rule (written law) in the form of texts as written law through Law Number 25 of 2007 concerning Investment. This type of research is normative legal research using a qualitative approach. Primary data in this study consists of applicable legislation and previous research results. Data collection techniques use literature studies and data validity uses triangulation of data sources and triangulation of methods.

Results and Conclusion: The results of this study indicate that the State of Indonesia has abundant natural resource potential so that it becomes a promising development alternative, for this reason the region must respond to investment support through the laws and policies it formulates, considering that legal factors are one of the factors that can influence investment policies, apart from political factors and economic factors. Legal certainty is one indication of priority considerations that must be considered. In the end, the region must be able to create investment opportunities, and eliminate obstacles that arise, the order and policies that are built must be responsive to needs while still adhering to the Pancasila ideology as a source of law, which contains certain quality values that must be realized in concrete reality for the life of the community, namely social welfare through development in the region to develop the community's economy.

Keywords: Responsive Locality Policy, Investment, Regional Development.

INTRODUCTION

Development is essentially directed at the process of improving the socio-economic welfare of society, this understanding has directed that development is identical to social change. This thought has confirmed the statement that there are intersections that must be considered in the development process, namely accountability for the dignity of citizens without exception to build a sense of justice in society. This, among other things, depends on the structure of the legal process and the policies formulated, because building justice for citizens means building fair structures.

The formulated national policy must be able to be translated by the region through local policies in the region that are responded to by the local government structure. The Regional Government should build responsive laws, in order to accommodate the interests and social changes that occur in society. The norms that are realized are required to be able to describe the reflection of values in the global era to achieve community welfare. The potential of natural resources owned by the region must be able to develop the level of community welfare. It is fully realized that the process of law working in society is a determining factor in the priority in the process of achieving development goals because the habitat of law is social life. In the end, law in the development process demands change because almost all social changes that happen must be followed by legal norms changes. We really realize on most community life sectors nowadays human attitude is given norm that law covers all sectors. The more consistent law penetration into community results in demand for

change and development of the law itself and its relation to other social problems will also be more intensive. When we face law then in our mind we think of social life, because law is social control as norms to control togetherness in life. Change on legal norm is an absolute pre-requisite to do when facing an environment where changes that law must be able to anticipate to adapt with changes that occur. Environment (in this case "social environment") will influence and bring changes on law and if social change happens then community interest will change quantitatively and qualitatively. Community interest in law will also change, but sometimes the adaptation process for law in social change is slow (Endang sutrisno, 2015: 16).

The statement above, strengthens the legal thinking and social change as an indicator of priority when dealing with changes in social-community conditions in the global era. The global order that has occurred has changed the paradigm of the development process. Genuine community involvement is a priority model that must be considered in the process, on the other hand, policy makers as components of decision makers must formulate a more responsive normative system, in the end the objectives to be achieved by the legal rules that are enforced can achieve the objectives of legal justice, legal certainty and legal benefits. In the realm of the validity of the investment legal system, namely Law Number 25 of 2007 concerning Investment, it has strongly indicated how then, the legal rules that have been formulated seek to accommodate the interests of social change that occur in society, the values of economic globalization are concretely contained through this system. The most crucial thing to observe is how the national policy can be responded to by policies at the local level, namely through technical policies in the Regional Government, in the form of legal norms or technical public policies, within the scope of Regional Regulations or Regent Regulations / Mayor Regulations which are more technical in nature. This is what must be examined considering the limitations that exist in the Regions are a separate problem, which cannot be ignored. The abundant natural resource potential owned by the Region and the National Policy in the Investment Sector which has been so real to build the economy of the community in the Region, in the context of developing the potential of its regional natural resources in order to realize the concept of a welfare state (welfarestate) into a strong legal political commitment.

The development process through the intended investment policy must be successful for the progress of development in the region and can be felt by the social welfare of the community in the region, this can reduce poverty rates, create jobs. This is very logical considering that sometimes, paradoxical conditions often occur, for example, the potential for marine natural resources along with the potential for coastal areas that can be developed into very contradictory when pockets of poverty are found around fishing communities. Poverty has caused many problems in the lives of fishermen, economic factors are the most crucial reason this dimension is contrary to the geographical conditions as a strategic area as an archipelagic country, which is surrounded by a very wide sea, with abundant marine resource potential. But along the coastline the poverty of coastal communities can be easily found (Endang Sutrisno, 2021: 278). National policies through various legal products including Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands; Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Farmers and Salt Farmers; Law Number 11 of 2013 concerning Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; Law Number 32 of 2009 concerning Protection and Management of the Environment; Law Number 26 of 2007 concerning Spatial Planning; Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises; Law Number 19 of 2013 concerning Protection and Empowerment of Farmers; Law Number 41 of 2009 concerning Protection of Sustainable Food Crop Land; Government Regulation Number 60 of 2007 concerning Conservation of Fish Resources. National policies in the form of regulatory products of all legal norms that are built must be balanced with the political will of the regional government which is responsive in nature, the order of technical norms must begin to be formulated and explained at the local level. The existence of local autonomy cannot be used as an alternative solution of development to prosper communities. Another approach is needed for the sake of communities interest. Local should be able to understand its communities better. In this case, state existence (local government) among communities interest is the absolute pre-requisite in order that the development can reach the target¹. The Government's policy of turning to the economic potential of marine resources has changed the perspective of achieving the concept of welfare state because in previous years Indonesia's development policy was too oriented and more land-based, at the same time, marginalizing the role of ocean (maritime orientation)

¹Endang Sutrisno, the Local Governments Dilmema in Accommodating the National Regulation, Op.Cit, p.4.

whereas it must be realized that the vast and large potential of the archipelago's marine economy geographically and geopolitically is very strategic (Endang Sutrisno, 2019: 329). The description above, as one example of a real condition found in a policy, is also not expected to occur in the National Policy in the Field of Investment. Regional policies must be able to accommodate the interests of the National Policy so that there is synchronization and harmonization of laws and policies at all levels.

RESEARCH METHOD

The research approach used in this study is a qualitative approach. Qualitative research is a procedure in research that produces descriptive data in the form of written or spoken words and observable human behavior (Moleong, 2009: 4). This type of research is normative or doctrinal legal research which is conducted by studying legal materials to solve the legal issues faced (Marzuki, 2017: 60).

The data sources used in this study are primary data, secondary data and tertiary data. The primary data source used is Law Number 25 of 2007 concerning Investment, while secondary data is in the form of legal publications including textbooks, scientific articles and scientific journals and tertiary data is in the form of legal dictionaries.

The data collection technique is by means of literature study, and using data validity with data source triangulation and method triangulation. Data analysis uses descriptive analysis, which is carried out through 4 stages, namely data collection, data reduction, data presentation and drawing conclusions. The phenomenon of facts that occur in the field of investment is then analyzed using existing legal theories, namely the theory of legal objectives in the form of legal justice, legal certainty and legal benefits (Miles and Huberman, 2014: 19).

RESULTS AND DISCUSSION

Normative Limits of Investment in the Dimension of Social Change

Observing the relationship between law and development implies that the direction of the study is actually contextual. This means that law should choose its essence as an interdisciplinary object of study (Esmi Warassih, 2005: 165). Continuously studying, criticizing, and developing legal science is absolutely necessary. Given that the object of legal science study is law, which is never in a sterile state and is in an empty room, but rather in society itself (Esmi Warassih, 2016: 9). And the study of investment law becomes an interesting thing when entering the era of economic globalization. Given that development requires capital in an effort to achieve the welfare of its citizens. The potential of natural resources owned must be able to be processed as much as possible, through the use of technology, mastery of technology must be achieved with the existence of capital. The development carried out requires capital in a fairly large amount and is available at the right time when needed. The existence of this capital can be provided by the government and by the wider community, especially the private business world, both from within the country and abroad (read: foreign capital).

The most ideal condition, from the aspect of nationalism, is when the need for capital is fully able to be provided through its own capabilities, so domestic capital and it does not matter whether the capital is provided by the government or from the domestic private business world. However, in fact it is not as easy as intended in the statement above, especially for developing countries such as Indonesia, so that the problem in terms of the availability of sufficient capital to carry out comprehensive development experiences various difficulties caused by various factors including the level of community savings which is still low, capital accumulation that is not yet effective and efficient, skills that are not yet adequate and have an impact on the low level of mastery of technology and technology transfer that has not been able to be realized properly. These obstacles that arise are generally tried by developing or developing countries to be overcome in various ways and alternatives, for example through assistance and cooperation with foreign parties needed to complete domestic capital that can be immediately deployed (Mawardi, 2023: 39-62). It is hoped that countries at this level of development will eventually be able to achieve independence in the process of community development in order to achieve better welfare.

Based on the description, at the beginning of the country's development, it cannot be separated from the role

played by foreign investment and foreign aid. The reality of limited capital to carry out development has resulted in a very decisive role played by foreign capital and foreign aid in determining the rate of national economic growth. Through the development of industries built by investment, especially foreign capital, improvements in facilities and infrastructure using foreign aid are an undeniable link to the role played by foreign capital and foreign aid in order to achieve a satisfactory level of economic growth so that it can realize the welfare of the community (Bimantoro & Adriana, 2016: 63-74).

For that reason, it is very natural if investment becomes one of the choices taken by the government to solve capital difficulties in implementing development. In such a position, the regulatory function of investment, especially foreign investment to enter Indonesia, becomes very important considering the role played by foreign capital in particular is to maximize capital utilization for development interests, technology transfer and skills from the ability possessed by investment to manage the economic potentials owned by the country, which to develop it requires large capital with sophisticated technology and professional skills that have not been fully handled by the national private sector or the government itself. On the other hand, the presence of investment, especially foreign capital with a constructive vision is expected to be able to help the government in dealing with employment problems where every year, the growth of the workforce experiences a fairly high increase. Industrialization development is ultimately supported by investment, because the main characteristic of investment is the existence of large savings or savings through capital accumulation in driving the industrialization engine. Because without capital accumulation or savings, it will not be possible to create a stable industrial structure to improve the country's economy (Aminuddin Ilmar, 2004: 8-9).

The first foreign investment that entered began after the enactment of Law No. 1 of 1967 concerning Foreign Investment, which occurred in the mining business sector, oil mining sub-sector and in the industrial sector, metal and machinery industry sub-sector (Aminuddin Ilmar, 2004: 181). Development in these areas continues and runs continuously along with the dynamics of development in society until now, although on certain sides the entry of foreign capital in the mining and industrial sectors has often had an impact on the occurrence of clashes between local wisdom values and the interests of foreign investors regarding profit orientation which sometimes ignores the interests of local values even though it can be realized that local values are social capital that should be respected by parties interested in the existence of foreign capital, including the role of the state not to arbitrarily ignore the existence of local community interests. Law Number 1 of 1967 does not provide a formulation of what is meant by Foreign Investment (Hulman Panjaitan, 2003: 28). The term investment is a translation of the English word, namely investment. The definition of investment means, namely an action to buy shares, bonds or other participation; an action to buy capital goods and the use of available funds for production with future income (Pandji Anoraga, 1994: 47). Regulation of norms on investment has been revoked and replaced by Law Number 25 of 2007 concerning Investment, the contents of which regulate investment as a whole, for foreign investment and domestic investment.

The increasingly intensive development of society along with the development of information and communication technology has caused a shift in the values of validity in society. A new understanding is needed when faced with conditions that are experiencing a shift in the value system. Advances in information and communication technology have forced society to enter the phase of globalization development. Globalization is defined as a process that places world society able to reach each other or be connected to each other in all aspects of their lives, both in culture, economy, politics, technology and the environment (Budi Winarno, 2004: 39).

The development of issues due to globalization becomes a separate consideration in understanding the development of foreign investment, this has an impact on the influence of globalization values that have been used as a reference in investment regulations, especially foreign capital, namely with the enactment of Law No. 25 of 2007 concerning Investment; and has resulted in the emergence of multi-interpretation impacts that are not conducive to the interests of national development due to efforts to accommodate global economic interests (Sholahuddin, 2019: 103-114).

Through the legal principles of Law Number 25 of 2007 concerning Investment, it has provided an understanding of what is meant by investment, as regulated in Article 1 number 1 that investment is all forms of investment activities, both by domestic investors and foreign investors to conduct business in the territory of

the Republic of Indonesia. Furthermore, the provisions of the law have also provided further limitations on investors who are divided into foreign investors and domestic investors. Provisions regarding this matter are contained in the provisions of Article 1 number 3 of Law Number 25 of 2007: foreign investors are investment activities to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use foreign capital entirely or those who are in partnership with domestic investors (Hartini, 2009: 48-51).

Meanwhile, domestic investors are regulated in the provisions of Article 1 number 5 of Law Number 25 of 2007: domestic investors are individuals who are Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or regions that carry out investment in the territory of the Republic of Indonesia (Hartini, 2009: 51-54). The provisions of Law Number 25 of 2007 have provided regulations by distinguishing between foreign investors and domestic investors, but do not explain further, especially for foreign investors, whether direct or indirect foreign investment, this is very different from Law Number 1 of 1967 which states that foreign investment only includes direct foreign investment or what is known as "direct investment", which will be used to run a company in Indonesia, in the sense that the owner directly bears the risk of the investment. Another definition of investment is the transfer of tangible or intangible assets from one country to another for the purpose of use in that country to generate wealth under the total or partial control of the owner of the assets (Huala Adolf, 2004: 4).

Investment is also defined as an expenditure to acquire property or assets to produce revenue; a capital outlay (Aminuddin Ilmar, 2004: 44). Or other restrictions regarding investment mentioned by the Organization of European Economic Co-operation (OECC) is direct investment, is mean acquisition of sufficient interest in an undertaking to insure its control by the investor, this understanding contains the intention of capital investment is given the freedom of management and management in the company where the capital is invested, in the sense that capital investment has control over the capital, so that from this meaning it is too focused on control of the company and does not take into account the possibility of capital investment in the form of portfolio investment (Black's Law Dictionary : 831). In relation to this understanding, investment can also be interpreted as an activity carried out by both individuals (natural persons) and legal entities (juridical persons), in an effort to increase and/or maintain the value of their capital, whether in the form of cash, equipment, immovable assets, intellectual property rights or expertise (Ida Bagus Rahmadi, 2006: 2).

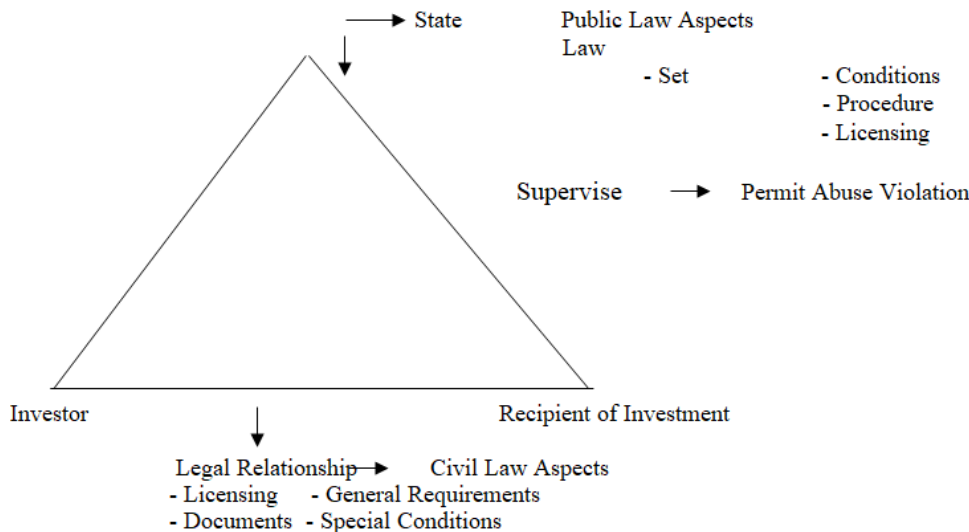
National Investment Policy and Responsive Local Policy

The government must be able to give affirmation to the community, the law that is made leads to the interests of the community and is oriented towards social justice (Endang Sutrisno, 2019: 329). Law is an important element in the development of politics and it makes the relationship with government policy clearer. Through legislation, the Government determines what it can do and what not to do. Law defined as legislation is a system of norms where the rule of law is arranged in unity within a hierarchical manner. The lower legal norms should not be contradictory to the higher legal norms (Endang & Isnaeni, 2019: 1-10). Investment policy as a priority issue in the context of national development when entering the realm of economic globalization becomes very important, this is with logical considerations because development has a close relationship with the process of social change that occurs in the midst of society (Endang Sutrisno, 2013: 42). And the law has a fundamental function in the context of the law performing an integration function for the socio-economic process of society, this strengthens the argument that the law is related to its environment, where the habitat of the law is located and lives. The existence of investment policies in the form of regulations of Law Number 25 of 2007 as evidence, the existence of an order cannot be separated from the socio-economic conditions of its society. Issues of the validity of global values have been responded to through these legal norms, and the national policy in question must be followed by concrete steps of efforts that have a clear and firm commitment by the local government at the local level, to reformulate all existing orders concerning investment policies, including legal rules that intersect with investment policies such as norms on environmental management, rules on spatial planning, policies on sustainable development values and regulations on increasing the people's economy based on Pancasila economic democracy (Abib, Triwati, Aryaputra, 2016: 196-206).

Investment policies must still refer to issues of re-energizing the increase in the existence of the people's

economy, and policies at the local level through the local Regional Government must pay attention to this, from the start real policies must be implemented that are pro-people's economy, because without realizing it, the validity of investment legal rules already contains global economic values that are loaded with the interests of trade liberalization and capitalization values (Juhro, 2016: 1-30).

In the end, investment is based on the idea that investment is a necessity, so investment activities are recognized as very complex business activities with very broad influences and impacts, both individually, in groups, socially, economically and various consequences, obligations and responsibilities that arise, including rights that are always put forward first (Sri Redjeki, 2007: 6). The function of investment law in investment activities is explained in Ragaan I as follows (Sri Redjeki, 2007: 7):



Based on the above description, it is clearly seen that legal norms are in a very dominant position, legal norms as a tool that is expected to be able to become a means of regulation to become an umbrella that covers all investment activities in the business realm carried out by interested parties and it is hoped that the conflicting interests in the investment realm are able to realize certainty and order for investment activities.

When Law No. 25 of 2007 is examined, this Investment Law consists of 18 chapters and 40 articles through the law, almost all provisions in Law No. 1 of 1967 in conjunction with Law No. 11 of 1970 concerning Foreign Investment and Law No. 6 of 1968 concerning Domestic Investment are revised (Hartini, 2009: 54-57). Law No. 25 of 2007 contains an investment philosophy that reflects sustainable national economic development based on economic democracy, and is also based on a people's economy that involves development for micro, small, medium and cooperative businesses and investment is intended to process potential economics into real economic strength by using capital, technology, management and skills (Hartini, 2009: 57-60). In an effort to face changes in the global economy and Indonesia's participation in various international cooperation, it is important to create a conducive, promotive investment climate that provides legal certainty, justice and efficiency while still paying attention to national economic interests. This philosophy is the consideration for the enactment of the Investment Law as stated in the consideration of "considering" the law (Larasati dan Natasya, 2017, 147-159). Observing the provisions of Law No. 25 of 2007 which in essence still respects national interests in investment activities but in the end becomes a big question of the commitment that will be built towards the interests of the national economy through the law in question because with this law the government provides various kinds of luxury and convenience to investors, especially foreign investors, to invest in Indonesia.

The excessive liberalization value content is very apparent in Law No. 25 of 2007 concerning Investment, especially regarding the regulations in the articles, namely Article 2, Article 3 paragraph (1) letter (d), Article 6 paragraph (1), Article 7 paragraph (1), Article 8 paragraph (1), and Article 22 paragraph (1).

All provisions in the articles as referred to above, cannot be ignored, provide the luxury that has been provided by the government to foreign investors in the Investment Law, namely the freedom to move their capital

anytime and anywhere, meaning that the law expressly provides opportunities for investors to transfer and repatriate capital freely to the guarantee of freedom from nationalization, the government also facilitates foreign capital to control production related to the livelihoods of many people. This Investment Law does not provide different treatment between foreign and domestic investment, the principle of non-discrimination has been accommodated as it continues to be developed through the issue of world free trade, there are no restrictions on control of the public sector which then overlaps regulations regarding the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia which ultimately does not have investment regulations related to national interest (Puru, 2014: 14-21). Including regulations aimed at the development and protection of sectors related to regional development, technology transfer to the development of small and medium enterprises. And in relation to licensing and use of land rights, the Investment Law clearly only considers how to be able to provide incentives for the entry of foreign investment without looking at and coordinating regulations with other laws and regulations, the most striking of the lack of synchronization of regulations is Article 22 paragraph (1) of Law No. 25 of 2007 with the provisions in Article 29, Article 35 and Article 41 of Law No. 5 of 1960 concerning the Basic Principles of Agrarian Law, the provisions of the Investment Law have provided easy services and/or licensing of land rights with a very long period of time and are directly extended in advance at once, while the Basic Agrarian Law for business use rights can be granted for a maximum period of 25 years, an extension of 35 years and at the request of the rights holder can be extended again then for a maximum of 25 years, for building use rights the maximum period is 30 years and can be extended for a maximum of 20 years while for use rights can be granted for a certain period of time or as long as the land is used for certain purposes (Parwati dan Sudjito, 2009, 141-154). If the two laws and regulations are compared, it is clear that the Investment Law provides a very large opportunity that can have an impact on national interests in terms of land acquisition because over a long period of time it can eliminate people's access to land (Amalia, 2020: 5-6).

Based on this Investment Law, even though it is a stimulating factor for the entry of foreign investors, in the end the interests of national economic development must still be considered, which are based on the rise of micro, small, medium and cooperative business sectors, therefore the provisions of this law must be able to be balanced with independence to be able to develop science and technology. It must be followed up through implementing regulations in the investment sector that support the independence of technological development and improvement of the working climate of the investment institutional bureaucracy, for example through simplification of the system and business licensing, reduction of various levies that cause business activities to become high cost or overlapping taxes and transparency of licensing costs for the interests of investment activities. And the most important thing is to realize a clean bureaucracy without any corrupt actions carried out by policy-making officials (Manihuruk, Ginting dan Siregar, 2013: 1-6).

In another dimension, the competence of policies in the local realm must be observed through a set of policies in the region that are able to provide support for the validity of the Investment Law, this is very important considering that those who understand and know about the potential of natural resources in the region are the community and stakeholders who will make decisions (Sanusi, Idayanti dan Widyastuti, 2020: 182-191). This means that responsive technical regulations are needed through an integral-comprehensive-holistic legal and policy formulation approach to develop regional potential. This condition must be considered because it is to balance the interests of the global value content that has been accommodated through the Investment Law as the content of the value content has been described above.

Locality policies that are responsive to investment from the perspective of community welfare must be designed inclusively, sustainably, and with attention to the long-term needs of the community. Local governments have a strategic role in creating an investment climate that not only benefits investors but also has a positive impact on improving the quality of life for the local community, creating jobs, and ensuring social and environmental sustainability.

CONCLUSION

The investment climate must be improved through steps to simplify investment licensing procedures, build legal certainty, improve investment incentive policies, improve the quality of human resources, and improve

infrastructure development and clarity of policy direction to encourage technology transfer from foreign investment. The existence of Law Number 25 of 2007 is intended to be the starting point for efforts to build a conducive investment climate as a real step to answer the challenges in investment activities in Indonesia. However, the existence of this law must be supported by policies in the local realm in the regions through the Regional Government must be more responsive, policies in the form of Regional Regulations, Regent Regulations or Mayor Regulations that are more technical in nature must be able to answer the challenges of economic globalization values as stated in the investment law in question. This is very important because efforts to improve the welfare of the community in the regions must be fully a priority element that must be achieved in the perspective of regional development in the global era. Foreign investment and domestic investment as regulated by the law must be translated into technical policies in the regions. Support for human resources at the stakeholder level in the Regions must be able to translate the National Investment Policy in a sustainable manner.

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