Legal Certainty for Electric Vehicle Investors in Indonesia

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Abstract

Problems related to climate change are currently a problem that is attracting a lot of attention in several countries. Many countries in the world want to develop the electric vehicle industry, including Indonesia. However, Indonesia also experiences many obstacles, one of which is that it needs electric vehicle investors. In an effort to overcome this, the government continues to make improvements, one of which is improving the law. Because it is understood that the law is one of the most important aspects of efforts to obtain investment. However, the issue is whether the legal regulations regarding electric vehicle investment in Indonesia have provided legal certainty to investors. The research method used is normative-legal with a statutory and conceptual approach. The results obtained from the research are related to the study of whether or not there are legal regulations for electric vehicle investment by investors.

Keywords: *Legal Certainty, Investment, Electric Vehicle.*

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A. INTRODUCTION

Problems related to climate change are currently a problem that is attracting a lot of attention in several countries, one of which is Indonesia. Indonesia is a country that has quite an influence on climate change, this is shown through data which shows that Indonesia is in the middle position in contributing to greenhouse gas emissions (Nur & Kurniawan, 2021). Carbon dioxide (CO2) is considered the main source of the greenhouse effect, where CO2 emissions come from the consumption of fossil fuels such as oil, coal and gas. If we look at the World Development Indicator data, the amount of CO2 emissions in Indonesia continues to increase every year. This increase is directly proportional to the increase in the number of motorized vehicles in Indonesia.

This climate change can be slowed by developing sustainable energy resources. The community must take part in supporting the energy transition program from fossil fuel energy to renewable energy and the use of alternative energy sources. Fossil fuels, which continue to be reduced, encourage researchers, producers and transportation agents to continue to innovate in looking for alternative resources, one of which is electric power for vehicles (Mehar et al., 2015). Indonesia has one goal, namely a development strategy related to the environment as stated in the Sustainable Development Goals (SDGs). Indonesia has also signed the Paris Agreement in 2016 which contains Indonesia's commitment to reducing GHG emissions by 29% - 41% by 2030, as well as targeting zero GHG by 2060 (Raihan et al., 2022).

The use of alternative energy is now something that is very necessary to reduce carbon emissions while supporting environmentally friendly energy security. One of

the uses of alternative energy is electric vehicles which have a good influence in overcoming pollution problems that often occur in urban areas. The development of electric cars and bicycles has the potential to significantly reduce pollutant emissions.

The development of electric car and bicycle products in Indonesia requires capital to become finished products that are ready for consumption, however, Indonesia has obstacles in developing the electric car industry. As is known, the process of developing electric cars and bicycles requires high costs, apart from costs, there are still no facilities and infrastructure available to support the development of electric vehicles nationally and knowledge and mastery of technology is still relatively weak. In order to achieve the goal of developing the electric vehicle industry in Indonesia, foreign investors are needed who are willing to be involved in government programs, namely the acceleration of the electric vehicle program. Indonesia itself is trying to attract foreign investors, where this foreign investment can be used as a source of funding in developing electric vehicles in Indonesia as well as increasing technological mastery.

In the development process in the energy sector, especially related to transportation issues, business actors and investors in the process of developing business ideas can certainly need legal protection aimed at ensuring that the ideas they have developed are not plagiarized by other people. Apart from that, the technological development of electric vehicles is a new thing that can result in commercial progress (Pilkington & Dyerson, 2006). Indonesia itself has designed and also prepared policy regulations to introduce and promote new and renewable energy because Indonesia has abundant resources. Technology in transportation plays an important role in implementing Green Development. Innovation in electric vehicles has a positive impact on reducing energy consumption and CO2 emissions.

Implementing regulations at the national level for electric vehicles is very important with the aim of reducing carbon dioxide emissions. The government itself continues to make improvements to develop electric vehicle regulations, including in terms of investment. Currently in Indonesia, electric vehicles are regulated in Presidential Regulation 55 of 2019 concerning the Acceleration of the Battery-Based Electric Vehicle Program in Indonesia. The presidential regulation as a legal umbrella has also explained the formation of a coordinating team organization to support the acceleration of this program.

As previously explained, Indonesia is trying to develop its electric vehicle industry. In an effort to realize this, the government continues to make improvements, one of which is improving the law. Because it is understood that law is one of the most important aspects in efforts to obtain investment. However, the issue is whether the legal regulations regarding electric vehicle investment in Indonesia have provided legal certainty to investors. "In this writing, the author wants to examine the legal certainty of electric vehicle investors in Indonesia."

B. RESULTS AND DISCUSSION

1. Regulations Concerning Electric Vehicle Investment in Indonesia

Problems related to climate change are currently a problem that is attracting a lot of attention in several countries, one of which is Indonesia. Indonesia is a country that has quite an influence on climate change, this is shown through data which shows that Indonesia is in the middle position in contributing to greenhouse gas emissions (Nur & Kurniawan, 2021). Carbon dioxide (CO2) is considered the main source of the greenhouse effect, where CO2 emissions come from the consumption of fossil fuels such as oil, coal and gas. If we look at the World Development Indicator data, the amount of CO2 emissions in Indonesia continues to increase every year. This increase is directly proportional to the increase in the number of motorized vehicles in Indonesia.

This climate change can be slowed by developing sustainable energy resources. The community must take part in supporting the energy transition program from fossil fuel energy to renewable energy and the use of alternative energy sources. Fossil fuels, which continue to be reduced, encourage researchers, producers and transportation agents to continue to innovate in looking for alternative resources, one of which is electric power for vehicles (Mehar et al., 2015). Indonesia has one goal, namely a development strategy related to the environment as stated in the Sustainable Development Goals (SDGs). Indonesia has also signed the Paris Agreement in 2016 which contains Indonesia's commitment to reducing GHG emissions by 29%-41% by 2030, as well as targeting zero GHG by 2060 (Raihan et al., 2022).

The use of alternative energy is now something that is very necessary to reduce carbon emissions while supporting environmentally friendly energy security. One of the uses of alternative energy is electric vehicles which have a good influence in overcoming pollution problems that often occur in urban areas. The development of electric cars and bicycles has the potential to significantly reduce pollutant emissions.

The development of electric car and bicycle products in Indonesia requires capital to become finished products that are ready for consumption, however, Indonesia has obstacles in developing the electric car industry. As is known, the process of developing electric cars and bicycles requires high costs, apart from costs, there are still no facilities and infrastructure available to support the development of electric vehicles nationally and knowledge and mastery of technology is still relatively weak. In order to achieve the goal of developing the electric vehicle industry in Indonesia, foreign investors are needed who are willing to be involved in government programs, namely the acceleration of the electric vehicle program. Indonesia itself is trying to attract foreign investors, where this foreign investment can be used as a source of funding in developing electric vehicles in Indonesia as well as increasing technological mastery.

In the development process in the energy sector, especially related to transportation issues, business actors and investors in the process of developing business ideas can certainly need legal protection aimed at ensuring that the ideas they have developed are not plagiarized by other people. Apart from that, the

technological development of electric vehicles is a new thing that can result in commercial progress (Pilkington & Dyerson, 2006). Indonesia itself has designed and also prepared policy regulations to introduce and promote new and renewable energy because Indonesia has abundant resources. Technology in transportation plays an important role in implementing Green Development. Innovation in electric vehicles has a positive impact on reducing energy consumption and CO2 emissions.

Implementing regulations at the national level for electric vehicles is very important with the aim of reducing carbon dioxide emissions. Electric vehicles or what are called electric vehicles are a technology that is believed to be able to reduce carbon dioxide emissions. The government itself continues to make improvements to develop electric vehicle regulations, including in terms of investment.

The basic regulations for investing in Indonesia are regulated by Law No. 25 of 2007 concerning investment in articles 3 and 4 relating to the objectives and basic policies of investment. Where the Investment Law regulates the principles of investment law, for example adhering to principles or those related to protection, including adhering to the principles of legal certainty, equal treatment and not distinguishing between countries of origin, balanced progress and national economic unity. This regulation also regulates the basic procedures for investors to invest in Indonesia.

Regarding the electric vehicle business climate in Indonesia, there are also several supporting regulations, namely:

a. Presidential Regulation 55 of 2019 concerning the Acceleration of the Battery-Based Electric Vehicle Program in Indonesia.

   The presidential regulation as a legal umbrella also explains the formation of a coordination team organization to support the acceleration of this program. In this Presidential Decree, the government wants to use electric vehicle battery recycling. This is intended so that battery manufacture does not depend on raw materials alone which are feared to run out if used continuously. Battery recycling is a challenge that makes it difficult for investors to enter Indonesia, because foreign investors believe that recycled electric vehicle battery components are considered dangerous and toxic waste. Therefore, this Presidential Decree is currently undergoing changes, the government is simplifying this regulation to make it more attractive and convince investors that recycling batteries in electric vehicles does not damage the environment. This simplification of regulations is intended to make things easier for Indonesians and foreign investors. In more detail, there are still no clear regulations regarding investment in electric vehicles because they are still in the process of being regulated to make them more attractive to foreign investors.

b. Minister of Industry Regulation No. 6 of 2022 concerning Specifications, Development Roadmap, and Provisions for Calculating the Value of Domestic Component Levels for Battery-Based Electric Motorized Vehicles (battery Electric Vehicles)

   To improve the electric vehicle industry ecosystem and attract investors, the Ministry of Industry has created a policy regarding the development road map and provisions for calculating the value of domestic components for battery-based motor vehicles as stated in Minister of Industry Regulation No. 6 of 2022 The government is currently focusing on encouraging the application of technology and increasing investment in the national automotive sector, including accelerating the development of electric vehicles based on electric batteries as well as mild hybrids and strong hybrids. This regulation contains specifications, development road maps and provisions for calculating domestic component levels for domestic motorized vehicles for battery-based electric motorized vehicles (Battery Electric Vehicles) issued to support the government's efforts in developing electric vehicles.

c. Minister of Energy and Mineral Resources Regulation Number 1 of 2023 concerning Provision of Electric Charging Infrastructure for Battery-Based Electric Motorized Vehicles.

   The electricity charging infrastructure for Battery-Based KBL contained in the regulation includes recharging facilities which at least consist of; Electrical Power Supply Equipment, Current, Voltage and Communication Control Systems and Protection and Security Systems. The type of recharging system technology at Public Electric Vehicle Charging Stations (SPKLU), as regulated in Article 3, consists of 2 (two) charging technologies, namely for two-wheeled and/or three-wheeled vehicles in accordance with SNI, producer country standards, or international standards as well as for vehicles with four or more wheels, including: Slow Charging Technology, Medium Charging Technology, Fast Charging Technology and Ultrafast Charging Technology. The provision of SPKLU can be carried out in locations that are easily accessible to battery-based KBL owners and provide special SPKLU parking spaces, and do not interfere with security, safety, order and smooth traffic. According to Article 16 paragraph (2), to accelerate the battery-based KBL program, SPKLU is provided at locations, public fuel filling stations, gas fuel filling stations, central government offices and regional government offices, shopping places, and public parking on the side of the highway. With the promulgation of Minister of Energy and Mineral Resources Regulation No. 1 of 2023, it is hoped that the acceleration of the Battery-Based Electric Motor Vehicle program by providing electricity charging infrastructure for Battery-Based Electric Motor Vehicles can be implemented immediately.

d. Minister of Transportation Regulation (Permenhub) Number 45 of 2020 concerning Certain Vehicles that use Electric Motor Drives.
Certain vehicles referred to in this regulation include electric scooters, electric bicycles, hoverboards, unicycles and electric scooters. This regulation explains the speed limit provisions for the use of vehicles with electric motor drives. The maximum speed limit for electric scooters and electric bicycles is 25 km/h. Meanwhile, hoverboards, unicycles and scooters have a maximum speed limit of 6 km/hour. Owners of vehicles regulated in this regulation must also comply with several provisions such as wearing a helmet when driving, must be more than 12 years old, and are not allowed to modify motorbike power that can increase speed.

With these regulations, it is a way and capital for the government to provide efforts to encourage the electric vehicle industry ecosystem to become even better and also attract investors' interest in investment and development of the ecosystem related to electric vehicles in Indonesia.

2. Can the Regulations Concerning Electric Vehicles in Indonesia Provide Legal Certainty for Investors?

A country's economy will be greatly influenced by the world of investment. The number of investors who come depends on the regulations prepared by a country. This is because investment is closely related to legal certainty, security, supporting infrastructure, a fast, easy and uncomplicated licensing process, transparency and accountability. Investment in a country will improve the economy so that it can improve people's welfare.

Encouraging investment inflow will have enormous benefits for a country's economy. The income referred to here can be income in the real sector which is income that directly influences the level of the country's economy, including income among the community. Apart from that, another benefit that can be obtained by a country is the transfer of technology to a country. This means that our society will know the use of new technology in the industrial sector.

The existence of law has an important meaning in investment. Investors will pay attention to legal regulatory factors that are closely related to the investments they will make. Laws in the world of investment must be able to provide certainty, security and also guarantee justice. So if investors consider several things about the law to be good, investors will not hesitate and will confidently invest. With this, it can be understood that the world of the economy, especially the world of investment, will be greatly affected by law because law plays a role from business licensing to end consumer protection.

Indonesia is trying to develop the electric vehicle industry. There are several policies taken by the government as an effort to realize the development of the electric vehicle industry in Indonesia. One of the efforts made is to attract electric vehicle investors to invest in Indonesia.

Previously it was also explained that investment requires legal instruments, this is because investors need guaranteed certainty and legal protection for their business. Therefore, the state needs to be present to provide it. Likewise electric vehicle investors, they also need legal certainty considering that the electric vehicle industry is also something new for Indonesia.

The problem of legal certainty often becomes an obstacle to investment entry in Indonesia. Because legal uncertainty can make investors distrustful of investing in Indonesia. If legal certainty is implemented well, investor confidence will increase and then investors will automatically come to Indonesia to invest. With more and more investors coming to Indonesia, the economy in Indonesia will also improve. Legal certainty can be created if legal substance, law enforcement officials and legal culture must be able to reflect legal certainty itself (Marbun, 2021).

The legal institutions that can guarantee legal certainty lie in how these legal institutions are formulated in legislative products. This is based on the fact that legislation can guarantee a level of legal certainty, if it is formulated in accordance with the legal principles, theories and philosophy it contains. A legislation to guarantee legal certainty must not only fulfill formal requirements, but there are substantial requirements that must be met, namely: 1) the formulation must be clear (unambiguous); 2) There is consistency in its formulation; 3) use of language that is appropriate and easy to understand (Manan & Magnar, 1997).

Talking about certainty, there are two dimensions, namely certainty in the law and certainty because of the law (Soekanto, 1983). This is in accordance with the nature of law, namely the law regulates, and also resolves when legal disputes occur. This is where the difference between the envisioned law and legal reality lies. The law as it should be and the law in its implementation.

This idea of legal certainty was originally introduced by Gustav Radbruch in his book entitled "Einführung in die Rechtswissenschaften". Radbruch wrote that in law there are 3 (three) basic values, namely: (1) Justice (Gerechtigkeit); (2) Benefits (Zweckmässigkeit); and (3) Legal Certainty (Rechtssicherheit) (Mario & Yuli, 2019).

Nusrhasan Ismail (2007) argues that the creation of legal certainty in statutory regulations requires several requirements related to the internal structure of the legal norms themselves. The internal requirements referred to by Nusrhasan Ismail are as follows:

a. There is clarity of the concepts used. These legal norms contain descriptions of certain behavior which are then integrated into certain concepts.
b. The presence of clarity in the hierarchy is considered important, because it concerns whether it is valid or not. As well as binding or not binding it in the laws and regulations that are made. The clarity of this hierarchy can provide direction as a form of law that has the authority to form certain statutory regulations.
c. There is consistency in statutory legal norms. This means that the provisions contained in a number of statutory regulations are related to one particular subject and do not conflict with one another.

Furthermore, Nusrhasan Ismail explained that legal certainty requires the existence of legal regulations in laws made by authorized and authoritative parties. So that the rules that are formed have a juridical aspect and can guarantee certainty that the law has a function as a regulation that must and must be obeyed by society or its citizens.

The principle of legal certainty is actually interpreted as a situation where the law is certain because of the concrete strength of the law in question. The existence of the principle of legal certainty is a form of protection against arbitrary actions, which means that a person will and can obtain something they hope for in certain circumstances (Mertokusumo, 1993). This statement is in line with what Van Apeldoorn (2015) said, that legal certainty has two aspects, namely the ability to enact the law in concrete terms and legal security. This means that the party seeking legal certainty wants to know what the law is in a particular matter before he starts a case and legal protection to obtain justice.

Legal certainty is an inseparable characteristic of law, especially for unwritten legal norms. Laws without the value of certainty will lose meaning, because they can no longer be used as guidelines for behavior for everyone (Margono, 2019).

Investment activities must be supported by regulations that are able to create certainty, fairness and efficiency. The creation of legal certainty, justice, efficiency are legal principles in a modern country, apart from legal principles creating fairness and calm in life (Atmosudirdjo, 1998).

In the investment sector, law enforcement is an interesting topic. This relates to whether investment activities provide certainty and legal protection for investors. The reason this is important is because investors often want guarantees for their capital and predicted profits on invested capital.

Law is a major contributor to the legitimacy of development activities, namely to provide protection, legal certainty and justice. This argument is based on an understanding that investment activities are more attractive by creating adequate investment infrastructure, including administrative and legal infrastructure.

Mochtar Kusumaatmadja's (1995) statement makes it clear that the legal and development context places legislation as the main source of law. Shidarta stated that the main source of law used as a reference is statutory regulations. The norms contain public policies, some of which have been implemented. This policy is evaluated and then matched with needs where the research approach is empirical. The results of this research are given a pragmatic perspective, namely suitability to national development interests. In the end, development law theory still uses the Legal Positivism reasoning pattern.

The legal context must provide a major contributor to the legitimacy of development activities, be able to provide legal protection and certainty, on the other hand, if the law does not support it, or the law is drafted and/or formulated without using good legal principles, for example a lack of adherence to principles in the procedures for making rules, no Compliance with the principles of this law will have implications for legal protection and certainty.

In investing in Indonesia, legal certainty for electric vehicle investors is demonstrated by the Investment Law where the legal principles of investment in the Investment Law include, for example, adhering to principles or those relating to protection, including adhering to the principles of legal certainty, equal treatment. and does not differentiate between country of origin, balance of progress and national economic unity (see Article 3 of Law No. 25 of 2007).

In terms of legal structure, in the Investment Law there are also principles that uphold legal certainty. This can be seen in Article 3 paragraph (1) which states: "Investment is carried out based on the principles of legal certainty, openness, accountability and equal treatment and does not differentiate between countries of origin."

The Regulation on Investment is the basis for electric vehicle investors to invest in Indonesia, which contains various things that provide legal certainty for investing in Indonesia in various matters, including investing in electric vehicles.

Previously it was explained that there are other regulations regarding the electric vehicle industry in Indonesia. Like; Presidential Regulation Number 55 of 2019 concerning the Acceleration of the Battery Electric Vehicle Program, Minister of Transportation Regulation (Permenhub) Number 45 of 2020 concerning Certain Vehicles that use Electric Motor Drives, 3. Regulation of the Minister of Energy and Mineral Resources (ESDM) Number 13 of 2020 concerning Provision of Electric Charging Infrastructure for Battery-Based Motorized Vehicles, and Regulation of the Minister of Industry Number 27 of 2020.

The above regulation is a form of legal certainty in investing for electric car investors in Indonesia, this is in accordance with the opinion of Nusrhasan Ismail where he believes that the creation of legal certainty in statutory regulations requires several requirements related to the internal structure in legal norms. itself. The internal requirements referred to by Nusrhasan Ismail are as follows:

a. There is clarity of the concepts used. These legal norms contain descriptions of certain behavior which are then integrated into certain concepts.

   The regulations regarding electric vehicle investment in Indonesia provide clarity on the investment concept for investors where the government presents regulations regarding the acceleration of the battery-based electric motor vehicle program and other implementing regulations under it. This is understood to be a synergy of the electric vehicle business climate which provides clarity on the business concept.

b. The presence of clarity in the hierarchy is considered important, because it concerns whether it is valid or not. As well as binding or not binding it in the laws and regulations that are made. The clarity of this hierarchy can provide direction as a form of law that has the authority to form certain statutory regulations.

   This can be seen from the basic investment regulations in Indonesia, namely Law No. 25 of 2007 concerning foreign investment which provides the main legal basis for foreign investors to invest in Indonesia. Furthermore, there are

also regulations referring to the acceleration of the battery-based electric motor vehicle program and other implementing regulations under it. So, from this there is a clear hierarchy in investment regulations in Indonesia starting from the main investment regulations, then more specific regulations regarding electric vehicles and there are also technical implementing regulations.

c. There is consistency in statutory legal norms
This means that the provisions in a number of statutory regulations are related to one particular subject and do not conflict with one another. In the regulations regarding electric vehicle investment in Indonesia, it can be understood that there is consistency between existing regulations. These regulations also do not conflict with each other. This can be seen from the law mentioned above. Where these regulations consistently complement each other.

Regulations regarding the electric vehicle industry were created by the government as the policy maker in the hope of creating a good business climate for electric vehicles in Indonesia. This is expected to create legal certainty in business for investors. Furthermore, when seen from the view of Nurhasan Ismail who said that legal certainty is also seen that an attempt at legal regulations in laws must be made by authorized or authoritative parties and the rules formed must have a juridical aspect and can guarantee certainty. that law has a function as a regulation that must and must be obeyed by society or its citizens. From this explanation, it can be understood that with the various regulations described above, these regulations have provided legal certainty for electric vehicle investors in Indonesia.

C. CONCLUSION

Electric vehicle investment regulations in Indonesia are regulated in the basic investment regulations in Law No. 25 of 2007 concerning capital investment where investors must comply with these regulations to invest in Indonesia. Furthermore, there are also regulations supporting electric vehicle investment in Indonesia, namely; Presidential Regulation 55 of 2019 concerning the Acceleration of the Battery-Based Electric Vehicle Program in Indonesia, Minister of Industry Regulation No. 6 of 2022 concerning Specifications, Development Road Map, and Provisions for Calculating Domestic Component Level Values for Battery-Based Electric Motor Vehicles, Regulation of the Minister of Energy and Mineral Resources Number 1 of 2023 concerning Provision of Electric Charging Infrastructure for Electric Motor Vehicles. Batteries, and Minister of Transportation Regulation (Permenhub) Number 45 of 2020 concerning Certain Vehicles that use Electric Motor Drives.

It is hoped that these regulations will provide a way and capital to encourage the electric vehicle industry ecosystem to become even better and also attract investor interest in investing and developing the ecosystem related to electric vehicles in Indonesia. Furthermore, the regulation above is a form of legal certainty in investing for electric vehicle investors in Indonesia. This is in line with the opinion of Nusrhasan Ismail where legal certainty in laws and regulations requires several requirements related to the internal structure, namely; There is clarity of the concepts used, there is

clarity of the hierarchy which is considered important, and there is consistency in statutory legal norms. From this explanation, it can be understood that with the various regulations described above, these regulations have provided legal certainty for electric vehicle investors in Indonesia.

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