THE IMPACTS OF FOREIGN DIRECT INVESTMENT TO THE ENVIRONMENT IN DEVELOPING COUNTRIES: INDONESIAN PERSPECTIVE

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Abstract

Foreign Direct Investment (FDI) may cause positive and negative impacts in developing countries, such as in Indonesia. The positive impact of FDI may enhance economic growth in developing countries, on the other hand, negative impacts of FDI may cause environmental pollution and environmental degradation. FDI in Indonesia has already increased economic growth, however, the environmental degradation and environmental pollution cannot be avoided. In certain extent, in order to gain a great profit, FDI can be used by the foreign investor to violate human rights and the environment in the host states. Unfortunately, the government in developing countries often sacrifice the interest of environment to booast economic growth. Hence, it is crucial to have a good policy in FDI as well as environmental protection. State needs to balance the interest of environment and economic growth, since both of them are interdependence. The existence of FDI shall not hinder the political will of the house state to protect the environment. However, it is essential to enhance the role of the host state government to have a good policy of FDI in order to protect the environment. The paper undertakes a critical examination of the issues relating to the impacts of FDI to the protection of environment in Indonesia. Furthermore, it also analizes the challenges and opportunities to enhance environmental protection. The research method of this article is qualitative and the approach of the research is normative. The research finds that the role of the host sate to have agood policy in FDI as well as protection of the environment is paramount.

Keywords: *host state, environmental damage and environmental pollution, natural resources*

I. INTRODUCTION

The last two decades have witnessed an extensive growth in foreign direct investment (FDI) flows to developing countries. This has been accompanied by an increase in competition among the developing countries to attract FDI, resulting in higher investment incentives offered by the host governments and removal of restrictions on operations of foreign firms in their countries. This has also led to an ever-increasing number of bilateral investment treaties (BITs) and regional agreements on investments.[1]

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[1] Rashmi Banga, "Impact of Government Policies and Investment Agreements on FDI

There are many studies prove that the reasons why states or companies would like to chooce and to determine where they would like to invest their capital depens on many factors, such as (1) resource availability, (2) labor availability and cost, (3) taxation, (4) manufacturing costs, (5) exchange rates, (6) transportation costs, and (7) environmental standards with which they must comply.[2] Companies which own capital and invest their capital abroad can be classified that the companies doing Foreign Direct Investment (hereinafter FDI). The investment is no longer restricted to manufacturing in the country where the majority of demand for their products rests, nor where the majority of the resources that they integrate into their products are located. Now companies choose to manufacture their products where they will realize the most efficient and economic benefits.[3]

FDI inflows to Indonesia are becoming increasingly diversified by sector, the primary sector, including the coal, gold, oil, and natural gas industries, remains a key FDI recipient. This extractive sector experienced cross-border deals every year in the past decade. In 2012, these industries accounted for 17% of total IFDI stock in all sectors, and almost 72% of total FDI stock in the primary sector. FDI flows in agriculture, especially in food crops and plantations, have also increased considerably. Within the plantation subsector, palm oil is the most important industry for IFDI, driven by growing world demand for Indonesian exports of crude palm oil. By 2012, food crops and plantations together accounted for 7% of total inward FDI stock in all sectors, compared to 1% in 2009.[4]

However, in order to maintain the balance of economic growth in Indonesia which is accelerated by FDI, the government of Indonesia has to consider the protection of the environment and to achieve sustanaible development[5] in Indonesia. Most FDI in Indonesia are con-

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Inflows " Retrieved from http://icrier.org/pdf/WP116.pdf 22 August 2015.

[2] Teresa Edwards, "The Relocation of Production and Effects on the Global Community", *Colo. J. Int'l Envtl. L. & Pol'y*, Vol. 13 (Wnter 2992), at 183.

[3] *Ibid.*

[4] Tulus T.H. Tambunan, "Inward FDI in Indonesia and Its Policy Context, 2013", http://ccsi.columbia.edu/files/2014/03/Indonesia-_IFDI_-_5_Nov_2013_-_FINAL_01.pdf, Retrieved on 31 August 2015.

[5] In the report of the World Commission on Environment and Development (here-

ducting mining ativities, so that the Indonesian economy is based on its natural resources. Hence, the natural capital is consumed rapidly in an unsustainable way, causing human poverty as well as losses to the national economy. Consequently, Indonesia must balance the need of making productive use of its natural resources with maintaining and managing its natural capital. Indonesia is highly dependent on its natural resources, which have been, and still are, the basis for Indoneisa's economic growth. [6]

Thus, it is important to integrate sustainable development in the economic growth in Indonesia. The sustainable development principle has been adopted in the Act No. 32 /2009 concerning Protection and Management of the Environment. In the Act No. 25 /2007 concerning Investment, and also Act. No. 40/ 2007 concerning Limited Liability Company. Realizing the bad impact of economic growth in Indonesia to the environment, and especially to the sustainability of the natural resources in Indonesia, the Indonesian government establishes National Development Planning which is regulated by law and coordinated by the National Development Planning Agency by integrating environmental protection in the long time Development Plan.

Therefore, the article analysis comprehensively how the government of Indonesia deals with the impacts of FDI in Indonesia to the protection of the environment. Firstly, it discusses the international and national instrument of FDI in Indonesia. Secondly, it examines the impacts of FDI to the protection of environment in Indonesia. Thirdly, it analyses the challenges and opportunities of FDI to the protection of environment in Indonesia.

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inafter WCED) in 1987, sustainable development (hereinafter, SD) was defined as "development that meets the needs to the present generation without compromising future generation to meet their own needs." See, Cristina Voigt, *Legal Aspects of Sustainable Development as A Principle of International Law, Resolving Conflicts between Climate Measure and WTO Law,* Leiden-Boston: Martinus Nijhoff Publisher, 2009, at 14. See also .Philippe Sands, *Principles of International Environmental Law, Second Edition*, Cambridge University Pressm United Kingdomm 2003, at 352.

[6] Federal Department of Economic Affairs, Swiss Economic Cooperation and Development " Indonesia Country Strategy 2013-2016". Retrieved www.seco-**cooperation**.admin.ch/.../index.html? , Retrieved on 24 April 2015.

II. PROBLEM STATEMENT

Based on the previous discussion, the statements of problems can be formulated as followed:

1. How are the impacts of FDI to the protection of environment in Indonesia?
2. What are the challenges and opportunities of FDI to enhance environmental protection in Indonesia

III. OBJECTIVE OF THE RESEARCH

1. To undertakes a critical examination regarding the impacts of FDI to the protection of environment in Indonesia.
2. To analyse the challenges and opportunities of FDI to the protection of environment in Indonesia.

IV. RESEARCH METHOD

It is qualitative research. The methodology employed in this article is library-based research. It uses normative approach. While the main reseach materials used in the research are primary and secondary sources. The primary sources concist of Indonesian Constitution, Act No 25 / 2007 concerning Investment, Act. No 40 / 2007 concerning Limited Liability Company, Act No. 32 /2009, regarding Environmental Protection and Management, Act 25/2004 on the National Development Planning System, and international Instruments of FDI. While the secondary sources consist of books, Journal, report and internet which are relevant to the subject matter.

V. RESULTS/FINDINGS OF THE RESEARCH

A. INTERNATIONAL INSTRUMENTS TO REGULATE FDI IN INDONESIA

It is important to understand the international instruments and national intruments which regulate FDI in Indonesia, in order to protect environment in Indonesia. Consequently, the implementation of the two

instruments are essential to be highlighted, since the environment is crucial to maintain the sustainability of economic growth and the sustainability of state. The historical background of FDI in Indonesia has already started in the colonial era. [7]There are many experiences that can be used to determine appropriate policy to issue regulation of FDI in Indonesia. Based on the historical background of FDI in Indonesia, there were many cases which reflected the failures and success of FDI in economic growth and environmental protection in Indonesia which are mention in the Medium National Development Planning Indonesia, 2010-2014.

In order to atract FDI in Indonesia, the Indonesian government becomes the Member of Multilateral Investment Guarantee Agency (MIGA) since 1992, an organization that protects investments against various political risk. , Indonesia has been Membership to the Agency ensures that Indonesia guarantees a favourable investment climate. As a member of the Association of Southeast Asian Nations (ASEAN), Indonesia signed the Framework Agreement on the ASEAN Investment Area (AIA) on October 7, 1998 in Manila. The AIA aims to make ASEAN a competitive, conducive and liberal investment area. [8] By participating in the multilateral and regional organization indicates that Indonesia government concern to protect also the interest of foreign investor in Indonesia.

It is rational when Indonesia also would like to implement International intsruments of FDI. There are many international intruments which regulate FDI whether in the form of *hard law,* such as International Treaty or Agreement whether Bilateral or Multilateral, and *soft law* such as code of conduct or resolution. Both *hard law* and *soft law* can be used as a legal basis to protect the national interest of a state, eventhough the two legal sources have different legal implications. These are some International multilateral Instruments which regulate FDI, namely:

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[7] Salamudin, *Penjajahan dari Lubang Tambang, Temali Modal asing, Utang dan Pengerukan Kekayaan Tambang di Indonesia,* In-Trans Publishing, Malang, 2011, at 6-8.

[8] Sri Adiningsih ed all, "Sustainable Development Impacts of Investment Incentives: A Case Study of the Chemical Industryin Indonesia", http://www.iisd.org/tkn/pdf/sd_investment_impacts_indonesia.pdf. Retrieved 31 August 2015.

First, Trade Related Aspects Investment Measures (TRIMs) which is clearly placed direct investment issues in to the WTO agenda Agreement, however it is not a complete investment agreement. The TRIMs Agreement contains no rules on screening and establishment issues. There are no provisions for the repatriation of capital or the free movement of personnel. TRIMs also does not cover expropriation and adequate compensation issues." Nevertheless, developing countries are constrained in dealing with Transnational Corporations by the TRIMs Agreement's prohibition of several common investment measures.[9] Developing countries argue that the TRIMs Agreement is deficient because it focuses only on the outcomes of investment measures and ignores the underlying causes for the imposition of such measures in the first place- the benefit-distorting practices of TNCs. Further more the regulations and policies which affect FDI are not explained clearly. [10]

Second, outside of the GATT/WTO framework, the Organization for Economic Cooperation and Development (OECD) has assigned extensively with investment issues. Recognizing the tremendous growth and increasing importance of FDI to the international economy, the OECD Ministers established a Negotiating Group in the OECD 1995 Ministerial meeting to begin negotiating a Multilateral Agreement on Investment (MAF). The OECD MAI seeks " high standards" for the liberalization of investment measures and post-establishment investment protection and an effective dispute settlement mechanism providing for both state-to-state and investor- to-state disputes. MAI will be a free standing international treaty with an existence separate from the other OECD instruments.[11].

Third*,* Bilateral Investment Agreement (BIT) is a treaty between two States. The BIT ensures that investors of a State-Party receive certain standards of treatment when investing in the territory of the

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[9] Eric M. Burt , "Developing Countries and the Framework for Negotiations on Foreign Direct Investment in the World Trade Organization", http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1401&context=auilr. Retrieved on 22 August 2015.

[10] Erman Rajagukguk, *Hukum Investasi di Indonesia, Anatomi Undang-Undang No. 15 Tahun 2007 Tentang Penanaman Modal*, Fakultas Hukum Universitas Al-Azhar Indonesia, Jakarta, 2007, at 178.

[11] *Ibid.*

other State-Party. When there is a violation of a BIT, a victim investor can directly bring a claim against the State that violated the BIT.[12] One problem posed by BITs comes from the historical development of the patchwork BIT regime. BITs have been designed to facilitate and promote global commerce, and because international investment law is rooted in early notions of the protection of foreigners, BITs can be seen as primarily safeguarding the interests of private investors. Essentially, BITs secure an exchange: the State agrees to certain protection obligations in exchange for a foreigner's commitment to invest. Given that the origins of BITs are in the former colonial powers with presently the largest economies, it should be recognized that "existing international investment agreements are based on a 50-year-old model that remains focused on the interests of investors from developed countries." [13]

There are some cases in Indonesia regarding the violation the right to enjoy healthy environment as part of human rights which has been recognized by Indonesian Constitution,[14] such as Buyat case, Newmont case and Freeport Mc Moran case. The violation of foreign investors who invest their capital in Indonesia in the form of joint venture are not only violate the right to enjoy healthy environment, but also they violate the human rights of the indiginous people.[15] The violations that have been conducted by TNCs in Indonesia is not esay to be overcome, since the law enforcement in Indonesia is still weak. Hence, it is rational when law enforcement become one of the priorities in the Medium and long term development programme in Indonesia[16]. Beside that, the Indonesian government has to enforce national law and also international law to the foreign investors. Accordingly, in the long run the FDI in Indonesia will contribute to the economic development and protec-

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[12] Megan Wells Sheffer, " Bilateral Investment Treaties: A Friend or Foe to Human Rights?", Vol. Vol.39, Denv. J. Int'l L. & Pol'y, (Summer, 2011), at 488

[13] *Ibid.*

[14] The 1945 Constitution of the Republic of Indonesia, Article 28 H (1) states that :) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

[15] Iris Halpern, Tracing the Contours of Transnational Corporations' Human Rights Obligations in the Twenty-First Century", Vol 14, *Buff. Hum. Rts. L. Rev.*(2008), at 136-137.

[16] Act 25/2004 on the National Development Planning System.

tion of the environment.

Besides the International Agreements which regulate the FDI, there are also code of conduct whicvh regulates the behaviour of TNCs as the investors of FDI. The OECD's 1976 Guidelines for Multinational Enterprises (as revised in 2000) recommend that enterprises respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.[17] Specifically, they recommend that enterprises contribute to policies of non-discrimination with respect to employment, to the effective abolition of child labour, and to the elimination of all forms of force or compulsory labour. However, the guidelines are not legally mandatory to OECD government or OECD-based Company.[18] Hence the guideline is lack of enforcement either, because it is voluntary in nature.

Fourth, the ILO's 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy is addressed to governments of member states, employers' and workers' organizations, and corporations (including, of course, TNCs) operating in their territories.[19] They do not make specific findings of misconduct by individual companies and their identities are kept confidential, thereby shielding them from public scrutiny and potential embarrassment. Furthermore, while the Guidelines and the Declaration encourage TNCs to respect internationally recognized human rights norms, they simultaneously uphold the superiority of national law. In this case TNCs should propose to the host states to obey and respect the guideline and the Codes if there is a good intention to enhance their performance to participate in the protection of environment and human rights.

Fifth, the UN Global Compact is another soft law instrument directed at TNC (the investor of FDI) . Though it is not strictly a code of conduct, its object is to encourage businesses to "embrace and enact" nine

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[17] Edwin C. Mujih, "Co-Deregulation of Multinational Corporation Operating in Developing Countries: Partnering Against Corporate Social Responsibility?", Vol. 16, *African Journal of International and Comparative Law,* (2008), at 254.

[18] Sean D Murphy, "Taking Multinational Code of Conduct to the Next Level", Vol. 43, *Columbia Journal of Transnational Law,* (2005), at 400.

[19] Lilian Aponte Miranda, "The Hybrid state-Corporate Enterprises and Violation of Indigenous Land Rights: Theorising Corporate Responsibility and Accountability under International Law", Vol. 11, *Lewis&Clark.Law Review,* (Spring, 2007), at. 148.

core principles[20] relating to respect for human rights, labour rights, and protection of the environment, both through their individual corporate practices and by supporting complementary public policy initiatives.[21] However, again, the lack of independent monitoring and enforcement [22]via sanctions highlights the limited ambition, and therefore, impact of this initiative in providing protection against corporate abuse of human rights.[23] It is true that the UN expressly acknowledges that it has neither the mandate nor the capacity to monitor and verify corporate practices.[24]

Finally, the UN Norms[25] are phrased in mandatory terms and ap-

[20] A Guide to the Global Compact: A Practical Understanding of the Vision and Nine Principle http://www.unglobalcompact.org/content/Public_Documents/gcguide.pdf. Retrieved on October 2010. These principles were centered generally around well-accepted standards of human rights, labour rights, and environmental issues, derived from the UN Declaration of Human Rights, the International Labour Organization Declaration on Fundamental Principles and Rights at Work, and the Rio Declaration on Environment and Development: (i) To support and respect the protection of internationally proclaimed human rights; (ii) To avoid complicity in human rights abuses; (iii) To uphold freedom of association and the effective recognition of the right to collective bargaining; (iv) To eliminate all forms of forced and compulsory labor; (v) To abolish effectively child labor; (vi) To eliminate discrimination with respect to employment and occupation; (vii) To support a precautionary approach to environmental challenges; (viii) To promote greater environmental responsibilities; and (ix) To encourage the development and diffusion of environmentally friendly technologies.

[21] Rebecca Kathleen Atkins, "Multinational Enterprises and Workplace Reproductive Health: Extending Corporate Social responsibility", Vol. 40, *Vanderbilt Journal of Transnational Law*, (January, 2007), at 241.

[22] Surya Deva, "Global Compact: A Critique of the U.N's 'Public Private' Partnership for Promoting Corporate Citizenship", Vol. 34, *Syracuse Journal of International Law & Comparative,* (Fall. 2006), at 110. See also, Lisbeth Segerlund, "Thirty Years of Corporate Social Responsibility within the UN: From Code of Conduct to Norm". http://archive.sgir.cu/upload/Segerlund_thirty_years_of_corporate.pdf. Retrieved on 22 August, 2010.

[23] Evaristus Osheonebo, "The UN Global Compact and Accountability of Transnational Corporations Separating Myth from Reality", Vol.19, *Fla.J.Int'l L.*, (April, 2007), at 9-10.

[24] Cynthia A. William, "Civil Society Initiatives and Soft Law in the Oil and Gas industry", (*New York University Journal of International Law and Politic*, (Winter-Spring, 2004), at 473.

[25] Furthermore, six different sets of obligations can be deduced from the general obligations of the UN Norm that companies shall have the responsibility: 1) to use due diligence in ensuring that their activities do not contribute directly or indirectly to hu-

ply not only to transnational corporations, but also to other business enterprises, as well as their subcontractors and suppliers.[26] The UN Norms thus go many steps beyond previous guidelines, further evincing expanding notions of corporate liability. Like all of the instruments discussed above, the UN Norms are presented in the form of recommendations and guidelines that create no legally binding obligations. Although the UN Norms may help establish customary law, provide guidance to courts trying to determine the extent of corporate norms, or serve as the basis for later treaties, they do not have the same effect that binding obligations have. A binding consensus of corporate obligations has proven to be difficult, but the Ruggie Report provided a framework in an effort to facilitate that goal. [27]

Hence, it is necessary to empowering the role of World Trade Organisation (hereinafter WTO) to involve in the abating of human rights violation and the environment conducted by TNCs in the house states. The justification to engage WTO in human rights and environmental protection can be deduced from the competency of the WTO in international trade which is not only regulates international trade but also investment. Furthermore, Article XX(e) already lays the groundwork for a human rights body within the WTO. Trade and human rights are already linked within the GATT because Article XX(e) appears to permit one member to use trade sanctions to protect the human rights of citizens of another Member.[28]

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man rights abuses and 2) to ensure that they do not benefit directly or indirectly from those abuses; 3) to refrain from undermining efforts to promote and ensure respect for human rights; 4) to use their influence to promote respect for human rights; 5) to assess their human rights impacts; 6) to avoid complicity in human rights abuses. See, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fifth session, Commentary on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights .See also, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)

[26] Michael K Addo, "Human Rights Perspective of Corporate Groups", Vol. 37, *Conn. ecticut Law Review,* (Spring, 2005), at. 678.

[27] David Kinley, Justine Nolan and Natale Zerial, "The Politics of Corporate social Responsibility: Reflections on the United Nations Human rights Norms for Corporation". http://www.unctad.org/en/docs/iteirf 2005_en.pdf . Retrieved on 24 August, 2010.

[28] Christiana Ochoa, "Advancing the Language of Human Rights in A Global Economic Order: An Analysis of Discourse",Vol. 23, *Third World Law Journal*, (Winter,

Thus, the WTO can be expected to incorporate human rights protection or environmental standards into its mechanisms for regulating trade.[29] Although, the primary objects of WTO regulations have always been products as defined by their physical characteristics. However, international trade regulation has recently been expanded to include process factors as well. production processes, such as investment laws and intellectual property rights, are now subject to international regulation under various WTO agreements.[30] Since, environmental impact and labour relations are important components of the production process,[31] it is legitimate to consider the extent to which they affect comparative advantage

B. THE NATIONAL REGULATIONS OF FDI IN INDONESIA

The Indonesian Government has realized that private investment, including FDI, is important for the modernization of the economy and sustainable economic growth. Therefore, foreign investment policy has always been an important component of economic development policies in Indonesia since the "New Order" era (1966-1998). To attract FDI, the Government introduced the Foreign Investment Law Number 1 of 1967. With this Law, Indonesia started to open sectors and lift quantitative restrictions on foreign equity participation. [32]

2003), vol p. 72.

[29] As with the TBT and SPS agreements under the WTO, a presumption could be created that national measures based on internationally agreed-upon standards on topics such as environmental protection or human rights would be valid. Such a presumption of validity would help to prevent disputes or claims based on indirect discrimination or de facto expropriation. See, Sol Piccioto, "Rights, Responsibilities and Regulation of International Business",Vol. 42, *Columbia Journal of Transnational Law,* (2003), at 140.

[30] William H. Meyer and Boyka Stevanova, "Human Rights, the UN Global Compact, and Global Governance", (2001), vol. 34, *Cornell International Law Journal,* p. 512. See also, Martin Khor, "Globalisation and the Crisis of Sustainable Development". http://www.er.uqaus.ca/nobel/oei/gouvernance/docs/Khor.pdf. Retrieved on 4 August, 2010.

[31] Gustavo Verreira Riberio, "Navigating the Turbulent Water's Connecting the World Trade Organisation and Corporate Social Responsibility", Vol. 16, *Indiana Journal of Global Legal Study,* (Winter, 2009) at 259.

[32] Tulus T.H. Tambunan, " Inward FDI in Indonesia and Its Policy Context, 2013", at 6. Retrieved on 31 August 2015. http://ccsi.columbia.edu/files/2014/03/Indone-

To administer the Foreign Investment Law, the Indonesian Investment Coordinating Board (Badan Koordinasi Peranaman Modal or BKPM) was established in 1973. BKPM is a central body that screens investment applications, grants licenses and permits and also offers investment incentives. In addition, there are sub-national investment bodies (BKPMDs) in the provinces. After the 1997-1998 Asian financial crisis, the Government took many measures to promote economic recovery in line with IMF emergency-funding loan conditionalities. It also reoriented FDI policies and initiated reforms in many areas related to private investment, including the legal system. Since 1998, many presidential decrees and regulations have been introduced to improve the investment

As the legal implication, after Indonesia has already become the Member of WTO, the regulation concerning the investment has to be harmonized with the TRIMs Agreement. Law on Investment Number 25 of 2007, is widely seen as the most important investment reform effort ever undertaken by the Indonesian Government. This law covers all private investment, both domestic and foreign. From the point of view of FDI, this new investment law is generally considered as much more open than Foreign Investment Law No. 1 of 1967, since in the new Law the negative list has become shorter (i.e., more sectors or subsectors are open now for FDI), and many new incentives in various forms have been introduced that make it easier for foreign investors to do business in Indonesia.

From 2006 to 2010, many regulations were issued that specifically mentioned the steps the Government has taken to improve the investment climate. Among these was Goverment Regulation No. 36 of 2010 that regulates 17 business sub-sectors that are conditionally open to FDI: agriculture, banking, communications and information technology, culture and tourism, defense, education, energy and mineral resources, finance, forestry, health, manufacturing, manpower and transmigration, marine and fisheries, public works, trading, transport, and security. [33]

Other laws enacted to support the investment regime include Law

sia-_IFDI_-_5_Nov_2013_-_FINAL_01.pdf. Retrieved on 31 August 2015.

[33] *Ibid.*

No. 40/2007 on Limited Liability Companies; Presidential Regulation No. 76/2007 on the Formulation Criteria and Requirement of List of Lines of Businesses Closed and Open, Conditional to Investment; Presidential Regulation No. 111/2007 on the Amendment of Presidential Regulation No. 77/2007 on The List of Lines of Businesses Closed and Open with Conditions to Investment; Government Regulation No. 7/2007 on the Import and/or Transfer of Strategic Certain Taxable Items, which include the Value Added Tax Exemption.[34]

All the regulations that presented previously actually can be used as legal basis for the government of Indonesia how to protect the environment in Indonesia from the negative impacts of FDI. Article 3 Law of the Republic of Indonesia, Number 25 of 2007 concerning Investment mentioned that investment shall be organised based on the principle of sustainability[35] and environmental friendly, while one of the objectives of investment in Indonesia is improving sustainability of economic growth. The Article can be used as the legal basis to mandate FDI to protect the environment in Indonesia and also to embody sustainability of economic growth in Indonesia. Principles and objectives can only be materialized if they are followed by policies , strategies and also programmes how to implement the principles and to achieve the objective.

However, in the implementation of the Act No 7/ 2007 is not successfully to enhance sustainable economic growth in Indonesia. The government of Indonesia has not yet implement the principle of sustainability and environmentally friendly. During the development of FDI in Indonesia, there are many cases which done by TNCs which are the investor of FDI in Indonesia cause environmental pollution and enviromental degradation, especially in extracing the natural resources in Indonesia, such as in coal mining activities, gold mining activities and

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[34] Sri Adiningsih ed all, "Sustainable Development Impacts of Investment Incentives: A Case Study of the Chemical Industryin Indonesia", http://www.iisd.org/tkn/pdf/sd_investment_impacts_indonesia.pdf. Retrieved on 31 August 2015.

[35] Law of the Republic of Indonesia, Number 25 of 2007 concerning Investment, Article 3 Sustainability shall mean the principle that systematically tries to make the development process run through investment in order to secure prosperity and progress in all aspects of life for today and tomorrow, while environmentally friendly shall mean the principle where investment is made by continuously considering and prioritising environmental protection and preservation.

other manufactories activities in Indonesia.

Investment Act has close relationship with Limited Liability Company Act, both of them have significant role to regulate FDI in Indonesia. Article 5 Investment Act as a legal basis for establishing Joint Venture Company in Indonesia, which mention that : Both domestic and foreign investors making an investment in form of limited liability company shall be carried out by: (a). having shares when such company is established; (b). purchasing the shares; and (c) . executing any other way pursuant to the rules of law. It is important to refer the rules which are provided by the Limited Liability Company Act to regulate the obligation of foreign investors in Indonesia. Most of the Foreign Investors in Indonesia established Joint Venture Company. Thus, all the obligations which are stipulated in Limited Liability Company are applicable to the FDI which engages in natural resources, such as the obligation to conduct Corporate Social Responsibility (CSR) and also Corporate Environmental Responsibility (CER) are mandatory for the limited liability Company which is stipulated in Article 74 Act No.40 Year 2007.

Both Act No. 25 Year 2007 about Investments and Act No. 40 Year 2007 about Limited Liability Company regulated about CSR and CER. Based on Areticle 15(b) Act No. 25 Year 2007, CSR defined "as a responsibility mounted in every investment company to keep creating relationship which is in harmony, in balance and suitable to the local community's neighborhood, values, norms, and culture". This definition has same essence with the definition of CSR based on Article 1(3) Act No. 40 Year 2007 in which stated that "Social and Environmental Responsibility is corporation commitment to take a part in the economic sustainable development with the aim to increase live quality and good environment, for corporate itself, local communities, and society in general.[36] Both of the Acts create abligations to the company to prtotect the environment to achieve economic sustainable development.

In 2012, the goverment of Indonesia has already enacted Government Regulation No. 47 Year 2012 as the implementation of Article 74 (4) Act No. 40 Year 2007. However, the substance of this government regulation is only technical procedure how should the company carry out CSR and CER and how the government appreciates toward the

[36] Act No. 40 Year 2007, Article 1 (3).

company carried out CSR. There is no sanction imposed to company which breach CSR article in the Act No. 40 Year 2007. Thus, there is not clear answer whether CSR and CER are mandatory or voluntary.

Due to the fact, that the international instruments deal with protection of the right to enjoy healthy environment as part of human rights are not effective, it is essential to exhaust national regulations to be enforced to TNCs (as the investors of FDI). Since, the fact that every state has jurisdiction over crimes committed in its own territory is a universally accepted maxime.[37] However, it should take into account that the exhaustion of national regulations in order to protect of the right to enjoy healthy environment face many hurdles, such as : ***Firstly,*** in some instances, the states themselves may be abusers of human rights and protection of the environment, enjoining TNCs into complicit violation against local populations. ***Secondly,*** the states may have little or no power against the TNCs due to the strength and position of TNCs, ,and perhaps even the terms of the bilateral investment agreement or trade rules under which the TNC has gained access to the host state's territory and market.[38] Alternatively, the host state which engaged in providing incentives to a TNC for its FDI is now caught in an awkward position of having to take action to effectively regulate or perplex activities related to the particular FDI initiative. ***Thirdly***, the host state may be the beneficial owner of a partner operating in a joint venture with the TNC, thereby compromising the host state's real ability to hold the TNC accountable for any violations of the right to enjoy healthy environment as part of human rights.[39] ***Finally***, the host state may simply lack the resources to engage in any action against the TNC, either because of lack environmental or labour standards which contributed to the incident at hand, or the lack of legal or judicial infrastructure[40] to adequately punish the TNC.

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[37] Viljam Emstrong, "Who is Responsible for Corporate Human Rights Violation?", http://web.abo.fi/instut/imr/nortalville.pdf. Retrieved on 27 August, 2010.

[38] Danwood Mzikenge Chirwa, "The Doctrine of State Responsibility as a Potential Means Holding Private Actors Accountable for Human Rights", Vol.5, *Melbourne Journal of International Law,* (2004), at 19-21.

[39] *Ibid.*

[40] Peggy Rodgers Kalas, "International environmental Dispute Resolution and the Need for Access by Non-State Entities", Vol. 12, *Colorado Journal of International Environmental Law & Policy,* (Summer, 2001), at. 192.

It is submitted that is appropriate to have a good policy of FDI in Indonesia integrated with the other policies in environmental protection. Furthermore, it is important also to strengthen the national environmental regulations and FDI regulations to achive sustainable development. Thus, a good policy of FDI in order to address environmental degradation issues caused by FDI must be incorporated in the national regulations. Governments will be bound to create pressure on corporations if they are under public assessment.[41]

C. THE POSITIVE IMPACT OF FDI IN INDONESIA

FDI in Indonesia Regulated in 1967 with the Act No. 1 Year 1967 regarding Foreign Direct Investment. Historically since 1967 the FDI in Indonesia increase steadily, however, in the Year 1980 s The FDI in Indonesia termendously increase. However, in the Year 0f 1997 When there is monetary crisis in Indonesia, cause the FDI in Indonesia turn down.[42] The FDI inIndonesia starts increase when the new Act of FDI had been issued in the Year of 2007 Act No. 25 Year 2007 regarding the Investment. Most Indonesian FDI in the form of Joint Venture based on efficiency seeking. There are some positive impacts of FDI to the host state, namely:

First, FDI which is done by TNCs can play a significant role in the development process of host economies and specifically may affect economic growth (and other dimensions of development) through three key mechanisms: *size* effects, *skill and technology* effects and *structural* effects. Size effects refer to the net contribution of FDI to the host country's savings and investment, thus affecting the growth rate of the production base. Most of the potential costs and benefits of foreign capital, however, result from more indirect effects of FDI either through the transfer of skills and technologies or through structural change in

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[41] Zakia Afrin, "Foreign Direct Investment and Sustainable Development in the Least-Developed Countries", Vol. 10, *Annual Survey of International & Comparative Law,* (Spring, 2004), at 217.

[42] Anugrah Adiastuti," "Implementasi *Foreign Direct Investment* (FDI) di Indonesia (Sebelum dan Setelah diundangkannya Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal), Pandecta Journal, Vol.6. No. 2, Juli 2011, http://journal.unnes.ac.id/nju/index.php/pandecta, Retrieved on 27 August 2015.

markets (competition and linkages) [43]

Second, FDI can provide capital inflows, FDI can be a vehicle for obtaining foreign technology, knowledge, managerial skills, and other important inputs; for integrating into international marketing, distribution and production networks; and for improving the international competitiveness of firms and the economic performance of countries. However, neither inflows of FDI nor the benefits from such inflows are automatic. While more and more countries welcome inward FDI, increased attention is being given to policies that can enhance the development benefits of such investment. There is considerable variation in the "quality" of FDI, and the associated impact of such inflows on host countries. Similarly, some host country environments are less conducive to positive impacts from FDI, irrespective of the strategy or operational behaviour of TNCs. For example, weak domestic capabilities in a country hamper its ability to reap the benefits of inward FDI and limit knowledge spillovers.[44]

On the other hand, in countries with relatively inefficient domestic enterprises inward FDI may provide examples of best practice, spurring a rise in the productivity of local competitors. At the same time, it also risks crowding out domestic firms. In some situations, as when domestic enterprises are relatively uncompetitive, this may be desirable from an economic efficiency perspective. In other cases, crowding out may lead to increased market concentration. Anti-competitive behaviour and restrictive business practices on the part of TNCs (the investor of FDI) may also result in welfare losses. The commercial interests of TNCs do not always coincide with a host country's developmental objectives, for example with regard to sourcing behaviour and reallocation of profits through transfer pricing practices.[45]

Third, performance requirements is among the range of policy options available to governments to optimize the good impacst of FDI in

[43] Fabienne Fortanier, " Foreign Direct Investment and Host Country Economic Growth: Does the Investor's Country of Origin Play a Role?" , http://unctad.org/en/Docs/iteiit20072a2_en.pdf, Retrieved 31 August 2015.

[44] *Ibid.*

[45] United Nations Conference On Trade And Development, "Foreign Direct Investment and Performance Requirements: New Evidence From Selected Countries", http://unctad.org/en/Docs/iteiit20072a2_en.pdf. Retrieved on 31 August 2015.

the host state. The performance requirements. are stipulations, imposed on investors, requiring them to meet certain specified goals with respect to their operations in the host country. They have been used by developed and developing countries together with other policy instruments, such as trade policy, screening mechanisms and incentives, to enhance various development objectives. There are divergent views as regards the effectiveness of performance requirements to achieve this end. While some experts regard them as an essential instrument in a country's FDI policy package, others tend to argue that their impact on investments is at best limited and at worst costly and counter-productive.[46]

D. THE IMPACT OF FDI TO THE PROTECTION OF ENVIRONMENT IN INDONESIA

The impacts of FDI in Indonesia may cause positive and negative impacts to the protection of environment. However, based on the cases which occur in Indonesia, there are more negative impacts of FDI to the protection of environment rather than the positive impacts. For instance, FDI is operated in a wide range of pollution-intensive and hazardous industries that have products or processes that may harm the environment or negatively impact human health. Moreover, through FDI processes have shifted environmental pollution problems increasingly to developing and transitional countries.[47] Ideally, FDI should have a better record in relation to environmental, health, and safety concerns than local or local investor in developing countries, because FDI are larger than local investment, they can more readily absorb the costs of environmental controls and employ more qualified managers and better skilled workers. [48]

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[46] *Ibid.*

[47] David Graham and Ngaire Woods, "Making Corporate Self-Regulation Effective in Developing Countries". http://www.elsevier.com/locate/worlddev. Retrieved on 29 August, 2010.

[48] It is no doubt that TNCs have the potential for introducing environmentally sound technologies in host developing countries, their actual environmental impact will, however, depend on many factors, including: i) the sectors in which they invest, the age of their facilities, their strategies -i.e., market, resource, efficiency or asset-seeking and the degree of export orientation of the investment (specially when the

Moreover, FDI should recognise the value of environmental management developments abroad and to have access to and the capacity to transfer modern environmental technology to their operations in developing countries. Hence, the performance of FDI may create a good image to their consumers. However, in practice, not all the FDI have a good performance. Since, several factors may induce or enable FDI to avoid national controls of environmental, health and safety matters, particularly in developing countries.[49] It is worsen by the lower standard of protection of environment in the host state, even the host state policy does have a good policy to protect the environment. In the case of Indonesia, when the district has the authority to issue permit for mining activities, the policy of the district area is often not in accordance with the objective of sustainable development which is stipulated in the Environmental Management Protection Act.

On the other hand, in the case of protection of human rights, such as the rights to enjoy healthy environment has been reconized by Indonesian Constitution as part of human rights. FDI should be able to prevent or actively support the protection of human rights in the host states due to the great influence of FDI in the host states. However, in reality FDI does not support the protection of human rights in the host states, but it is very often FDI uses the government of the host states to support their interest[50] by violating the right to enjoy healthy environment as part of human rights in the host states directly or indirectly.

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destination market is "environmentally-sensitive"); ii) their corporate environmental policies, their approach towards environmental management, and the magnitude and type of their linkages with domestic suppliers, clients and competitors; iii) the host country environmental regulations and their degree of enforcement and the role played by stakeholder groups such as nongovernmental organizations, consumers, workers and local communities; iv) home country regulations regarding the responsibility of MNCs shareholders for their overseas operations and the role played by third party lenders -for example, international financial institutions- in -reinforcing environmental standards as a condition of lending. See, Daniel Chudnousky and Andres Lopez, "TNCs and the Diffusion of Environmentally Friendly Technologies to Developing Countries". http://www.fund-on/org.ai/Descagas/tncs.pdf. Retrieved on 25 July, 2010.

[49] Joshua P.Eaton, *op.cit,* note 43 at. 262.

[50] Rebecca M. Bratspies, "Organs of Society: A Plea for Human Rights Accountabilityfor Transnational Enterprises and Other Business Entities". http://www1/cuny.edu/law/faculty-staff/R Bradt SpiesPubs/organsociety.pdf . Retrieved on 27 August, 2010.

While all of these considerations may have induced TNCs to perform above the levels of their local counterparts in developing countries, there still appears to be a gap between local and home country performance which is reflected in a failure to introduce new technologies to affiliated plants in developing countries. It has been alleged that TNCs are engaged in dumping outmoded environmental technologies in developing countries such as, in *Beanal v. Freeport-McMoran*, [51] a group of Indonesian citizens filed a class action suit under ATCA against a U.S. mining company claiming that mining operations in Irian Jaya, Indonesia, caused environmental torts, human rights abuses, and cultural genocide. [52] Thus, TNCs who have significant political power and authority should entail responsibility and liability, particularly direct liability for environmental degradations.

VI. THE CHALLENGES AND OPPORTUNITIES TO ENHANCE ENVIRONMENTAL PROTECTION IN INDONESIA

Environmental protection in Indonesia is not only the responsibility of Indonesian government but it becomes the responsibility of all stakeholders including the business authors. The existence of FDI in Indonesia can be utilized by the Indonesian government to enhance protection of environment. Obviously, there will be many challenges how to materialize the participation of the bussiness authors including the foreign investors. However, there are many possibilities how to overcome the challenges become opportunities.

A. CHALLENGES TO ENHANCE ENVIRONMENTAL PROTECTION IN INDONESIA

Economic growth that has been achieved by the Indonesian government is reflected in the National Medium-Term Development Plan (hereinafter RPJMN 2010-2014). Based on the result of RPJM demonstrated that economic growth in Indonesia increased significantly. FDI in Indonesia contributes to the economic growth in Indonesia, however,

[51] Peggy Rodgers Kalas, "International Environmental Dispute Resolution and the Need for Access by Non-State Entities" *Colorado Journal of International Environmental Law & Policy,* p. 195.
[52] *Ibid.*

FDI also contribute to the environmental challenges which are faced by Indonesian government. The activities which conducted by TNCs as the Investors of FDI in Indonesia in extraction of Indonesian natural resources may cause many environmental challenges in Indonesia, Based on the summary held by the Asian Development Bank (ADB). 2010,[53] the environmental challenges in Indonesia, such as:

First, Forest resources**.** Indonesia's forest area totaled 134 million hectares (ha) in2009—about 60% of the country's land area.2 From 1990 to 2008, actual forest cover decreased by 7.5%. The vast rainforest is a habitat for a wide diversity of species, and provides goods and services that are important in sustaining the country's water supply, agriculture, coastal fisheries, tourism, and livelihoods. Deforestation is thus a critical problem in Indonesia. Its far-reaching effects include a loss of biodiversity, desertification, flooding, food insecurity, and impoverishment of local communities whose incomes depend critically on the use of forest resources. Deforestation, specifically peatland conversion, is also the biggest source of greenhouse gas (GHG) emissions in Indonesia. The level of GHG emissions from forest and land conversion is estimated at 75% of the total national GHG emissions in Indonesia.

Second, Water resource degradation. Indonesia holds about 6% of the world's freshwater reserves and 21% of those in Asia and the Pacific. However, its water resources suffer from overuse, ill-defined water use rights, and poor surface water quality. Out of 35 rivers monitored in 2008 by the Ministry of Environment, 25 of them (or 71%) were classified as "polluted" to "heavily polluted". Many of the country's water resources are exploited unsustainably. Rivers are often used as a catchment for wastewater disposal from industries and waste from households. Extensive extraction of groundwater has resulted in seawater intrusion to aquifers. Domestic sewage remains largely untreated. Government spending for wastewater management accounts for less than 0.1% of total government spending. With most households depending on poorly maintained septic tanks for their sewage disposal, ground-

[53] This summary is based on Asian Development Bank (ADB). 2010. *Indonesia: Country Environment Note*. Draft. http://serd-ino.adb.org); World Bank. 2009. *Investing in a More Sustainable Indonesia*. Jakarta; and ADB. 2010. *Indonesia: Critical Development Constraints.*

water in urban areas also suffers from a high degree of contamination.

Third, Urban waste management. Water quality degradation from industrial sources and urban settlements continues to be a problem. Solid waste from households and commercial operations suffers from poor collection and disposal solutions. Only some 20% of 33.5 million tons/year of solid waste produced from Indonesia's households are collected by local garbage collection services. Urban air pollution is an issue in major metropolitan cities, especially Jakarta. Although some attention has been placed on reducing lead in gasoline and improved emission controls from motor vehicles, only better (and cleaner) urban mass transportation systems can provide a meaningful breakthrough to reduce air pollution. Indoor air pollution is a major health threat to many poor Indonesians, as 44% of the country's households continue to use biomass fuel for cooking.

Fourth, Environment and natural resource institutions and capacity. Since 2000, Indonesia has devolved many environment and natural resource management authorities to 495 districts and municipalities and 33 provinces, each with their own institutions. This devolution of authority has left ministries at the national level with largely a role in developing national policies; preparing technical guidelines and standards (norms, standards, procedures, and criteria); and supervising implementation at the local level. As a result, an intricate web of institutions and authorities exists around the environment, natural resources, and climate change areas. Overlapping and conflicting legislation at the national and local levels, lack of human resource capacity and budget allocation for management of environment and natural resources at the local level, poor quality environmental data, and lack of awareness and understanding of the environment among the public and government officials have contributed to the lack of enforcement of environment laws and improvement of environmental quality.***Fifth,*** Weak Environmental Governance and Institution. Indonesian legislation within the environmental and natural resources management fields is extensive and detailed but lacks common vision and established policies. The country faces many constraints in its efforts to improve environmental regulations and policy and their application. Lack of clear mandates between central and regional governments often leads to contradictory

and overlapping regulations. Lack of funds made available for environmental protection, corruption amongst officials, weak enforcement, lack of follow up on prosecution, lack of technical capability especially in local government, and perverse economic incentives all lead to over-exploitation of natural resources and environmental pollution.[54]

B. OPPORTUNITIES TO ENHANCE ENVIRONMENTAL PROTECTION IN INDONESIA

There are many factors that can be used by the goverment of Indonesia to enhance environmental protection in Indonesia. Based on the long experience of facing many challenging on environmental protection, the Indonesian government presently are able to design a policies and provide legal protection to the right of healthy environment as part of human right which is stipulated in Indonesian Contitution. Indonesia as a sovereign state has authority to involve foreign investors in Indonesia to participate in the protection of environment in Indonesia to achieve sustanable development in Indonesia.

Consequently, it is importance to have a good policy and also a good planning how to overcome the challenges. It is bear in mind that Indonesia has an abundance of natural resources, its strategic geographical situation, its ideal demographic structure, its diverse and strong cultural resources, and its human resources contribute to an infinite potential and creativity. Based on the environmental challenges that presented previously, there are some opportunities that can be carried out by Indonesian government to achieve the national objective which is stipulated in Article 33 (4) the 1945 Constitution of the Republic of Indonesia. The opportunities that can be obtained by the Indonesian government as, followed:

Firstly, Indonesian government throught the Ministry of Environment and Forestry has already made many changes of environmental management and environmental protection policies in Indonesia. The

[54] Departement of Economic, University of Gothenburg, Indonesia Environmental and Climate Change Policy Brief http://www.sida.se/globalassets/global/countries-and-regions/asia-incl.-middle-east/indonesia/environmental-policy-brief-indonesia.pdf. Retrieved, 3 September 2015, at 4.

Ministry of Environment and Forestry has along history to encourage companies to participte to the protection of environmen (It started before there is a merger between the Ministry of Environment and the Ministry of Forestry). One of the programme which held by the Ministry is Indonesia's Program for Pollution Control, Evaluation, and Rating (PROPER) is a national-level public environmental reporting initiative which may effect the performance of companies . [55] By doing the programme, the companies will comply with all the requirements which are stiplated in the PROPER.

Secondly, the use of sustainable natural resources to achieve sustainable development in Indonesia has become the vision and mission of various ministry in Indonesia. Each Ministry has its own vision and mission to be achieved. , such as the ministry of Industry, Ministry of Economic Affairs, Ministry of Energy and Mineral Resources, Ministry of Planning and Development (BAPENAS) has already designed the green growth programme[56] that has to be coordinated by each Ministry and they also have their priority programme to materialise green growth in Indonesia. The abundant natural resources could constitute a solid basis for economic development and poverty reduction in Indonesia, provided there is good governance at all levels, effective regulatory frameworks, rigorous environmental and social safeguards, redistribution of wealth and the protection of rights.[57]

Thirdly, after decentralization, the relationship between the sectoral ministries and the regional authorities are more collaborative than top-down as the communities recognize their increased power and leverage they have to have their voices heard. If the central government wants to continue to curb conflict, the rights of the traditional peoples demand-

[55] Parameeta Kanungo and Magüi Moreno," Indonesia's Program for Pollution Control, Evaluation, and Rating (Proper), Retrieved from http://siteresources.worldbank.org/INTEMPOWERMENT/Resources/14825_Indonesia_Proper-web.pdf, Retrieved on 27 April 2015.

[56] Secretary Ministry of Planning and Development and Global Green Growth Institute, "Green Growth Program 2013-2014". Retrieved from http://www.greengrowth-knowledge.org/sites/default/files/4D_Bappenas.pdf, Retrieved on 24 April 2015.

[57] Department of Economic, University of Gothenburg" Indonesia Environmental and Climate Change Policy Brief", at 5. http://www.sida.se/globalassets/global/countries-and-regions/asia-incl.-middle-east/indonesia/environmental-policy-brief-indonesia.pdf . Retrieved 3 September 2015.

ing a community-based approach to natural resource management must be respected. The Government of Indonesia has to have a willingnes to enforce regarding the mandatory obligation for the Companies engage in natural resources to conduct CSR and CER, in order to empowering the sosiety and also to participate in the environmental protection.

Fourthly, the opportunity to maintain protection of the environment are carried out by various institution in Indonesia that has been mandated in the Long Term Development Plan. Since 2000, Indonesia has devolved many environment and natural resource management authorities to 495 districts and municipalities and 33 provinces, each with their own institutions. This devolution of authority has left ministries at the national level with largely a role in developing national policies; preparing technical guidelines and standards (norms, standards, procedures, and criteria); and supervising implementation at the local level. [58]

Fifthly, presently there are many Greenfield industry in Indonesia which carried out by TNCs in Indonesia. Thus, the government of Indonesia may issue policy how to utilize Green field industry in Indonesia to achieve sustainable economic growth in Indonesia, since there is interdependency between the sustainability of environment and the sustainability of economic growth. It is becomes the opportunities to materialize green growth to achieve sustainable development, the Indonesian government adopted many regulations to regulate this matter, in order to provide clear legal basis to enforce the law. This also conforms with one of the values and principles of the United Nations Millennium Declaration, namely respect for nature. [59]

VII. CONCLUSION

FDI has a great power to affect a state's social and economic policies. Foreign Investors in the form of TNCs could use its power to positively influence a country's protection of the environment by refusing to invest in or deal with violation of environment standards. In practice the FDI in Indonesia formerly violate the protection of environment. The activities which done by the TNCs often cause environmental pollution

[58] Parameeta Kanungo and Magüi Moreno, *op.cit*, note 58.
[59] Article 6 of the United Nations Millennium Declaration.

and environmental degradation, such as, in the mining activities and other extraction of natural resources in Indonesia.

In Indonesia context, the Indonesian economic growth enhances significantly during the second stage of the Medium Term Development Plan. The economic growth in Indonesia is triggered by the inflow of FDI in Indonesia. However, instead of the negative impacts of FDI in Indonesia, the FDI also contribute to the protection of environment by implementing Corporate Environmental responsibility and also participate in PROPER programme. The Indonesian government has made many changes of environmental protection by using economic instruments to encorage companies to protect the environment to achieve sustainable development in Indonesia. climate and attract FDI.

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International Instruments

International Covenant on Economic, Social and Cultural Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights ((ICESCR)

Trade Related Aspects Investment Measures (TRIMs)

Bilateral Investment Agreement(s)

Code of Conduct on Transnational Corporations

The ILO's 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

The United Nations Global Compact

The United Nation Norm

General Agreement on Tariffs and Trade (GATT)

National Regulations

The 1945 Constitution of Republic Indonesia.

Act No. 25/ 2007 concerning Investmen

Act No. 40/2007 concerning Limited Liability Company

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Appendices Regulation of the President of the Republic of Indonesia No. 5/2010 Regarding the

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