

Research Review

Minimum Capital Requirements for Limited Liability Company for Foreign Investment in a Notarial Deed Based on Job Creation Law

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Abstract: The implementation of the Job Creation Law has brought significant changes to the regulation of foreign investment in Indonesia, particularly through the establishment of a minimum capital requirement for a Foreign Investment Limited Liability Company (PT PMA) of IDR 10 billion. This study aims to examine the formal minimum capital requirements for PT PMA in notarial deeds under the Job Creation Law using normative juridical methods with statutory, conceptual, and case study approaches, and referring to the theory of legal certainty, responsibility, and legal protection. The analysis includes the evolution of PT minimum capital regulations, capital classification within the company's legal structure, the phenomenon of fictitious PT PMAs such as the PT BKG case, and the status and limitations of notary responsibilities. The results of the study indicate that although the minimum capital requirement for PT PMAs has been explicitly stipulated in Government Regulation No. 5 of 2021 and Regulation of the Head of the Investment Coordinating Board (BKPM) No. 4 of 2021, there are legal loopholes in the form of unclear capital deposit periods, weak verification and oversight mechanisms, and the prevalence of nominee practices and fictitious PT PMAs that reduce the effectiveness of the policy. The notary's position as a public official plays a strategic role in drafting deeds of establishment, verifying documents, and providing legal counseling, but has limited authority in verifying material truth. The study concluded that regulatory improvements are needed through establishing clear capital deposit periods, strengthening verification and oversight mechanisms, and harmonizing regulations between institutions to ensure the effective implementation of minimum capital requirements for foreign-owned companies (PT PMA) in accordance with the principle of economic sovereignty.

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1. Introduction

The government's limited ability to finance the national economy has led to the opening of foreign investors to fund sectors that can support the country's economy, both domestic and foreign. It must be acknowledged that foreign capital inflow is a vital determinant of Indonesia's economic growth. Foreign investment is recognized as having a positive impact

and is seen as significant for Indonesia's economic growth. Based on the need for capital for development originating from foreign investors, there must be legality to regulate it, and various regulations have been created to allow foreign investment to be present in Indonesia.

Various policies to attract investors to invest their capital in Indonesia are carefully made by the government so that Indonesia can become an investment destination, such as by providing incentives, long investment periods and various other policies that can increase or encourage investment activities.

The positive impact of investment or capital investment according to William A. Fannel and Joseph W. Tyler is to provide working capital, bring in expertise, managerial, scientific, capital, and market connections and increase foreign currency income through export activities by multinational companies, while the negative impact is that multinational companies give rise to disputes with recipient countries or with local poor natives and multinational companies are criticized for destroying the positive aspects of investment in developing countries.

In line with current developments, the government feels the need to increase and accelerate investment to support Indonesia's economic progress. Therefore, the government enacted Law Number 11 of 2020 concerning Job Creation. Subsequently, the government enacted Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law).

The enactment of the Job Creation Law will bring about reforms and improved services for investors, encouraging them to invest in Indonesia. Under the Job Creation Law, the government intends to retain revenue from both foreign direct investment and domestic investment. The government must provide strong protection and ensure legal certainty, especially for foreign and domestic investors who intend to invest in Indonesia, considering that an investor's track record in a country is a consideration for other investors before investing.

Investment in a country will proceed smoothly and benefit the country and its people if the country is able to establish investment policies in accordance with its constitutional mandate. The legal entity, specifically a Limited Liability Company, is outlined in Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law), which was later amended by the Job Creation Law. Therefore, it can be said that when making investments, Foreign Direct Investment (PMA) must essentially be conducted in the form of a business entity, namely a Limited Liability Company (PT).

Under Government Regulation No. 29 of 2016 concerning changes to the authorized capital of Limited Liability Companies, the authority to determine authorized capital is entirely delegated to the agreement of the Limited Liability Company's founders. However, there are special requirements that apply to Foreign Investment Limited Liability Companies (PT PMA).

To implement the provisions of Article 12 of Law No. 11 of 2020 concerning Job Creation, as stipulated in the Government Regulation of the Republic of Indonesia (hereinafter referred to as PP RI), the PP RI has been established concerning the Implementation of Risk-Based Business Licensing. To provide legal certainty in the process of implementing risk-based business licensing as mandated in PP RI Number 5 of 2021, the government has stipulated Regulation of the Investment Coordinating Board Number 4 of

2021 (hereinafter referred to as the Regulation of the Head of BKPM) concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

The regulation contains a loophole in the Capital Investment regulations. From a philosophical perspective, the objectives of capital investment have not been effectively achieved. Both regulations do not provide specific provisions regarding the capital deposit period or the monitoring mechanism for its implementation. This regulatory gap has led to abuses where the founders of PT PMA (Foreign Investment Companies) state the capital required by the minimum provisions in the company's deed of establishment but fail to immediately realize the capital deposit as required by law.

From a sociological perspective, the existence of legal loopholes has a negative impact on the country's economy and society, particularly in Bali. The impacts of these loopholes include: The emergence of fictitious PT PMA (Foreign Investment Company) established without any real capital investment or failing to fulfill the authorized capital requirement of 10 billion rupiah, which is supposed to be required to run a large business. One example of this case is On September 6, 2024, a Canadian citizen (JGC) was deported from Bali to Toronto, Canada, after it was revealed that he had violated several immigration regulations and other applicable laws in Indonesia. JGC first arrived in Indonesia in October 2020 on a tourist visa, which was supposed to be used only for temporary purposes. However, in February 2021, he established a company later known as PT BKG, which he claimed was a legitimate business. JGC acted as an investor in the company, even though the company he founded turned out to be a fictitious entity that did not operate in accordance with applicable regulations. Over time, JGC's visitor visa status was changed to an investor KITAS, which granted him a longer stay and allowed him to live and work in Indonesia as an investor at PT BKG. In 2023, the visa was extended for a second time, with a new status as a consultant at PT BKG. This change in status indicated a change in JGC's function and role within the company. However, despite administratively fulfilling the requirements for an investor KITAS, PT BKG was not operating legally. The company did not pay taxes and did not have a valid or legally registered office address.

This phenomenon reflects how loopholes in the regulation and oversight of foreign investment in Indonesia can be exploited by certain parties for purposes that are not in accordance with legal provisions. In this phenomenon, a foreign national (JGC) successfully obtained KITAS investor status by establishing a company called PT BKG. The company only met the minimum administrative investment requirements as stipulated in applicable regulations, without being followed by appropriate operational realization.

Based on the description above, the author intends to comprehensively examine the minimum capital provisions, their legal implications, and the role of notaries in accommodating the regulations regulated by the Job Creation Law, as stated in the title "Formal Requirements for Minimum Capital for Foreign Investment Limited Liability Companies in Notarial Deeds Based on the Job Creation Law".

Based on the background explained above, the formulation of the problem in this research is as follows:

- What are the formal minimum capital requirements for a Foreign Investment Company (PMA) as regulated in the Job Creation Law as a capital category in a Limited Liability Company?

- What is the role of a notary in accommodating compliance with the minimum capital requirements for PT PMA in accordance with the Job Creation Law in the deed of establishment?

2. Research Method

This research uses a normative approach. This research raises issues related to the legal vacuum found in Article 189 paragraph (2) of Government Regulation Number 5 of 2021. In this case, the researcher will analyze the Job Creation Law and related regulations that regulate the formal minimum capital requirements for PT PMA, identify legal provisions that regulate the role of notaries in the establishment of PT PMA and notarial deeds and assess the consistency and effectiveness of existing regulations in supporting foreign investment in Indonesia..

In this research, the researcher will conduct a case study analysis of several PT PMA that have been established in Indonesia to explore their experiences in meeting the minimum capital requirements, then analyze how notarial deeds are drafted and the role of notaries in the process of establishing PT PMA and explore the challenges and opportunities faced by foreign investors in the context of existing regulations.

In this study, legal data collection techniques were carried out using several systematic and structured methods to ensure that the data obtained were relevant, accurate, and reliable. In this study, document studies were conducted by referring to various relevant state documents, namely: the 1945 Constitution of the Republic of Indonesia, which serves as the highest legal basis; the Law on Investment; the Law on Limited Liability Companies, which regulates the legal aspects of Companies; the Job Creation Law, which aims to accelerate bureaucratic reform and encourage investment; and the Law on Visas and Residence Permits; and Law Number 13 of 2009 concerning the Position of Notary, which regulates the authority and responsibilities of the notary profession. All of these documents were used as a basis for analyzing the legal issues discussed in the study.

3. Results and Discussion

Formal Minimum Capital Requirements For Foreign Investment Companies (Pma) Regulated In The Job Creation Law As A Capital Category In Limited Liability Companies

Evolution of Minimum Capital Regulations in Limited Liability Companies

Prior to the enactment of Law Number 40 of 2007 concerning Limited Liability Companies, provisions regarding the authorized capital of PTs were regulated in Law Number 1 of 1995. In this law, the minimum authorized capital amount was not explicitly stipulated, thus creating uncertainty for investors. As stated by Johan, the uncertainty of definitions and provisions in the legislation can cause confusion for business actors and regulators, which ultimately results in legal uncertainty. This condition leads to diverse interpretations from the competent authorities, thus creating inconsistencies in the process of establishing a PT and hesitancy among potential investors due to the lack of clear parameters regarding the required capital.

According to Chandrawulan, this difference in treatment reflects the need to ensure that foreign investment entering Indonesia is of sufficient quality and commitment to make a

positive contribution to the national economy. Law Number 11 of 2020 concerning Job Creation (the Job Creation Law) is a legal breakthrough designed to encourage investment and create jobs in Indonesia. This law implements the omnibus law concept by amending several provisions in various laws simultaneously, including the Investment Law and the Limited Liability Company Law. Based on analysis by Harahap et al., the issuance of the Job Creation Law aims to create jobs and increase investment, both foreign and domestic. Thus, increased investment will encourage the creation of new job opportunities, which can ultimately help balance the workforce with job opportunities in Indonesia.

In the context of minimum capital for PT PMA, the Job Creation Law does not explicitly mention a specific amount, but provides a legal basis for further regulation through implementing regulations.

This delegation of technical arrangements to implementing regulations allows for greater flexibility and adaptability in responding to changing global economic and investment dynamics. Based on this mandate, the government then enacted Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing.

This regulation adopts a risk-based approach to business licensing, where licensing requirements and procedures are tailored to the risk level of the business activity. According to Fatchullah, Ispriyarso, and Sa'adah, this regulation aims to improve the efficiency of public services through the Online Single Submission (OSS) system, which simplifies and streamlines licensing applications, including for foreign-owned companies (PT PMA).

Capital Classification and Legal Analysis of Minimum Capital Provisions for PMA PTs Based on the Theory of Legal Certainty and Protection

Within the legal structure of a Limited Liability Company, there are several capital classifications, each with its own characteristics and legal implications. A comprehensive understanding of these classifications is essential for analyzing how the minimum capital requirements for PT PMA are applied within the context of the Job Creation Law and for assessing their effectiveness based on the theory of legal certainty and protection.

There are several capital classifications in limited liability companies and their implications for PT PMA:

Authorized Capital

Authorized capital is the total nominal value of shares that can be issued by a company. As defined by M. Yahya Harahap, authorized capital is "the total nominal value of the company's shares as stated in the articles of association." In principle, authorized capital represents the maximum limit of shares that can be issued by a company during its operational period. Based on Article 31 paragraph (1) of the Limited Liability Company Law, which reads "The Company's authorized capital consists of the entire nominal value of shares",

Authorized capital consists of the total nominal value of shares. Authorized capital reflects the company's maximum capital potential if all authorized shares were issued. The provisions regarding authorized capital are important because they set the upper limit on the capital that can be subscribed and paid in by shareholders without amending the company's articles of association.

In the context of PT PMA, although there are no specific provisions regarding the amount of authorized capital in the Job Creation Law and its implementing regulations, authorized capital must be at least equal to or greater than the issued capital, which must be at least IDR

10 billion. Based on Article 189 paragraph (2) of PP number 5 of 2021 as explained by Karista Putri, the total minimum investment for PT PMA must reach IDR 10 billion excluding the value of land and buildings, and is calculated per business sector per location.

Subscribed Capital and Paid-up Capital

Issued capital is the portion of the authorized capital subscribed by the company's founders or shareholders. Paid-up capital, on the other hand, is the portion of issued capital actually paid into the company by shareholders. As explained by Putra Pratama and Priyanto (2020), deposits can be made in cash or other forms, such as tangible immovable property (land) or intangible assets in the form of collection rights. These provisions set a much higher standard for PT PMA compared to general PT provisions, reflecting higher expectations of financial commitment from foreign investors.

In the context of minimum capital for PT PMA, analysis based on the theory of legal certainty can be examined from several dimensions:

Aspects of Clarity of Legal Norms

The minimum capital requirement for a PMA PT of IDR 10 billion has been explicitly stated in PP Number 5 of 2021 Article 189 paragraph (2)

In terms of nominal clarity, this provision is quite clear and unambiguous. However, there are several aspects that remain unclear in this regulation:

- Capital Deposit Period

Neither the PP nor the Head of BKPM Regulation specifically regulates when the capital must be fully paid up.

- Verification Mechanism

The monitoring system for PT capital deposits still relies on the awareness of each shareholder and notary.

Consistency of Implementation Aspect

Consistency in the application of the law is a crucial aspect of legal certainty. In the context of the minimum capital requirement for foreign-owned companies (PT PMA), there are indications of inconsistency in its implementation, as evidenced by the phenomenon of fictitious PT PMA.

Legal protection theory emphasizes that the law must provide protection for legal subjects through various preventive and repressive instruments. In the context of minimum capital requirements for foreign-owned companies (PT PMA), analysis based on legal protection theory encompasses two main aspects:

Protection of National Interests

The minimum capital requirement for foreign-owned companies (PT PMA) of Rp 10 billion can be seen as a form of protection for national interests. By establishing this requirement, Indonesia can ensure that incoming investors are truly committed to large-scale, long-term investments that will absorb a significant workforce.

Protection for Investors and Creditors

From an investor and creditor protection perspective, the minimum capital requirement for a foreign-owned company (PT PMA) has two sides. On the one hand, a high minimum capital requirement can provide creditors with protection by ensuring sufficient assets are available to meet the company's obligations. As Sili and Kurniawan point out, a high minimum capital requirement provides greater protection for creditors and third parties.

Based on the above description, it is clear that the minimum capital requirements for foreign-owned companies (PT PMA) in the Job Creation Law and its implementing regulations do not fully meet the principles of legal certainty and legal protection. Although the nominal amount is clear, crucial aspects such as the deposit period, verification mechanisms, and consistent enforcement still require more comprehensive regulation to improve the regulation's effectiveness in supporting a conducive investment climate and protecting national interests.

From the description of capital classification and legal analysis based on the theory of legal certainty and protection above, it can be concluded that the minimum capital regulations for foreign-owned companies (PT PMA) provide clarity regarding nominal requirements, but there are still weaknesses in implementation and oversight. Different capital classifications have different legal implications.

Legal Loopholes in Regulations Related to Minimum Capital Requirements for PMA Companies

An analysis of the minimum capital requirements for foreign-owned companies (PT PMA) in the Job Creation Law and its implementing regulations reveals several legal loopholes that could potentially hamper the policy's effectiveness. These loopholes impact not only law enforcement but also the achievement of the goal of ensuring quality foreign investment and contributing positively to the national economy. Some of the legal loopholes in the implementation of the minimum capital requirements for PT PMA are as follows:

- **Unclear Capital Deposit Period**

One of the most significant legal loopholes in the minimum capital requirements for foreign-owned companies (PT PMA) is the lack of clear regulations regarding the capital deposit period. Government Regulation No. 5 of 2021 and Regulation of the Head of the Investment Coordinating Board (BKPM) No. 4 of 2021 only stipulate a minimum amount, without specifying a specific deadline for the full capital deposit.

- **Weak Verification and Oversight Mechanisms**

The second legal loophole relates to the weak verification and oversight mechanisms for capital deposits. Under the current system, verification of the validity of capital deposits still relies heavily on the awareness and good faith of shareholders and notaries. As stated by Fadhillah et al., the validity and legitimacy of the PT establishment data inputted depends entirely on the honesty of the shareholders and notaries.

The Role Of Notaries In Accommodating Compliance With Minimum Capital Requirements For Pt Pma In Accordance With The Job Creation Law In The Deed Of Establishment

The Legal Position of Notaries in the PT PMA Establishment Process

The legal standing of a notary in the establishment of a Foreign Investment Limited Liability Company (PT PMA) is a fundamental aspect determining the legitimacy and legal certainty for foreign investors in Indonesia. This position is not merely administrative, but reflects the notary's strategic role as a public official with special authority to provide legal legitimacy for the formation of a company involving foreign capital.

Legally, the position of notaries in the Indonesian legal system is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN).

This definition indicates that the authority of a notary is not limited to the UUJN alone, but can be expanded through other sectoral laws, including in the field of investment and limited liability companies.

The direct link between the position of a notary and the establishment of a PT PMA is found in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Article 7 paragraph (1) of the UUPT explicitly states that:

"The company is established by 2 (two) or more people with a notarial deed made in Indonesian."

This provision demonstrates that a notarial deed is a constitutive legal instrument, not merely a declarative one. According to the Big Indonesian Dictionary (KBBI), constitutive means having the nature or character of forming, establishing, or establishing. In the context of establishing a legal entity such as a Limited Liability Company (PT), a notarial deed has a constitutive nature because it is an absolute requirement for the legal entity to be legally established.

Without a deed of establishment approved by the Minister of Law and Human Rights, a company is not considered a valid legal entity. Conversely, a declaratory instrument merely states or announces a pre-existing condition and does not have the legal force to establish a new legal entity in the formation of a legal entity company.

The role of a notary in granting power of attorney is also a crucial aspect of the process of establishing a foreign-owned company (PT PMA). In practice, situations often arise where a foreign investor grants power of attorney to another party to act on their behalf in the establishment of a PT PMA. In this context, the role of a notary is crucial in ensuring the validity and legal certainty of the granting of power of attorney.

From a broader legal system perspective, the position of a notary in the process of establishing a PT PMA is also related to legal protection for PT PMA as a legal entity. The legal position and rights of PMA companies have been guaranteed by positive law in Indonesia as stated in the implementation of the principles of investment based on Article 3 paragraph (1) and Article 4 paragraph (2) of Law Number 25 of 2007 concerning Investment which states that there is a guarantee of legal certainty, openness, fair efficiency, sustainability, equal treatment and does not differentiate between countries of origin. This shows that the position of a notary in the process of establishing a PT PMA is related to ensuring that the PT PMA being established has a strong legal standing in the Indonesian legal system.

Notary's Responsibilities in Making PT Deed of Establishment PMA and Minimum Capital Verification of PT PMA

The notary's responsibility in verifying the minimum capital of a foreign-owned company (PT PMA) is closely related to their role in drafting the deed of establishment. At this stage, the notary is obligated to ensure that the established PT PMA meets the minimum capital requirements stipulated in Government Regulation No. 5 of 2021 and BKPM Regulation No. 4 of 2021, namely a total investment of more than IDR 10 billion excluding land and buildings, and a minimum issued or paid-up capital of IDR 10 billion.

In practice, a notary's responsibility in verifying the minimum capital of a PMA company includes examining supporting documents demonstrating the founders' commitment to deposit capital in accordance with applicable regulations. These documents can include proof

of transfer, bank statements, bank statements, or private statements of willingness to deposit capital. adequate documentation.

Notaries are also responsible for drafting the deed of establishment that accurately and in detail reflects the minimum capital requirements. Notaries must ensure that the deed of establishment of a PT PMA clearly states the amount of authorized capital, issued capital, and paid-up capital in accordance with applicable provisions, including the distribution of shares among the founders and the payment mechanism to be implemented. Article 15 paragraph (2) letter e of the UUJN states that notaries are authorized to "provide legal advice in connection with the preparation of deeds."

Based on this provision, notaries have the responsibility to provide comprehensive counseling to the founders of PT PMA regarding minimum capital requirements, legal consequences of non-compliance, and alternative solutions that can be taken.

Limitation of Notary Liability Regarding Minimum Capital PT PMA and its Legal Implications

One of the main limitations of a notary's responsibility regarding the minimum capital requirements for a PMA company is the verification of the material substance submitted by the founders regarding the company's financial aspects. In relation to the minimum capital requirements for a PMA company, a notary has limited authority in material verification. This limitation arises because the notary's role is as an official who establishes the will of the parties, not as a party who verifies the substantial truth of the statements submitted. In practice, a notary can be sued by the injured party if they can prove that the loss suffered occurred due to the notary's negligence, but this only applies if the notary failed to adhere to the principle of prudence in drafting the deed.

The limitations of a notary's authority in verifying material substance are also related to the principle of independence of the notary profession. As stated by Soedjono Dirjosisworo, a notary is an independent public official who is not subject to executive, legislative, or judicial authority. This independence limits notaries from taking actions that exceed their authority, such as conducting in-depth verification of material substance outside their scope of duties. This independence of the notary profession also requires notaries to refrain from engaging in activities that could create a conflict of interest or compromise neutrality in carrying out their duties.

In carrying out their duties and obligations, notaries have formal responsibilities related to the procedural aspects of making deeds, but have limitations in material responsibility related to the accuracy of the substance of the information contained in the deed. The notary's formal responsibilities include ensuring that the deeds they make meet the requirements of authenticity, validity, and the reasons for the invalidity of a deed. This is done as a preventive measure to prevent legal defects in notarial deeds that can result in the loss of authenticity and the invalidation of the notarial deed, which has the potential to cause losses to interested parties.

4. Conclusions and Suggestions

Conclusions

- The formal minimum capital requirements for Foreign Investment Companies (PMA) regulated in the Job Creation Law as a capital category in Limited Liability Companies, it can

be concluded that the minimum capital provisions for PMA PTs stipulate specific requirements that are different from PTs in general. Based on Government Regulation Number 5 of 2021 Article 189 paragraph (2) and BKPM Regulation Number 4 of 2021 Article 12, PT PMA is required to have a total investment of more than IDR 10,000,000,000 (ten billion rupiah) excluding land and buildings, as well as a minimum issued or paid-up capital of IDR 10,000,000,000. This provision differs from the flexibility granted to PTs in general based on PP Number 29 of 2016, reflecting the government's efforts to ensure the quality of foreign investment. However, the implementation of this provision contains legal loopholes in the form of unclear capital deposit periods, weak verification and supervision mechanisms, and the rampant practice of nominees and fictitious PT PMA, which has the potential to reduce the effectiveness of this policy in protecting national interests and attracting quality foreign investment.

- The role of notaries in accommodating compliance with the minimum capital requirements for Foreign Investment Limited Liability Companies (PT PMA) in accordance with the provisions of the Job Creation Law is reflected through their involvement in a number of important stages in the process of establishing the legal entity. These roles include: (a) verifying supporting documents that demonstrate the founders' commitment to contribute capital; (b) preparing a deed of establishment that clearly states the amount of authorized capital, issued capital, and paid-up capital in accordance with statutory provisions; (c) submitting an application for legal entity approval to the relevant authorities; and (d) providing information and education to the founders regarding minimum capital requirements and their legal implications.

Suggestions

Based on the research conclusions, the following are suggestions that can be put forward:

- **Theoretical Suggestions**
Reviewing the compliance of the minimum capital provisions for foreign-owned companies (PT PMA) in the Job Creation Law with international investment law principles to ensure fair regulations that do not hinder foreign investment.
- **Practical Advice**
 - For the government: Increase outreach to notaries and investors regarding the minimum capital requirements for PT PMA, and strengthen supervision to prevent the establishment of fictitious companies or unlawful nominee practices.
 - For notaries: Improve understanding and compliance with the minimum capital requirements for PT PMA in the Job Creation Law, and carry out their role professionally in ensuring that these requirements are met in the deed of establishment.
 - For investors: Ensure compliance with the minimum capital requirements of PT PMA and avoid unlawful practices, as well as contribute to economic growth and development in Indonesia through quality investments.
- **Suggestions for Further Research**
Conducting an empirical study to evaluate the effectiveness of minimum capital requirements in attracting quality foreign investment and its impact on economic growth, employment absorption, and technology transfer in Indonesia.

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