



How Indonesian Investment Law Positively Impacts the Environment for Foreign Businesses

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Abstract

Indonesia, as one of the founding members of the Association of Southeast Asian Nations (ASEAN) and a member of the Group of Twenty (G20), possesses distinct advantages. Its sustained economic development, rapid investment growth, abundant natural resources, and expansive market have established its significant international presence, positioning it as a frontrunner among other ASEAN countries. As one of the most influential members among the ten ASEAN nations, Indonesia holds remarkable appeal for foreign investment and garners considerable attention in the investment sphere. This article employs methodologies including data analysis and literature review to concentrate on Indonesia's investment laws, exploring potential risks within Indonesia's investment environment and corresponding strategies for mitigation. The article also focuses on Indonesia's domestic laws and Bilateral Investment Treaties (BITs) related to investment, outlining the framework of Indonesia's investment legal environment by examining the risks, challenges, and benefits posed by Indonesia's investment laws. The primary focus of this paper lies in dissecting the risks and challenges inherent in Indonesian investment laws while identifying pathways for resolution.

Keywords: Investment Law, Indonesia's Foreign Investment Environment, Bilateral Investment Treaty

Abstrak

Indonesia, sebagai salah satu anggota pendiri Perhimpunan Bangsa-Bangsa Asia Tenggara (ASEAN) dan anggota Group of Twenty (G20), memiliki keunggulan yang berbeda. Pembangunan ekonominya yang berkelanjutan, pertumbuhan investasi yang cepat, sumber daya alam yang melimpah, dan pasar yang luas telah menegaskan kehadirannya secara signifikan di dunia internasional, menempatkannya sebagai pelopor di antara negara-negara ASEAN lainnya. Sebagai salah satu anggota terpenting di antara sepuluh negara anggota ASEAN, Indonesia memiliki daya tarik yang luar biasa bagi investasi asing dan mendapatkan perhatian besar di bidang investasi. Makalah ini akan menggunakan metodologi termasuk analisis data dan tinjauan literatur untuk fokus pada hukum investasi Indonesia, mengeksplorasi risiko potensial dalam lingkungan investasi Indonesia dan strategi penanggulangannya. Makalah ini juga akan berfokus pada hukum domestik Indonesia dan Perjanjian Investasi Bilateral (BITs) terkait investasi, menguraikan kerangka kerja lingkungan hukum investasi Indonesia dengan meneliti risiko, tantangan, dan manfaat yang ditimbulkan oleh hukum investasi Indonesia. Fokus utama makalah ini terletak pada mengurai risiko dan tantangan yang melekat dalam hukum investasi Indonesia sambil mengidentifikasi jalur penyelesaiannya.

Kata Kunci: Hukum Investasi, Lingkungan Investasi Asing Di Indonesia, Perjanjian Investasi Bilateral



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INTRODUCTION

As a country rich in natural resources, Indonesia is the world's largest exporter of minerals, palm oil and rubber exports are also significant.¹ The huge volume of foreign trade

¹ Dutu, Richard. Making the Most of Natural Resources in Indonesia. OECD Economics Department Working Papers No. 1236. Paris: Organization for Economic Co-operation and Development (2015): 7.



will undoubtedly attract a lot of foreign capital to enter the Indonesian market. At the same time, in order to seek national development, the Indonesian Authority actively promotes and attracts foreign capital to enrich its economy. In this duration, as a superstructure, Investment Law will inevitably have an impact on its foreign business environment. Or to go further, the Investment Law has shaped the business environment for foreign investors.² Indonesia has a history of cautious and often restrictive policies toward foreign investments, particularly during the early years of independence. Under the early days of President Suharto's leadership, the country embraced the "anti-foreign capital movement" emphasizing economic nationalism, self-reliance and rejecting foreign economic influence.³ This culminated in the nationalization of Dutch companies and a general suspicion toward Western investments. However, this stance shifted in the latter half of President Suharto's regime, adopting more open economic policies, welcoming foreign capital to stimulate growth and development, though with regulations to ensure national control over key sectors.⁴

Recently, foreign investments in Indonesia have been on the rise, significantly contributing to the country's economic development. The growth is fueled by policy reforms,⁵ infrastructure improvements,⁶ and investment incentives,⁷ attracting substantial FDI to sectors like manufacturing, mining, real estate, and services. Manufacturing stands out as a key magnet for FDI, driven by Indonesia's large domestic market and strategic export location. Investments in infrastructure such as water, electricity, and transportation are also expanding, further supporting economic growth.⁸ Nevertheless, the law is not perfect, it also has lag and inherent defects such as having inconsistencies and ambiguous rules and procedures.⁹ By studying the development context of Indonesian Investment Laws, focusing on the challenges brought by the enactment of Indonesian Investment Laws from 2007 to present and the benefits provided by successive Indonesian investment laws to the development of the foreign investment business environment in Indonesia, this paper aims to clarify the shaping of Indonesia's Investment Law on the foreign investment business environment and forecast its further development. Based on the background that the author has conveyed, the author is interested in discussing Investment Law and working on a journal with the title "How Indonesian Investment Law Positively Impacts the Environment for Foreign Businesses".

Problem Statement

Based on the background above, the formulation of the problem is as follows:

1. How do the frequent changes and complexity of Indonesian investment laws create regulatory uncertainty that affects foreign business investment decisions in Indonesia?
2. What potential benefits could arise from a more stable and transparent legal framework?

² Agustian, Rani Apriani. "Pengaruh Hukum dan Politik Terhadap Perkembangan Investasi Asing Di Indonesia". *Economic Education and Entrepreneurship Journal* 4, no. 1 (2021): 61-77.

³ Padiatra, Muara.A. 2015. *Introduction To Malari : Dari Situasi, Aksi, Hingga Rusuh Pada Awal Orde Baru 1970 – 1974*. Criksetra. Volume 4 No.8 Agustus 2015.

⁴ Pratiwi, Mutiara Yuliana. "Perkembangan Sistem Ekonomi pada Masa Orde Baru (Rezim Soeharto) Terhadap Sektor Perekonomian Indonesia." *Historia Vitae* 4, no. 1 (April 2024).

⁵ Montfaucon, Angella Faith, Victor Kidake Senelwa, and Aufa Doarest. "Early Impacts of Indonesia's Investment Reforms: A Preliminary Analysis". *Policy Research Working Paper* 10478. World Bank Group, June 2023.

⁶ Irawan, Tony, Djoni Hartono, Ferry Irawan, and Arief Anshory Yusuf. "Infrastructure Improvement and Its Impacts on the Indonesian Economic Performance". *Journal of Indonesian Economy and Business* 27, no. 3 (2012): 293-302.

⁷ Wahyudi, Setyo Tri. "The Impact of Foreign Direct Investment on Economic Growth in Indonesia, 1980-2004: A Causality Approach". *Journal of Indonesian Economy and Business* 24, no. 3 (2009): 311-327.

⁸ Fazaalloh. "The Impact of Sectoral Foreign Direct Investment on Economic Growth in Indonesia". *Journal of Economic Structures* 13, no. 3 (2024): 1-22. <https://doi.org/10.1186/s40008-023-00323-w>

⁹ Ivanovenska Ardy Aqilla Yudhistira, "Impact of Foreign Investment on Indonesia: Analysis of Socio-Legal Problems", *Jurnal Hukum Sehasen*, Program Studi Magister Hukum Ekonomi, Fakultas Hukum, Universitas Indonesia, [ISSN details: p-ISSN 2528-5025, e-ISSN 2746-6485].



RESEARCH METHOD

This research uses a normative approach, meaning it analyzes the application of written laws based on current regulations regarding foreign investments. The focus is on examining relevant laws and policies related to the legal issue at hand.

- a. Secondary Data. This research relies on secondary data that has been processed and presented by other parties, such as books, scientific journals, and research reports, to provide a comprehensive understanding of the legal aspects under study.
- b. Primary Materials. Primary materials in the form of laws and regulations are used as the main reference in understanding the legal aspects studied in this research.

DISCUSSION

Challenge Brought About by Indonesian Investment Laws From 2007 till Present Development Path of Indonesia Investment law

In the initial phase, an examination of the legal framework predating the enactment of the 2007 Indonesian Investment Law will be conducted. Subsequently, a comprehensive exploration of the pivotal moment of the law's promulgation in 2007, denoted as the Law Number 25 of 2007 on Investment will ensue, aiming to scrutinize its substantive content and the profound impact it bore as a pivotal milestone. Finally, a thorough investigation into the successive regulatory alterations, influential reforms, and iterative processes will be undertaken. This scrutiny intends to elucidate the trajectory of legal evolution and its enduring ramifications on the investment milieu.

Pre-2007 Legal Landscape

Indonesia's investment laws underwent significant evolution before 2007, resulting in instability and shifting approaches toward foreign investment. The changes began with the formulation of investment regulations post-independence in the 1950s. However, the initial legislation faced obstacles (government changes and other reasons), and it wasn't until 1958 that the 1958 Law Number 78 on Foreign Investment was enacted, aimed to attract foreign capital to address the domestic capital shortage while ensuring provisions met national development needs and allayed concerns about foreign investment.¹⁰ This phase laid the groundwork for subsequent investment laws and provided crucial background for Indonesia's investment legal framework before 2007. In 1965, Law Number 78 of 1958 was replaced by Law Number 16 of 1965, driven by concerns about foreign investment's impact on self-reliance and decolonization. The law aimed to limit foreign capital, emphasizing domestic production and living standards. It wasn't until the advent of Law Number 1 in 1967 that Indonesia reintroduced avenues for foreign investment. Aligned with the Resolution Number XXIII/MPRS/1966, Indonesia's investment policy was strategically oriented towards harnessing foreign capital to galvanize economic advancement, particularly targeting sectors characterized by resource scarcity, expertise deficits, and technological gaps.

Law Number 25 of 2007 on Investment

Throughout Indonesia's investment landscape, there have been consistent fluctuations, contributing to an environment fraught with instability. However, the pivotal turning point came in 2007 with the enactment of Law Number 25 of 2007 on Investment replacing its predecessor, Law Number 1 of 1967. This new legislation aims to accelerate the development

¹⁰ Marbun, Eldbert Christanto Anaya (2022) "MENGAJI KEPASTIAN HUKUM DAN PERLINDUNGAN HUKUM TERHADAP INVESTASI DI INDONESIA MELALUI LEMBAGA PERIZINAN ONLINE SINGLE SUBMISSION (OSS)", Dharmasisya: Vol. 1, Article 8. Available at: <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/8>



of the national economy in Indonesia and establish the country's political and economic sovereignty.¹¹ It is considered essential to boost capital investment, thereby transforming economic potential into tangible economic prowess, through the utilization of both domestic and overseas funds, substantially enhancing Indonesia's connections with international investment and cooperation, profoundly influencing the country's economic development.¹²

This law contains many groundbreaking provisions, such as:

According to Article 3,¹³ The Law Number 25 of 2007 on Investment's fundamental principles introduced groundbreaking provisions, notably the principle of equal treatment and non-discrimination based on national origin, an unprecedented stride toward granting equal standing for both domestic and foreign investors. According to Article 8 of Law Number 25 of 2007 on Investment: "The investor may freely transfer its assets to parties appointed by the investor, as long as this is not contrary to prevailing laws and regulations",¹⁴ investors are allowed to freely transfer their assets to parties designated by the investor, as long as this doesn't contravene prevailing laws and regulations. Article 10 of the investment law contains provisions aimed at safeguarding the interests of Indonesian nationals. It delineates specific principles regarding the employment and training of human resources within enterprises: in meeting its needs for manpower, an investment business has an obligation to give priority to Indonesian manpower.¹⁵ Moreover, the removal of the 30-year limitation for foreign investment has ushered in increased freedom and flexibility for foreign investors. This change has expanded opportunities for long-term development, contributing significantly to sustaining growth and stability within the Indonesian economy. It creates an investment climate whose nature is conducive, promotive, legally certain, impartial and efficient.¹⁶

According to CHAPTER X, the Capital Investment Coordination Board (BKPM) was established. The clauses detailed its responsibilities and functions, outlining specific tasks in policy analysis, service provision, addressing investment barriers, and more. It emphasizes direct involvement of representatives from relevant sectors and regions for effective service implementation. In conclusion, the enactment of Law Number 25 of 2007 on Investment was a watershed moment in Indonesia's investment landscape. An environment of certainty where business may be done without qualm as it is according to the needs of the people.¹⁷ Its comprehensive provisions, emphasizing equality, asset mobility and the removal of restrictive limitations, have propelled Indonesia onto a trajectory of enhanced international integration, economic growth, and a more inclusive investment environment.

Indonesia's Progressive Openness: Evolution of Investment Regulations Post-2007

Indonesia's legislative landscape concerning investments has witnessed significant transformations over the years. From the impactful changes brought by Law Number 25 of 2007 and Law Number 40 of 2007 to more recent regulatory shifts, such as the repeal of

¹¹ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007).

¹² Randi, Azaria Putri, Maskun, and Yustina Sri Ekwandari. "Gerakan Anti Modal Asing pada Awal Pemerintahan Orde Baru (1967-1974)." *Journal Pendidikan dan Penelitian Sejarah (Pesagi)* 10, no. 2 (2023): 33. <http://dx.doi.org/10.23960/pesagi>.

¹³ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007), art. 3.

¹⁴ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007), art. 8.

¹⁵ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007), art. 10.

¹⁶ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007), art. 3.

¹⁷ L.J. van Apeldoorn, *Pengantar Ilmu Hukum* (In Leiding Tot De Studie Van Het Nederlandse Recht), diterjemahkan Oetarid Sadino, (Jakarta: Balai Pustaka, 2015), hal. 19



Presidential Regulation No. 44 of 2016 and the introduction of Presidential Regulation No. 10 of 2021, Indonesia's approach to foreign investment has undergone substantial evolution. The enactment of Law Number 25 of 2007 on Investment and Law Number 40 of 2007 on Limited Liability Companies brought about significant changes that profoundly impacted the investment landscape. In recent years, Indonesia's regulations on foreign investment have undergone significant changes, notably with the enactment of the Presidential Regulation No. 44 of 2016 dated May 18, 2016 on the List of Businesses Closed and Opened Under Certain Conditions for Investment ("PR 44/2016"), imposing certain restrictions on foreign investments through a negative list. This regulation explicitly listed specific types of enterprises either entirely prohibited from foreign investment or allowing foreign capital under specific conditions, setting limits on foreign ownership, leading to a close association between foreign investments and the negative list causing reduction in productivity by foreign businesses.¹⁸ However, in 2021, this regulation was repealed, replaced by Presidential Regulation No. 10 of 2021 (The "PR 10/2021") receiving a more positive reception and impact.¹⁹

Furthermore, the formulation and enactment of the Omnibus Law on Job Creation, which amended 76 overlapping government regulations,²⁰ stand as a pivotal reform in Indonesia's recent legislative landscape regarding investment. It simplifies the commercial licensing procedures at the regional level. The Omnibus Law on Job Creation offers new opportunities for foreign investors to engage in technology startups within economic special zones, allowing them to invest up to less than 10 billion Indonesian Rupiah. This law introduces a series of provisions aimed at simplifying business licensing requirements, reforming stringent labor laws, implementing tax reforms to support business convenience, and establishing the Indonesia Investment Authority (INA) to encourage and facilitate direct investment.²¹ However, according to Marulak Pardede, there are still some negative impacts of the law.²² For instance, the Indonesian government may increasingly face foreign companies in international arbitration institutions. In addition, is the deterioration of the investing environment of Indonesia.²³ Subsequently, the Indonesian government issued a series of new regulations supporting this law. Of particular note is the Presidential Regulation No. 10 of 2021 (PR 10/2021) issued in February 2021, indicating the government's intent to expand investments and attract foreign capital. PR 10/2021 stipulates that, except for activities reserved by the central government and seven approved business sectors, all commercial activities are fully open to investment. So it removed restrictions on foreign ownership in hundreds of industries that were previously closed or subject to foreign ownership caps.²⁴ The changes in this regulation aim to shape a more inclusive investment environment, reduce restrictions from the negative list, and encourage more investors to actively engage in the Indonesian market.

The recent regulatory shifts, notably the introduction of PR 10/2021 and the reforms under the Omnibus Law on Job Creation, have played a pivotal role in reshaping Indonesia's

¹⁸ Mira, and B Wardono. "Impact of presidential decree number 44 of 2016 on sustainable fisheries at archipelago state". IOP Conference Series: Earth and Environmental Science 1119 (2022): 012068.

¹⁹ Makarim & Taira S. "At Last, the Long Awaited and Much Anticipated 'Positive Investment List' has been Issued". M&T Advisory 1, no. 1 (March 2021).

²⁰ Aji, Tito Bramantyo. "The Indonesian Government Participation in International Investment Law and Its Reform". Indonesian Journal of International Law 19, no. 1 (2021): Article 1. <https://doi.org/10.17304/ijil.vol19.1.4>.

²¹ Mahersaputri, Rheina Alifa, and Rani Apriani. "Dampak Undang-Undang Omnibus Law Terhadap Iklim Investasi Di Indonesia". JUSTITIA: Jurnal Ilmu Hukum dan Humaniora 9, no. 3 (2022): 1357.

²² Pardede, Marulak. "Investment Regulatory Reform in Indonesia: An Effort to Increase the Competitiveness Climate of Investment". De Jure 23 (2023): 231-244. <http://dx.doi.org/10.30641/dejure.2023.V23.231-244>.

²³ Anadolu Agency. "Investor Global Anggap Omnibus Law Rusak Iklim Investasi Indonesia". Anadolu Agency, October 6, 2020. <https://www.aa.com.tr/id/ekonomi/investor-global-anggap-omnibus-law-rusak-iklim-investasi-indonesia/1996921>

²⁴ U.S. Department of State. "2023 Investment Climate Statements: Indonesia". Accessed October 14, 2024. <https://www.state.gov/reports/2023-investment-climate-statements/indonesia/#:~:text=Indonesia%20is%20an%20attractive%20destination,and%20well%20regarded%20macroeconomic%20policy>.



investment climate.²⁵ By lifting restrictions on foreign ownership in numerous industries previously closed or capped, these changes aim to foster a more inclusive investment environment and encourage heightened participation of investors in Indonesia's burgeoning market. These legislative measures signify Indonesia's commitment to attracting foreign capital and fostering a more conducive and open investment atmosphere.²⁶

Abstract of Law

Investment law in its broadest sense has contributed to shaping the Indonesian investment market. Broadly speaking, investment law includes domestic law (Law Number 25 of 2007 on Investment and its related laws) as well as bilateral investment treaties [hereinafter 'BITs'], treaties with investment provisions [hereinafter 'TIPs'] and international agreements concluded by Indonesia with other countries. Next, we will briefly describe types of broad Indonesian investment law.

Domestic laws

Law	Year	Key Features
Law Number 25 of 2007 on Investment	2007	- Establishes the principle of equal treatment for domestic and foreign investors
		- Specifies the restricted sectors and ownership percentages for foreign investment
		- Establishes the Investment Coordinating Board (BKPM) as the central regulatory body for investment coordination and facilitation
Law Number 40 of 2007 on Limited Liability Companies	2007	- Provides the legal basis and procedures for the establishment, operation, and dissolution of limited liability companies in Indonesia
		- Defines the rights and obligations of shareholders, directors, and commissioners
		- Regulates the capital structure, corporate governance, and corporate social responsibility of limited liability companies
Law Number 11 of 2020 on Job Creation (Omnibus Law)	2020	- Introduces a risk-based permit system to simplify and streamline the licensing process for various business activities
		Eliminates the negative investment list and introduces a positive list, which opens up more sectors for foreign investment and provides incentives for priority sectors
		- Relaxes foreign ownership restrictions in several sectors, such as health, education, and tourism
Regulation of the Government Number 5 of 2021 on the Organization of Risk- Based Business Licensing	2021	- Revises and harmonizes various laws and regulations related to labor, taxation, environment, and spatial planning
		- Implements the risk-based permit system under the Omnibus Law
		- Classifies business activities into low, medium-low, medium-high, and high risk categories - Reduces the number and types of permits required for each risk category
Regulation of the President Number 10 of 2021 on Investment Business Fields as amended by Regulation		- Enables online application and issuance of permits through the Online Single Submission (OSS) system
		- Implements the positive investment list under the Omnibus Law Specifies the sectors that are open, closed, or reserved for foreign investment

²⁵ Masitah, Dewi, Aris Munandar, and Lalu Wira Pria Suhartana. "Perubahan Bidang Usaha dalam Kegiatan Penanaman Modal Asing Berdasarkan Peraturan Presiden Nomor 10 Tahun 2021 Tentang Bidang Usaha Penanaman Modal". 10, no. 2 (May 2022).

²⁶ Sutrisno, Nandang, and Sigar Aji Poerana. "Reformasi Hukum dan Realisasi Investasi Asing pada Era Presiden Joko Widodo". Undang: Jurnal Hukum 3, no. 2 (2020): 237-266. DOI: 10.22437/ujh.3.2.237-266.



of the President Number 49 of 2021		- Provides incentives and facilities for priority sectors, such as tax holidays, tax allowances, import duty exemptions, and investment guarantees
		- Encourages investment in special economic zones, industrial estates, and border areas

Bilateral investment treaties (BITs)

Most recent BITs' dates of entry into force

Short Title	Year	Status
Indonesia - United Arab Emirates BIT	2021	In force
Indonesia - Singapore BIT	2021	In force
Indonesia - Qatar BIT	2018	In force
Indonesia - Russian Federation BIT	2009	In force

Source: UN Trade and Development, International Investment Agreements Navigator

Treaties with investment provisions (TIPs)

Most recent TIPs' dates of entry into force

Short Title	Year	Status
IPEF Clean Economy Agreement	2024	In force
Indonesia - United Arab Emirates CEPA	2023	In force
Indonesia - Korea, Republic of CEPA	2023	In force
RCEP	2022	In force

Source: UN Trade and Development, International Investment Agreements Navigator

Benefits Brought About Indonesian Investment Law

Although Indonesia's investment law has faced challenges, such as delays in enacting regulations and certain legal limitations, it has also brought significant benefits.²⁷ The development of these laws has helped attract foreign capital and improve the business environment.²⁸ The efforts of the Indonesian government, especially since 1958, have been crucial in shaping this positive progress. In short, the evolution of Indonesia's investment laws has generated many advantages for foreign businesses.²⁹ Historically, the Indonesian Authority has enacted three Investment Laws, namely the Foreign Investment Law Number 78 Year 1958,³⁰ Foreign Investment Law Number 1 Year 1967 and the Foreign Investment Law Number 25 Year 2007.³¹ Law 1958 was revoked in 1966. Law 1967 was also revoked and replaced by Law 2007. And Law 2007 has been continuously amended for coping with changing social conditions.³² Simultaneously, the Indonesian Authority has also signed a series of bilateral investment treaties with other countries.³³

²⁷ Rieta Lieke Lontoh. "Problems of Border Regions in Ensuring Legal Certainty Invest in Indonesia". 2 (2019): 118. <https://doi.org/10.33096/substantivejustice.v2i2.36>.

²⁸ B. Pramono and Ayu Larasati. "The Effect of Legal and Political on the Development of foreign Investment in Indonesia". *Journal Research of Social, Science, Economics, and Management* (2022). <https://doi.org/10.36418/jrssem.v1i8.134>.

²⁹ Pramono, B., & Larasati, A., 2022. The Effect of Legal and Political on the Development of foreign Investment in Indonesia. *Journal Research of Social, Science, Economics, and Management*. <https://doi.org/10.36418/jrssem.v1i8.134>; Wardah Yuspin and Fadil Muhammad. "The Impact of Foreign Investment on the Indonesian Economy". *International Journal of Social Science Research and Review* (2022). <https://doi.org/10.47814/ijssrr.v5i9.597>.

³⁰ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 78 Tahun 1958 (Law on the Foreign Investment Law, Law No. 78 Year 1958), arts. 3 and 6–13.

³¹ Indonesia. Undang-Undang tentang Penanaman Modal Asing, UU No. 1 Tahun 1967 (Law on the Foreign Investment Law, Law No. 1 Year 1967); Undang-Undang tentang Penanaman Modal Asing, UU No. 25 Tahun 2007 (Law on the Foreign Investment Law, Law No. 25 Year 2007), arts. 1, 3–5, 8, 10, 12, 20, 23, 25, 30, 32–33, and 37–38.

³² Indonesia. Rancangan Undang-Undang Republik Indonesia Tentang Cipta Kerja, UU No. 11 Tahun 2020 (Job Creation Law, Law No. 11 Year 2020).

³³ United Nations Conference on Trade and Development. "International Investment Agreements Navigator: Indonesia". Investment Policy Hub. Accessed October 19, 2024. <https://investmentpolicy.unctad.org/international-investment-agreements/countries/97/indonesia>; Dameria Kristina Pardede. "The Role of Legal Politics in Creating Legal Reform in Increasing Foreign Investment in Indonesia". *Strata Law Review* (2023). <https://doi.org/10.59631/slr.v1i2.68>.



Benefits of Indonesian Investment Laws

Firstly, with regard to Law 1958, as the first investment law since Indonesia's independence in 1945, it has shaped the rudiments of Indonesia's foreign business environment. The law has been used in land rights, tax relief, guarantees against expropriation for investments in vital domestic sectors and other aspects provide opportunities for foreign investors to initially invest in Indonesia.³⁴ This allowed foreign investors to make a range of stable investments in Indonesia at the time of independence. Simultaneously, foreign capital has injected strength into Indonesia's own economy.³⁵ Secondly, we turn our attention to Law 2007. In the duration of reforming Indonesian Investment Law after 2007, the legislators chose to simplify the procedure of investment licensing, facilitate foreign investment restrictions and streamline corporate tax regulations. These provide foreign investors with more chances in different sectors of investment in Indonesia and the lower costs brought about by new tax regulations motivate foreign direct investment.³⁶ Moreover, Law 2007 was amended in 2020 through Job Creation Law. The benefits of Omnibus Law are quite significant. Based on the data from Indonesia Ministry of Finance, Indonesia is still an attractive destination for foreign investors. At the end of 2020, foreign direct investment amounted to approximately IDR 412.8 trillion (USD 28.67 billion).³⁷

Benefits of the BITs signed by Indonesian Authority

BIT is an agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state.³⁸ The BIT facilitates investment by guaranteeing investment from one contracting State to another.³⁹ Ever since its independence, Indonesia has formulated 74 BITs with countries around the world.⁴⁰ Besides most favored nation treatment, fair and equitable treatment, full protection and security, expropriation, Indonesian BITs also revolve around the dispute settlement mechanism, which indicates that foreign investors may submit the disputes to international arbitration tribunal once the disputes arise. This move partially closed a loophole in the settlement of foreign investment disputes in Indonesia. This means that the shortcomings in the settlement of foreign investment disputes in Indonesia have been remedied. At the same time, Indonesia's business environment for foreign investors has also been improved.⁴¹ As mentioned, unlike BITs, which are specific treaties between two countries focusing exclusively on protecting and promoting investments made by each country within the other's territory, TIPs incorporate investment provisions as part of broader agreements that also address trade and economic matters. While BITs center solely on investment issues, TIPs may include trade agreements and wider partnerships, covering more than just investments. In summary, BITs concentrate exclusively on investments, whereas TIPs encompass investments along with trade and other economic elements, highlighting their broader scope.⁴²

³⁴ Aji, Tito Bramantyo. "The Indonesian Government Participation in International Investment Law and Its Reform". Indonesian Journal of International Law 19, no. 1 (2021): Article 1. <https://doi.org/10.17304/ijil.vol19.1.4>.

³⁵ Rian Saputra and Silaas Oghenemaro Emovwodo. "Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law". *Journal of Human Rights, Culture and Legal System* (2022). <https://doi.org/10.53955/jhcls.v2i1.21>.

³⁶ Nurianto Rs and Ahmad Fata'al Chuzaibi. "Government Regulations toward Investment Law in Indonesia". *Research, Society and Development* (2019). <https://doi.org/10.33448/RSD-V8I9.1295>.

³⁷ *ibid*; Ministry of Investment/Indonesia Investment Coordinating Board. Indonesia Investment Guidebook. Accessed October 19, 2024. https://ppid.bkpm.go.id/wp-content/uploads/2022/09/Indonesia_Investment_Guidebook.pdf.

³⁸ Wikipedia. "Bilateral Investment Treaty". https://en.wikipedia.org/wiki/Bilateral_investment_treaty. Accessed October 17, 2024.

³⁹ Dolzer, Rudolf, and Christopher Schreuer. *Principles of International Investment Law*. Oxford: Oxford University Press, 2012, 92.

⁴⁰ UNCTAD. "International Investment Agreements Navigator: Indonesia". UNCTAD Investment Policy Hub. Accessed October 17, 2024. <https://investmentpolicy.unctad.org/international-investment-agreements/>.

⁴¹ Petra Bunawan. "Foreign Investment in Indonesia The Legal Aspects under the New Indonesian Investment Law". 8 (2017): 01-14. <https://doi.org/10.28932/di.v8i2.719>.

⁴² Marx, Axel, and Pietro Mattioli. *The Potential of Trade and Investment Policies to Address Labour Market Issues in Supply Chains*. International Labour Organization. Accessed October 22, 2024. <https://www.ilo.org/publications/potential-trade-and-investment-policies-address-labour-market-issues-supply>.



Prospects to Indonesian Investment Law

With the implementation of the “Job Creation Omnibus Law” (Law No. 11 of 2020),⁴³ Indonesia has made positive strides in its investment environment. Simplifying the licensing process, transitioning to a positive investment list, and easing cross-sectoral ownership restrictions signify a significant step towards attracting more investors. Nevertheless, the continuously evolving legal framework may bring about uncertainty. The government’s ongoing efforts in stable regulation are crucial in fostering a stable, predictable environment and promoting inclusive economic growth.⁴⁴ Indonesia is undergoing significant changes in its legal environment as an investment hotspot, but challenges persist. Restrictive regulations, legal uncertainties, economic nationalism, and trade protectionism create obstacles for foreign investors. Issues such as bureaucratic inefficiencies, slow land acquisition, contract enforcement problems, inadequate intellectual property protection, and limits on cross-border data flow have also been reported.⁴⁵ Investors face inconsistent regulations that need to be resolved through a clearer, unified legal framework. While arbitration is allowed in judicial proceedings, court rulings remain inconsistent. Improving transparency and efficiency in the judicial system, providing legal training, and promoting arbitration could enhance the investment climate.⁴⁶ The government should simplify and coordinate regulations to prevent conflicts, strengthen intellectual property protection, and improve cross-border data flow. Reforms are needed in the licensing process for Foreign Direct Investment (FDI) projects to make it more transparent, swift, and easily understood by investors.⁴⁷ Raising awareness and providing training on intellectual property would boost investor confidence. A more transparent legal system with clear regulations and online legal guidance platforms would aid compliance and improve enforcement.⁴⁸ International cooperation is key. Indonesia should collaborate with other countries and organizations to address cross-border investment challenges and join international trade agreements to enhance legal standards and attract more investment. In summary, while Indonesia faces investment challenges, continued reforms and international collaboration offer opportunities to improve its attractiveness to foreign investors.⁴⁹

CONCLUSION

Indonesia’s investment environment is evolving positively, with a focus on stability and openness, driven by the crucial role of foreign investment in its economic growth. The enactment of the 2007 Investment Law marked a significant milestone, showcasing the nation’s commitment to refining its legal frameworks and fostering an investor-friendly climate while upholding sovereignty. However, challenges persist. Inconsistencies between domestic laws and Bilateral Investment Treaties (BITs) remain unresolved, impacting transparency in investment arbitration. Additionally, issues such as environmental concerns, localization policies, and legal uncertainties pose risks that necessitate urgent attention. Addressing these

⁴³ Indonesia. Rancangan Undang-Undang Republik Indonesia Tentang Cipta Kerja, UU No. 11 Tahun 2020 (Job Creation Law, Law No. 11 Year 2020).

⁴⁴ Tri Anggoro Putro. “Establishment of Omnibus Law in Solving Investment Issues in Indonesia”. *Indonesian Comparative Law Review* (2021). <https://doi.org/10.18196/ICLR.V3I2.12738>.

⁴⁵ Erikson Sihotang. “Legal Protection for Foreign Investment in the Disruptive Era in Indonesia”. *Journal of Law and Sustainable Development* (2023). <https://doi.org/10.55908/sdgs.v11i12.2387>.

⁴⁶ Hartini Atikasari. “Trends and issues of the investment legal revolution evidence of the omnibus law job creation”. 5 (2021). <https://doi.org/10.15294/JPL.V5I1.29884>; E. Kusuma and S. Anisah. “The Urgency of RCEP in the Development of Indonesia Investment Law”. *Journal of Law and Legal Reform* (2022). <https://doi.org/10.15294/jllr.v3i2.55169>.

⁴⁷ Ivanovenska Ardy Aqilla Yudhistira. “Impact of Foreign Investment on Indonesia: Analysis of Socio-Legal Problems”. *JURNAL HUKUM SEHASEN* (2023). <https://doi.org/10.37676/jhs.v9i2.5038>.

⁴⁸ Ireina Rahayanti Nural. “Dynamics Of Investment Regulation: A Legal Review Of Law No. 25 Of 2007 On Investment In Indonesia In Overcoming The “Investment Ghost”.” *Jurnal Syntax Transformation* (2023). <https://doi.org/10.46799/jst.v4i9.820>.

⁴⁹ Keny Gainau, Supriyadi and Susanto. “A Study of the Omnibus Law Method in Law Establishment in Indonesia”. *International Journal of Research in Social Science and Humanities* (2022). <https://doi.org/10.47505/ijrss.2022.v3.9.6>.



concerns represents crucial areas for improvement by Indonesian authorities to enhance investor confidence and optimize the business climate. It is recommended that the government focuses on bolstering risk mitigation for businesses through the enhancement of Bilateral Investment Treaties and overseas investment protection mechanisms.⁵⁰ Indonesia's investment laws pose several challenges and risks, yet addressing them through legislative, enforcement, and judicial measures can significantly enhance the investment climate. Legislative improvements involve refining existing laws to ensure coherence and consistency, aligning them with the evolving needs of the investment landscape. Enhanced enforcement ensures law adherence; swift, fair judiciary fosters stability. These measures mitigate risks, boost Indonesia's appeal, and promote reliable investments.⁵¹

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⁵⁰ Li, Jingbo. "Research on the Risk of China's Direct Investment in Five Central Asian Countries Against the Background of 'The Belt and Road Initiative'." In *Proceedings of the 4th International Conference on Economy, Judicature, Administration and Humanitarian Projects (JAHP 2019)*, January 2019, 10. <https://doi.org/10.2991/jahp-19.2019.184>.

⁵¹ Januari Nasya Ayu Taduri. "The Legal Certainty and Protection of Foreign Investment Againsts Investment Practices in Indonesia". *Lex Scientia Law Review* (2021). <https://doi.org/10.15294/lesrev.v5i1.46286>.



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