



Revisiting the Need to Regulate Foreign Portfolio Investor in the Indonesian Stock Market

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Article	Abstract
<p>Keywords: Foreign investment; foreign shareholders; capital market; shareholders protection;</p> <p>Article History Received: Jan 14, 2021; Reviewed: Feb 18, 2021; Accepted: Jun 10, 2021; Published: Jun 15, 2021</p>	<p><i>This research aims to reintroduce the issue of foreign portfolio investment in Indonesia by way of presenting an analysis on the prevailing Indonesian laws and regulations, comparative analysis with well-established jurisdictions, as well as an evaluation on the need for regulating foreign portfolio investment in Indonesia. The methods used in this research combine normative and empirical method where a review is conducted on the laws and regulations in Indonesia as well as in South Korea and India as comparative jurisdictions, in addition to an interview conducted with Indonesian Stock Exchange. The research found that Indonesia does not have a separate, comprehensive set of regulations on foreign portfolio investments yet whereby inferences need to be made from the prevailing laws and regulations that are general in nature. After the comparative overview and analysis, there appears to be a need for separate regulation for foreign portfolio investments in Indonesia, either by way of enacting a completely new set of laws and regulations or alternatively, by way of creating implementing regulations to support the prevailing laws.</i></p>

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INTRODUCTION

The COVID-19 pandemic comes with a positive note with regard to the Indonesian capital market: a sharp increase in the number of retail investors. The Financial Services Authority has also noted that this time, the increase is dominated by younger than 30 years old millennial that accounted for around half of the total

number of 3.88 million new investors (Sidik, 2020; Yovanda, 2021). Despite this increase, there are still quite a significant number of foreign investors that hold massive control over the Indonesian Stock Exchange as indicated in recent years. On 11 January 2021, foreign net buy was reported to reach 1.56 trillion rupiah despite the imposition of community activities restriction for Java and Bali (Putra, 2021).

Foreign investment is a driver for economic growth especially in this increasingly globalized world, and as a result, the topic has been discussed as one of the most important subjects in the study of international business (Wu et al., 2012). With regard to foreign investment in Indonesia, the Indonesian government has been paying immense attention to the foreign direct investment such as through the recent introduction of the Sovereign Wealth Fund that has been planned to launch by early 2021 (Setiawan, 2021). The matter of foreign portfolio investment, however, has not been discussed extensively and the regulation is yet to be crystal clear due to the different concept and limitations being upheld by governmental agencies and institutions in Indonesia.

Foreign “Non-direct investment”, which is also often termed as foreign “Portfolio investment”, refers to any investment made by foreign parties through the Indonesian Stock Exchange. One of the main differences between direct and non-direct investment would be the supervising agency, in which direct investments are usually handled by the Investment Coordinating Board of the Republic of Indonesia (*Badan Koordinasi Penanaman Modal*) whereas non-direct investments in the stock exchange are under the auspices of the Financial Services Authority (*Otoritas Jasa Keuangan*) as well as the self regulatory organizations of capital market namely the Indonesian Stock Exchange (*Bursa Efek Indonesia*), the Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia*), and the Indonesian Clearing and Guarantee Corporation (*Kliring Penjaminan Efek Indonesia*).

Separation between the direct and non-direct foreign investment is evident in certain areas, as it is obvious in the exemption of foreign portfolio investment for the imposition of Negative List as stipulated under Article 9 of Regulation of the President of the Republic of Indonesia Number 10 of 2021 on Investment Business Fields (or also known as the “Investment Negative List”). Nevertheless, whether non-direct foreign investment would still be exempted under the Negative List and consequently, the Investment Coordinating Board’s control remains unclear with practice and researches pointing out that majority foreign ownership which comes from portfolio investment shall still be subjected to the Negative List despite existing on-going debate on the matter.

The discussion on the applicability of the Investment Negative List towards non-direct foreign investment was presented in Velentina & Hayaty (2009). The research analyzed the share purchase transaction carried out by Qatar Telecom which

amounted to 65% of Indosat's shares. The findings of this research showed that non-direct foreign investment could not be subjected to the Investment Negative List because it was an implementing regulation of the Capital Market Law, by which the latter is only applicable to direct foreign investment. Consequently, Indosat share acquisition by Qatar telecom did not violate the 49% limit stipulated under the Negative Investment List at that time and Qatar telecom was allowed to further purchase shares from the public in addition to the 40.81% that it already owned from Singapore Technologies Telemedia Ltd. However, the Investment Negative List becomes subjected to two changes in 2016 and 2021 respectively. The 2016 only limited foreign direct investment in certain subsections of telecommunication sector such as the retail of mobile phones (Anas & Narjoko, 2019) whereby the 2021 eliminates the limit of foreign investment in the telecommunication industry hence the discourse on whether the Investment Negative List should also apply to foreign portfolio investment has to be carried out through the analysis of the purpose and objective of the List itself.

The Investment Negative List aims to attract foreign investors (Rajah, 2018) while providing legal certainty by giving a definite list of sectors that are open for foreign investors (Magiera, 2011). Abolition on the limit of foreign investments has shown a significant increase in foreign investments in the domestic market of Korea (Gong & Kim, 2011), and as such, lenient restriction on the Investment Negative List may attract more foreign investors, which is inline with the government's latest aim to encourage foreign investment to Indonesia.

On the other hand, the Investment Negative List should also protect national interest, and therefore must carefully assess competitiveness between domestic investors against foreign investors (Andriani et al., 2020). The importance of ensuring fulfilment of the Negative Investment List's purpose to protect national interest by controlling foreign domination is addressed comprehensively in Sulistyowati & Paripurna (2014), and the research sternly suggests the applicability of the Negative Investment List to foreign portfolio investment, or in the alternative, putting a maximum limit of shares that can be bought by foreign portfolio investors in the Indonesian Stock Exchange. Foreign portfolio investment, especially in very large amount, must also be managed carefully due to its economic implication: large capital inflow can cause currencies to appreciate significantly, and *vice versa* with regard to outflow and depreciation (Anggitawati & Ekaputra, 2020).

Bearing this in mind, it is therefore important to provide distinction between domestic and foreign portfolio investors, and perhaps even going further to specify the limitations of foreign institutional investors and foreign retail investors, in order to encourage a larger foreign flow to the Indonesian Stock Exchange. After all, legal factors such as regulatory oversight (Leuz et al., 2009) and regulatory cooperation (Lang et al., 2020) have profound effects on the level of foreign investment in a

country and Indonesia cannot create a separate framework on foreign portfolio investment without firstly distinguishing between the two types.

To support such an aim, this research intends to provide an analysis of the currently prevailing regulations on foreign portfolio investors in Indonesia, followed by a comparison thereof in order to be able to present a sound evaluation on whether or not Indonesia needs a separate regulation on foreign portfolio investment, or alternatively, to what extent the applicable laws and regulations need to be improved in order to accommodate foreign portfolio investment aptly.

By providing such analysis, this article is expected to contribute to the advancement and vast development of stock exchange performance in Indonesia, especially in response to the very significant increase in the number of retail investors that recently joined the market. This article also seeks to initiate the discussion on foreign shareholder protection in public companies, as well as to further encourage the discourse on shareholder protection in general. As an ending note, the authors hope to contribute to the development of capital market, business and corporation operation, and corporate governance legal framework in Indonesia and to direct the attention to the issue of foreign portfolio investors protection in Indonesia.

METHOD

The research employed a juridical normative method, consisting of, *inter alia*, the statutory approach by analyzing prevailing laws and regulations (Efendi & Ibrahim, 2018). To start off with, regulations that are related to shareholder protection and the capital market are looked into. Law Number 40 of 2007 on Limited Liability Company (hereinafter 'LLC Law'), as amended to Law Number 11 of 2020 on Job Creations, as well as Law Number 8 of 1995 on Capital Market (hereinafter referred as the 'Capital Market Law') were first examined, followed by another look at relevant Financial Services Authority regulations and Decree of Indonesian Stock Exchange. The research also utilized findings from an interview conducted with a representative from the Indonesian Stock Exchange, but due to the COVID-19 pandemic, the interview was conducted via e-mail. Further, publicly listed companies shareholder data that are available on the Indonesian Stock Exchange and the companies website was also checked up on to see the actual situation of foreign investor ownership.

Moreover, a comparative approach is also employed to better provide ideas on possible regulatory changes that can be applied towards the current stance of Indonesian legal regime on foreign portfolio investment. After all, comparative analysis is an important legal tool for policy evaluation in which the comparisons can bring wider perspective towards the national and international law-makers in modifying existing regulations (Siems, 2018).

RESULTS AND DISCUSSION

The discussion for this research is further divided into three subsections. The first part consists of the explanation of the applicable laws and regulations that are related to Foreign Portfolio Investment. The second part presents comparative notes on several jurisdictions that have already recognized and provided distinct status for foreign portfolio investors, and last but not least, a concluding analysis is set forth with regard to the need of drafting or amending laws and regulations on foreign portfolio investors in Indonesia.

Laws and Regulations on Foreign Portfolio Investment

The sale and purchase of publicly listed companies shares are regulated under the Capital Market Law, whereas the first mention on foreign investors refers to foreign investors' right to take part in an offering. Elucidation of Article 1 Point 5 of Law Number 15 of the Capital Market Law addresses the possibilities of foreign elements involvement in a public offering and provides relevant definitions. The term "Public Offering" refers to an offering of Securities that takes place within a certain time and within specified amounts, within the territory of Indonesia, or to Indonesian citizens abroad, and offered either through the mass media, or otherwise to more than one hundred Persons, or resulting in sales to more than fifty Persons. An "Offering" within the territory of Indonesia is stated to include both domestic and foreign issuers, as well as offerings to both domestic and foreign investors, in compliance with Disclosure Principles. Regulations regarding Public Offerings are also applicable to offerings by domestic issuers to Indonesian citizens abroad. These legal grounds provide necessary protection to Indonesian investors overseas in the case of Securities offered by domestic Issuers.

The LLC Law, similarly, does not provide any stipulations on the matter of foreign investor despite the elaboration in the Elucidation of Article 7 Paragraph (1) that 'persons' that can establish a company also include foreign individuals and foreign legal entities. This Article, however, is usually referring to the formation of Foreign Investment Company (*Perseroan Terbatas Penanaman Modal Asing*, or also commonly abbreviated as PT. PMA). Law Number 25 of 2007 on Investment is irrelevant in this case since the research is limited to non-direct investment only. As such, a closer look into the implementation needs to be conducted on the matter.

Based on the interview with a representative from the Indonesian Stock Exchange via email, extensive pronouncements with regard to foreign investors have yet to exist. However, inferences from the prevailing regulations which are not specifically designated for foreign investors, but have an impact thereof, can be made as an effort to analyze the issue. For example, with regard to the equal access of disclosure of information for foreign investors that live abroad, especially regarding the information or announcement relating with the General Meeting of Shareholders

(*Rapat Umum Pemegang Saham*), the Financial Services Authority Regulation Number 15 /POJK.04/2020 concerning Planning and Implementation of General Meeting of Shareholders of Public Companies applies.

Article 52 of the Financial Services Regulation states that the announcements shall be made through at least: e-GMS (provider website, stock exchange website; and public company website, where it should be available in both Indonesian and foreign languages, provided that the foreign language used is at least English. As such, it is observable that the foreign investor's interests are also being accommodated, as the information regarding the meeting relating the investment product which they are investing can be accessed and understood easily.

Moreover, the explanation on foreign investors' participation in the General Meeting of Shareholders refers to Article 77 of the LLC Law which allows such meeting to be conducted through teleconferences, video conferences, or other electronic media facilities which allow all participants to see, hear, and participate directly in the progress of the meeting. This is also seen as one way to accommodate foreign investors' interests concerning portfolio investors that do not reside in Indonesia and cannot attend the General Meeting of Shareholders physically.

Foreign investors participation is also accommodated through an implementing regulation issued by the Financial Services Authority, namely Financial Services Authority Regulation No. 16 /POJK.04/2020 concerning the Implementation of the Electronic General Meeting of Shareholders of Public Companies. Electronic General Meeting of Shareholders has increased in the past months due to COVID-19, whereby the Indonesian Central Securities Depository has set up the eASY.KSEI platform for this purpose. The author is of the opinion that technological advancement like this could better enhance good corporate governance and implementation of shareholder participation in the future (Prisandani, 2019) and this also has an impact in attracting more foreign portfolio investments.

Moving on, the question on securities account opening procedures also does not yield unexpected findings. The different requirement for foreign and domestic investors are as predicted, by which foreign investors are required to use ~~of the~~ Temporary Stay Permit Card (*Kartu Izin Tinggal Sementara* or also commonly abbreviated as 'KITAS') or passport as well as a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*) whereas Indonesians are required to use their Residential Identity Card (*Kartu Tanda Penduduk*). Last but not least, the interview was concluded with the statement that Indonesian citizens and foreigners have the same rights to invest subject to certain limitations provided in the existing laws and regulations and that the Stock Exchange does not differentiate between foreign or domestic investors.

Comparison to Foreign Portfolio Investment Regulation in Other Jurisdictions

In order to discuss ways of which the Indonesian foreign portfolio investment regulation should head towards, examining regulations from other jurisdictions that have already provided sufficient legal arrangement on the matter of foreign portfolio investment is beneficial. To ensure a more relevant comparative analysis, contrast will be made with relevant Asian countries which have a relatively more similar background condition, but taking into account the higher level of advancement in terms of stock market development and foreign portfolio investment framework in order to provide proper example. The stock markets of India and South Korea are larger and more developed than those of Indonesia (Narayan et al., 2014) and as such, a brief comparison to the well-established laws of foreign portfolio investment of India and South Korea is further provided in this section.

1. Foreign Portfolio Investment in India

The history of India's stock exchange development is relevant and can be regarded as "apple to apple" to the Indonesian stock exchange in terms of its initial establishment and expansion. The Bombay Stock Exchange was initiated in the year of 1875 when the Bombay Native Share and Stock Brokers' Association was formed, but it was formally established in the year of 1899 when the Stock Exchange eventually acquired its own premises (Pathak, 2010). Not long after in the year of 1912, the Batavia Stock Exchange, Indonesia's first stock exchange market, was established by the Dutch East Indies (Indonesia Stock Exchange, 2018). Both jurisdictions also underwent market liberalization in the 1990s due to which the related changes to the conditions also impact foreign equity flow to the financial markets, hence affecting the inflow and outflow of foreign investors (Derbali & Lamouchi, 2020).

Later on, the development of stock exchange in Indonesia and India both resulted in establishments in multiple cities throughout the country, and currently, the two biggest stock exchanges in India, namely the Bombay Stock Exchange and the National Stock Exchange, list about 7.4 thousand companies together in 2019 (Keelery, 2020) whereas all of the stock exchanges in Indonesia are now centralized in the Indonesian Stock Exchange that is located in Jakarta.

Furthermore, foreign portfolio investment has been allowed in Indian domestic stock market since 1992 (Garg & Bodla, 2011; Pal, 2010) and under Indian legal framework, foreign institutional investor was inserted as one of the amendments under the Securities and Exchange Board of India Act 1992 (or also commonly abbreviated as the 'SEBI' Act). The amendment was introduced through the Securities Laws (Amendment) Act of 2014. Article 11 asserts that it is the duty of the Indian exchange board to provide protection the securities investors, and foreign institutional investors is mentioned explicitly under Article 11 point 2 (ba). The SEBI

Act also consisted of a detailed framework for identifying various foreign portfolio investments detail, such as with regard to beneficial ownership (Lai, 2018).

The importance of foreign institutional investors in India have also been noted in several researches (Mukhopadhyay & Chakraborty, 2017; Prasanna, 2008). The Securities and Exchange Board of India has enacted the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations in 2019 which regulates, *inter alia*, in detail registration of foreign portfolio investors, categories of foreign portfolio investors, investment conditions and restrictions, as well as the general obligations and responsibilities of foreign portfolio investors.

In November 2019, the Securities and Exchange Board of India has also issued an Operational Guidelines for foreign portfolio investors that serve as an implementing regulation of the aforementioned Securities and Exchange Board of India Foreign Portfolio Investors Regulations. The Operational Guidelines include details such as foreign portfolio investor registration related activities and investment conditions and restriction for foreign portfolio investors. All things considered, these regulations have provided sufficient legal basis for the arrangement of foreign portfolio investments in the Indian Stock Exchange, and the researches conducted have shown that foreign portfolio investment brings a positive impact such as with regard to the stock market strengthening (Garg & Bodla, 2011). Setting up appropriate legal framework for foreign portfolio investment remains to be important because whenever the average net inflow of daily foreign portfolio investment and the average daily return in the stock market are positive in these two jurisdictions, then the volatility spillover effect from the foreign portfolio investment market to the stock market is found to be significant (Derbali & Lamouchi, 2020).

2. Foreign Portfolio Investment in South Korea

South Korea is amongst the top Asian countries with the largest number of listed companies, 2,262 companies in 2019 (The World Bank, 2019). Foreign investors can place investments in Korean companies by way of both direct and non-direct investments, where foreign direct investment is regulated under the Foreign Investment Promotion Act while foreign portfolio investment is regulated under the Foreign Exchange Transaction Act.

In contrast to the comparative analysis carried out in the previous section towards India due to its shared history, this research contemplates a comparative notion towards the South Korean stock exchange because of its potential. South Korea is one of the fastest growing stock markets in the region, and since 2000, it has lifted the restriction on foreign investment limit (Gong & Kim, 2011). Furthermore, the unique characteristic that makes the jurisdiction highly relevant to this research is better foreign investors performance and higher returns when compared to the Korean domestic investors since the year of 1996 onwards (Bae et al., 2011; Choe et al., 2005; Oh et al., 2008; Yang & Segara, 2020; Yoo, 2011) which can be useful to

provide a perceivable visualization of what may happen if Indonesia changes its regulatory stance on foreign portfolio investment.

Much like the stance of the governments in other jurisdictions, Korean government bestowed a greater level of protection to foreigners who conduct foreign direct investment as this kind of investment is preferred over other means of investment (Jeon & Jung, 2016). Nevertheless, the aggregate limit for foreign portfolio investments in listed companies in Korea Stock Exchange was removed after the 1997 legal reform: from 55% of all issued and outstanding shares to acquiring 100% of all outstanding shares of a listed company subjected to certain exceptions. There is also no minimum investment requirement for foreign portfolio investors based on the Foreign Exchange Transaction Act.

Korean law even attributes the term 'foreigner' in the foreign investment regime with several different definitions. However the most commonly used definition is stipulated under Article 168 of the Financial Investment Services and Capital Market Act as individuals with no address or residence for not less than six months in the Republic of Korea. As provided in (Jeon & Jung, 2016), the definition of 'foreigner' also includes the following:

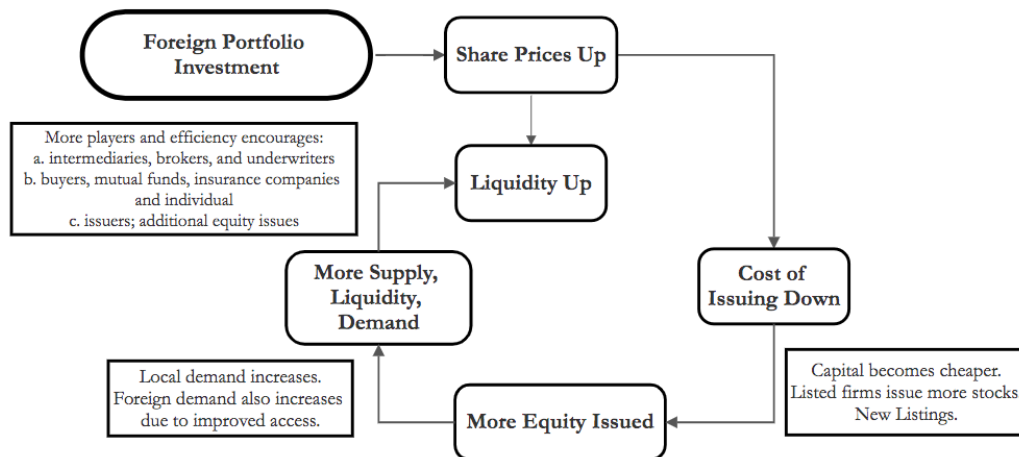
- a. foreign government;
- b. foreign municipal government;
- c. foreign public organization;
- d. foreign company established pursuant to foreign laws;
- e. any international organization established pursuant to an international treaty;
- f. any fund or association created and supervised or managed in accordance with foreign laws;
- g. any fund or association created and supervised or managed by a foreign government, foreign municipal government, or a foreign public organization;
- or
- h. any fund or association created and supervised or managed by an international organization established pursuant to an international treaty.

The restrictions for the trading of securities and exchange-traded derivatives are further regulated in a Presidential Decree, whereas Presidential Decree is lower in hierarchy compared to Acts and Treaties. Distinctions between foreign and domestic investors such as in South Korea have been advantageous for financial analysis and studies, and ultimately, may result in recommendation for improving the stock markets as a whole.

Recognizing the Need for Foreign Portfolio Investment Regulation in Indonesia

The importance of foreign funds in encouraging domestic secondary and primary market has been proven. Foreign portfolio investment brings various

advantages to the host country, while contributing positively to the development of a domestic capital market that is more efficient and liquid, producing a deeper and broader market in general (Duasa & Kassim, 2009). The impact on foreign funds on domestic secondary and primary market is also presented in (Pal, 2010) as follows:



Graph 1. Diagrammatic Representation of How Foreign Funds Encourage Domestic Secondary and Primary Market (Pal, 2010)

Reflecting on the model presented by Pal, even though the case study was conducted in India, similar condition is likely to apply if foreign portfolio investment is supported with a decent legal framework in Indonesia. As a matter of fact, foreign portfolio investment in Indonesia has reached 11489 million US Dollar based on the quarterly data of January 2019 (CEIC, 2020).

To further illustrate the level of involvement of foreign portfolio investors, both institutional and retail, share ownership composition samples were obtained from the Indonesian Stock Exchange website. As the first example, the share ownership composition of PT. Bank Mandiri (Persero) Tbk. as of 30 November 2020 (PT. Bank Mandiri (Persero) Tbk., 2020) showed a 29.80% of foreign ownership, followed by 10.20% of local ownership in addition to the 60% owned by the government of the Republic of Indonesia. Of the total of 1747 foreign investors, 1455 were institutional investors whereas 292 were foreign retail investors.

PT. Bank Rakyat Indonesia (Persero) Tbk. showed a similar number in the shareholder composition data per April 2020, where 33.90% of the shares were owned by foreign portfolio investors, in contrast with the 9.35% of the shares owned by domestic shareholders and 56.75% of the shares owned by the government of the Republic of Indonesia. Out of the total of 2273 foreign investors, 325 were foreign individuals (retail investors) whereas 1948 were foreign legal entities (institutional investors).

Referring to the comparative explanation on India and South Korea in the previous section, it seems to be the case that regulating foreign portfolio investors can provide a clearer ground on implementing the stock exchange in general. As a result, the Indonesian Stock Exchange may be able to develop different strategies to attract and manage foreign portfolio investors. Taking specific example of India, the SEBI was claimed to help in preventing outflow caused by COVID-19 uncertainties in India. Nevertheless, the precise impact of the regulation remains to be seen.

The study on governance environment of foreign investment by Li & Filer (2007) distinguishes countries into two types: a rule-based governance environment and a relation-based governance environment. A rule-based governance environment can be found in many developed countries where societies, companies, and individuals generally rely on the laws and regulations set for the public by government to resolve disputes and enforce contractual rights and obligations. The conditions of a rule-based governance environment is described as follows:

1. Having laws, regulations, and other public rules concerning economic exchanges that are fair and just;
2. The creation, adjudication, and enforcement of law that are separate;
3. Law enforcement that is unbiased and efficient; and
4. Public information infrastructure, which includes accounting, auditing, and financial rating, that is highly reliable with high transparency and accuracy.

By contrast, the second type mentioned in the study, the characteristic of a relation-based governance environment is described in (Li & Filer, 2007) as follows:

1. Lower level of fairness in the laws, regulations, and other public rules concerning economic exchanges;
2. No separation between legislative, judiciary, and executive branches of the government;
3. Exercise of control of a certain group or a ruler within the court and judges; and
4. Control of public information by the government that causes lack of trustworthiness.

All in all, the main signifying characteristic of a relation-based governance environment is the existence of closely knit informal networks, where people tend to resort to these networks in order to settle disputes and gain protection in business. With regard to the governance environment of foreign investment in Indonesia, the study of Wu et al. (2012) found that Indonesia has yet to have a strong public ordering and hence still resorting to an extensive informal relation-based social networks, where the study pointed similarities to other Asian countries like China and Taiwan.

In the perspective of the authors, Indonesia cannot be categorized to have a relation-based governance environment with regard to its foreign portfolio

investment as several points in the rule-based governance environment have been met. For example, Indonesia has established laws, regulations, and public rules on economic exchanges that are fair and just, though this may be subject to further discussion with regard to which laws, and which regulations, as well as the standard of fairness and justness. Indonesia also has separated between the creation, adjudication, and enforcement of the law in the legislative, adjudicative, and executive governmental body respectively. Further, the Indonesian Stock Exchange has managed to set up public information infrastructure that is reliable, transparent, and accurate through its website, social media, and other information channels being used to communicate with the public on the matter of portfolio investments.

Nevertheless, Indonesia can still improve its laws and regulations, specifically on the matter of foreign portfolio investments to strive closer towards what was mentioned as a rule-based governance system. Foreign portfolio investment is more volatile by nature and as such, it should receive ample attention from the policy makers and regulators because of the challenges it brings by way of changing macroeconomic variables, which in turn can affect monetary policies (Waqas et al., 2015). The effect of non-direct majority share ownership such as in the acquisition of Indosat by Qatar Telecom as discussed in Velentina & Hayaty (2009) can also be analyzed further when such distinction has been enacted.

Furthermore, although Indonesia has provided some law enforcement in the aspect of registering and account creation for investors, provided the means for foreign investors in getting the information, entering, and participating in the General Meeting for Shareholders, the government has yet to regulate the most basic regulation on foreign portfolio investment: who can be eligible to be a 'foreign portfolio investor' under Indonesian law, what kind of rights and obligations does a 'foreign portfolio investor' have upon investing in Indonesia, which limitations apply to institutional 'foreign portfolio investor' and retail 'foreign portfolio investor' respectively, and most importantly, which governmental institution will be in charge in supervising and handling these 'foreign portfolio investor'.

Providing a completely equitable treatment between foreign and domestic portfolio investors may also cause adverse consequences, as foreign investors evidently have to surpass more barriers and pay more costs, such as in regards to monitoring the company's actions taken by the Board of Directors. As a foreign investor, the cost of understanding the legal system and figuring out the legal barriers is also higher if no separation is made between foreign direct investors, foreign portfolio investors, and domestic investors. Taking the current situation as an example, with a clear separation there should not be any vagueness with regard to whether or not foreign portfolio investment can be subjected to the limits imposed in the Investment Negative List, whereby the two options of allowing or prohibiting

such an imposition result in a very different outcome with regard to limiting foreign control over Indonesia's vastly developing industries.

In that sense, the Indonesian government needs to coordinate, harmonize, and introduce new regulations with regard to foreign investor regulation. This is due to the possibly overlapping authorities owned by governmental institutions such as the Investment Coordinating Board, the Indonesian Stock Exchange, the Financial Services Authority and in the future, sovereign wealth fund institution that need to have clear limits on the tasks and responsibility in handling foreign portfolio investment. The proposal would be to either enact a completely new set of regulation, or through providing implementing regulations to complete the already prevailing laws. The latter can take the form of Financial Services Authority Regulation, for example, or even sufficiently through operational guidelines that can be issued by the Indonesian Stock Exchange. To sum up, the provision of a distinction under the law will offer more clarity and higher legal certainty for foreign portfolio investors.

CONCLUSION

Foreign investment, both direct and non-direct, constitute as an important source of contribution to a country's economic development. Indonesia, however, has yet to enact a different set of regulations concerning foreign portfolio investors despite putting a lot of focus on increasing foreign direct investment such as through the establishment of the sovereign wealth fund institution.

From the comparative overview, it is noticeable that South Korea and India have seen positive impact after the imposition of separate laws and regulations on foreign portfolio investors. It then brings the notion of possibility that Indonesia can also benefit from the increase of foreign portfolio investors' interests through providing a clear and distinct set of regulations similarly.

Consequently, there is a need to regulate foreign portfolio investment in Indonesia separately in order to ensure legal certainty, consistency and clarity within the regulatory framework, and this can be achieved through either passing a new law in its entirety or through harmonization and improvement of the prevailing regulations by way of issuing implementing regulations for the existing law. Such implementing regulation can be issued under relevant governmental agencies such as the Financial Services Authority. Taking into account the intricacy of introducing a new law to the already overloaded regulatory regime of Indonesia, it is the authors' opinion that an implementing regulation is needed to clarify and provide certainty to protect foreign portfolio investors that participate in the Indonesian Stock Exchange.

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