INDONESIAN DEVELOPMENT UNDER ECONOMIC GLOBALIZATION: THE REFORM OF INVESTMENT LAW*)

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I. INTRODUCTION

Foreign investment is one of the indispensable financial resources for Indonesia's economic development. The economic crisis over the last two years has brought about a number of problems such as threat of national disintegration, the bankruptcy of large companies, andincreasing numbers of people who live below the poverty line. This essay attempts to discuss foreign investment in connection with developments in the domestic political situation, efforts made towards economic recovery, and equal distribution of welfare services from the legal point

II. INDONESIAN DEVELOPMENT AND GLOBALIZATION

Countries which are at present being referred to as industrialized countries have implemented their development through three stages: unification, industrialization, and welfare state. At the first stage the main problem is how to achieve political integration to create national unity.

At the second stage, the struggle for economic development and political modernization. Finally, at the third stage, the task of the state is particularly to protect the people from the negative aspect of industrialization, correcting errors at the previous stages by emphasizing public welfare. Such stages are passed consecutively and take a relatively long time. National unity is the prerequisite to enter the industrialization phase. Industrialization is the way to achieve the welfare state. The history of nations indicate that legislators, judges and legal institutions played a significant role in changing norms and values to designate new social priorities from one development level to the next development level.

The conventional way of thinking says that national unity, the creation of stability coupled with dynamics of the public and market are the prerequisites to establish industrial

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infrastructure, and industrial growth is the prerequisite for successful effort in overcoming ignorance and various kinds of malady.

Developing countries have rejected such assumption. Industrialization without thinking about social welfare will merely delay the anger of the new generation which may threaten national unity. GNP increase does not automatically bring about social unity, stability and happiness. The people of developing countries are fully aware that the above three development levels must be achieved concurrently. This is also attributable to very fast development in the communication and technological sectors, thereby enabling nations to communicate and see one another within seconds.

In particular we in Indonesia are confident that economic growth and income equalization can be implemented concurrently. If we wish to have the three development levels carried out concurrently, legal culture must be able to accommodate such objectives. Indonesia must have laws, legal institutions and legal profession which are capable of preserving integration and national unity, are able to boost trade and industrial growth, and function to improve social justice, human welfare. fair sharing of rights and privileges, duties and responsibilities. National unity, economic growth and social welfare must be able to be reflected in each decision making process. In achieving such objectives, we need a reformation of laws, legal institutions and legal culture. Indonesia is carrying out this reform during this era of globalization.

Globalization of economic activity has actually taken place since a long time ago, during the spice trade period, the forced planting (cultivation system) period, and the colonial era. In the three periods. Indonesia's natural products already reached Europe and North America. Conversely, the importation of textiles and manufactured goods, regardless of the simple nature, has been going on for a long time.

Globalization of economic activity at present is a new manifestation of the development of capitalism as an international economic system. As it had happened in the past, to overcome a crisis, a multinational company would look for a new market and maximize profit by exporting capital and reorganizing production structure. In the 1950s, foreign investments centralized natural resource activities and raw materials for their factories. In the last thirty years, manufacturing companies have spread throughout the world. With distribution of operating areas extending beyond country borders, companies no longer produce all products in one country only. With management in various continents, personnel assignment is no longer bound by

language, country border and citizenship. In the past international business was only in the form of export import and investment. Now transactions have become diversified and complicated, such as product manufacturing contract, franchise, counter purchase, turnkey project, transfer of technology, strategic international alliance, financial activities, and so on. Globalization has caused the widespread of interdependence of world economic players. Manufacturing trade and investment crossing country borders have increased the intensity of competition. This phenomenon has been accelerated by progress in communication and technology of transportation.

As economies become integrated, legal harmonization follows suit. The establishment of the WTO (World Trade Organization) was preceded or followed by the establishment of regional economic blocs such as the European Community, NAFTA, AFTA, and APEC. There is no contradiction between regionalization and trade globalization. Joining the WTO and regional economic cooperation means developing a democratic institution, renewing market mechanism, and functioning legal system.

Whatever its characteristics and obstacles may be, economic globalization has produced a very big effect on the field of law, namely the creation of globalization of law. Globalization of law takes place through standardization of law efforts, amongst others through international agreements. The General Agreement on Tariffs and Trade (GATT), for instance lays down several conditions to be fulfilled by the member countries in relation to investments, intellectual property rights, and services. The Non Discrimination, Most Favored Nation, National treatment and Transparency principles subsequently become the national regulations of the member countries. Globalization in the international business contract sector has taken place, since long. Since industrialized countries bring new transactions to developing countries, their partners from the developing countries accept such international business contract models, but possibly because they have not earlier known such models, possibly also because of their weak bargaining power. Therefore it is not surprising that joint venture agreements, franchise agreements, license agreements, and agency agreements are almost the same in all countries. The legal consultant of a country can easily prepare such agreements in other countries.

The similarity of legal substances in various countries can also take place because a country follows the model of an industrialized country in relation to law institutions to obtain capital accumulation. The Limited Liability Company law of various countries, in terms of Civil

Law and Common Law, contains similar substance. Likewise in the case of the Capital Market, there is not much difference due to the fact that the funds flowing to the markets are no longer fully bound to time and country borders. The increasingly big demand for transparency, the spreading international crime in money laundering and insider trading have pushed the establishment of international cooperation. Efforts to have the same regulation in the manpower and the environment still continue. Industrialized countries have requested that developing countries improve manpower condition and environment protection, not only based on human rights but also on trade competition. Low wage and worker's insurance and loose environment protection regulation according to industrialized countries serve as social dumping which is detrimental to their competing power.

Globalization of law will cause the regulations of developing countries on investment, trade, service and other economic sectors to resemble those of industrialized countries (convergence). However, there is no guarantee that such regulations will provide the same result in all places. This is due to differences of political, economic and cultural backgrounds. Law is not the same as a horse. People cannot call a mule or zebra a horse although the shape is almost the same. A horse is a horse. Law is not like that. What is called law depends on the perception of the community. Friedman says that the strength of legal regulations depend on the legal culture of community. The legal culture of the community depends on their educational, environmental, and cultural backgrounds, as well as on positions and even on interests.

In facing such a fact, there has to be check and balance in running a state. Check and balance can only be achieved with a strong Parliament, an autonomous Court, and the participation of the people through relevant institutions.

III. POLITICAL, ECONOMIC AND LEGAL REFORMS

The recovery of Indonesia's economic crisis needs substantial capital. One of the capital sources is foreign investment in the form of investment portfolio as well as direct investment.

The purpose of foreign investment anywhere is to gain profit. The profit can be gained through a widely open market, lower labor cost, proximity to natural resources, sales of raw materials and spare parts, and transfer of technology through patent, trade mark, and copyright licenses.

However, there are at least three other conditions which are quite determinant as to whether a country is attractive for foreign capital, namely the existence of political stability, economic opportunity, and legal certainty.

Indonesia at present is facing the three big issues, namely how to create political stability, restoring economy, and enforcing legal cer-tainty. When President Soeharto was about to resign, the Indonesian people demanded reform in the political, economic, and legal sectors. The demand of the people received response from the People's Consultative Assembly (MPR) through the issuance of MPR Decree Number X/MPR/1998 on the need for political, economic and legal reforms.

From the legal aspect, reform of the three sectors must begin from law reform in the political, economic and legal sectors so that in the near future Indonesia is able to achieve political stability, economic recovery, and legal certainty.

Based on the objective of political, economic and legal reforms, the national legislation program needs to get priority in the law relating to democratization in the political sector which continues to preserve Indonesia's unity capital accumulation for economic recovery, economic democratization to achieve efficiency, protection for the economically weak group, and guarantee that Human Rights will be upheld. First, political democratization amongst others should be implemented through reform of the Law on Political Parties, Law on General Election, Law on Composition and Status of DPR (House of Representatives) MPR (People's Consultative Assembly). In addition, to preserve national unity Law on Local Government and Law on Central and Local Financial Balance were established.

Second, optimization of development financing sources needs a reform of Law on Banking, Law on Bank of Indonesia, and reform of Law on Secure Transaction Law Bankruptcy. As regards economic democracy, Indonesia now has Law on Prohibition of Monopoly and Unfair Competition and Law on Consumer Protection.

Furthermore, to avoid monopolistic practice in the mining sector, reform of Law on Natural Oil and Gas Mining has also been made. Meanwhile in the Construction sector, Law on Construction Service has also been submitted for enactment.

Third, reform of law related to enforcement of Human Rights must be carried out through revocation and reform of various laws and ratification of various International Conventions.

The government has submitted to the DPR, Draft Law on State Administration that is Clean and Free from Corruption, Collusion, and Nepotism, Draft Law on combating of Corrupt Criminal Acts, Draft Law on Amendment to the Criminal Code related to crime against State Security.

To ensure better implementation of Human Rights the government has submitted Draft Law on Revocation of Law No. I I PNPS of 1963 on Subversive Activities, Draft Law on Human Rights and National Commission on Human Rights, Draft/Law on Ratification of International Convention, on Abolishment of All Forms of Racial Discrimination, Draft Law on Ratification of ILO Convention on Abolition of Forced Labor, Draft Law on Ratification of ILO Convention on Discrimination in Work and Position, Draft Law on Ratification of ILO Convention on Minimum Age to be Allowed to Work.

To expedite the settlement of disputes in the business, the Government has also submitted Draft Law on Arbitration and Alternative Dispute Resolution.

Based on the mandate of the 1998 MPR Special Session, "Letter of Intent" between the Government of the Republic of Indonesia and the IMF, the proposals from the Technical Departments and the initiative of the DPR itself, no fewer than 35 draft laws were or are being discussed by the DPR in the last one year. Three draft laws were the result of the initiative of the DPR, namely Draft Law on Prohibition of Monopoly and Unfair Competition, Draft Law on Consumer Protection, and Draft Law on Haj Pilgrimage. At present these are lining up for submission to the DPR: Draft Law on Forestry, Draft Law on Telecommunication, Draft Law on Power Energy, Draft Law related to Mass Media, Draft Law on Secure Transaction, Draft Law on State Security, Draft Law in Intellectual Property Right field such as Draft Law on Trade Secret, Draft Law on "Integrated Circuit", and Draft Law on Industrial Design as obligations of Indonesia in becoming a GATT member. Likewise the new Draft Law on Investment, Draft Law on Anti Dumping and Draft Law on Money Laundering.

In preparing the aforesaid laws and regulations, there are at least three conditions to be fulfilled so that the law in question can be effective. First, the law must be presentable in a language that can be understood by the people, meaning the law must not be of a symbolic nature, but must already be operational. Therefore there is a need for the legislative institution to make an evaluation after a certain period of time, whether a law is functioning as intended. Second, the preparation of law ought to conform to the aspiration of the people. Furthermore, a

law sometimes requires rules of a procedural nature and institution, so that it can function in accordance with the purpose.

Friedman said that a legal system always has 3 elements: substance, apparatus, and legal culture. The new 35 laws constitute only one of the elements in a legal system. In order to enable it to live and proceed, the apparatus and the legal culture of the people must support the operational aspect of the law. Legal reform must therefore be continued for the improvement of judicative, executive, and legislative apparatuses. In line with this, there must be legal culture reform on the part of the Indonesian people supporting democracy, justice and protection of human rights.

Laws and regulations alone will not suffice. There is a need for clean and efficient apparatus to implement the laws and regulations.

The role of the court will be increasingly important in the future. For example, Act No. I of 1995 on Limited Liability Companies mentions up to 12 times the involvement of the court in granting enactment and in passing rulings on cases. The task of the judge is guiding law to social facts. Efforts must be continued to have a clean and dignified court. In this context, additional budget to improve the welfare and quality of judges cannot be avoided. An honest and clean court still falls far short of our expectations in the present condition of the judges' welfare.

Besides improving the court institution, it is high time that Indonesia established a means for alternative dispute resolution. Alternative dispute resolution has long since been developed in the West such as the United States and Norway, and in the East such as Japan and China for practical and cultural reasons. Dispute resolution through the court in the West and in the East has its shortcomings,. i.e. it is time-consuming from the first level court up to the appeal or cassation level, it is costly and it widens the gap in the relationship of the parties in the dispute.

Cultural reasons have also caused the people to tend to waive the court as a place for resolution of disputes arising among themselves. Eastern societies like China and Japan traditionally dislike the court. Also traditionally, Chinese and Japanese are very reluctant to bring their civil disputes before the court. To preserve harmony, civil cases are settled through mediation (China and Japan) and in a conciliatory manner (Japan). For practical considerations, alternative dispute resolution such as arbitration, negotiation, mediation and conciliation are widely adopted in the United States and in Japan. Negotiation, mediation, conciliation and

arbitration practices have also existed in Indonesia, although not all of them have an important role in the out of court settlement of disputes.

Each legislative institution commission needs to be staffed with experts. Although the DPR is a political representative institution, knowledge of and information on matters of a technical nature has to be available. Therefore experts from various sectors have to support the DPR. Thus the DPR will be able to perform its function with a quality that is balanced with that of the executive. Many legislative initiatives in various industrialized and developing countries fail to achieve their purposes the ones that and are almost always blamed are the public segment, so that the law cannot be enforced. Actually the responsibility for failure is mostly with the legislative itself because they fail to capture the living aspiration.

Although there is no empirical correlation to the effect that democratization is necessary for economic growth and integration to the world market, this does not always make the government repressive, and improvement of the people's prosperity level will bring about a greater desire for the creation of a more democratic society, thereby enabling wider and bigger public participation in development decision making.

There is also a need for improvement in the quality of personnel at the Legal Bureau in various Departments. This is due to the more intensified role of law in the future, not only with regard to local and national legal issues, but also with regard to cross sectorally related international issues.

For example, agricultural problems not only relate to production but also to marketing and even industrialization. It relates not only to domestic market but also foreign market, since Indonesia takes part in international trade.

Practicing lawyers also have to reorganize themselves. Legal scholars must adequately understand the economic issues, so that they will be able to fulfill the expectations of the planners and the administrators. Besides the need for law advocates, the legal profession organizations also have to enforce professional code of ethics.

In connection with development in the political sector, development is also intended to realize political culture transparency to improve the quality of democracy. Laws and regulations not only emphasize their functions to preserve order, but also to encourages public participation. It is clear that the "legal culture" in question is not the- "legal culture" viewing law as merely a series of the state's instruc-tions/orders which must be complied with whatever the contents are,

but law as something that also contains the rights of the people in a country. The rights relate to their participation to take part in deciding on the matters that are the best for them in this development process. Those matters are amongst others reflected in the contents of law and the relevant implementing regulation, the attitude and action of the legal apparatuses in performing the function, and the compliance of the people with law. Indonesia at present is undergoing a transition period. Some are still bound to the old, paternalistic cultural values, some others are encouraging the development of new values towards a transparent and democratic society. In the transition period, in certain cases sometimes a kind of tug of war takes place between the old values and the new ones. This is not something strange because the "legal culture" is part of the culture of a nation, and the "legal culture", according to Friedman, depends of the "sub legal culture" of the members of society, namely depending on their position in society, the cultural background, the political stance, and the ideology adopted, and the education received by them. In this context, legal reform leading to a transparent and democratic society is not an easy task.

The economic recovery, in order to be able to succeed, has to get the support of the legal system. There are even those who are of the opinion that an effective legal framework is the prerequisite for economic development intended to achieve welfare for all people. The legal system in Indonesia will not be able to function without the existence of substantial reform of laws and regulations, improvement of legal apparatuses, and change of view of the state and the people on the role of law in the society.

IV. INVESTMENT LAW AT PRESENT

Over the last 32 years since the enactment of Act No. I of 1967 on Foreign Investment, legislation in the field of investment has undergone a number of changes. These changes have been induced by political factors, domestic economy and developments in international economy, and are tending towards, more liberal investment

The following section attempts to explain the changes in regulations on investment in Indonesia which are related to ownership of national shares, the rights of the minority shareholders, business opportunities for foreign investors, and licensing.

A. Joint Venture and Indonesianization of Equity

On January 15, 1974, coinciding with the arrival of Prime Minister Kakuei Tanaka, Jakarta was engulfed in demonstrations and riots. The riots caused burnings, especially on cars made in Japan. Many observers believe that the January 15, 1974 incident, which showed anti--Japanese sentiment, pushed a change in the government's attitude to foreign investment. Only one week after the January 15 incident, the government announced a new policy on foreign investment, namely:

1. Foreign investment in Indonesia must be in the form of a joint venture with national capital.
2. National participation in old and new investment must be 5 1 % within a period of 10 years.
3. The foreign partner must fulfill the conditions for transfer of manpower to Indonesian employees.
4. The participation of Indonesian indigenous entrepreneurs in foreign investment and domestic investment must be bigger.

From the legal aspect, Ad No. 1 of 1967 on Foreign Investment confers authority on the government to set up the period of commen-cement of transfer of shares to the national partner and how much national capital participation in the company. However, Act No. I of 1967 does not prohibit foreign investment made by a company whose entire shares are owned by foreigners. As a result of the resolution in the meeting of the Economic Stabilization Council on January 22, 1974 requiring foreign investment in the form of joint venture, this policy quietly amended Act No. 1 of 1967. Many parties are of the opinion that the amendment should have been made in the form of amendment to Act No. 1 of 1967, so that a regulation of a lower level does not conflict with a Law as a result of this new policy.

On October 11, 1974, the Investment Coordination Board (BKPM) issued a Circular Letter describing in a more detailed manner the policy, namely:

1. In the case of projects taking a maximum period of 3 years in the project execution period, the increase of the national shares to become majority shares, shall be 51% minimum, within a period of 10 years with effect from the date of the Business Permit of the Project issued by the technical department concerned.
2. In the case of projects taking more than 3 years in the project execution, the increase of national shares to become majority shares shall be 51 % minimum within a period of 10 years calculated from the middle date between the date of the Business Permit of the Project issued

by the technical department concerned and the date of commencement of commercial production.

3. In the case of projects the Provisional Approval of which was issued prior to September 21, 1974, the increase of national shares to become majority shares shall be minimum 51% within a period of 10 years, with effect from the date of ratification of the PT (Limited Liability Company) by the Department of Justice like what is applicable prior to the Presidential Instruction dated September 21, 1974.
4. In the case of projects the Provisional Approval of which had not been issued or had been issued after September 21, 1974, the provisions of dictum I and dictum 2 above shall apply to the increase of national shares to become Majority, 5 1 % minimum.

Four months later, the Investment Coordination Board (BKPM) issued another Circular Letter providing clarification on, the earlier Circular Letter, namely:

1. The guidelines contained in Circular Letter No. B I 195/A/BKPM/X/ 1974 dated October 11, 1974 shall be applicable only to foreign investment the Provisional Approval/Approval in Principle of which from the **BKPM** was issued since September 21, 1974. Thus foreign investment:
   a) which has obtained the approval of the President prior to February 1974, either in the form of direct foreign investment or in the form of joint venture, prior to being burdened with the regulation on participation and increase of national shares reaching the majority status. In this case, the increase of national shares approved by the Government continues to be calculated as of the date of ratification of the corporate body by the Department of Justice.
   b) what was approved by the President between February 1974 and September 21, 1974 was the increase of national shares reaching the majority level within a period of not later than 10 years still calculated since the date of ratification of the corporate body by the Department of Justice.
   c) a company the Provisional Approval of which from the BKPM was issued prior to September 21, 1974, the increase of national shares to become majority shares shall also be taken into account since the date of ratification of the corporate body b the Department of Justice.

2. As another alternative, it can also be designated that the date of commencement of the period of national share increase is the date of issuance of the Presidential Approval Letter.
3. In the case of foreign investment projects of a special nature viewed from the aspect of the business sector, the amount of investment, the level of technology applied, the absorption of manpower, the location, and so on, the Government may consider an amendment on the obligation to increase national share participation to become majority shares within a period as described above.

In conclusion, the minimum condition for increase of national shares must be implemented by foreign investments in Indonesia. However, the Government appears not to be in a huffy to sell in fulfilling the obligation, and even opens again the possibilities for amendment to the policy itself on a project to project basis.

On July 1, 1981, six years later, the Capital Investment Board (BKPM) issued internal guidelines on the increase of national shares, linking it also to the development of the Capital Market and Cooperative Societies. These new guidelines state amongst others:

1. Foreign Investment Companies, either those whose 100% shares are owned by foreigners or in the form of joint venture company, having obtained the Presidential Approval prior to September 21, 1974:
   a) shall be obliged to fulfill the conditions for increase of the national shares in accordance with the provisions laid down in Government Approval Letter as a continuation of the aforesaid Presidential Letter of Approval. The obligation for the increase of the national shares shall take effect since the time of commencement of commercial production, unless the Approval Letter from Government determines otherwise.
   b) It is requested to make the best efforts so that by December 31, 1981 the position of ownership of national shares shall become a minimum of 30% of the number of shares paid in and placed unless the Letter of Approval from the government determines otherwise.
2. Foreign investment joint venture companies obtaining Presidential approval after September 21, 1974 are obliged to increase their national shares up to 5 1 % of the paid in and placed shares in the fifth year through the tenth year since the commencement of commercial production, unless the Government Approval Letter stipulates otherwise.

3. Foreign investment companies, whether those whose shares are 100% owned by foreigners or those in the form of joint ventures, which increase the share capital for the purpose of expansion, are obliged to sell 51% of the additional share capital to the national participants starting in the fifth year through the tenth year since the commen-cement of commercial production of the expansion project, unless the Government approval serving as the basis stipulates otherwise.
4. Particularly in the forestry sector in accordance with Presidential Decree No. 20 of 1975, foreign investment companies holding Forest Concession (HPH) are obliged to transfer 51 % of ownership to national companies not later than a period of 10 years since the issuance of the Forest Concession (HPH).
5. Unless stipulated otherwise, at least 20% of the shares of foreign investment companies must already constitute national participation since the incorporation of the companies. In case of expansion, the 20% shall be calculated from the share capital increase. Particularly in the case of plywood industry, the national participation stipulation is 51%.
6. Included in the definition of national participation is share capital participation in foreign investment companies by:
   a. National individual.
   b. National company.
   c. Cooperative Societies.
   d. Non bank financial institution.
   e. BAPINDO.
   f. National individual pr company through the capital market (through the go public method).
7. For the purpose of giving a bigger role to the cooperative societies movement from time to time in the future, unless there is the right of first refusal on the part of the existing national shareholders, it is recommended that for the purpose of increasing the national shares, the cooperative societies shall be given the widest possible opportunity.

National capital participation in foreign investment company has become a general tendency in developing countries and in industrialized countries. It constitutes a reflection of nationalism in the economic sector and the desire to avoid dependence on foreign control on their economy. Investment receiving countries have laid emphasis on international joint- venture

so that the majority of participation is with the national party through various systems. Malaysia, for example, required that joint-venture companies approved prior to January 1, 1972 submit their plans so that national participation would become 70% approaching 1990 (including 30% ownership by indigenous Malaysians. The Philippines also stipulated that foreign participation in companies not constituting pioneer companies may not exceed 40%, except where full capacity has not been implemented by the foreign party. Pioneer companies may own 100% by the foreign party in case the local capital is not adequately available. However, such companies are required to transfer their shares so that the Filipino majority will become 60% within a period of 30 years (or 40 years), when 70% of the production plan has been achieved. In South America, the Peruvian Industrial Law stipulates that after 10 years the Government must buy at least two thirds of the basic industries and resell to Peruvian national entrepreneurs. In addition, within a short period the foreign investors in other industries must transfer the shares to national parties so that the foreign participation in the industry in question will not exceed 25%. The employees will be the majority owners, whereby each company must set aside 15% of its profit each year in the form of purchase of shares for the employees until reaching 51 %. In Venezuela, the "1965 Insurance and Reinsurance Company Law" stipulates that the insurance and reinsurance business in the country must be majority owned by the "Socedades Anonimes". Minimum 51% of the shares of insurance companies must be owned by national Venezuelan entrepreneurs. In addition, the Board of Directors of the companies must comprise at least five persons and of these the majority must be held by Venezuelans. The same situation is also found in several industrialized countries. The Canadian government, for example, stipulates that 50% of the industry dealing in the oil and gas sector must be owned 15y the Canadian Government or Canadian citizens approaching 1990. The policy to limit foreign participation is also adopted by Japan. The Japanese government prefers to have foreign investors owning only 50% or less of the shares in joint venture companies in the country.

The gradual intensification of national participation in the public sector and the private sector in the ownership of foreign investment companies, limitation on activities of foreign companies in certain sectors and other bans are (he result of nationalism in (he economic sector. However, from the aspect of the foreign investors themselves, such policy is felt as creeping nationalization: erosion of ownership and control on management from the investment companies.

Conducting control on joint-venture companies is an important part for foreign investors. This problem will not arise if the foreign parties own the majority shares in the company. However, when the foreign parties become the minority shareholders, they still have several ways to protect (heir interests, amongst others through designation of the quorum for the general meeting of shareholders and method for making resolutions, irrevocable power of attorney, voting agreement, and contract management. In addition, the foreign partners can still conduct control on the company by means of transferring shares to various national parties, Illus practically the foreign partners will still serve as the majority if compared to several other shareholders in split numbers. First, the Articles of Association of a joint-venture company can include the stipulation that important resolutions can only be made in a general meeting of shareholders in which at least three quarters of "he shares issued by the company must be represented and resolutions must be accepted by at least three quarters of those empowered to cast votes. This will guarantee that important matters relating to the interest of the minority shareholders will not be resolved without their approval. For example, the foreign partners only own 49% of the shares in the company in question. If in a general meeting of shareholders the foreign partners do not accept the resolution to be made, then the resolution will not be acceptable although it is accepted by 51% of the shares issued. The Japan this possibility is the best way. However, it must be remembered that the minority shareholders controlling only two-thirds or less of the shares issued cannot have such veto right. Article 343 of the Japanese Commercial Code states for example that the amendment of the Articles of Association of a company may only be made if in a meeting of shareholders there are present those representing more than half of the shares issued and the resolutions must be approved by three quarters of those empowered to cast votes. Furthermore since 1967 the minority shareholders have not been allowed to include the provision in the Articles of Association conferring on them the right to veto resolutions.

Second, a minority shareholder can still control important activities of the company through the power of attorney given by a majority shareholder, such as the individual concerned with marketing of the products of the company. This power of attorney usually arises from the loan given by the foreign partner to the local partner to enable the local partner to own shares in the joint-venture company thai has been jointly established.

Third, the minority shareholders may enter into an agreement with other shareholders, so that the latter will give their votes in the same manner as the voles cast by the minority

shareholders, so that in the end the number of votes will be adequate to prevent the resolution to be taken if the resolution is not accepted by the minority shareholders. For example, a foreign partner only owns 49% of the shares of a company and he then enters into an agreement with another shareholder, so that 2 % only of the shares of *the* latter will give the same vote as the vote to be given by the foreign partner. If the Articles of Associalion of the company stipulate that resolutions may be made with simple majority, then as a result of the agreement it shall be adequate, for the foreign partner to control the resolutions to be taken.

Fourth, the foreign partner also has the possibility to enter into a management contract with a local partner, thereby conferring the power to him lo run the joint-venture company. The local partners in developing countries tend to hand over this important part to their foreign partners because they do not have experienced managers. For the foreign partners themselves, another possibility for entering into a special agreement relating to certain positions can constitute compensation for the Jack of control through voting in a general meeting of shareholder. For example, a joint-venture agreement states that if the ownership of shares changes from 75-25 for the foreign partners to 49-51 after 10 years, the foreign partners will still hold important positions in the Board of Directors. The foreign partners usually hold the positions of President Director, Marketing Director, Director of Operation, and Finance Director, whilst the Ethical partners hold the position of Vice President Director, Personnel Director, and Director of General Affairs. After 10 years, the local partners will hold the positions of President Director, Director of Operation, Personnel Director and Director of General Affairs, whilst the foreign partners will still hold the positions of Finance Director, Marketing Director, and Vice President Director. In the case of Japanese companies, for example, the importation of basic materials and selling the products from the basic materials in the export market is an important part of the activities of their multi-national companies. Japanese multi-national companies can gain profit from the sale of the basic materials and buy the products from their joint-venture companies. For this aspect, holding certain positions such as Marketing Director and Finance Director is more important than merely being majority shareholders. Conversely in Japan itself, foreign partners are not allowed to control positions in the Board of Directors in a proportion exceeding their capital participation in a joint venture. In other words, the foreign partners cannot control the Board of Directors if they only own 50% of the shares in the company.

Finally, selling shares to the capital market (go public) is another strategy for the foreign partners desiring to continue holding control on the company. The shares sold in the capital market will be owned by many shareholders, thus the foreign partners, from this aspect, remain as majority shareholders. In addition, although the shareholders are empowered to conduct supervision on the operation of the company, in practice they will not participate in management and policy making of the company.

Reverting to the transfer of foreign shares to the local partners, besides the existence of the local regulation requiring such matter, the preparedness of the foreign partners depends also on the evaluation as to how far the business sector in question will still generate profit in the future. This matter is again related to the factor of what determines the company to make investment in the first place. Such investment motivation can be seen from the purpose of the company. Generally, the investors can be divided into three categories based on the purpose of the company, namely gathering the sources of natural resources and selling them in the world market, seeking the availability of cheap production cost for the goods produced, and finding the possibility to discover new markets. The companies belonging to the first category are those dealing in the petroleum, timber, metal mining, and fishery sectors. The ban on export of certain raw materials by the local government desiring that the raw materials be processed domestically may constitute a boosting factor for the companies in this category to postpone their investments. They are very seldom attracted to establish their own industries, especially if the possibility to gain profit from the business is not yet clear. When the Indonesian government applied the ban on timber export in the form of logs and require the companies dealing in this sector to establish plywood factories, several foreign investors then withdrew and transfer their shares to the local partners. The companies belonging in the second category, namely those giving priority to the cheap production cost are those dealing in the sector of assembling electrical appliances such as radio, television, and computer. One wave of demand from the local workers for wage increase can be the main factor for the companies in this category to carry out divestment. The companies in the third category, giving priority to the local market for their products, are investors in the textile, pharmaceutical, motor vehicle, food and beverage sectors. A request from the local partner or the local government for the companies in this category to conduct export of its products will constitute matter that is unfavorable, because originally the purpose of their investment is to seize the local market. Moreover, the foreign market has been controlled by the

products of their joint venture companies in other countries. In addition, the transportation cost and the quality of the product may not necessarily be able to overcome competition from similar goods in the international market. A dullness in the local mark et or the occurrence of sharp competition can be a factor influencing the foreign partner to transfer its shares to the local partner. Finally, the calculation of profit/loss will still be the basis of the decision to carry out divestment.

In connection with cooperation with national capital, Act No. 1 of 1967 only lays down the general conditions regarding cooperation between foreign capital and national capital, by mentioning that in the business sectors that are open to foreign capital cooperation may be established between foreign capital and national capital. The Government further designates the business sectors, forms and methods of cooperation between foreign capital and national capital by using the foreign expertise capital in the export sector and the sector of production of goods and services. This condition is interpreted not as a requirement for the existence of cooperation between foreign capital and national capital in the business ‘sectors that are open to foreign investment. This interpretation is further strengthened with the issuance of Instruction of the Cabinet Presidium No. 36/IJ/IN/6/1961 on the provision of special incentives for foreign investment establishing cooperation in the form of joint enterprise. By providing incentives again, it can be said that the Government tries to encourage foreign investment to be made in the form of joint venture voluntarily. If foreign investment is made in the form of venture, the Government shall again provide incentives, namely: a joint-venture company may be exempted from the obligation to invest a minimum of 2.5 million dollars to get corporate tax and dividend tax exemption. Additional corporate tax and dividend tax exemption can be granted during one year, on the condition that the amount of exemption of the two taxes shall not exceed five years.

As in other developing countries, the Indonesian Government appears to prefer investment through a joint venture system that enables national capital to participate, and thus such condition expedites the implementation of transfer of knowledge and skills in conducting business, and at the same also reducing the danger of foreign domination in economy and industry. However, the Government is prepared to compromise because to find a national partner having the ability to cooperate with a foreign entrepreneur is not an easy thing. The government is aware that not all national entrepreneurs are able to take part in capital placement and almost always can only participate with relatively small capital in a joint venture company

with foreigners. Even in the mining sector which requires a big investment, practically no local partner with the capability to take part in investing in this sector.

In several countries, conducting business in the form of venture by foreign entrepreneurs is the only way, because the regulations require such method. Conversely for the for entrepreneurs themselves, most of them admit that participation in form of joint venture brings special benefits, amongst others involving the availability of marketing facilities, rapport with the government. I public opinion. First, a foreign investor participates in a joint venture the business to get distribution channels in areas where the existing distribution networks are not able to reach the areas. For example, foreign company faces a problem whereby for a certain period it must relocate its business in the form of local production or conversely will lose the market completely, because of import restriction applied by the local government. In another study, American entrepreneurs from the motor vehicle sector said that the local partners were very important because conducting sales in the places in question would be very difficult for foreigners. In several countries, the Government is the bigger buyer. However, it is the policy of the government concerned to buy domestic products. A joint venture with local entrepreneur can be the right way, because the joint venture company is classified as domestic company. Second, since the local government prefers foreign investment in the form of a joint venture, it is an important matter to get or preserve good relationship with the Government. Therefore it can be expected that the local government will provide assistance or at least will not take actions that will be unfavorable. In addition, the local partner in many cases is more able to penetrate bureaucratic hindrances, and can even influence Government actions through personal relationship with the officials who are the policy makers. This role is better implemented by the local partner instead of the foreign investor. In several other cases, first class managers are rather difficult to find in developing countries. The establishment of a joint venture company with a successful local entrepreneur is the only means to find the persons who are knowledgeable about the local condition, whether the persons are in the political sector or in the business world. In the end, a joint venture company appears to represent a symbol of equality, whereby the foreign investor hopes the local employees will be prepared to devote their loyalty to the company. In a report on joint ventures in India, sales of 10% of the shares of a company where originally all of the shares were owned by the foreign party to the local people created a moral strength to the Indian national staff in the company. In Indonesia, the partners in joint venture companies may

be categorized into two categories: private and state owned enterprises. Generally the private entrepreneurs relatively face capital difficulties. It is not easy to find entrepreneurs who are able to take the shares in a joint venture, although as minority shareholders. In many cases, the foreign partner lends money to the local partner for the participation in the joint venture. It is expected that the loan can be repaid from the profit gained in the future. Sometimes the local partner places its participation in the form of title on the land used in the joint venture company. In the past, another form of participation was remuneration given based on the rapport of the local partner with the bureaucracy, so that the affairs of the company can be settled properly with the government bureaucracy.

In the 1990s China and Vietnam were extremely active in their efforts to attract foreign investors. They offered various facilities for foreign investment, one of which was the possibility for the investors to own shares up to 100%.

Inspired by this fact, Indonesia introduced deregulatory measures -in various fields particularly those related to foreign investment. One of the measures was the possibility for foreign investors to own all s of the company they established. The latest provision of 100% investment can be found in Government Regulation No. 20 of 1994. ly this provision had already existed in 1967 through Act No. 1 on Foreign Investment, but it was banned in 1974 after the *Malari* incident as described earlier. Government Regulation No. 17 of 1992 for the following:

1. Entrepot areas whose products are 100% for exports, the provision is 100% ownership for a period of the first five years of commercial production. In the sixth year, there shall be national share participation (equity) of 5% at the minimum for Indonesia.
2. From large investment with a paid capital of 50 million American dollars, the provision is 100% ownership for a period of the first five years. In the sixth year thereafter, there shall be national capital participation of 5% and this shall increase to 20% in the twentieth year.

For certain services or labor intensive industries, or 65% export products or semi-finished goods of other industries, investment is made in the form of joint ownership between foreign and national investors with the following stipulations:

1. For certain services, the composition of shareholding at the time of establishment shall be 80% (foreign) and 20% (Indonesia), and 49% and 51% in the twentieth year.
2. For the following cases:

- Labor-intensive industries
- 65% export products
- Production of raw materials
- Semi finished goods of other industries

The shareholding composition at the time of establishment shall be 95% (foreign) and 5% (Indonesia). In ten years' time the composition shall be 51 % and 49%, and in twenty years' time 5 1 % and 49%. In October 1993 the Government issued Government Regulation No.50 of 1993. This regulation seemed bolder than the previous regulation in July 1992 particularly concerning divestment, which was always disputed by foreign investors. Government Regulation No. 50 of 1993 stipulates the following:

1. In entrepot areas with products for export purposes, foreign investment of 100% is provided for. For cases where 25% of the products is for domestic market, the composition becomes 80% and 20% in twenty years after ten years of commercial production.
2. For large investment with a paid capital of 50 million American dollar in certain areas, foreign investment of 10% is also provided for. Ownership becomes 49% and 51 % in twenty years after ten years of commercial production.
3. Provision for 100% foreign investment is also made for companies that produce auxiliary materials, semi finished goods or components for other industries with a minimum capital of 2 million American dollars, with divestment of 49% and 51% in twenty years after ten years of commercial production.

For certain services with a minimum capital of 250,000 American dollars, investment is made in the form of joint ownership with a ratio of 80%: 20% which in twenty years becomes 49%: 51 %. For labor intensive (minimum 50 workers, 65% for export, or production of basic materials or semi finished goods) the original composition of 95%: 5% becomes 80%: 20% in ten years, then 51%: 49% in twenty years. For other lines of business with a minimum capital of 2 million dollars, the original composition of 80%: 20% becomes 49%: 51% in twenty years. The participation of national (equity) capital in foreign investment can be done through direct ownership or the capital market.

The latest development in provision on foreign capital particularly Foreign Investment of 100% and Joint Venture in Indonesia is Government Regulation No. 20 of 1994. In this regulation business activities that are important for the State and concerned with public services, such as production/transmission/distribution of electricity, telecommunications, shipping, airlines, drinking water, railways, power plant and mass media can be done in the form of joint venture between foreign investors and Indonesian citizens or legal entities with a shareholding composition of at least 5% of the paid capital for the Indonesian partner, and further increase in shareholding can be decided on through consensus. Foreign investment of 100% is also provided for by this regulation for business activities other than those mentioned above with the stipulation that within 15 years of commercial production, the foreign investor must sell part of his shares to the Indonesian citizen or legal entities.

Participation of the national (equity) capital in foreign investment under this regulation can be done through direct ownership or the capital market. What is special about Government Regulation No. 20 compared with the previous provisions is that a transfer of foreign shares to national shares does not change the status of a company. In addition, the amount of capital invested by a foreign investor is determined on the basis of the economic feasibility of the business activity concerned and the investor is free to decide on the amount of the invested capital. The company's business activity can be carried on in any location within the jurisdiction of the Republic of Indonesia except in entrepot or industrial areas.

B. Minority Shareholder Rights

One of the problems in joint venture companies is the relation-ship between the majority shareholders and the minority shareholders.

Act No. I of 1995 concerning Limited Liability Company confers certain rights on the minority shareholders. These rights are delegated because if problems in the company are referred to only the resolution of a General Meeting of Shareholders (GMS), then the majority shareholders will simply approve the resolution of the Board of Directors, the Board of Commissioners and a GMS because such matter is favorable to them. Thus the wrong actions or policies of the Board of Directors, the Board of Commissioners, and even the majority shareholders that are unfavorable to the minority shareholders, insofar as the matter in question is favorable to the majority shareholders through the GMS the process can go on. The law does

not allow such matter by delegating certain rights to the minority shareholders. The rights of the minority shareholders can be divided into two. First the rights clearly stated and the second, the actions that must obtain the approval of the minority shareholders. The fights clearly stated, namely the right to file claims on the company (Article 52(2), the right to request GMS (Article 60(1), the right on behalf of the company to sue the board of directors and the board of commissioners (Article 85(3) and Article 98(2)), the right of the minority shareholder in merger, acquisition and consolidation as mentioned in articles 104(1a), 104(2), 105(1), and the right minority shareholder to request a court to investigate the company (Article 110(3a).

The minority shareholders may sue the company on behalf of itself. Likewise the shareholders on behalf of the company may sue the Board of Directors and the Board of Commissioners.

Article 54, paragraph 2, states that each shareholder shall be empowered to sue the company at a District Court, if the shareholders feels it has suffered a loss because of an action of the company consider-ed to be unfair and without proper reason as a result of the resolution of a GMS, the Board of Directors or the Board of Commissioners.

This Article 54, paragraph 2 may be troublesome for the company because one shareholder alone without ownership limit can sue the company if the shareholder feels he/she has suffered a loss because of the resolution of a GMS, the Board of Directors or the Board of Commis-sioners. A minority shareholder on behalf of the company may also sue the Board of Directors and the Board of Commissioners. Article 85(3) states that, on behalf of the company, a shareholder representing at least 1/1.0 (one tenth) of the total number of shares with legitimate voting right may file a lawsuit at a District Court against a member of the Board of Directors for a mistake or negligence resulting in a loss to the company.

Furthermore article 98(2) states that, on behalf of the company, a shareholder representing at least 1/10 (one tenth) of the total number of shares with legitimate voting right may file a lawsuit at a District Court against the Board of Commissioners which on account of a mistake or negligence has caused a loss to the company.

In the United States or in the Common Law system, the right of the minority shareholders to sue on behalf of the company is referred to as derivative action. The consequence is that if this lawsuit wins, all of the cost of the case including the lawyer fee shall be borne by the company.

The minority shareholders representing 1/10 (one tenth) of the total number of shares with legitimate voting right, or a smaller number as designated in the Articles of Association of the company concerned may also request an annual GMS and for the benefit of the company may request an extraordinary GMS:

The GMS in question may only discuss the problems related to the reason why the GMS is being requested.

Article 67 states that,

(1) The Chief Justice wh6se jurisdiction covers the domicile of the company may grant permit to the applicant to:
   a) make the summons to the annual GMS himself, at the request of the shareholder if the Board of Directors or the Board of Commissioners fails to convene the annual GMS at the designated time; or
   b) make the summons to the other GMS himself, at the request of the shareholder as referred to in Article 66, paragraph (2), if the Board of Directors or the Board of Commissioners after a period of 30 (thirty) days with effect from the time of submission of the request has elapsed does not make the summons to the other GMS.

(2) The Chief Justice of the District Court referred to in paragraph (1) may designate the format, contents, and period of summons to the GMS and appoint the Chairperson of the meeting without being bound to the provisions of this Law or the Articles of Association.
(3) In case the GMS is held as referred to in paragraph (1), the Chief Justice of the District Court may instruct the Board of Directors and/or the Board of Commissioners to be present.
(4) The ruling of the Chief Justice of the District Court on the issuance of the permit referred to in paragraph (1) shall constitute a ruling of the first and last level.

Each shareholder shall be empowered to request to the company that the shareholder's shares be purchased at a reasonable price, if the shareholder concerned does not accept the action of the company that is unfavorable to the shareholder or the company, in the form of:

a. amendment to the Articles of Association;

b. sale lacing as collateral exchange of most or all of the assets of the company; or
c. merger, consolidation, or acquisition.

Article 104, paragraph 1, further states that the legal action of merger, consolidation, and acquisition of the company must observe the interest of the minority shareholders.

Paragraph 2 states that merger, acquisition and consolidation of the company shall be without prejudice to the right of the minority shareholders to sell the shares at a fair price.

In the United States, the method to get the fair price varies. First, evaluation can be conducted on the basis of past performance. The past performance can be measured with the:

a. market price
b. past earnings
c. book value
d. liquidating value
e. going concern value

The court admits the shortcomings and the strengths of the above methods. Therefore, it combines the methods with certain criteria. For example, the Delaware Court in *Tannectics*, Inc. v. A.I. Industries, Inc., 5 Del. J. Corp.L.337 (Del Ch. 1979) in an effort to get a fair price by means of valuing the assets at 45%, the average earnings at 40%, and the market price at 45%.

The above methods by some parties are considered unable to give a fair share price if they are linked to the future prospects of the company. Therefore there are courts using the method based on future earnings as in the case of Weinberger v. VOP, Inc., 457 Azd 701 (Del 1983). In the United States, if a shareholder who does not agree to a merger fails to get a fair price for the shareholder's shares through an offer to the company, then the dissenting shareholders shall refer the case before a court to get a fair price. Within a period of about 6 months the court shall have passed its ruling.

Based on Article 110, paragraph 3a, a shareholder on behalf of itself or on behalf of the company if representing at least 1/10 (one tenth) of the total number of shares with legitimate voting right may request an investigation on the company to obtain data or information in case there is suspicion that:

a. the Company has committed an act against the law that is unfavorable to the shareholders or third parties; or

b. a member of the Board of Directors or the Board of Commissioners has committed an act against the law that is unfavorable to the company or the shareholders or third parties.

The investigation referred to in paragraph (1) shall be conducted by submitting an application in writing together with the relevant reasons to the District Court whose jurisdiction covers the domicile of the company. Article 86(3) confers the right also on a minority shareholder to inspect the accounting records of the company. For this purpose, the shareholder concerned must submit an application in writing to the Board of Directors.

Dispute settlement through the District Court as required by Act No. I of 1995 on Limited Liability Companies restricted the freedom of the parties in dispute to settle their cases through arbitration. In 1982, in the case of *Ahyu Forestry Company United v. Sutomo,* 2924 K/SIP/1981, the Supreme Court decided that the District Court had no authority to deal with the case because both parties in the Joint Venture Agreement had chosen arbitration for settlement of their dispute. According to the Supreme Court, a legitimate agreement is law to both parties. If this case had been filed after the enactment of Act No. I of 1995, the Supreme Court would have had a different view. Therefore, in drawing up a joint-venture agreement, an arbitration clause should be clew because according to Act No. I of 1995, disputes between shareholders and the Board of Directors or Commissioners must be settled through the District Court.

C. Business Opportunities for Foreign Investors

Articles of Act No.5 of 1967 on Foreign Investment provides that the Government shall specify the kinds of business opportunities for foreign investors on a scale of priority and determine the requirements to be fulfilled by foreign investors in each business opportunity. In implementing this article, the Government has made an annual renewal on the list of business opportunities for foreign investors. It appears that the range of business opportunities is becoming more extensive.

Presidential Decree No. 6 of 1998 on the kinds of business undertakings that are closed to foreign investors states two categories. First, undertakings absolutely closed for investment in the primary sector include the cultivation of *ganja* (marijuana) and suchlike, use and trade of sponge, contracts for forest clearance, and uranium mining. In the secondary sector, undertakings absolutely closed for investment are industries manufacturing Penta Chlorophenol, Dichloro

Diphenyl Trichloro Ethane, Dieldrin, Chlordane, Pulp with Sulfite processing and Pulp with Chlor Whitening, Chlor Alkali with Mercury processing, Chloro Fluoro Carbon, Cyclamate and Saccharin, processing of Finished/Semi Finished goods from Mangrove, alcoholic drinks, fireworks, explosives and components, arms and components, printing of postage stamps, seals, treasury bills, passports and post paid items.

Undertakings closed in the tertiary sector are establishment of gambling places. The second category is concerned with undertakings that involve ownership by foreign citizens and/or foreign legal entities. In the primary sector: culture of freshwater fish and logging concession; in the tertiary sector: transportation by taxi and bus, shipping, private television and radio broadcasting, newspaper and magazine, film industry and cinemas, management of radio frequency spectrum, and satellite orbit, trading service except large scale retail businesses (mall, supermarket, department store, shopping center), distributor/wholesaler, restaurant, quality certification, market research, and after sales service. Medical services are also closed: clinic, maternity clinic, specialist clinic and dental clinic.

Any other undertaking that is not mentioned in the above list is open for domestic and foreign investment.

D. Licensing

The procedure for investment has undergone a number of changes to ensure efficiency. On July 28, 1998 Presidential Decree No. 115 of 1998 was issued to amend Presidential Decree No. 79 of 1993 concerning Investment Procedure. It is stipulated that a request for domestic investment that satisfies certain criteria can be directed to the Governor.

Later on Presidential Instruction No. 22 of 1998 was issued concerning the cancellation of the requirement of recommendation from a technical agency for approval of investment expect for mining, energy, oil palm plantation and fishery. In establishing this investment procedure, the Government has tried to simplify the bureaucratic process and ensure that the required licensing can be dealt with under the same roof.

V. THE NEED FOR INVESTMENT LAW REFORM

Reform of the investment law in Indonesia will be carried out in the near future. There is a desire to combine laws for foreign investment and domestic investment. In relation to GATT

(General Agreement on Tariffs and Trade), there is still opportunity for Indonesia during the transitional period of five years to change or add to the investment regulations that can cause trade distortion. For Indonesia, the Trade Related Investment Measures (TRIMs) will include only the local content requirement, which is currently imposed on industries of two wheeled, four wheeled vehicles, and the production of some machines and equipment. In addition, the reform of the foreign investment law should not overlook the principles of investment agreed upon in APEC (Asia Pacific Economic Cooperation).

The APEC Non Binding Investment Principles can be used us a guide to determine the transparency and consistency of investment policy. Over the past few years, countries in the Asia Pacific region have carried out significant liberalization. Amidst this severe economic diffi-culty, Indonesia needs to invite more foreign capitals to boost exports.

Any party or coalition of parties that forms a new government as a result of the General election on June 7, 1999 cannot afford to put aside the need for political, economic, and legal reforms that have been going on for a year. Metaphorically speaking, let us suppose that economic growth is a building. This building should stand on a strong foundation, i.e. the law. This strong foundation can exist if the ground, i.e. the political situation, is stable. Foreign capitals will come if there are political stability, economic opportunities, and legal certainly. Legal reform to attract foreign investors is not only restricted to investment laws and the apparatus but is also concerned with reform of all the components within the legal system as a whole, i.e. legislation in various fields, the government apparatus and the legal culture of the Indonesian society.

REFERENCES

Arifin, Marzuki. Peristiwa 15 January 1974. Jakarta, Publishing House Indonesia, 1974.

Barenberg, Mark. "Law and Labour in the New Global Economy: Through the Lens of United States Federalism," Columbia *Journal of Transnational Law, Vol.* 33, 1995.

Breeden, Richard C. "The Globalization of Law and Business in the 1990s," *Wake.Forest Law Review, Vol.* 28, No.3, 1993.

De Graaf, Gerard and King, Mathew. "Towards a More Global Government Procurement Market: The Expansion of the GATT Government Procurement Agreement in the Context of the Uruguay Round," *The International Lawyer, Vol.* 29. No.2, 1995.

De Wet, Erika. “Labour Standards in the Globalized Economy: the Inclusion of a Social Clause in the General Agreement on Tariff and Trade/World Trade Organization,” *Human Rights Quarterly, Vol.* 17, 1995.

Delors, Jaqnes. “ The Future of Free Trade in Europe and the World,” *Fordham International Law Journal, Vol. 18,* 1995.

Damaret, Paul. “The Metamorphoses of the GATT : from the Havana Charter to the World Trade Organization,” *Columbia Journal of Transnational Law, Vol.* 34, 1995.

Friedman, Wolfgang, G. and Kalmanoff, George. ed. *Joint International Business Ventures.* Columbia University Press, New York, 1961.

Friedman, Wolfgang, G. and Kalmanoff, George. ed. *Joint International .Business Ventures.* Columbia University Press, New York, 1971.

Friedman Lawrence *M. A History of American Law,* New York, Simon and Schuster, 1973.

Frank, Thomas M. “The New Development: Can American Law and Legal Institutions Help Developing Countries”, *Wisconsin Law Review,* No. 3, 1972f

Footer, Mary E. “The International Regulation of Trade in Services

Followig Completion of the Uruguay Roundi”The *International* Lawyer, Vol. 29, No. 2,1995.

Green Carl J. “APEC and Trans Pacific Dispute Management,,” Law *and Policy in International Business,* Vol. 26, 1995.

Gomez, Mario. “Social Economic Rights and Human Rights Commissions,” *Human Rights Quarterly,* Vol. 17, 1995.

Geist, Michael A. “Toward a General Agreement on the Regulation of Foreign Direct Investment, *Law and Policy in International Business,* Vol. 26, 1995.

Gray, Whitmore. “Globalization of Contract Law: Rules for Commercial Contracts in the 2 I’t Century,” *New Zealand Law Journal,* 1996.

Henderson, Dan F. “Contract Problems in U.S. Japanese Joint Ventures”, *Wash. L. Rev.* 479,1964.

Hildebrand, James L. “Establishing a Joint Venture Company in Japan Legal Considerations”, 6 CASE W. *RES. J, INT’L* 199,1974.

Himawan, Charles. *The Foreign Investment Process in Indonesia., PIT.* Gunung Agung, Singapore, 1980.

Haedal, Dan Meadow. West, Robert G. Gerald T. The Measurement of Political Risk and Foreign Investment Strategy: A Summary Report. Foreign Policy Research Institute, Philadelphia, 1975.

Hasibuan, Sayuti. *Ekonomi Sumber Daya Manusia,* LP3ES, Jakarta, 1996.

Hufbauer, Bary. " International Trade Organizations and Economies in Transition: A Glimpse of the Twenty First Century, " Law *&Policy in International Business,* vol.26, 1995.

Howse, Robert and Trebilcock, Michael J! "The Fair Trade Free Trade Debate: Trade, Labour, and the Environment, *"International Review of Law and Economics,* No. 16, 1996.

Jaeger, Walter H. B. "Joint Venture : Membership, Types and Termi-nation" 9AM. U.D. *REV. I 11,* 1960.

Japanese Transnational Enterprises in Indonesia. *AMPO Japan Asian Quarterly,* Vol. 12, No. 4, 1980.

Kapoor, A and Cotton, James *E. Foreign Investment in Asia: A Survey of Problem and Prospects in 1970s.* The Darwin Press, Princeton, 1970.

Kartasasmita, Ginanjar. *Pembangunan Untuk Rakyat, Memadukan Pertumbuhan dan Pemerataan.* CIDES, Jakarta, 1096.

Manique, John 0' "Human Rights and Development". *Human Rights Quarterly, Vol.* 145.,1992.

Mendelson, Wallace. "Law and the Development of Nations, *"The Journal of Politics,* Vol. 32, 1970.

Ozawa, Terutomo. *Multinationalism: Japanese Style,* Princeton Univ. Press, 1979.

Organski A. F. K. *The Stages of Political Development,* Knoff, New York, 1965.

Osinbajo, Yemi Ajayi, Olukonnyisola. "Human Rights and Economic Development in Developing Countries," *The International Lawyer, Vol. 28,* No. 3, 1994.

Phatak, Arvind V. *Managing Multinational Corporation.* Praeger Publishers, New York, 1974.

Sadli Mohammad. "Foreign Investment in Developing Countries: Indonesia". In *Direct Investment in Asia and the Pacific.* Edited by Peter Drysdale. Univ. of Toronto Press, Toronto, 1972.

Sadli Mohammad. *"Dominasi Modal Asing versus Pertumbuhan Modal dan Perusahaan Nasional", Kompas,* 4 Juni, 1970.

Sankar, Nihan R. and Chattopadhyay, Boudhayan. *Foreign Investment and Economic Development in Asia.* Orient Longman Ltd., Calcutta, 1976.

Sakurai Masao. *Legal Problems ofIntemational Joint Vntures in Asia,* Institute of Developing Economies, Tokyo, 1980.

Shahab, Halim. "Directors and Managers: Their Functions and Powers Indonesian Company Law Centre for Management Technology, Jakarta, 1983.

Solomon, Lewis D. *Multinational Corporations and the Emerging World Order,* National University Publication, London, 1978.

Stutzman, Andrew R. K."Our Eroding Industrial Base : U.S. Labour Laws Compared with Labour Laws of Less Developed Nations in Light of the Global Economy," *Dickenson Journal of International Law, No.* 12, 1993.

Tomlinson, James W.C. *The Joint Venture Process in International Business: India and Pakistan,* The MIT Press, 197 1.

Theberge, Leonard J. Law and Economic Development, *Journal of International Law and Policy,* Vol. 9, 1980.

Upham, Frank K. *Law and Social Change in Postwar Japan,* Harvard Univ. Press, Cambridge, 1987.