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The Role of Investment Management Institutions in Carbon Trading in Industrial Areas in Indonesia

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Abstract: Life always evolves with the times, including the country. Indonesia is developing by shifting from an agrarian to an industrial sector that is growing rapidly. The existence and development of the industry are instrumental in economic growth in Indonesia, but as the industry develops, the greenhouse gas emissions produced by Indonesia are also increasing. Therefore, a solution is needed to lower greenhouse gas emissions, and one of the solutions is carbon trading. Besides reducing carbon gas emissions, carbon trading can also encourage the domestic carbon market through its buying and selling system, opening up investment opportunities. In relation to investment, since the inauguration of the Job Creation Law, there has been an institution specifically regulating investment, namely the Investment Management Institution, representing the central government with significant authority and privileges. This study aims to analyze how the regulation of carbon trading has changed after the inauguration of the Job Creation regulation as a law and the position of the Indonesia Investment Authority in carbon trading within the industrial sector in Indonesia.

Keyword: Carbon Trading, Indonesia Investment Authority, Job Creation.

INTRODUCTION

The evolution of time and technology drives a transitional phase from old methods to new ones. One of these transitions is from agrarian to industrial methods. Every country experiences this transition, including Indonesia. Indonesia has shifted from agrarian to rapidly growing and developing industrial sectors (Jeshika, 2019), thus becoming a pivotal sector in Indonesia's economic growth. In 2022, the industrial sector contributed 18.57 percent of the total Gross Domestic Product (GDP) distribution, with an annual growth of 4.43 percent, making it more influential than the trade, mining, agriculture, and construction sectors (Ahdiat, 2023). The industrial sector stood out among others in the distribution and growth of GDP by field of business in 2023. The existence and development of industries play a crucial role in Indonesia's economic growth. However, with the growth of industries, the emission of carbon dioxide and other greenhouse gases produced by Indonesia also increases, reaching up to 1.3 million gigagrams equivalent. The industrial sector contributes 3.12% to the production stages and 9.63 percent of energy consumption out of the total 1.3

million gigagrams equivalent to greenhouse gas emissions (Alfayerds & Setiawan, 2021). Carbon emissions are a significant challenge globally, even for superpower nations. China ranks first in cumulative carbon emissions throughout 2023, followed by the United States in second place, India in third, EU27 in fourth, Russia in fifth, Japan in sixth, and Indonesia in seventh (Annur, 2023). Indonesia ranks among the top ten countries with the largest cumulative carbon emissions in 2023, which must be taken into consideration. Indonesia needs to be more vigilant in environmental protection and conservation since carbon emissions pose significant threats to the environment, and Indonesia is among the top ten countries with the highest carbon emission output.

Greenhouse gas emissions, such as carbon dioxide, are among the causes of environmental damage leading to global warming. Excessive emissions of greenhouse gases into the atmosphere result in the retention of heat, making it difficult for heat to be reflected into outer space. This trapped heat damages the atmosphere, leading to global warming as the heat spreads across the Earth (Kurnia & Sudarti, 2021). Therefore, it is relatively crucial for Indonesia to reduce carbon emission output as one of the largest carbon-emitting countries in the world. Carbon trading emerges as one of the alternative methods for reducing greenhouse gas emissions. Several mechanisms exist within carbon trading, namely: Clean Development Mechanism (CDM), Joint Implementation (JI), and Emission Trading or Cap & Trade (C&T) (Irama, 2020). One of the mechanisms implemented in Indonesia is the C&T mechanism, as it is more accessible and involves both private sector and governmental agencies. The C&T mechanism is more flexible and allows for the development of the domestic carbon market through carbon trading, thereby opening investment opportunities within this mechanism. Regulations regarding carbon trading in Indonesia are governed by Presidential Regulation No. 98 of 2021 regarding the Implementation of Greenhouse Gas Emission Control and Achievement of National Contribution Targets, utilizing Carbon Economic Value, and Minister of Environment and Forestry Regulation No. 21 of 2022 concerning Procedures for the Implementation of Carbon Economic Value. Presidential Regulation No. 98 of 2021 primarily regulates the mechanisms of carbon trading using the C&T mechanism as its basis, and Ministerial Regulation No. 21 of 2022 primarily deals with the technical aspects of carbon trading in Indonesia.

In reality, regulations always evolve to adapt to the times. In Indonesia, Presidential Regulation (Perppu) No. 2 of 2022 concerning Job Creation was officially enacted and ratified by Law No. 6 of 2023. One of the regulations stipulated in Perppu No. 2 of 2022 concerns the establishment of the Investment Management Institution, as outlined in Article 165 paragraph (2), which explains that the purpose of establishing the Investment Management Institution (LPI) is to enhance and optimize the value of assets over the long term to support continuous development efforts. Establishing the LPI is crucial to increase and optimize the value of long-term assets for sustainable development in Indonesia. According to data released by the Indonesia Investment Coordinating Board (BKPM), the realization of Foreign Direct Investment (FDI) in 2020 contributed 49.9% or IDR 412.8 trillion of the total investment. This amount is lower compared to 2017, which was IDR 430.5 trillion, indicating the instability of foreign investments flowing into Indonesia. Thus, the formation of the LPI aims to maintain stability and certainty in investment in Indonesia, particularly in key sectors and national assets, by making Indonesia a relatively strong and reliable strategic partner institutionally and legally for investors. According to Andriani et al. (2020), Indonesia, as a country, is required to create an investment climate that provides legal certainty, is promotive, conducive, fair, and efficient.

Carbon trading falls under the purview of the Investment Management Institution as it constitutes an effort towards sustainable development and economy. However, the position of the Investment Management Institution in carbon trading within industrial areas

in Indonesia needs thorough examination, particularly considering its substantial capital and authority amounting to 75 trillion rupiahs. This significant capital might disrupt the carbon market in Indonesia, especially in the industrial sector within the domestic market. Therefore, this study will discuss the position of the investment management institution in carbon trading within industrial areas in Indonesia following the enactment of Presidential Regulation No. 2 of 2022 concerning Job Creation.

METHOD

This research uses a Juridical Normative research method, which conceptualizes law through both legislation (statutory law) as well as norms and rules as references suitable for human behavior. According to Suhaimi (2018), this choice is justified by the normative legal research approach which emphasizes doctrines and legal principles, legal systematics, inventory of positive law, legal findings on concrete problems, level of synchronicity, and legal history. This approach involves depicting scientific content in accordance with legal knowledge, legal standards, legal theories, and doctrines relevant to its field. In normative research, secondary data were used, namely the type of data utilized to provide answers to the problems encountered in this research through literature studies (Benuf & Azhar, 2020). Using an analytical approach, it examined the position of investment management institutions in carbon investment. It helped analyze to elucidate the subject and object of investigation through the presentation of a summary or explanation of research findings. The legislative approach involved studying legislation related to investment management institutions and carbon trading in Indonesia, the mechanisms of carbon trading in Indonesia, the Job Creation Law, and the Job Creation Presidential Regulation.

RESULTS AND DISCUSSION

Carbon Trading in Industrial Areas in Indonesia Post the Omnibus Law

Law No. 6 of 2023 concerning the Omnibus Law is evidence that Indonesia, as a legal state, seeks to create awareness among its society. After various oppositions and rejections of Law No. 11 of 2020 concerning job creation, which is related to the codification of various laws existing in Indonesia, thus the Omnibus Law becomes common law. According to Pardede (2023), the Omnibus Law contains several regulations deemed beneficial to society, one of which is the investment regulation. Foreign investments can contribute to the expansion and development of the economy by creating more job opportunities. Nevertheless, there are several obstacles to investment in Indonesia, the first being excessive regulations, or the abundance of regulations. The worsening hyperregulation is exacerbated by the poor quality of most legislation characterized by overlap, inconsistency, gaps, contradictions, and multiple interpretations between the best, optimal legislation, or with legislation of a very high level (Azgara & Mardhatillah, 2023). Permitting issues are the second problem. In reality, permits pose problems for investors because of overly convoluted bureaucracy, time-consuming processes, and expensive fees, as well as the abundance of unofficial levies discouraging foreign investors from allocating their capital to Indonesia (Azgara & Mardhatillah, 2023). The regulations replacing the previous rules under the Job Creation Law aim to simplify legal provisions and create a more supportive environment for workforce infrastructure. The realization of existence with more optimal protection and guaranteed job creation in a more ideal condition. They are building an environment supportive of commercial activities, to promote economic expansion and legal stability, as well as attracting international individuals to seek job opportunities in Indonesia.

In legal studies, various principles serve as the foundation for the creation and application of law, one of which is the principle of *lex specialis derogat lex generalis*, which is a legal principle that specifically overrides general laws (Irfani, 2020). The principle of *lex specialis derogat lex generalis* will likely emerge after the enactment of general rules. The

application of the *lex specialis* principle can facilitate the smooth process of drafting subsequent specific regulations; the formation of specific regulations remains unimpeded by existing general regulations, as the application of these specific regulations is prioritized over general ones. The principle of *lex specialis derogat lex generalis* often arises after the application of general norms. The application of the *lex specialis* principle facilitates the creation of specific regulations in the future. This principle ensures that the establishment of specific regulations is not hindered by pre-existing general regulations, as specific regulations are given priority in their application. Regarding carbon investment in Indonesia, there are specific regulations that provide rules on the mechanism and implementation of carbon investment in Indonesia. Therefore, carbon investment in Indonesia does not refer to the Omnibus Law, which is general, because there are specific regulations governing carbon investment in line with the principle of *lex specialis derogat lex generalis*.

The regulation governing carbon trading in Indonesia is Presidential Regulation No. 98 of 2021. This regulation focuses on the application of carbon economic value to achieve nationally determined contribution targets and to control greenhouse gas emissions in national development. Additionally, there are two other regulations, namely Ministerial Regulation on Environment and Forestry (PERMEN LH) and Ministerial Regulation on Environment and Forestry No. 21 of 2022, which regulate the procedures for applying carbon economic value. Furthermore, there is the PJOK, which stands for Financial Services Authority Regulation Number 14 of 2023, specifically regulating carbon trading through the Carbon Exchange. Each relevant regulation governs the existence, operation, and implementation of carbon trading in Indonesia. Presidential Regulation No. 98 of 2021 outlines the procedures for carbon trading in Indonesia as follows:

1. Cap and trade, also known as emission trading, is a transaction mechanism that occurs between businesses whose emissions exceed the established emission standards.
2. Greenhouse Gas (GHG) Emissions Offsetting, also known as GHG Emissions Offsetting, refers to the reduction of GHG emissions carried out by companies and/or activities to offset emissions generated elsewhere.
3. Performance-based compensation or results-based payments. Payments refer to incentives or financial rewards received as a consequence of successfully reducing greenhouse gas (GHG) emissions, which have been confirmed and/or certified. These payments may also include benefits other than proven carbon credits.

The three mechanisms in carbon trading and the carbon trading system in Indonesia aim to achieve NDC targets, abbreviated from Nationally Determined Contributions (Azaria et al., 2023). Articles 49 paragraphs (2) and (3) of Presidential Regulation No. 98 of 2021 provide further explanations regarding the implementation of domestic and international carbon trading. This is done through the use of Emissions Trading Mechanisms, also known as cap and trade, and Greenhouse Gas Emissions Offsetting. It should be noted that carbon trading can be conducted across various sectors. According to articles 54 paragraphs (1) and (2), carbon trading both domestically and internationally is conducted through the carbon market system via Carbon Exchange and direct trading. The Carbon Trading process is facilitated by implementing the carbon market system mechanism. This includes the development of Carbon Trading infrastructure, regulation of state revenues obtained from Carbon Trading, and the administration of carbon transactions. The Direct Trading Mechanism refers to the practice of Carbon Trading that occurs outside carbon exchanges. This mechanism involves sellers and buyers in need of Carbon Units. According to article 54 paragraph (4), state revenue from carbon trading is generated from taxes on carbon unit transactions and is classified as non-tax state revenue.

Ministerial Regulation No. 21 of 2022 on Environment and Forestry provides rules regarding general provisions, non-tax state revenue from carbon trading, the organization of emissions trading and greenhouse gas emissions offsetting in the forestry sector, evaluation,

reporting, and coaching in the forestry sector. This regulation explains that carbon trading involves several sectors and sub-sectors. The sectors involved in carbon trading include energy, waste, industrial processes and product consumption, agriculture, and forestry. Sub-sectors in carbon trading efforts include power generation, transportation, buildings, solid waste, liquid waste, garbage, industry, paddy fields, livestock, plantations, forestry, as well as peat and mangrove management. Ministerial Regulation No. 21 of 2022 primarily focuses on the forestry sector, while Financial Services Authority Regulation (POJK) Number 14 of 2023 regulates the carbon trading process in the Indonesian carbon stock market. POJK Number 14 of 2023 explains that Carbon Sales are market-oriented greenhouse gas (GHG) emission reduction strategies through the exchange and sale of Carbon Units. Carbon Exchange is a mechanism that oversees carbon trading and tracks ownership of carbon units. Carbon Units serve as evidence of carbon ownership indicated by certificates or technical permits that verify the registration of one metric ton of carbon dioxide on the SRN PPI. This provides an accurate picture of carbon footprint.

Ministerial Regulation No. 21 of 2022 on Environment and Forestry provides detailed regulations regarding the forestry sector. Therefore, carbon investment in Industrial Areas in Indonesia refers to Presidential Regulation No. 98 of 2021 and Financial Services Authority Regulation (POJK) No. 14 of 2023. Thus, referring to Presidential Regulation No. 98 of 2021 and POJK No. 14 of 2023, Carbon Trading in Industrial Areas in Indonesia can be conducted domestically and internationally based on relevant SRN PPI and prioritizing the use of Greenhouse Gas Emission Reduction Certificates or simply Emission Reduction Certificates obtained through the national emission reduction certification mechanism. SRN PPI, or the National Climate Change Control Registration System, is an online platform that manages and provides data and information on climate change adaptation and mitigation measures and potentials, as well as the economic importance of carbon in Indonesia. According to Financial Services Authority Regulation No. 14 of 2023, carbon trading in Indonesia is conducted through the Cap & Trade mechanism or emission trading on the stock exchange. Additionally, the Offset mechanism is used for businesses or activities without greenhouse gas emission limits. In such cases, these entities can demonstrate emission reductions by utilizing mitigation actions taken by other businesses or activities. Carbon investment can be implemented through carbon units, which are securities that can be traded through the carbon exchange.

Position of Investment Management Institutions in Carbon Trading Investments in Industrial Areas in Indonesia

Investment is a crucial factor in the progress and expansion of economies worldwide, including Indonesia. To achieve improvement compared to previous conditions, the nation's economy must experience growth. Economic advancement must be aligned with environmental protection. Indonesia, as a nation, has a responsibility to conduct all activities while prioritizing environmental preservation and implementing sustainable development. One of its initiatives is the establishment of an Investment Management Institution, known as a Sovereign Wealth Fund (SWF), which serves as a government investment vehicle managed in private financial markets.

Sovereign Wealth Fund (SWF) is a government-controlled financial account responsible for overseeing and investing public funds in assets with broader impacts. The existence of SWF aims to manage long-term investment assets (Putra et al., 2023). The presence of SWF is highly beneficial for the government and society as it eliminates the need for the government to rely on public funds for financing and administering public infrastructure. SWF can continuously enhance economic growth in Indonesia by attracting international investment players to invest in our country. The establishment of specialized regulatory bodies to oversee their investment sources inherently increases their incentives to

allocate their resources to specific locations. Sovereign Wealth Fund (SWF) is an investment vehicle established or owned by the government to manage long-term investment assets. SWF is divided into 3 (three) types of SWF as follows:

1. Pension Reserve Funds, which are funds specifically formed to provide retirement benefits from alternative individual contribution sources;
2. Reserve Investment Corporation, which is an SWF formed to simplify the financial burden on foreign exchange reserves;
3. Development Funds, which are SWFs established to finance domestic development budget needs.

Investment Management Institution is an independent institution established through Law No. 11 of 2020 concerning Job Creation, specifically in Article 154 paragraph 3 and Article 165 paragraph 1. The establishment of an Investment Management Institution is stipulated in Article 165 of the Job Creation Law in two paragraphs, expressing that the Investment Management Institution aims to provide support for sustainable development (Rahayu et al., 2022). Additionally, the purpose of the Investment Management Institution is to maintain stability and certainty in investment in Indonesia, especially in important sectors and state assets, by making Indonesia a reliable and legally strong strategic partner for investors. Indonesia, as a country, is required to create an investment climate that provides legal certainty and is promotive, conducive, fair, and efficient. The Investment Management Institution focuses on the economic growth of Indonesia using the principles of sustainable development (Amin, 2023).

The Investment Management Institution (LPI) is a legal entity fully owned by the government and directly accountable to the president based on Article 2 of Presidential Regulation No. 74 of 2020. Article 3 of Presidential Regulation No. 74 of 2020 states that the capital of LPI comes from state capital injections, which include cash, limited liability companies or state receivables to state-owned enterprises (BUMN), state assets, state-owned shares in BUMN or limited liability companies, and other sources. Article 3 paragraph (3) of Presidential Regulation No. 74 of 2020 explains that the capital allocated for LPI is Rp. 75,000,000,000,000 (Seventy-five Trillion Rupiah), with a breakdown of the initial capital injection into LPI in the form of a minimum cash fund of IDR 15,000,000,000,000 (Fifteen Trillion Rupiah).

According to Article 6 and Article 7 of Presidential Regulation No. 74 of 2020, the responsibility for supervision and control of capital investment lies with the LPI. The functions of this body include planning, coordination, supervision, management, and assessment of capital investment. LPI has the authority to allocate funds to financial instruments, carry out asset management activities, collaborate with other entities such as trust fund organizations, explore potential investment partners, provide and receive loans, and oversee asset management. LPI can establish partnerships and collaborations with investment managers, investment partners, government organizations or institutions, state-owned enterprises, and other bodies, both domestically and internationally. Presidential Regulation No. 74 of 2020 states that the government provides a minimum of 3 privileges or benefits to LPI, as follows:

1. According to Article 72, LPI cannot be declared bankrupt unless it can be confirmed that it is unable to pay its debts;
2. Article 55 regulates the transfer of assets of state-owned enterprises (BUMN) invested by the central government immediately to joint venture companies of LPI; and
3. Article 52 provides special measures for the annual report, which includes activity reports and audited financial statements by a public accounting firm selected by the LPI Board of Directors with the approval of the LPI Supervisory Board.

Sustainable development is mandatory for all countries worldwide, as the Earth's condition becomes increasingly concerning due to excessive exploitation and inadequate

preservation efforts. Carbon trading is an effort to preserve the environment, particularly by reducing greenhouse gas (GHG) emissions to control pollution resulting from corporate and industrial activities. Carbon trading is an integral part of the activities of the LPI because it aligns with the goals outlined in Article 5 of Presidential Regulation No. 74 of 2020 regarding the Establishment of the LPI. Since its official launch in February 2021, LPI has focused on eight main investment sectors, including supply chain and logistics, infrastructure, digital infrastructure, healthcare services, environmentally friendly investments, financial services, technology and consumer services, and tourism (Kusuma, 2022). Carbon trading is considered one of the components of environmentally friendly investments because environmentally friendly investments are responsible investment strategies that focus on long-term sustainability (Anisah, 2020). Investments must uphold collective responsibility in applying ESG principles (environmental, social, and governance). Aligning ESG principles in investment activities is crucial to promote a healthier and more sustainable investment climate for future generations.

In carbon investment, the Investment Management Institution can act as the representative of the central government due to its position as a Sovereign Wealth Foundation. LPI serves as the state's representative in investment cooperation with foreign countries and can facilitate or organize domestic and international carbon investment markets according to its functions, duties, and authorities. As the Organizer of the Carbon Exchange, LPI is supported by Financial Services Authority Regulation No. 14 of 2023, which specifically addresses Carbon Trading through the Carbon Exchange. Article 11 of Regulation No. 14 of 2023 states that the Carbon Trading Organizer is a limited liability company recognized by law and operates in the legal jurisdiction of Indonesia. Based on the explanation in Article 11, LPI has the potential to function as a carbon trading organizer because of the nature of its institution, resembling a government-owned limited liability company. Therefore, LPI can be considered equivalent to private-owned institutions compared to public institutions. Article 9 of Regulation No. 14 of 2023 explicitly states that Carbon Trading Organizers are prohibited from conducting transactions for their interests within their supervised systems. According to Article 1 paragraph (2) of Presidential Regulation No. 74 of 2020, LPI is granted special authority (*sui generis*) regarding the management of Central Government Investments because LPI incorporates aspects of public law discipline, with a budget derived from state funds. Additionally, LPI exhibits attributes related to private law discipline in investment implementation. Article 13 of Regulation No. 14 of 2023 regulates that carbon exchange organizers must have a minimum capital of Rp100,000,000,000.00 (one hundred billion Rupiah), which cannot be obtained through loans. With this provision, LPI meets the criteria as a carbon exchange organizer in Indonesia, strengthening LPI's position as an exchange organizer because LPI is an institution with *sui generis* authority that can be categorized as a limited liability company and also has sufficient capital to become a carbon exchange organizer. According to Article 14 of Regulation No. 14 of 2023, LPI is allowed to own shares in carbon trading organizers. This privilege is limited to *sui generis* institutions, Indonesian citizens, Indonesian legal entities, and foreign legal entities that have obtained permission or are supervised by financial regulators in their home country. LPI can play a role as a carbon trading organizer, transaction party, and shareholder of the organizer.

CONCLUSION

The principle of *lex specialis derogat legi generali* means that specific laws override general ones. The mechanism and implementation of carbon investment in Indonesia are not based on the Omnibus Law on Job Creation but rather refer to Presidential Regulation No. 98 of 2021 and Financial Services Authority Regulation No. 14 of 2023. Carbon trading in industrial regions in Indonesia can be conducted domestically and internationally by adhering

to the applicable guidelines of the National Climate Change Adaptation Platform (SRN PPI) and prioritizing the use of Greenhouse Gas Emission Reduction Certificates obtained through the national emission reduction certification framework. SRN PPI is a web-based system offering data, management, and information on climate change adaptation actions, climate change, and the economic value of carbon in Indonesia. In Indonesia, carbon trading is conducted through the Cap & Trade method or emission trading via exchanges. Carbon investment can be made by utilizing carbon units, financial instruments tradable in carbon exchanges.

The LPI plays a significant role in managing central government investments and foreign investment cooperation, including carbon investment. The primary role of LPI is to oversee and handle investments. This involves responsibilities for planning, organizing, supervising, controlling, and evaluating investments. Through Government Regulation No. 74 of 2020 and reinforced by its position in carbon trading as both an organizer and participant in Financial Services Authority Regulation No. 14 of 2023, LPI holds extensive authority as it can act as an investor by owning shares in carbon exchange organizers while also serving as a facilitator or organizer in carbon trading. Although LPI cannot engage in transactions in the carbon market it organizes, its power remains substantial. This places LPI in a strong position in the industrial region carbon trading, as it can function as an organizer, transaction party, and shareholder of carbon market organizers. This scenario may lead to deviations such as monopolies due to their significant authority, which tends to be susceptible to corruption.

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