World Investment Forum 2014: Investing in Sustainable Development

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Mr. Mahendra Siregar
Chairman of Investment Coordinating Board
The Republic of Indonesia

First of all, I would like to express my high appreciation to UNCTAO for inviting me to speak before this prestigious international conference with very relevant theme to Indonesia and many other members.

The theme of this year conference of "Reforming the International Investment Agreements Regime" is very relevant to Indonesia and all other developing countries, as well as more strategic geo-economic changes in the midst of continuous global economic slowdown. The most prominent challenge at hand is how developing countries can identify their strategy in responding to the prolonged recession amongst their traditional partners. The theme is a reminder that developing countries should understand its bigger responsibility today, not just continuing its outstanding agenda.

For example, the emerging and developing economies in Asia constitute 30 percent of global GOP today. At the same time, Asia has contributed to more than 50 percent of global growth in the last 10 years. It is clear that the combined emerging economies in Asia-Pacific alone have substantial capacity to turn around the global economic slowdown, if only they can sustain high economic growth.

The strategic challenge for the region is how to achieve sustainable growth in the years ahead on the basis of an economic growth model highly dependent on exports of goods and services to advanced nations whose growth remains tenuous at best. The global economic crisis today would require that strategy to be rebalanced by focusing more on domestic and intra-regional demand.

The key question to this proposition is whether such an alternative model is doable?

Indonesia's growth in recent years has proven that such a model is not only doable, but conceptually also sustainable. Indonesia's exports are only 25 percent of GOP. On the other hand, domestic consumption contributes close to 55 percent. The key is how to ensure that the consumption is supported with strong investment growth to make it sustainable. The high investment growth in recent years suggested that the consumption growth has indeed attracted strong foreign and domestic direct investment. Gross Fixed Capital Formation has contributed to 32 percent of Indonesia's GOP today.

The next challenge is then how to make the economy and human capital more productive and competitive. The country has to address at least three most important challenges: i) invest heavily in its infrastructure development; ii) continue improving its good public governance, and iii) reform its industrial relations that promote productivity. On this occasion I will not elaborate this matter further. Instead, I would focus on how the World should welcome Indonesia, and other developing economies, to follow similar path.

Path toward Sustainable Growth A study by McKinsey suggested that Indonesia has 45 million consuming class today which projected to reach 135 million by 2030 if the economy grows by 5 to 6 percent per annum. But if it could grow by 7 percent, then the consuming class could reach 170 million in 2030, and make Indonesia the seventh largest economy in the world.

With that objective in mind, it is very clear that the most important factor for Indonesia to sustain maximum gain from its domestic demand economic model is how to ensure growth is inclusive as much as keep the economy open and competitive. There should not be any trade-off between development and implementing open economic system. In fact, one would strengthen the other, as long as it is kept in a balanced mode.

In the export driven economy, only the most competitive sectors survive, while the rest have to be compensated or left behind. In the domestic and intra-regional demand driven economy, a sustainable, inclusive and balanced growth is a must. The message is very clear: the developing economies of Asia have to address their development challenges while taking part in the regional economic integration. This is also a good lesson learn from ASEAN. The countries have to promote further its development pillar in its integration, to balance its liberalization agenda that has been championed up to now.

Indonesia Opportunities and Challenges

At present, Indonesia is an economy in transition. As we enter the global economy, the aspirations of our people naturally increase and one of the major challenges of our Government is how to cope with, accommodate and help realize these aspirations.

All advanced economies have faced the same challenges in the past; - and indeed a number face the same challenges today, albeit of a different nature. In the a case of developing economies, the key is how to generate the prosperity to provide wider education, healthcare and jobs for a growing population; and in more developed economies, the more pressing issue is how to maintain the existing social systems.

The first point I would like to make is that all nations share the same objectives and move along the same path towards prosperity, but in the case of Indonesia we are less that undoubtedly contributed to the prosperity achieved in these advanced economies. Are we to be denied the same paving stones on this road to development?
In my capacity as Chairman of Indonesia Investment Coordinating Board (BKPM), I would say that the same paving stones will not necessarily deliver the same benefits as erstwhile polices; and I am also a believer in the benefits of an open economy, but there is a need to transition. This transition does not mean that Indonesia is closed for investment. On the contrary, we wish to work alongside our trading partners so that we can achieve a sustainable growth; - based on a mutual interest, which would generate sufficient wealth in the global economy- to allow developed economies to maintain and improve their standard of living and at the same time developing economies to improve theirs.

In the case of my country, while health and education facilities are improving, they still lag behind the developed world as well as a number of Asian neighbours. Infrastructure is improving but still poor to support an economy that has been expanding in recent years and unemployment is still very high.

Sustainable Economic Growth: Key to Indonesia development

The record-high investment inflows that Indonesia enjoys in the last 3 years have certainly provided more jobs, tax and to a lesser extent export revenue. However, as is the case for the resources or labour-intensive industries, this growth does not readily support sufficient national companies and entrepreneurs that are critical to create sustainable growth. The country requires large number of national companies and entrepreneurs to ensure its long-term development.

Indonesia is not alone in pursuing these policies that are often associated with developing economies. Europe and the USA did very much the same and even now, while they claim their economies to be open, most key sectors are already dominated by their industries that have acquired, in the phase of development, the ability to compete in the global economy. In spite of this, they are also very hesitant to accept investments from emerging economies in key sectors of their economy as we have seen in the recent past and present. The "Buy America Act", and the Alstom, and AstraZeneca episodes cases are just other obvious examples of these situation.

Reforming Bilateral Investment Treaty

Indonesia opened up its economy to foreign direct investment in 1967 when the Law of Foreign Investment mainly addressed the issue of promoting foreign direct investment, providing investment incentives, and protecting foreign investments. At that time, the law has become the pillar for other supporting regulations and measures on foreign investments.

Since then, Indonesia has become host country for a significant number of foreign investors who has invested in various sectors and regions in the country. To further strengthen this end, up until now, Indonesia has signed and implemented Bilateral Investment Treaties (BITs) with 62 partner countries.

However, as you are all very aware of, Indonesia has reformed significantly since then, especially after the Asia monetary crisis and post-Soeharto era from 1998 up to date. The country has amended its constitution four times, and transformed its social- political system from authoritarian to one of the most democratic, transparent and free system to date. Tens of new and revised laws have been introduced since then, with hundreds of their implementing regulations. The once very centralized political, economic and social systems, now have become one of the most decentralized. It is very obvious all legal instruments, including BIT, have to be up dated to keep it relevant and consistent it such REFORMASI era.

To do that, since 2012 Indonesia has been reviewing its bilateral investment treaty regime, with the intention to update and adjust the formulation of BITs provisions with the current circumstances. Several key considerations in conducting the review are as follow:

a. Rapid and substantial changes on Indonesia's political, economic and social governance, as well as evolving regional and global economic landscape. The update would improve legal certainty and consistency between BIT and the national and sub-national laws and regulations.
b. Swift development of Free Trade Agreements (FTA), Preferential Trade Agreements (PTA), Comprehensive Economic Partnership Agreements (CEPA),regional FTAs, etc, brings in overlapping issue between bilateral and regional based investment arrangements. This situation demands consistency between one and another investment arrangements, in order to provide a simple and clear understanding for parties involved.
c. While the update is taking place, foreign investors do not need to worry with the legal certainty and protection of their investment in Indonesia. The country's new Investment Law (Law No.25 of 2007) explicitly states the protection of foreign investors in Indonesia, including several clauses that stipulate the treatment of investor and dispute settlement mechanism, as well as the clauses to facilitate the intention of Indonesian business to invest overseas, also provide the reasons to rethink and review the existing BIT.
d. Like many other emerging and developing countries, many of Indonesian companies are now investing abroad. This would also require the treaty applies both ways. Indonesia with US$5,000 per capita income today, is certainly not the same when it was still US$400 in 1967.

The government of Indonesia expects that the new BIT draft would set an appropriate condition and treatment to foreign investors in Indonesia as well as Indonesian investors who are investing abroad, and taking into account the national interests of both states involved in the BIT. It is important to underline that this Indonesia's policy would not affect the protection of foreign investment in Indonesia, as all foreign investments remains protected under Indonesia's national laws and regulations. Furthermore, the existing foreign investments shall continue enjoying the same level of protection for another period, as may be stipulated in the BIT.

The review process has gone through intensive domestic consultation with line ministries and agencies, in order to capture the dynamic in the particular industries, regions, and socio cultural aspect of the society. In this process, international experts are also involved, especially to touch upon some technical issues in the BIT text. The process is targeted to finish by the end of this year.

Some issues arising from the consultation are, among others: the coverage of investment (pre and post establishment), developmental dimension, treatment of investment (fair and equitable, national treatment, most favored nation treatment), protection of investment in relation to indirect expropriation, Investor-State Dispute Settlement (consent to international arbitration, governing law, forum shopping).

While the review is in progress, it is important to report to this Conference that Indonesia keeps enjoying record high quarterly investment flow from international and domestic investors in the last 4 quarters. It clearly shows that despite BIT's importance, investors are focus more on real growth opportunities. This brings the most important lesson-learn of all: International Investment Agreement is to support sustainable economic growth that is critical for the investors profitability. It is not and never meant to replace it.

Thank you.