

Legal protection for investment in Indonesia

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Abstract

Investment serves as a crucial instrument for driving economic growth in Indonesia and financing national development. Enhancing Indonesia's development capacity cannot rely solely on internal funds; it requires leveraging external financing sources—such as international loans, development aid, and, most notably, foreign investment. Investment is a vital economic activity that supports the business sector within a country. Investors play a critical role in assisting the state with the financing required for national infrastructure development. Given the importance of investment to the economy and the business landscape, such investments require state protection. This study aims to examine the impact of investment on investors in Indonesia and the legal protections afforded to them. It employs a normative legal research method, analyzing documents and utilizing various primary and secondary data sources—including legislation, court rulings, legal theories, and scholarly opinions. The study is descriptive in nature, with the author seeking to provide an in-depth, detailed, and comprehensive description of the subject matter. The findings indicate that the Investment Law is essentially a statute crafted to create an appealing environment for investment. Developing nations often lack strong bargaining power against the forces of globalization, leaving them in a weakened position. The Investment Law focuses solely on capital investment, yet such investments often entail the "embedding" of other interests within the country—such as the interests of foreign states and corporations, as well as implications for environmental sustainability. Foreign investment serves as a crucial source of funding for Indonesia's national-scale development. However, major obstacles affecting the investment climate include regulatory uncertainty, sudden policy shifts, legal disputes with the government, bureaucratic hurdles, corruption, political and social risks, and inconsistent law enforcement. Furthermore, macroeconomic risks—such as economic crises and exchange rate fluctuations—also impact investment stability. Consequently, legal protection must not merely serve as a formal instrument; it requires the backing of a stable, consistent, and transparent legal framework that is free from political interference. The government must continue to enhance the effective implementation of regulations and provide robust legal certainty to minimize conflict and boost Indonesia's appeal as a stable, secure, sustainable, and profitable investment destination for both foreign and domestic investors.

Keywords: Protection, law, investment

Introduction

Investment law in Indonesia focuses not only on increasing capital flows but also on regulations that support sustainable development and the protection of social and environmental rights. As part of Indonesia's broader legal system, existing investment regulations reflect the government's efforts to create a business-friendly climate while maintaining a balance between economic and social interests ^[1].

Investment serves as a crucial instrument for driving economic growth in Indonesia and is utilized to finance national development. The primary source of funding for national development in Indonesia is domestic capital, derived from government budgets, public savings, and domestic investments. These domestic funds originate from various sources, including government taxes and levies, public savings and investments, and profits generated by State-Owned Enterprises and the private sector. These funds support diverse development programs spanning infrastructure, education, healthcare, and other strategic sectors. Enhancing Indonesia's development capacity requires going beyond reliance on internal funds; it also necessitates leveraging external financing sources—such as international loans, development aid, and, most notably, foreign investment ^[2].

When foreign investment operations are undertaken, the possibility of disputes arising between foreign investors and

the Indonesian Government remains. Such issues stem from various causes, including breaches of investment agreements by either the investor or the government, the government's revocation of investment licenses, and violations of investor rights enshrined in the Investment Law—such as instances of nationalization or state takeover of foreign companies. The protection of these investments is inextricably linked to the various challenges and risks foreign investors face regarding their investment activities in the host country ^[3]. Numerous factors contribute to risk in foreign investment activities, including political instability and financial or economic crises in the host country, which can lead to delays in investment projects previously agreed upon with foreign investors. To address these issues, the Indonesian government has established legal protections for investors through Law No. 25 of 2007 concerning Investment. This regulation was enacted to ensure legal certainty, safeguard investor assets, facilitate the repatriation of capital and profits, and provide mechanisms for dispute resolution ^[4].

Under Law No. 25 of 2007, investment is defined as any form of capital investment activity whether by domestic or foreign investors undertaken to conduct business within the territory of the Republic of Indonesia. Capital markets play a crucial role, serving as both a source of business financing and an investment vehicle for the public ^[5].

Capital markets are economic instruments heavily influenced by various information-bearing events, stemming from either internal or external conditions. Internal events include announcements regarding dividend distributions, stock splits, the release of financial statements, and the like. Meanwhile, external events may be economic or non-economic in nature, encompassing legal, social, cultural, and security matters, as well as political developments and unpredictable adverse events such as natural disasters or extraordinary occurrences. Investment is a vital economic activity that supports the business sector within a country; it stimulates activity and fosters new business ventures, thereby reducing unemployment, boosting public purchasing power, and driving national income and economic growth. Investors play a pivotal role in assisting the state with the financing of national infrastructure development ^[6]. Consequently, to further enhance its appeal to investors, the state needs to present attractive offers that do not place an undue burden on them; ideally, these terms should be codified in regulations to bolster investor confidence. However, such measures require in-depth analysis to avoid negative perceptions or social conflict. Regulations must be carefully crafted to ensure balance and fairness, fostering a climate of mutual comfort for investment activities. This study aims to examine the impact of investment on investors in Indonesia and the legal protections afforded to them ^[7].

Method

This study employs a normative legal research method, which involves the analysis of documents using various primary and secondary data sources—such as legislation, court rulings, legal theories, and scholarly opinions. The research is descriptive in nature, as the author seeks to describe the subject or object of study in a comprehensive, detailed, and extensive manner. This method is typically used to address or resolve a specific issue through the processes of data collection, analysis, classification, conclusion formulation, and reporting.

Results and Discussion

1. The impact of Law No. 25 of 2007 concerning Investment on investors.

Comprehensive and detailed policies and regulations—combined with guidance, oversight, and consistent law enforcement—will yield positive results for the national interest. These positive impacts include job creation for the local workforce; the development of specific skills and competencies among local workers; the fostering of an entrepreneurial spirit among local businesspeople; and the generation of adequate, decent incomes. Furthermore, local entrepreneurs may be motivated to collaborate with foreign entities in production, leading to higher-quality goods and services. The state can also generate income tax or value-added tax revenue from various business activities, thereby improving the quality of life for the entire population, including those in the executive, legislative, and judicial branches. However, while opening investment opportunities to foreign businesses offers benefits, it inevitably entails certain negative impacts on national interests ^[8].

The enactment of the Investment Law carries significant implications. In terms of investment appeal, the Investment Law acts as a "red carpet" designed to attract a massive influx of investment.

The Investment Law itself does not explicitly address how to anticipate or mitigate potential negative impacts. Nevertheless, concerns regarding investment require careful scrutiny. First, because developing nations lack strong bargaining power against the forces of globalization, their position tends to weaken. Local capital struggles to compete with global capital, and local technology and human resources often fail to compete with their global counterparts ^[9].

Concerns regarding global investment generally center on the dominance of wealthy nations, capital owners, multinational corporations, and international institutions acting as major powers, as well as the vulnerability of weaker parties—specifically governments, local communities, and the environment in developing nations ^[10]. The Investment Law focuses solely on the act of investment itself; however, embedded within such investments are other elements—such as the interests of foreign nations, the agendas of foreign corporations, and concerns regarding environmental sustainability ^[11]. Other nations graft their economic interests onto this country, while global corporations extend their reach worldwide to ensure stability should a crisis affect their operations elsewhere. Many global investments entail more than just capital; they involve the sovereignty of other nations, corporate leverage and bargaining power, and expanded access to foreign interests factors that may clash with local priorities such as national sovereignty, domestic enterprises, and the well-being of the local population and environment. The Investment Law's pragmatic focus on investment is understandable, given its specific nature and purpose. Nevertheless, now that the law has been enacted, the government bears the responsibility of identifying precisely what else is embedded within these foreign investments ^[12].

2. Legal Protection Provided for Investors in Capital Investment in Indonesia.

The law has a duty to protect individuals and must be upheld to safeguard human dignity. Although life's stages often proceed smoothly, obstacles arising from legal issues can sometimes occur. It is essential to address all legal violations to ensure the law functions effectively ^[13]. To maintain public order, the law must guarantee legal certainty. Legal certainty refers to provisions that are not merely explicitly stated in the law but more specifically exist within the context of written norms. According to Fensholt M. Wantu, a law that fails to affirm the certainty of values risks losing its essence, given that the law must serve as a behavioral guide for everyone ^[14].

This conceptual approach to law focuses on the outcomes of specific case rulings. One method of understanding legal application centers on the primary objective of viewing the law as an instrument for achieving justice. The foundation of legal interpretation lies in applying regulations to specific cases impartially, without favoring any of the parties involved. Thanks to the existence of a legal code, individuals can anticipate the consequences of compliance. This extends to ensuring parity with domestic investors regarding rights and obligations ^[15]. This entails fair treatment free from nationality-based discrimination, allowing investors to operate in accordance with applicable laws without facing detrimental, preferential treatment. Furthermore, the protection of assets and capital constitutes a cornerstone of Indonesia's legal protection framework ^[16].

The law guarantees that capital and assets invested will not be unilaterally confiscated, expropriated, or nationalized without fair compensation and transparent legal procedures. This guarantee is crucial for mitigating the risk of unilateral seizure by the state or other parties, which could result in significant losses for investors. Additionally, the ease of repatriating capital and profits is an integral part of the provided legal protection^[17]. The Investment Law guarantees that investors can readily transfer their invested capital and accrued profits back to their home countries without facing burdensome administrative obstacles. This is crucial for maintaining capital flows and investor confidence in Indonesia's economic stability. However, in practice, legal challenges and risks persist, potentially hindering the investment climate in the country^[18].

Beyond legal factors, Indonesia's fluctuating economic conditions also impact the investment climate. Between 2004 and 2019, investment slowed due to the global economic crisis, shifts in fiscal and monetary policies, and socio-political dynamics affecting national economic stability. Therefore, legal protection serves not only as a safeguard for investors but also as a strategic instrument to attract long-term investment, establish legal certainty, and foster stable, sustainable economic growth^[19].

This study focuses on examining the forms of legal protection afforded to both domestic and foreign investors in Indonesia, evaluating their practical implementation, and analyzing their impact on economic growth and national development policies. By understanding the challenges, risks, and mechanisms of this legal protection, it is hoped that investment management strategies can become more effective, conflicts minimized, and Indonesia's appeal enhanced as a preferred destination for investments that are safe, sustainable, and profitable for all parties. The principle of equality must be upheld within the legal system, free from discrimination^[20].

Currently, foreign investment is governed by various applicable regulations rooted in Law Number 25 of 2007 concerning Investment. This Law serves as the legal framework providing guarantees and legal certainty to investors, enabling them to invest their funds securely and ensuring protection against detrimental actions by the government or other parties. Key aspects of this protection include the principles of legal certainty and non-discrimination; the Investment Law explicitly guarantees that foreign investors enjoy rights and obligations balanced with those of domestic investors. This entails fair treatment without discrimination based on nationality, allowing investors to operate in compliance with applicable laws without facing prejudicial treatment^[21].

Furthermore, the protection of assets and capital constitutes a cornerstone of Indonesia's legal protection framework. The Law guarantees that capital and assets invested will not be unilaterally confiscated, expropriated, or nationalized without fair compensation and adherence to transparent legal procedures. This guarantee is crucial for mitigating the risk of unilateral state or third-party expropriation, which could result in significant financial losses for investors. Additionally, the ease of repatriating capital and profits is an integral component of the legal protections provided. The Investment Law guarantees that investors can easily repatriate capital and profits derived from their investments to their home countries without facing burdensome administrative obstacles. This is crucial for maintaining

capital flows and investor confidence in Indonesia's economic stability. However, in practice, legal challenges and risks persist, which can hinder the investment climate in Indonesia^[22].

Beyond legal factors, Indonesia's fluctuating economic conditions also influence the investment climate. Between 2004 and 2019, investment slowed due to the global economic crisis, shifts in fiscal and monetary policies, and socio-political dynamics affecting national economic stability. Consequently, legal protection serves not only as a safeguard for investors but also as a strategic instrument to attract long-term investment, establish legal certainty, and foster stable, sustainable economic growth. This study examines the forms of legal protection afforded to domestic and foreign investors in Indonesia, evaluates their practical implementation, and analyzes their impact on economic growth and national development policy. By understanding these challenges, risks, and legal protection mechanisms, it is hoped that investment management strategies can become more effective—minimizing conflict and enhancing Indonesia's appeal as a destination for safe, sustainable, and mutually profitable investment^[23].

Conclusion

1. The Investment Law is clearly nothing more than a statute crafted to look as attractive as possible in order to draw in a flood of investment. First, because developing nations lack strong bargaining power in the face of the forces of globalization, their positions tend to weaken. Local capital struggles to compete with global capital, while local technology and human resources are outmatched by their global counterparts. The Investment Law addresses only the mechanics of investment itself, yet embedded within that investment are other elements—such as the interests of foreign nations and foreign corporations, as well as implications for the country's environmental sustainability.

2. Foreign Direct Investment (FDI) serves as a crucial source of funding for Indonesia's national development, yielding positive impacts on economic sector growth, the transfer of technological knowledge, and job creation. The Indonesian government has established an adequate legal framework—specifically Law No. 25 of 2007 concerning Investment—to protect foreign investors; this framework encompasses legal certainty, non-discriminatory treatment, asset and capital protection, and the ease of repatriating capital and profits. Nevertheless, foreign investors still face various challenges and legal risks during implementation. Regulatory uncertainty, abrupt policy shifts, legal disputes with the government, bureaucratic hurdles, corrupt practices, political and social risks, and inconsistent law enforcement act as major impediments affecting Indonesia's investment climate. Furthermore, macroeconomic risks—such as economic crises and exchange rate fluctuations—also impact investment stability. Consequently, legal protection must not merely be a formal instrument; it requires the support of a stable, consistent, and transparent legal system that is free from political interference. The government must continue to enhance the effective implementation of regulations and provide robust legal certainty to minimize conflicts and bolster Indonesia's appeal as a stable, secure, sustainable, and profitable investment destination for both foreign and domestic investors. In this way, foreign direct investment can optimally contribute to driving inclusive and sustainable national development.

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