

EXAMINING THE CHANCE OF FREE PRIOR AND INFORMED CONSENT ENACTMENT UPON DIRECT INVESTMENT IN INDONESIA

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ABSTRACT

This research is aimed to examine the possibility of Free Prior and Informed Consent (FPIC) enactment on the field of natural resources direct investment in Indonesia, especially in the sector of forestry, oil and gas, mining and plantation. FPIC enactment will put people in the position where they can access prior information from an investor about their investment. Prior information is provided by investor and government that contains information from pre-investment, investment operational, and post-investment. Besides, people could obtain their right to explain opinion and give consent upon investment that will operate in their area. Impact and benefit since investment existence can be calculated early and a time accepted properly. The Character of this research is normative research. As normative research, it uses normative approach, conceptual approach, and comparative approach. Research data is lying on secondary data which consists of the primary legal source, the secondary legal source, and the tertiary legal source. It arranges deductively from the general topic about FPIC to the specific topic. The result of it is explained after the examination or evaluation. Research result and analysis portray that Indonesian regulation which regulates natural resources direct investment, especially on the sector of forestry, oil and gas, mining and plantation accommodates FPIC partially elements named prior information. Moreover, information transfer has to be proceeded by the government in the planning process of direct investment location of the spatial plan. An investor should inform their activity aforesaid and its impact. For the investor, they should conduct a public hearing about their influence of business. In the sector of forestry, mining, oil and gas regulation, it provides the obligation to inform. Plantation law is concerning more over people with its agreement as the prerequisite. Contrary to prior information, the chance of entire FPIC enactment based on current Indonesian law is still difficult to be employed since there is right to control of the state to manage the natural resource in Indonesia that can be challenged by people consent.

Keywords: FPIC, direct investment, natural resources, local and indigenous people.

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MENGUJI PELUAN PEMBERLAKUAN FREE PRIOR AND INFORMED CONSENT PADA PENANAMAN MODAL LANGSUNG DI INDONESIA

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INTISARI

Penelitian ini ditujukan untuk menguji kemungkinan pemberlakuan *Free Prior and Informed Consent* (FPIC) di Indonesia dibidang penanaman modal langsung di Indonesia, khususnya pada bidang kehutanan, minyak dan gas bumi, mineral dan batu bara dan perkebunan. Pemberlakuan FPIC memberi akses ke masyarakat untuk memperoleh informasi lebih dini mengenai penanaman modal mulai dari pra penanaman modal, pelaksanaan penanaman modal dan pasca penanaman modal. Selain itu, masyarakat akan memperoleh hak untuk menyampaikan pendapat dan memberikan persetujuan atas penanaman modal yang akan dilaksanakan di wilayahnya. Penelitian ini merupakan penelitian normatif dengan pendekatan peraturan perundang-undangan, pendekatan konseptual dan pendekatan komparatif. Data yang digunakan dalam penelitian ini adalah data sekunder dengan bahan hukum primer, bahan hukum sekunder. Penelitian dipaparkan secara evaluatif dan dijabarkan mulai dari pembahasan yang umum menuju pembahasan yang khusus atau secara deduktif. Hasil penelitian ini menunjukkan bahwa pengaturan penanaman modal langsung di bidang sumber daya alam kehutanan, minyak dan gas bumi, mineral dan batu bara dan perkebunan secara parsial telah mengakomodasi konsep FPIC dalam pelaksanaan penanaman modal langsung dalam bentuk penyampaian informasi lebih dini. Penyampaian informasi wajib dilakukan oleh pemerintah pada saat perencanaan lokasi penanaman modal, sedangkan bagi penanam modal pada setiap sektor, wajib menginformasikan penanaman modal pada saat perolehan izin lingkungan. Pengaturan bidang perkebunan lebih memperhatikan masyarakat dibuktikan dengan kewajiban pembuatan perjanjian antara penanam modal dan masyarakat. Berbeda dengan pengaturan pada pertambangan mineral, minyak dan gas bumi dan perkebunan yang hanya menekankan pada informasi lebih dini. Peluang pemberlakuan FPIC masih sulit untuk langsung diterapkan secara penuh pada peraturan perundang-undangan karena adanya hak menguasai negara pada sumber daya di Indonesia.

Kata kunci: FPIC, penanaman modal langsung, sumber daya alam, masyarakat adat dan masyarakat lokal.

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