Syntax Literate: Jurnal Ilmiah Indonesia p–ISSN: 2541-0849
e-ISSN: 2548-1398
Vol. 9, No. 10, Oktober 2024

LEGAL STUDY ON THE REQUIREMENTS FOR FOREIGN CAPITAL INVESTMENT IN THE INDUSTRIAL SECTOR IN INDONESIA

Jonathan Marpaung
Universitas Indonesia, Indonesia
Email: Jonathan.marpaung12@gmail.com

Abstract

This study examines the legal requirements governing foreign capital investment in the industrial sector in Indonesia. This study uses a normative legal approach. The data collection technique in this study is through literature studies. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and drawing conclusions. The results of the study show that the requirements for foreign capital investment in the industrial sector in Indonesia are regulated in Article 5 of Law Number 25 of 2007. Foreign Investors are required to be in the form of a limited liability company and must be located within the territory of the Republic of Indonesia, unless otherwise regulated by law. Investors, both domestic and foreign, can invest in the form of a limited liability company. Foreign Investors are only allowed to carry out business activities in large sectors with an investment value exceeding IDR 10,000,000,000.00 (ten billion rupiah), excluding the value of land and buildings. In addition, they must also complete the licensing or establishment documents required for foreign investors. Strong legal protection is needed to create a comfortable atmosphere for foreign investment in the Capital City of the Archipelago (IKN). The regulations applied must maintain the sovereignty of the nation and not betray the values adopted by the state. Effective legal protection will provide certainty and trust for foreign investors, so that they can contribute positively to economic growth and infrastructure development in Indonesia.

Keywords: Legal Protection, Foreign Investment, and Economic Law

Introduction

Indonesia as a developing country, is actively trying to attract investment, especially foreign direct investment (FDI) in the industrial sector. FDI is an investment made by individuals, companies, or foreign entities in a country with the aim of obtaining significant ownership in assets or companies in that country (Fernandez & Joseph, 2020). This investment involves large capital expenditures and focuses on developing or operating a business, such as establishing a factory, acquiring a local company, or building infrastructure (Cicea & Marinescu, 2021). This effort is made because foreign investment is considered important to drive economic growth, create jobs, and improve local technology and skills.

As much as 79% of state revenue is obtained through tax revenues. Increasing investment can have a positive impact on increasing tax revenues. For example, investment in the manufacturing sector can create jobs, increase exports, and provide added value to products. In accordance with the 2024 Government Work Plan (RKP), the investment realization target for 2024 is set between IDR 1,450 and IDR 1,650 trillion, with the direction of the President of IDR 1,650 trillion. Meanwhile, the Draft

How to cite:	Marpaung, J. (2024). Legal Study on The Requirements for Foreign Capital Investment in The Industrial Sector in Indonesia. *Syntax Literate. (9)11.* http://dx.doi.org/10.36418/syntax-literate.v9i11
E-ISSN:	2548-1398

Government Work Plan (RKP) for 2025 sets an investment realization target of IDR1,868.2 to IDR1,905.6 trillion.

In an effort to encourage this investment, on March 6, 2023, the government issued Government Regulation Number 12 of 2023 which regulates the granting of business permits, ease of doing business, and ease of investment for investors in the IKN as a derivative regulation of Law Number 3 of 2022. In order to facilitate this, President Joko Widodo gave firm direction. He asked the government to prepare attractive incentives for investors, with an emphasis on extraordinary incentives that still comply with applicable legal regulations. In addition, the President also emphasized the importance of providing as many incentives as possible to investors who are interested in investing in Indonesia. One of the recommended strategic steps is to provide a tax holiday for as long as possible, in order to attract more investors to contribute to the national economy.

These steps are expected to create a better investment climate, which in turn will support sustainable economic development in Indonesia. However, to ensure that the investment has a positive impact on the national economy, the government has set a number of regulations and requirements. Management of government investment requires a legal basis regulated through government regulations to ensure orderly administration and effective investment management. The legal basis for this management is stated in Government Regulation Number 8 of 2007 concerning Government Investment. Efforts to expand government investment, especially in the form of direct investment in the infrastructure sector and other fields, as well as providing opportunities for investment cooperation, require an update to Government Regulation Number 8 of 2007.

Previous research by (Agnita, 2024) shows that in general every sector is open to foreign investment activities, except for sectors that are designated as closed and can only be operated by the Central Government and the open sectors are commercial sectors, restrictions on foreign ownership in the oil palm plantation business no longer apply, so that Foreign Investors can control or own 100% of the shares in oil palm plantation companies. Another study by (Razak, 2023) shows that the government has reopened the door to foreign investment through Law Number 1 of 1967 concerning Foreign Investment. Until now, this policy has continued to experience changes reflected in various regulations in the field of investment, adjusted to developments and global economic needs. One sector that is open to foreign investment is the banking industry, which allows foreign ownership of up to 99%, reflecting the great opportunities for foreign investors in this sector.

The novelty of the research is from the substance of the research, namely that there has been no research that analyzes the legal requirements for foreign capital investment in the industrial sector in Indonesia with a case study of the National Capital (IKN) in Penajam Paser Utara, East Kalimantan. This research contributes to the development of economic law theory by highlighting how foreign investment policies affect the industrial sector and investment climate in Indonesia. The results of this study can enrich academic discussions on the role of regulation in creating a balance between national interests and openness to global investment, as well as proposing a more adaptive and responsive legal approach to the dynamics of the international economy. This study examines the legal requirements governing foreign capital investment in the industrial sector in Indonesia.

Research Method

This study uses a normative legal approach. The normative legal approach is a method carried out by relying on primary legal materials, through a study of theories, concepts, legal principles, and laws and regulations related to the topic of this research (Hidayat et al., 2023). The case study in this study is the new National Capital (IKN) in Penajam Paser Utara, East Kalimantan. IKN was established to overcome various problems faced by the previous capital city, such as overpopulation, heavy traffic, and environmental degradation. The data collection technique in this study was carried out through a literature study which began with data collected from various sources such as books, journals, laws and regulations, and scientific articles that were relevant to the research topic. After the data was collected, the analysis was carried out in three stages. First, the data is reduced by filtering information that is considered important and relevant. Second, the reduced data is presented in a more structured form to facilitate understanding. Finally, conclusions are drawn based on the analysis of the data that has been compiled, in order to answer the research questions.

Results and Discussion

Foreign capital investment has a very important role for the Indonesian economy, especially as a developing country. The presence of foreign capital investment (FDI) is one of the main driving forces in increasing the country's economic growth (Rismawan et al., 2021). The importance of this investment can be seen from its contribution in supporting economic stability, by being one of the elements that spur national economic growth. Most of the country's revenue, around 79%, comes from tax revenue. When there is an increase in investment, including foreign investment, it can have a positive impact on state tax revenue (Wijaya & Dewi, 2022). For example, when investment is directed to strategic sectors such as manufacturing, it can create more jobs, encourage an increase in export volume, and provide added value to domestically produced products.

The process of investment entering the economy serves as a catalyst in creating more jobs. As jobs expand, people get more opportunities to work, which directly increases income. This increase in income then leads to an increase in purchasing power or consumption. Increased consumption will strengthen the economic cycle as demand for products and services increases, which in turn also supports the growth of industry and other related sectors (Rizki & Haryadi, 2021).

Indonesia's investment realization target for the 2020-2025 period has been set in the Government Work Plan (RKP). In 2024, the investment realization target is in the range of IDR1,450 to IDR1,650 trillion. However, in accordance with the President's direction, the more ambitious target of IDR1,650 trillion is prioritized. For 2025, the investment realization target increases further, in the range of Rp1,868.2 to Rp1,905.6 trillion, in accordance with the draft 2025 RKP. This target increase reflects the government's optimism in strengthening the economic sector through investment, both domestic and foreign.

To date, Indonesia continues to be one of the main destinations for foreign direct investment (FDI) inflows in the ASEAN region as illustrated in the following table.

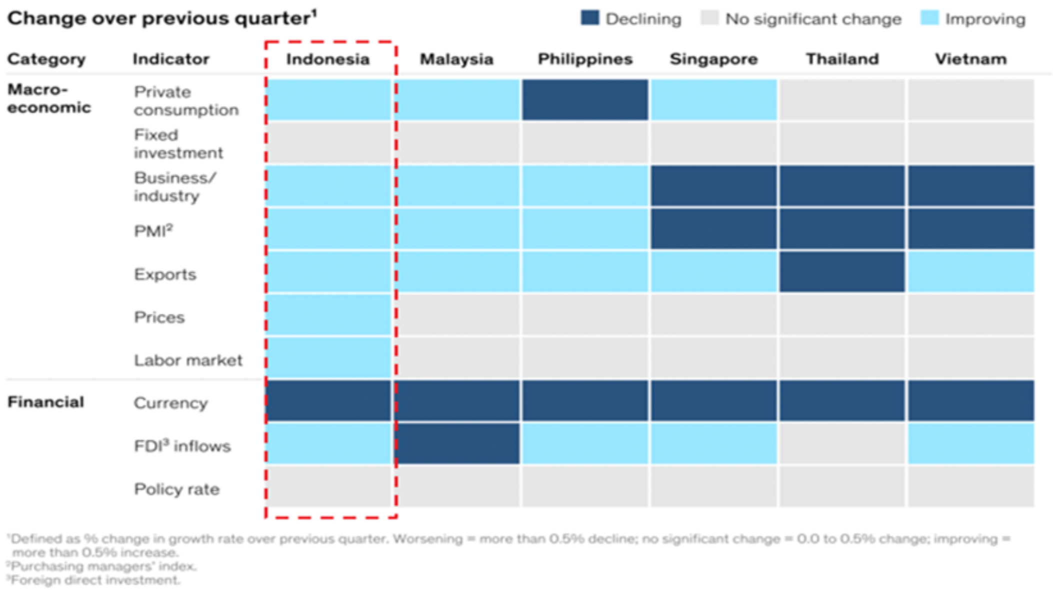

Figure 1. Comparison of Macroeconomic and Financial Performance in ASEAN Countries
Source: McKinsey & Company, Q1 2024

Based on this comparison, it can be seen that Indonesia shows variations in trends across various economic and financial indicators. However, what stands out is the increase in foreign direct investment (FDI) flows into Indonesia. The comparison confirms Indonesia's position as one of the top destinations for foreign investors in the ASEAN region. This increase was driven by increasingly supportive investment policies and relatively stable economic conditions. In addition, the improvement seen in policy interest rates indicates the government's efforts to stabilize the economy.

Meanwhile, IKN Nusantara, as a national strategic project, has special regulations governing investment aspects. There are several important things that need to be considered by potential investors. One of them is the determination of priority sectors. The government will pay more attention to investment in sectors that support the development of IKN Nusantara, so that investment is directed to accelerate the realization of the region's development. Some of the prioritized sectors include renewable energy, technology, sectors related to the green economy, and downstreaming. These sectors were chosen because they are in line with the government's vision to make IKN an environmentally friendly and sustainable smart city, as well as a new center of economic growth in Indonesia (State Secretariat, 2022).

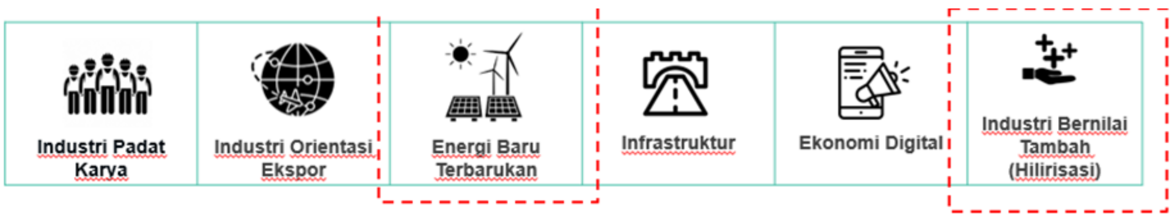

Figure 2 Priority investment sectors
Source: Ministry of National Development Planning/Bappenas and Ministry of Investment/BKPM

Green and Low Carbon Economy has been a key strategy set by President Joko Widodo to steer Indonesia's economic transformation in the medium to long term. This transformation is achieved through the Low Carbon Development framework, which encourages the creation of green jobs, or so-called "green jobs." The current employment trend is towards the creation of jobs that support the preservation or restoration of the environment.

It is estimated that by 2060, 1.8 to 2.2 million new jobs will be created from sectors such as renewable energy, sustainable land and circular economy. Renewable energy, for example, is projected to create more than 1 million new jobs. In addition, sustainable agriculture is expected to increase the value of the global economy by USD 2.3 trillion and create more than 70 million jobs by 2030. In the circular economy, around 4.4 million green jobs will be created by 2030, of which 75% of the total workers are women.

The Indonesian government is also focusing on strengthening the investment ecosystem and collaboration in the business world, aimed at accelerating the development of an innovation and technology-based economy, especially those that support a sustainable green economy, blue economy, and circular economy, with the hope of driving more inclusive and sustainable economic growth in the future.

Meanwhile, the downstream policy has also had a major impact on the added value of domestic products. For example, nickel downstreaming shows a significant increase in the export of its derivative products. In 2017, exports of nickel derivative products were recorded at USD 3.3 billion. However, after the nickel ore export ban was implemented in 2020, the export value of nickel-derived products jumped sharply to reach USD 33.8 billion in 2022. These results show that downstreaming has succeeded in significantly increasing the added value of nickel products and supporting national economic growth.

In realizing these priority sectors, it is estimated that Indonesia needs a total investment of USD 545.3 billion to achieve sustainable economic growth. While this is a large amount of investment, the impact is expected to be significant until 2040. Projections show that this investment can boost exports to reach USD 1.82 trillion, create 25.76 million new jobs, and increase gross domestic product (GDP) by USD 743.55 billion.

To fulfill these investment needs, the involvement of foreign investment is considered essential. However, in order to ensure that foreign investment provides optimal benefits to the national economy, the Indonesian government has established a number of regulations and requirements related to foreign investment (FDI). These regulations aim to maintain a balance between the benefits of foreign investment and the protection of national economic interests (Sari, 2020). Law No. 25/2007 on Investment is the main legal basis governing foreign capital investment in Indonesia. This law provides a regulatory framework that includes rights, obligations, and protections for foreign investors who wish to invest in various sectors of the Indonesian economy (Samosir, 2024).

According to Article 1 Point 8 of the Investment Law, foreign capital is defined as capital owned by foreign parties, including foreign countries, individual foreign nationals, foreign business entities, foreign legal entities, and Indonesian legal entities whose capital is partially or wholly controlled by foreign parties. In other words, the owner of foreign capital can consist of various entities, namely foreign countries, individual foreign citizens, foreign companies, foreign legal entities, and Indonesian companies whose shares are owned by foreign investors. This definition makes it clear that foreign capital can come from various sources, both public and private, involved in investment in Indonesia.

In addition, BKPM Head Regulation No. 5/2019 on Guidelines and Procedures for Licensing and Investment Facilities is also an important reference in the licensing process and provision of facilities for investors. This regulation explains the administrative procedures that foreign investors must go through to obtain a license to invest in Indonesia, as well as what facilities can be provided by the government to support smooth investment, such as tax incentives or other facilities.

Legal protection plays an important role in creating an environment conducive to attracting foreign investment. When a country provides a strong legal protection guarantee, it gives a positive signal to investors that they can invest safely in the country (Alfian et al., 2024). Foreign investors will feel more confident to invest if they believe that their rights will be effectively protected. Good legal protection also provides clarity regarding rights, obligations, and dispute resolution, thereby reducing the risks faced by investors.

In foreign capital investment (FDI) in Indonesia, there are several important requirements governed by law to ensure the involvement of foreign investors in accordance with national provisions. Based on Law Number 25 Year 2007, specifically Article 5, foreign investors are required to establish a business entity in the form of a Limited Liability Company (PT) which must be domiciled in the territory of the Republic of Indonesia. Regarding the definition of a Limited Liability Company (PT), it is explained in Article 1 paragraph (1) of Law No. 40/2007 on Limited Liability Companies, namely "as a legal entity that is a capital alliance, established based on an agreement, with an authorized capital divided into shares, and must fulfill the requirements stipulated by law and its implementing regulations." This means that any foreign investment must operate in Indonesia in the form of a company recognized by the national legal system, unless there are other provisions regulated by law. This is so that foreign companies operating in Indonesia are legally and economically integrated with domestic regulations.

Furthermore, according to article 189 foreign investment is only permitted to operate in the large business sector, where the investment value must exceed IDR 10 billion, excluding the value of land and buildings. This provision is set to ensure that investments made by foreign parties have a significant impact on the national economy, especially in strategic sectors.

In addition, foreign investors are also required to complete licensing and establishment documents required by the relevant authorities. These requirements cover various administrative aspects needed to support that business activities can run in accordance with applicable laws and regulations in Indonesia. However, in practice, these requirements are often an obstacle for some foreign investors to invest in Indonesia. Only foreign investors with large capital can fulfill the predetermined investment criteria. As a result, some investors choose to invest in other countries, which in turn has a negative impact on Indonesia's competitiveness in the midst of increasingly fierce global competition (Putri, 2022).

To address these issues and attract more investors, especially in the development of the Capital City of the Archipelago (IKN), the Indonesian government offers various incentives. These incentives are designed to accelerate the IKN development process and provide additional attraction for interested investors. On March 6, 2023, the Indonesian government issued Government Regulation Number 12 of 2023. This regulation regulates various aspects related to business licenses, ease of doing business, and ease of investment for investors operating in the Capital City of the Archipelago (IKN). This regulation is an implementation of Law Number 3 Year 2022, which aims to create a more conducive and attractive investment climate for investors.

President Joko Widodo provided clear direction to increase the attractiveness of investment in the IKN. He emphasized the importance of providing attractive incentives for investors, in the hope of creating an enabling environment for investment. The directive includes the development of exceptional incentives that remain compliant with applicable laws, so that they are not only beneficial to investors, but also do not violate existing provisions.

The President also encouraged that as many incentives as possible be given to investors interested in investing in IKN. One form of incentive emphasized is the provision of tax holidays, which is a tax exemption for a certain period of time. Providing this facility for as long as possible, it is expected that investors will be more interested in investing, which in turn will support infrastructure and economic development in the IKN area. Foreign investment in the Nusantara Capital City (IKN) does require a strong guarantee of legal protection so that investors feel comfortable. However, in regulating foreign investment, it is important to maintain national sovereignty (Makhfudz, 2016). This means that any legal instruments created must protect national interests and not give excessive discretion to foreign investors, which could result in harming the country.

The legal importance of foreign investment requirements also serves to prevent exploitation, where the state must ensure that foreign investors do not use Indonesia's natural resources or labor indiscriminately (Prawira et al., 2024). For this reason, policies that limit foreign ownership need to be implemented to empower domestic businesses. For example, Japan closed the flow of foreign direct investment (FDI) in strategic sectors until the 1960s, while Finland limited foreign ownership to 20% until 1987. These measures show how important it is to safeguard national interests in any investment policy implemented.

Investment policies in IKN must be aligned with national interests, including environmental protection, strengthening domestic industries, and improving Indonesia's bargaining position in international negotiations. Therefore, the results of this study provide significant implications for investment policy in Indonesia, especially in IKN. First, the improvement of regulations governing foreign investment needs to be carried out on an ongoing basis so that they are always relevant to the times and investment needs. Second, the institutions responsible for managing foreign investment must be strengthened in order to provide better services to investors.

In addition, transparency and accountability in the foreign investment decision-making process are also crucial to prevent corruption and collusion. Investment policy must be able to find a balance between the interests of foreign investors and national interests so that both parties can mutually benefit.

As a concrete step, the President has conducted groundbreaking for six domestic investment projects with a total investment plan of Rp20 trillion. The projects include Hotel Nusantara managed by the PMDN Consortium, Astra Biz Center by Astra Group, Indogrosir which is part of Salim Group, Grand Lucky Superstore by Erajaya/ASG Group, Living World by Kawan Lama Group, and Alfa and Lawson managed by Alfamart Group. This step demonstrates the government's commitment to encouraging investment in IKN while maintaining sovereignty and national interests.

Conclusion

The requirements for foreign capital investment in the industrial sector in Indonesia are regulated in Article 5 of Law Number 25 of 2007. In this law, Foreign Investors are required to be in the form of a limited liability company and be located within the territory of the Republic of Indonesia, unless otherwise regulated by law. Both domestic and foreign investors are allowed to invest in the form of a limited liability company. However, Foreign Investors are only permitted to carry out business activities in large sectors with an investment value exceeding IDR 10,000,000,000.00 (ten billion rupiah), excluding the value of land and buildings. In addition, they are also required to complete the licensing or establishment documents required for foreign investors. The importance of strong legal protection is highly emphasized to create a comfortable atmosphere for foreign investment in the Capital City of the Archipelago (IKN). The regulations implemented must maintain the sovereignty of the nation and not betray the values adopted by the state. With effective legal protection, certainty and trust for foreign investors can be created, so that they can contribute positively to economic growth and infrastructure development in Indonesia.

BIBLIOGRAPHY

Agnita, B. (2024). Kajian Hukum Penanaman Modal Asing dalam Usaha Perkebunan Kelapa Sawit di Indonesia. Jurnal Ilmu Hukum, Humaniora dan Politik, 4(4), 579-589.

Alfian, R., Sianturi, B. F., Anendri, N. T., Hidayat, M. F., & Fiyona, P. (2024). Perlindungan Hukum Bagi Investor Asing dalam Kegiatan Penanaman Modal Asing di Indonesia dan Implikasi Terhadap Negara. SYARIAH: Jurnal Ilmu Hukum, 1(4), 57-61.

Cicea, C., & Marinescu, C. (2021). Bibliometric analysis of foreign direct investment and economic growth relationship. A research agenda. Journal of Business Economics and Management, 22(2), 445-466.

Fernandez, M., & Joseph, R. (2020). Foreign direct investment in Indonesia: An analysis from investors perspective. *International Journal of Economics and Financial Issues*, *10*(5), 102-112.

Hidayat, S., Landrawan, I. W., & Setianto, M. J. (2023). Tinjauan Yuridis Kekerasan Dalam Rumah Tangga Dalam Perspektif Hukum Islam Dan Undang-undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga"(Studi Putusan Nomor 138/Pid. Sus/2021/PN Sgr). Jurnal Gender dan Hak Asasi Manusia, 1(1), 130-141.

Kementrian Sekretariat Negara Republik Indonesia, (2022). IKN Nusantara Magnet Pertumbuhan Ekonomi Baru dan Smart City. https://www.setneg.go.id/baca/index/ikn_nusantara_magnet_pertumbuhan_ekonomi_baru_dan_smart_city diunggah tanggal 24 januari 2022.

Makhfudz, M. (2016). Seberapa penting investasi asing dipertahankan di indonesia. ADIL: Jurnal Hukum, 7(1), 18-35.

Prawira, A. Y., Setiady, T., & Astawa, I. K. (2024). Peranan Hukum Perizinan Dalam Kemudahan Investasi Asing Demi Tercapainya Pembangunan Ekonomi. YUSTISI, 11(1), 248-260.

Putri, L. P. Y. K. (2022). Persyaratan Modal Minimum Bagi PT PMA Di Indonesia: Perlukah?. Repertorium: Jurnal Ilmiah Hukum Kenotariatan, 11(2), 172-185.
Razak, A. A. A. (2023). Politik Hukum Terhadap Penanaman Modal Asing Dalam Industri Perbankan di Indonesia. Madani: Jurnal Ilmiah Multidisiplin, 1(5).
Rismawan, L. B., Haryanto, T., & Handoyo, R. D. (2021). Foreign Direct Investment Spillovers and Economic Growth: Evidence from Asian Emerging Countries. Ekuilibrium: Jurnal Ilmiah Bidang Ilmu Ekonomi, 16(1), 49-63.
Rizki, M., & Haryadi, H. (2021). Analisis investasi serta pengaruhnya terhadap kesempatan kerja dan pertumbuhan ekonomi di Indonesia. e-Journal Perdagangan Industri dan Moneter, 9(3), 193-200.
Samosir, V. E. (2024). Analisis Yuridis Pemberian Hak Istimewa Kepada Penanam Modal Asing Menurut Undang–Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal Ditinjau Dari Prinsip Perlakuan Yang Sama Dalam General Agreement On Trade In Services (GATS). Innovative: Journal Of Social Science Research, 4(1), 3166-3181.
Sari, I. (2020). Syarat-Syarat Penanaman Modal Asing (PMA) di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal. Jurnal Ilmiah Hukum Dirgantara, 10(2).
Wijaya, S., & Dewi, A. K. (2022). Determinants of foreign direct investment and its implications on tax revenue in Indonesia. JPPI (Jurnal Penelitian Pendidikan Indonesia), 8(3), 719-733.