

**FOREIGN INVESTOR PROTECTION: JOB CREATION LAW AND
BILATERAL INVESTMENT TREATY STANDARDS ALIGNMENT**

THESIS



By:

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Student Number: 21410106

**INTERNATIONAL PROGRAM
UNDERGRADUATE PROGRAM IN LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2025

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THESIS

Presented as the Partial Fulfillment of the Requirements to Obtain a Bachelor's
Degree at the Faculty of Law
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Yogyakarta



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Legal Protection of Foreign Investors in Foreign Direct Investment Based on Job Creation Law

Telah diperiksa dan disetujui Dosen Pembimbing Tugas Akhir untuk diajukan
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Yogyakarta, 14 September 2025
Dosen Pembimbing Tugas Akhir,

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Legal Protection of Foreign Investors in Foreign Direct Investment Based on Job Creation Law

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**Foreign Investor Protection: Job Creation Law and Bilateral Investment
Treaty Standards Alignment**

Has been examined and approved by the Language Advisor to be submitted
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Yogyakarta, August 25th, 2025

Yang Membuat Pernyataan,



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MOTTO

You can't go back and change where you started, but you can start where you are and change the ending.

DEDICATION

This thesis is dedicated to:

First and foremost, I want to express my deepest gratitude to Allah *Subhanahu wa Ta'ala*. Throughout this journey, there were moments of doubt, exhaustion, and uncertainty, but by His mercy, I found strength, clarity, and peace. It was only with His help that I was able to complete this thesis. I am truly thankful for the calm He has placed in my heart, the focus He has given me during difficult times, and the resilience to keep going. I am also deeply grateful for the people around me who supported, encouraged, and reminded me that I was not alone in this process.

To my beloved parents, thank you for always being there, for your constant prayers, endless support, and unconditional love. Your care and encouragement have carried me through every step of this journey. I'm forever grateful for the strength you have given me, both in words and silence, and for believing in me even when I doubted myself.

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PREFACE

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I would not have reached this point without the constant support, heartfelt prayers, and unwavering encouragement of my beloved parents, family, lecturers, and friends. With deep gratitude, I would like to sincerely thank the following individuals:

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ABSTRACT

The enactment of Indonesia's Job Creation Law (Law Number 6 of 2023) marked a significant effort to enhance the country's investment environment and attract greater foreign direct investment (FDI). However, despite its objective of regulatory simplification, the law has raised concerns regarding legal certainty, labour rights, environmental protection, and the effectiveness of dispute resolution mechanisms. This research explores how the Job Creation Law aligns with international standards, particularly those established by the International Centre for Settlement of Investment Disputes (ICSID). It assesses its impact on foreign investor protection. This study analyses legal frameworks, international investment treaties, and relevant secondary sources using a conceptual approach. The research identifies critical gaps in the Job Creation Law, including the absence of comprehensive investor-state dispute settlement (ISDS) provisions, inconsistent regulatory enforcement, and potential risks related to labour flexibility and environmental deregulation. To address these issues, the thesis proposes harmonizing domestic investment regulations with BIT principles, strengthening institutional mechanisms, and enhancing legal safeguards. The findings suggest that while the Job Creation Law introduces important reforms, further alignment with international norms is essential to provide legal certainty, promote sustainable investment, and ensure balanced protection for investors and the host state.

Keywords: *Foreign Direct Investment (FDI), Job Creation Law, Legal Protection, BIT Standards.*

CHAPTER I

INTRODUCTION

A. Context of Study

Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation Law in Indonesia was enacted to create simple and balanced regulations and licensing.¹ This is due to the complexity of the previous law, which discouraged foreign investors from investing in Indonesia.² Since foreign direct investment (FDI) is one of the main drivers of Indonesia's economic growth,³ the Job Creation Law was created to improve Indonesia's investment environment and attract more FDI.⁴

Article 25 of Law Number 25 of 2007 on Investment regulates matters concerning the licensing process for foreign direct investment.⁵ Due to its excessive approval requirements, many foreign investors were discouraged from investing in Indonesia.⁶ However, after the enactment of the Job Creation Law, Article 12 mandated a simplified licensing system. Therefore, Indonesia introduced a system called Online Single Submission (OSS).⁷ It aims to streamline the licensing process

¹ Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation Law.

² Indonesia. *Booklet UU Cipta Kerja*. Jakarta: Ministry of Education and Culture, Directorate General of Higher Education, 2020. <https://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>. Accessed October 16, 2024.

³ Presidential Regulation Number 49 of 2021 on Amendments to Presidential Regulation Number 10 of 2021 on Business Fields Open to Investment.

⁴ Khaliq, Abdul, and Ilan Noy. "Foreign Direct Investment and Economic Growth: Empirical Evidence from Sectoral Data in Indonesia." 2007.

⁵ Law Number 25 of 2007 on Investment, art 25.

⁶ Taduri, J. N. A. "The Legal Certainty and Protection of Foreign Investment against Investment Practices in Indonesia." *Lex Scientia Law Review* 5, no. 1 (2021): 119-138.

⁷ Government Regulation Number 5 of 2021 on the Implementation of Risk-Based Business.

for foreign investors, eliminate excessive approval requirements, and encourage them to invest in Indonesia.⁸

Law Number 13 of 2003 on Manpower regulates matters related to severance pay, hiring and firing procedures, and working hours. Despite that, many foreign investors did not choose Indonesia as the primary option for conducting FDI due to high labour costs and the difficulty of laying off workers compared to other countries. To solve those issues, the Manpower law was amended by the Job Creation Law Article 81, which regulates matters related to severance pay, hiring and firing procedures, and working hours in the Manpower law, which aims to create a more flexible contract and severance pay terms and introduce provisions for outsourcing to eliminate the high labour costs and difficulty of laying off workers, which are more favourable for employers.⁹

Law Number 32 of 2009, Articles 22 to 27 on Environmental Protection and Management, regulates matters related to environmental impact assessment.¹⁰ The environmental impact assessment (AMDAL) evaluates projects that may have an impact on the environment, ranging from low-risk to medium-risk to high-risk. A thorough evaluation is undertaken to protect the environment from hazardous projects. Even so, the process is considered slow and often causes significant delays in operations. As a result, the Job Creation Law has limited these assessments to

⁸ Setiawati, Diana, Chrisna Bagus Edhita Praja, Hary Abdul Hakim, and Muhammad Bagus Boy Saputra. "Indonesian Model Foreign Direct Investment (Omnibus Law): Learning from China." Department of Financial and Economic Law, Asia University, Taiwan; Faculty of Law, Universitas Muhammadiyah Magelang, Indonesia, 2020.

⁹ Mahy, Petra. "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments." *Asian Journal of Comparative Law* 17 (2022): 51–75.

¹⁰ Law Number 32 of 2009 on Environmental Protection and Management, art 22-27.

only high-risk projects, streamlining the process detailed in Government Regulation Number 22 of 2021 on Environmental Protection and Management.¹¹

Although beneficial in some aspects, the Job Creation Law has flaws that create challenges for foreign investors.¹² The lack of transparency and public involvement in making the law raised many concerns, as the law, which needs to reflect society's views, was seen as lacking and rushed.¹³ This is considered a violation of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations, which advocates transparency in law-making and encourages public involvement, making the law formally flawed. Moreover, the law should not contradict any existing or higher laws, which the Job Creation Law fails to adhere to, resulting in overlap and creating legal uncertainty for foreign investors.¹⁴

In the manpower sector, creating a more flexible contract, severance pay terms, and introducing provisions for outsourcing can be seen as a solution to combat the high labour costs and difficulty of laying off workers, which creates a better climate for investment.¹⁵ However, implementing Article 81 of the Job Creation Law involves hefty costs. Reducing workers' human rights guarantees is

¹¹ Government Regulation Number 22 of 2021 on Environmental Protection and Management.

¹² Dewi, Anak Agung Sagung Laksmi, Mella Ismelina Farma Rahayu, Ni Made Puspasutari Ujianti, Hartini Saripan, and Anak Agung Ngurah Adhi Wibisana. "The Urgency of Indonesian Omnibus Law Implementation Related to Foreign Investment." *Substantive Justice* 6, no. 2 (December 2023): 83–93.

¹³ Siregar, Audy Amelia. "Legal Studies on Omnibus Law Issues in Indonesia." *International Asia of Law and Money Laundering* 1, no. 4 (December 2022).

¹⁴ Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations.

¹⁵ Putro, Tri Anggoro. "Establishment of Omnibus Law in Solving Investment Issues in Indonesia." *Indonesian Comparative Law Review* 3, no. 2 (2021): 105–123.

unavoidable, creating disharmony between employers and employees. This can lead to social unrest, a concern for foreign investors who prioritize stability and adherence to international labour standards.¹⁶

In the environmental sector, limiting the environmental impact assessment (AMDAL) to only high-risk projects, as well as streamlining the process to eliminate delays in their operations, may seem beneficial for foreign investors. Even so, the implementation of Government Regulation Number 22 of 2021 on Environmental Protection and Management¹⁷, which limits the evaluation to only the high-risk projects, can create problems for the low-risk and the medium-risk projects not assessed by AMDAL, reducing environmental protection that can potentially damage the environment and develop disputes related to environmental degradation that can create drawbacks for the investors.¹⁸

The Job Creation law also lacks provisions for resolving investor-state disputes, which creates legal uncertainty for foreign investors engaged in FDI. While the dispute resolution mechanisms available to foreign investors in Indonesia are improving, they still need to be improved.¹⁹ Domestic courts are often viewed as inefficient, inconsistent, and unpredictable. At the same time, uncertainty around

¹⁶ Samawati, Putu, and Shinta Paramita Sari. "Problematic of the Draft of Omnibus Law on Job Creation in Indonesia." *Journal of Xi'an University of Architecture & Technology*, 2020.

¹⁷ Government Regulation Number 22 of 2021 on Environmental Protection and Management.

¹⁸ Sembiring, Raynaldo, Isna Fatimah, and Grita Anindarini Widyarningsih. "Indonesia's Omnibus Bill on Job Creation: A Setback for Environmental Law?" *Chinese Journal of Environmental Law* 4 (2020): 97–109.

¹⁹ Khatimah, Khusnul. "The Dispute Settlement over Foreign Investment in Indonesia." *UNES Law Review* 5, no. 4 (2023).

Bilateral Investment Treaties (BITs) and protections under international frameworks can discourage foreign investors.²⁰

With Indonesia's new Capital City (IKN) development, the government also enacted a regulation for Investment in IKN. Law Number 3 of 2022 on the National Capital (IKN Law) was issued to attract investors to IKN.²¹ Due to the high amount of capital needed to develop the IKN, the government of Indonesia issued Law Number 3 of 2022 on the National Capital (IKN Law) to help address this issue by giving investment incentives, introducing the Public-Private Partnerships (PPP) schemes, and streamlining licensing processes under the Job Creation Law. Since this law only applies to IKN and not the entirety of Indonesia, this will not be seen as an issue in this thesis, following the problems of the Job Creation Law itself.²²

Therefore, in this thesis, the writer will assess the Job Creation Law and suggest legal protection for foreign investors in the FDI framework by addressing the legal uncertainty due to the inconsistency of regulation, challenges in accessing fair dispute resolution mechanisms, weak enforcement of rules and investors' rights, and bureaucratic complications such as corruption in the licensing process.²³ This can ultimately promote a more conducive and stable environment for foreign investment, ensuring compliance with international standards and promoting

²⁰ United Nations Conference on Trade and Development (UNCTAD). *Investment Policy Hub: Bilateral Investment Treaties (BITs)*. <https://investmentpolicy.unctad.org/international-investment-agreements>. Accessed December 3, 2024.

²¹ Law Number 3 of 2022 on the National Capital (IKN Law)

²² Kodir, A., N. Hadi, I. K. Astina, D. Taryana, N. Ratnawati, and Idris. "The Dynamics of Community Response to the Development of the New Capital (IKN) of Indonesia." *In Development, Social Change and Environmental Sustainability*, (2021): 202-224.

²³ "Analisis Perlindungan Hukum Investasi Asing Pasca UU Cipta Kerja." *Law & Justice*. <https://law-justice.co/artikel/152905/analisis-perlindungan-hukum-investasi-asing-pasca-uu-cipta-kerja/>. Accessed October 16, 2024.

sustainable investment practices, which is crucial for Indonesia's economic growth and development.

B. Problem Formulation

According to the background of the study, the problem formulations for this research are:

1. To what extent has the investment law reform under the Job Creation Law changed the legal protection for Foreign Direct Investment?
2. How does the Job Creation Law align with Bilateral Investment Treaty standards in protecting foreign investors?

C. Research Objectives

The objectives of this research are:

1. To assess how the Job Creation Law's investment reforms have affected the protection of Foreign Direct Investment.
2. To assess the extent to which the Job Creation Law aligns or differs from Bilateral Investment Treaty standards in protecting foreign investors.

D. Originality of Research

This research examines the impact of the Job Creation Law on the legal protection provided to foreign investors within the foreign direct investment framework. While previous studies have addressed legal protection for foreign investors, this research aims to assess how the reforms introduced by the Job Creation Law affect foreign investment and investor protection. It also seeks to determine whether the Job Creation Law aligns with international investment standards.

First, Januari Nasya Ayu Taduri wrote research on “The Legal Certainty and Protection of Foreign Investment Against Investment Practices in Indonesia,” where she explored whether foreign investors are sufficiently protected under Indonesian law. She highlighted areas where the law could be improved to ensure legal certainty and foster a more favourable investment environment. Her focus is on providing general research on Indonesia’s Investment Law and its impact on foreign investors.

Second, in “Legal Studies on Omnibus Law Issues in Indonesia,” research was written by Audy Amelia Siregar. She addressed the gap between the expectations of the Omnibus Law and its actual implementation in Indonesia. She explored the nature of the Omnibus Law, focusing her research on the implementation of the law to determine whether it can resolve or exacerbate regulatory issues.

Third, Tri Anggoro Putro's research “Establishment of Omnibus Law in Solving Investment Issues in Indonesia” addressed the appropriateness of the Omnibus Law for improving Indonesia’s investment environment. The writer highlighted that Indonesia’s investment environment was performing exceptionally well compared to other Asian countries, making the reform questionable. In contrast, this research mainly focuses on the unattended consequences of the Omnibus Law, such as legal uncertainty and the reduction of workers' human rights protection.

Fourth, research conducted by Adnan Hamid, “Analysis of the Importance of Omnibus Law ‘Cipta Kerja’ In Indonesia,” addressed the potential consequences

of the Job Creation Law on labour rights. This research focuses on how the job creation law could compromise constitutional rights in favour of investment priorities. Neglecting the labour rights of Indonesian citizens raises questions about the alignment of law and constitutional assurance.

Fifth, Putu Samawati and Shinta Paramita Sari wrote research on “Problems of the Draft of Omnibus Law On Job Creation in Indonesia,” where they analysed the advantages and disadvantages of the Omnibus Law, particularly the competing interests of the balance of investment growth, labour rights, and environmental standards. They analyse the omnibus law favouring employers over employees and concerns about the expanding executive power in Indonesia.

No.	Sources	Outcome of the Research	Main Differences
1.	Taduri, J. N. A. "The Legal Certainty and Protection of Foreign Investment Against Investment Practices in Indonesia." <i>Lex Scientia Law Review</i> 5, no. 1 (2021).	Explored whether foreign investors are sufficiently protected under Indonesian law. Highlight areas where the law could be improved to ensure legal certainty and foster a more favourable investment environment.	This research provides general research on Indonesia’s Investment Law and its impact on foreign investors.
2.	Siregar, Audy Amelia. "Legal Studies on Omnibus Law Issues in Indonesia." <i>International Asia of Law and Money Laundering</i> 1, no. 4 (December 2022).	Addressed the gap between the expectations of the Omnibus Law and its actual implementation in Indonesia.	This research explores the nature of the Omnibus Law. It focuses her research on analysing the implementation of the Omnibus Law to address whether the law can resolve or worsen the regulatory issues.

3.	Putro, Tri Anggoro. "Establishment of Omnibus Law in Solving Investment Issues in Indonesia." <i>Indonesian Comparative Law Review</i> 3, no. 2 (2021).	Addressed the issue of the appropriateness of the omnibus law for improving Indonesia's investment environment. It highlights that Indonesia's investment environment was performing exceptionally well compared to other Asian countries, making the reform questionable.	This research mainly focuses on the unattended consequences of the Job Creation Law, such as legal uncertainty and a reduction in workers' human rights protection.
4.	Hamid, Adnan. "Analysis of the Importance of Omnibus Law 'Cipta Kerja' in Indonesia." <i>International Journal of Scientific Research and Management</i> 8, no. 8 (2020).	Addresses the potential consequences of the Job Creation Law on labour rights.	This research focuses on how the Job Creation law could compromise constitutional rights in favour of investment priorities. Neglecting the labour rights of Indonesian citizens raises questions on the alignment of law and constitutional assurance.
5.	Samawati, Putu, and Shinta Paramita Sari. "Problematic of the Draft of Omnibus Law on Job Creation in Indonesia." <i>Journal of Xi'an University of Architecture & Technology</i> , 2020.	Analysing the advantages and disadvantages of the Job Creation Law, particularly on the competing interests of the balance of investment growth, labour rights, and environmental standards.	This research analyses the Job Creation law, favouring employers over employees, and concerns about the expanding executive power in Indonesia.

E. Literature Review

1. Foreign Direct Investment Framework

Foreign Direct Investment (FDI) occurs when a business or individual invests in a country other than its own. It includes buying stock in a company, opening branches or subsidiaries, or forming joint ventures with local companies. FDI presents benefits, including new capital, job creation, and increased production capacity, which boost the country's economic growth.²⁴ To attract foreign investors, a country must provide strong legal protection and a stable and secure investment environment. Foreign investors might hesitate to invest without legal protection, limiting economic opportunities and growth.²⁵

To encourage investment and economic growth globally, international norms governing FDI prioritize creating a fair and secure environment for foreign investors and focusing on investor rights, legal protection, and dispute resolution mechanisms. It ensures that foreign investors are treated equally and protected from expropriation.²⁶ Organizations such as the World Trade Organization (WTO) and the International Centre for Settlement of Investment Disputes (ICSID) help to protect these rights by providing legal frameworks and sufficient dispute resolution mechanisms. Furthermore, Bilateral Investment Treaties (BITs) and multilateral agreements offer further protection, promoting transparency and stability.²⁷

There are many opportunities for FDI in emerging markets, including growing customer markets, untapped resources, and investment in infrastructure.

²⁴ Kawai, Hiroki. "International Comparative Analysis of Economic Growth: Trade Liberalization and Productivity." *Developing Economies* 32 (1994): 372-97.

²⁵ Hatchondo, Juan Carlos, and Leonardo Martinez. "Legal Protection to Foreign Investors." *Economic Quarterly* 97, no. 2 (2011): 175-187.

²⁶ Moosa, Imad A. *Foreign Direct Investment: Theory, Evidence, and Practice*. London: Palgrave Macmillan, 2002.

²⁷ United Nations Conference on Trade and Development, Division on Investment, Technology and Enterprise Development. *Transnational Corporations*, vol. 12, no. 2 (August 2003).

However, these opportunities come with challenges, including political instability, complex regulation, and underdeveloped infrastructure, which are risks for investors. Other issues like corruption, currency instability, and limited access to skilled labour make investment difficult. Therefore, the government must guarantee strong legal protection and a stable and secure environment for FDI in this region.²⁸

2. Theory of Legal Protection for Foreign Investors

Legal certainty and protection mechanisms are crucial to create a stable and secure environment for foreign investors. They guarantee investors' property rights, uphold the contract, and protect them from unlawful expropriation. A clear and consistent law encourages investors to operate, knowing they are sufficiently protected. The theory of legal protection emphasizes principles such as national treatment and non-discrimination, protection against expropriation, fair and equitable treatment (FET), and complete protection and security.²⁹ These principles aim to safeguard investors from arbitrary actions and ensure stability in the legal and regulatory framework. Legal certainty and protection are essential in an emerging market due to the less predictable legal framework.³⁰ Compared with the global standard provided by BITs, MITs, and FTAs, countries with strong and

²⁸ Babatunde, Solomon, Oluwaseyi Awodele, and Onaopepo Adeniyi. "Opportunities and Challenges of Foreign Direct Investment Utilisation and Its Impact on the Construction Sector in Developing Countries." *Journal of Financial Management of Property and Construction* 23, no. 2 (2018): 239–256.

²⁹ Muchlinski, Peter. *Multinational Enterprises and the Law*. 2nd ed. Oxford: Oxford University Press, 2007.

³⁰ Dolzer, Rudolf, and Christoph Schreuer. *Principles of International Investment Law*. 2nd ed. Oxford: Oxford University Press, 2012.

secure regulations attract more foreign investors due to their certainty and protection.³¹

To create certainty and protect foreign investors, dispute resolution mechanisms for FDI focus on providing a forum for dispute resolution between investors and host states. The theory also focuses on the importance of dispute resolution, supporting mechanisms like international arbitration to resolve conflicts fairly and impartially. International arbitration, such as the ICSID, offers a platform for investors who seek legal action when their rights are violated.³² In Indonesia, while local courts exist, international arbitration is still favoured because local courts are still seen as lacking. Arbitration is favoured due to its unbiased, binding decisions and enforceability.³³

Before the Job Creation Law was enacted, Investment was regulated by Law Number 25 of 2007 on Investment, which focused on protection against nationalization and unlawful expropriation and equal treatment for foreign and domestic investors. This aligns with the theory's emphasis on protection against expropriation and equal treatment as cornerstones of legal certainty. Meanwhile, the Job Creation Law is focused on streamlining the regulation, making it easier for investors to navigate. It simplifies the licensing process, removes any sectoral restrictions, and improves labour, all to enhance foreign investment and economic

³¹ Chidede, Talkmore. *Legal Protection of Foreign Direct Investment: A Critical Assessment with Focus on South Africa and Zimbabwe*. Hamburg: Anchor Academic Publishing, 2016.

³² *International Centre for Settlement of Investment Disputes (ICSID). ICSID Convention, Regulations and Rules*. Washington, D.C.: International Bank for Reconstruction and Development, 2006.

³³ Bashmill, H. "Foreign Investment Disputes Settlement under ICSID and the Protection of FDI." *Journal of Internet Banking and Commerce* 21, no. 1 (April 2016).

growth in Indonesia.³⁴ Such regulatory reforms contribute to achieving the theory's goal of ensuring fairness, reducing complexity, and improving investors' confidence.

3. Job Creation Law (Law Number 6 of 2023)

Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation brings significant reforms to attract FDI. The law is created to simplify regulation, merging over 70 laws to make it easier for businesses to abide by the law. It also focuses on streamlining the licensing process through Online Single Submission (OSS). The law also lessens restrictions on various sectors, removes many negative investment lists, and opens more industries for foreign investors, making Indonesia a more attractive investment environment.³⁵

The Job Creation Law also significantly changed investment-related regulations in Indonesia. It introduced more flexible contracts, severance pay terms, and provisions for outsourcing.³⁶ Moreover, it also simplifies environmental permits, limiting the environmental impact assessment (AMDAL) to only high-risk projects and streamlining the process.³⁷ The Job Creation Law aims to create simple and balanced regulations and licensing by implementing the above rules.³⁸

F. Operational Definitions

³⁴ Setiawati et al., *Indonesian Model Foreign Direct Investment*, *op. cit.*

³⁵ Indonesia, *Booklet UU Cipta Kerja*, *op. cit.*

³⁶ Mahy, "Indonesia's Omnibus Law on Job Creation," *op. cit.*, 51–75.

³⁷ Sembiring, "Urgensi Perjanjian Investasi Bilateral," *op. cit.*, 97-109.

³⁸ Bambang RJ. *Hukum Ketenagakerjaan*. Bandung: Pustaka Setia, 2013.

This part provided a brief explanation of the terms used in the research to avoid misinterpretation. The terms that require explanation are as follows:

1. Foreign Direct Investment (FDI)

A form of cross-border investment is when an individual or business with operations in one nation owns a productive asset in another nation. Investments made by individuals, companies, or other entities from one nation (the investing country) into businesses or assets in another nation (the host country) can take many forms, including buying stock in a company, opening branches or subsidiaries, forming joint ventures with local partners, and investing in infrastructure and real estate projects.³⁹

2. Legal Protection

Legal protection refers to insurance coverage that protects individuals, families, businesses, and professionals in various legal matters, including criminal and misdemeanour cases and labour disputes. The primary goal of legal protection is to protect individuals, families, businesses, and professionals from unexpected risks and legal conflicts, ensuring that they have access to legal representation and support when needed. This coverage can help alleviate the stress and financial burden of legal challenges, offering peace of mind in an often complex and intimidating legal landscape.⁴⁰

3. Omnibus Law

³⁹ Te Velde, Dirk Willem. "Foreign Direct Investment and Development: An Historical Perspective." Background paper for *World Economic and Social Survey for 2006*, January 30, 2006.

⁴⁰ Smelser, Neil J., and Paul B. Baltes, eds. *International Encyclopedia of the Social & Behavioral Sciences*, vol. 12 (2001): 8447.

Omnibus Law is a regulatory approach that combines various cross-sectoral regulations into a single legal framework. It aims to correct conflicting and overlapping regulations and simplify and streamline legal frameworks. Omnibus law often includes a wide range of laws, such as labour, environmental, and investment. Combining various regulations simplifies administrative processes and reduces redundancies, promoting economic growth by creating a more favourable investment climate.⁴¹

G. Research Method

1. Type of Research

This research is conducted based on normative legal research. This research is classified as normative legal research because the data is compiled from library materials or secondary data as sources.⁴²

2. Method of Research

In this research, the writer used several approaches in normative legal research, such as:

a. Statutory Approach

The statutory approach involves analysing all applicable laws and regulations related to the discussed legal issue.⁴³ In this approach, the writer will examine the laws and regulations related to the research, which will be used to analyse the Job Creation Law, the legal protection

⁴¹ “Omnibus Law: The Purpose and Benefits.” ADC Law. <https://adcolaw.com/blog/omnibus-law-the-purpose-and-benefits/>. Accessed October 16, 2024.

⁴² Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, (2003): 13.

⁴³ Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, (2012): 67-68.

for foreign investors based on the applicable law, and the international standards that the Job Creation Law should follow.

b. Historical Approach

The historical approach involves assessing the background and order of development of the discussed legal issues.⁴⁴ This is related to the research object, which concerns the effect of the Job Creation Law on legal protection for foreign investors in the foreign direct investment framework (FDI) and its alignment with International Standards.

c. Conceptual Approach

The conceptual approach involves providing a comprehensive understanding of the laws and regulations. This approach examines the legal protection the Job Creation Law provides to safeguard foreign investors in the foreign direct investment (FDI) framework and its arrangement with International Standards.⁴⁵

3. Object of Research

The object of this research is the Job Creation Law, which provides legal protection for foreign investors within the framework of foreign direct investment (FDI), and its alignment with International Standards.

4. Sources of Research Data

The present study employs the normative legal research method, which relies on secondary data sources to collect, review, and look for

⁴⁴ Muhaimin, *Metode Penelitian Hukum, op. cit.*, 67–68.

⁴⁵ Ibrahim. *Teori dan Metodologi Penelitian Hukum Normatif*. 3rd ed. Malang: Bayumedia Publishing, (2007): 300.

relevant documents and libraries. The legal materials used in this research include:

a. Primary Legal Material

Primary Legal Material includes Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation Law, Law Number 25 of 2007 on Investment, Law Number 32 of 2009 on Environmental Protection and Management, Government Regulation Number 5 of 2021 on the Implementation of Risk-Based Business, Government Regulation Number 22 of 2021 on Environmental Protection and Management, Presidential Regulation Number 49 of 2021 on Amendments to Presidential Regulation Number 10 of 2021 on Business Fields Open to Investment, International Centre for Settlement of Investment Disputes (ICSID) Convention, and Bilateral Investment Treaties (BITs).

b. Secondary Legal Material

Secondary Legal Materials are used to support primary legal materials. This includes journals and literature books that can be used as references to support this research.

c. Tertiary Legal Material

Tertiary Legal materials are used to support secondary legal materials. This includes legal dictionaries and terminology related to the research object.

5. Method of Data Collection

The data collection method will be a literature study and a document study approach. Data from primary, secondary, and tertiary legal material related to job creation law, foreign direct investment (FDI), and legal protection will be examined.

6. Data Analysis

The descriptive analysis method is used to summarize and describe the characteristics of the legal issue. It provides a straightforward understanding of the basic features of the problem, allowing for a direct presentation of patterns, trends, and relationships.⁴⁶

H. Structure of Writing

Chapter I provides an overview of the research, including the background of the study, problem formulation, research objectives, originality of research, literature review, operational definitions, research method, and writing structure.

Chapter II is a theoretical review that will discuss theories related to problem formulations concerning the Job Creation Law regarding the legal protection of foreign investors in Indonesia's foreign direct investment (FDI) framework.

Chapter III will answer the research problem formulation. First, it will explain how the changes in the Job Creation Law affect foreign investment and investor protection. Second, it will answer the question of to what degree the

⁴⁶ Nazir, Moh. *Metode Penelitian*. Jakarta: Ghalia Indonesia, 2005.

Job Creation Law aligns with or differs from international standards in protecting foreign investors.

Chapter IV is the final chapter. The conclusion of the research, along with the recommendations related to the issue, will be provided.

CHAPTER II

THEORETICAL AND LEGAL FOUNDATIONS OF FOREIGN

INVESTMENT PROTECTION IN INDONESIA

A. Foreign Direct Investment (FDI) in Theory and Practice

1. Definition and Characteristics of Foreign Direct Investment (FDI)

Foreign Direct Investment (FDI) is a cross-border investment in which an individual or an entity from one country invests in a business to run the business operations in another country. Unlike portfolio investments, such as stocks or bonds, which are more hands-off, FDI involves long-term commitment and active participation. Typically, FDI requires a 10% ownership stake, but a larger share of managerial influence is needed to exert effective control. FDI can take various forms, such as greenfield investment, mergers, acquisitions, and joint ventures. FDI is considered a long-term investment because it is driven by long-term business objectives, such as expanding into new markets, securing access to resources, and improving operational efficiency.⁴⁷ The importance of FDI, especially for the host country, lies in the benefits it brings, including capital inflows, new technology, job creation, and economic development. However, to achieve this, the host country needs to offer a stable legal system and clear rules that make investors feel secure about their investments.⁴⁸

2. The Importance of FDI to National Economic Growth

⁴⁷ Moosa, *Foreign Direct Investment, op. cit.*, 1-6.

⁴⁸ e Velde, "Foreign Direct Investment and Development," *op. cit.*

Foreign Direct Investment (FDI) plays a crucial role in the economic growth of a country, especially developing countries, including Indonesia. FDI brings many contributions, such as capital inflows, new technology, job creation, and access to international markets.⁴⁹ These contributions are primarily valuable for countries with developing technology and domestic savings. In Indonesia's case, foreign investment largely contributes to the economic growth in many industries, particularly in manufacturing, infrastructure, and the digital economy, all of which contribute to the job creation and expand regional economies.⁵⁰

Beyond providing capital, FDI also brings valuable knowledge, skills, and advanced technology. When foreign companies invest, they often introduce advanced equipment, management skills, and innovative business practices. This not only improves the productivity of local businesses but also encourages innovation and the adoption of more efficient processes. Over time, these improvements can lead to a more competitive and modern economy.⁵¹ John H. Dunning, one of the leading scholars in international investment, pointed out that the contribution of FDI not only increases productivity but also helps steer entire economies toward sectors and industries that better match their growing capabilities. Dunning also emphasizes that investment flows today are not just about ownership but

⁴⁹ Grossman, Gene, and Elhanan Helpman. *Innovation and Growth in the Global Economy*. Cambridge, MA: MIT Press, 1991.

⁵⁰ Borensztein, Eduardo, José De Gregorio, and Jong-Wha Lee. *How Does Foreign Direct Investment Affect Economic Growth?* NBER Working Paper No. 5057. Cambridge, MA: National Bureau of Economic Research, 1995.

⁵¹ *Ibid.*

about building and managing global networks that add value across borders.⁵² In this way, FDI is as much about building long-term capabilities as it is about funding projects.⁵³

Indonesia has recognized the value that FDI can bring and has actively worked to tap into its potential. Institutions such as the Investment Coordinating Board (BKPM) have emphasized the crucial role foreign investment plays in enhancing industries and driving economic growth beyond its traditional reliance on natural resources.⁵⁴ The government has introduced significant reforms to make Indonesia more attractive to investors, most notably the Job Creation Law. These efforts reflect a growing understanding that attracting FDI isn't just about offering incentives but also building a strong and reliable environment for doing business. Today's investors are looking for more than profits; they want to operate in countries where the rules are clear, legal protections are strong, and government services are efficient and trustworthy.⁵⁵

That said, FDI doesn't automatically bring benefits. As Dunning argues, there's no such thing as a "free lunch" regarding FDI. Countries must be strategic in shaping how FDI contributes to their development. Investments must be aligned with national goals, and local industries need to be prepared to absorb the skills, technology, and knowledge that foreign

⁵² Dunning, John H. "Re-evaluating the Benefits of Foreign Direct Investment." *Transnational Corporations* 3, no. 1 (1994): 23–51

⁵³ UNCTAD. *World Investment Report 2024*. New York and Geneva: United Nations, 2024.

⁵⁴ Investment Coordinating Board (BKPM). *Indonesia Investment Performance Report 2023*. Jakarta: BKPM, 2023.

⁵⁵ Law Number 6 of 2023. *op. cit.*

companies bring.⁵⁶ United Nations Conference on Trade and Development (UNCTAD) echoes this view, emphasizing that FDI should be aligned with broader goals, notably those related to environmental sustainability, labour rights, and inclusive development. In that sense, building a strong foundation of institutions, education, and infrastructure is just as necessary as any economic reform.⁵⁷

3. Global Trends and Challenges in Attracting FDI

In the past few decades, Foreign Direct Investment (FDI) has emerged as a crucial driver of economic development worldwide. As globalization continues, markets and industries are more closely connected than ever. Countries increasingly compete to attract foreign investors beyond offering financial incentives.⁵⁸ Investors seek countries with strong institutions, consistent policies, efficient regulations, and solid infrastructure. Global experience shows that attracting and sustaining FDI requires more than simply opening the door, as it demands a clear, long-term strategy that aligns national interests with the needs of investors.⁵⁹

One of the most significant global trends is the shift of FDI flows toward developing and emerging economies, particularly in Asia. Countries like China and Vietnam have benefited immensely by opening their markets

⁵⁶ Dunning, “Re-evaluating the Benefits of Foreign Direct Investment,” *op. cit.*, 23–51.

⁵⁷ UNCTAD, *World Investment Report 2024*, *op. cit.*

⁵⁸ Hill, Hal. “Foreign Investment and East Asia Economic Development.” *Asian Economic Literature* 4 (1990): 21–58.

⁵⁹ Pant, Bhubanesh, and Bama Dev Sigdel. *Attracting Foreign Direct Investment: Experiences and Challenges*. NRB Working Paper No. 1. April 2004.

and focusing on building investor-friendly environments.⁶⁰ China, for example, since the 1980s, has made attracting foreign investment a core part of its modernization plans. Over time, they opened more sectors to investors and steadily improved infrastructure and business regulations. By 2002, China had become one of the top destinations for FDI. This highlights how policy consistency, infrastructure investment, and a clear strategy can transform a country's global investment profile.⁶¹

On the other hand, South Asian countries like India, Bangladesh, and Nepal have not been as successful in attracting FDI, especially compared to their size, population, and economic potential. Despite legalization measures, inflows have remained relatively low due to bureaucratic complexity, policy instability, and underdeveloped infrastructure. Investors are looking for cost advantages, certainty, efficiency, and market access. Countries relying solely on cheap labour or natural resources without tackling these deeper challenges risk missing out on an increasingly competitive global investment race.⁶² The key challenges many countries face today include:

- 1) **Regulatory complexity and unpredictability.** Overlapping laws, unclear procedures, and slow decision-making processes frustrate investors and create uncertainty. Simplifying

⁶⁰ Lall, Sanjaya. "Foreign Direct Investment in South Asia." *Asian Development Review* 11 (1993): 103–119.

⁶¹ Pingyao, Lai. "Foreign Direct Investment in China: Recent Trends and Patterns." *China & World Economy* 2 (2002): 25–32.

⁶² Pant and Sigdel, *Attracting Foreign Direct Investment*, *op. cit.*

regulations through a “one-stop shop” measure for investment services has proven to be effective.

- 2) **Infrastructure gaps.** Without reliable electricity, transportation, and internet connectivity, even well-intentioned investment policies fall flat. Investors are less likely to commit capital where basic operational needs are unmet.
- 3) **Labour market issues.** Investors seek not just low costs, but a skilled and stable workforce. Poor vocational training, low productivity, and rigid labour laws can all deter long-term investment.
- 4) **Weak backward linkages.** To maximize the benefits of FDI, host countries must build strong connections between foreign firms and domestic suppliers. Without these linkages, the gains from investment, such as technology transfer and skill development, may remain limited. ⁶³

In recent years, the landscape of foreign investment has started to shift. Factors like technological innovation, global supply chain shifts, and sustainability pressures are reshaping how and where investors choose to operate. One of the most significant changes is the rise of ESG standards, which stand for Environmental, Social, and Governance criteria. Investors today are not just looking at profits; they want to know that a country is

⁶³ Pant and Sigdel, *Attracting Foreign Direct Investment*, *op. cit.*

doing business responsibly. A country's environmental record, human rights protections, and labour practices are becoming part of the equation.⁶⁴

Indonesia is one of the countries actively conforming to these global investment trends. Through the Job Creation Law (Law Number 6 of 2023), the government has taken steps to make the country more appealing to foreign investors.⁶⁵ The law introduces reforms like simplifying business licensing through the Online Single Submission (OSS) system and making labour rules more flexible, all to create a more investor-friendly climate.⁶⁶ While these reforms have helped improve Indonesia's ranking in ease of doing business, some critics argue that transparency, accountability, and environmental safeguards have been weakened in the process. This highlights a key challenge for Indonesia: how to make the country more competitive without compromising long-term sustainability or eroding public trust.⁶⁷

B. Legal Protection Theory for Foreign Investors

1. Principle of Legal Certainty in Investment Law

The principle of legal certainty is a fundamental aspect of any legal system, especially in investment law. For foreign investors, legal certainty means understanding, trusting, and predicting the legal consequences of their actions in the host country.⁶⁸ It assures them that laws and regulations

⁶⁴ Dolzer and Schreuer, *Principles of International Investment Law*, *op. cit.*

⁶⁵ Law Number 6 of 2023. *op. cit.*

⁶⁶ Government Regulation Number 5 of 2021. *op. cit.*

⁶⁷ Hamid, Adnan. "Analysis of the Importance of Omnibus Law 'Cipta Kerja' in Indonesia." *International Journal of Scientific Research and Management* 8, no. 8 (2020).

⁶⁸ Dirdjosisworo, Soejono. *Hukum Bisnis*. Bandung: Mandar Maju, 2003.

will not be applied arbitrarily or changed without due process. In international investment, this principle is pivotal in shaping investor confidence and guiding investment decisions. Legal certainty encompasses several core elements.⁶⁹ First, it requires that laws be transparent, accessible, and stable. Investors must easily understand the legal framework governing their investment and be confident that those rules will not change unexpectedly or retroactively. Second, it implies that laws are enforced consistently and transparently, without bias or corruption. Arbitrary enforcement or sudden shifts in legal interpretation can be damaging, especially when large amounts of capital and long-term planning are involved.⁷⁰

Imad A. Moosa, a Professor of Finance at RMIT University, pointed out that legal and regulatory clarity is a primary concern for foreign investors because FDI involves long-term, often irreversible commitments. Investors may hesitate to enter or expand in a jurisdiction without the assurance that laws will be consistently applied and enforced. In this context, the principle of legal certainty encompasses the clarity of laws, as well as the predictability, consistency, and enforceability of legal rules.⁷¹ On the other hand, according to international investment law scholars such as

⁶⁹ Muliadi, Ahmad. "Applying Principles of Legal Certainty and Equal in the Implementation of Investment in Indonesia." *European Research Studies Journal* 20, no. 4A (2017): 135.

⁷⁰ Reinisch, August, and Christoph Schreuer. "Fair and Equitable Treatment." *In International Protection of Investments: The Substantive Standards*. Cambridge: Cambridge University Press, (2020): 251–335.

⁷¹ Moosa, *Foreign Direct Investment, op. cit.*, 1-6.

Dolzer and Schreuer, legal certainty is closely tied to protections, for instance, fair and equitable treatment (FET), protection from expropriation, and non-discriminatory treatment. These standards are often embedded in bilateral investment treaties (BITs) and international arbitration mechanisms, such as those provided by the International Centre for Settlement of Investment Disputes (ICSID).⁷²

Ahmad Muliadi, a Law Professor at Jayabaya University, also explains that legal certainty consists of two aspects: "in abstracto" (the law as written) and "in concreto" (how the law is implemented). The principle mandates that regulations must be clear, accessible, and stable; frequent legal changes, overlapping authority between central and regional governments, and inconsistent enforcement undermine this principle.⁷³ According to his research, one of the key factors of investor hesitation in Indonesia is the lack of consistent enforcement and the uncertainty around regional laws that may contradict national policy. Additionally, the absence of legal certainty has led to real economic consequences, such as investors relocating to other countries embracing more predictable legal systems, like Vietnam and China.⁷⁴

In Indonesia, the principle of legal certainty is acknowledged in Law Number 25 of 2007 on Investment, which urges equal treatment for foreign

⁷² Dolzer and Schreuer, *Principles of International Investment Law*, *op. cit.*

⁷³ Muliadi, "Applying Principles of Legal Certainty and Equality in the Implementation of Investment in Indonesia," *op. cit.*, 135

⁷⁴ Muliadi Ahmad. *Politik Hukum Pertanahan Dikaitkan dengan Kepentingan Penanaman Modal Agribisnis Bidang Perkebunan Dalam Rangka Tujuan Negara Kesejahteraan*. Jakarta: Universitas Padjadjaran, 2012.

and domestic investors and offers protection against unlawful expropriation.⁷⁵ However, the arrival of the Job Creation Law (Law Number 6 of 2023) has stirred mixed reactions.⁷⁶ On the one hand, the law aims to make things easier for investors by streamlining procedures and cutting through layers of regulation, especially with tools like the Online Single Submission (OSS) system.⁷⁷ Nevertheless, many have raised concerns. The law was passed quickly, with minimal public consultation, and has undergone multiple revisions. This has left investors questioning the stability and the predictability of the legal landscape, making them wary of potential legal uncertainty in the future.⁷⁸

Legal certainty is not just a legal concept for foreign investors eyeing Indonesia as a place to do business; it is a key factor in measuring risk. When the rules are clear, stable, and consistently enforced, investors feel more confident about putting their money into long-term projects. It allows them to plan without worrying about sudden policy shifts or legal hurdles.⁷⁹ As Indonesia works to bring in more foreign direct investment to boost its economy, strengthening legal certainty should be a top priority in shaping

⁷⁵ Law Number 25 of 2007. *op. cit.*

⁷⁶ Law Number 6 of 2023. *op. cit.*

⁷⁷ Legalitas.org. “Sejarah OSS (Online Single Submission).” <https://legalitas.org/tulisan/sejarah-oss-online-single-submission>. Accessed June 23, 2025.

⁷⁸ The Conversation. “Riset: UU Cipta Kerja Gagal Sejahterakan Buruh, Hanya Untungkan Pemodal.” <https://theconversation.com/riset-uu-cipta-kerja-gagal-sejahterakan-buruh-hanya-untungkan-pemodal-224371>. Accessed June 23, 2025.

⁷⁹ Lipsey, R. E., and F. Sjöholm. *FDI and Growth in East Asia: Lessons for Indonesia*. 2010.

investment policies and reforming regulations. Without it, even the most promising opportunities can be overshadowed by uncertainty.⁸⁰

2. Protection Against Expropriation, National Treatment, Fair and Equitable Treatment (FET)

When foreign investors bring their capital into a host country, they expect more than profit and protection. This sense of security arises from key principles in international investment law, such as protection against expropriation, fair and equitable treatment (FET), and national treatment. These principles are abstract legal doctrines and practical tools for investors to consider whether a country provides a stable and trustworthy environment for long-term investment.⁸¹

a. Protection Against Expropriation

Expropriation refers to a state taking or interfering with a foreign investor's property. While international law allows this in certain situations, the rules are strict: the action must serve the public interest, be non-discriminatory, follow legal procedures, and include prompt, fair, and adequate compensation.⁸²

Christoph Schreuer emphasizes that even legitimate regulatory actions may constitute indirect expropriation if they deprive

⁸⁰ Fernandez, M., M. M. Almaazmi, and R. Joseph. *Foreign Direct Investment in Indonesia: An Analysis from Investors Perspective*. 2020.

⁸¹ Magraw, Kendra, Victorino Tejera, and Louis-Philippe Coulombe. Standards Under the North American Free Trade Agreement: Fair and Equitable/Minimum Standard of Treatment, Expropriation of Rights and Contracts, and the Standard of Compensation and the Determination of Damages for Violations of the Fair and Equitable/Minimum Standard of Treatment. CTEI Working Paper CTEI-2011-10. Geneva: Centre for Trade and Economic Integration, Graduate Institute of International and Development Studies, 2011.

⁸² Dolzer and Schreuer, *Principles of International Investment Law*, *op. cit.*

investors of the economic use of their assets. This includes physical property, as well as contractual and intangible rights that are vital to business operations.⁸³

In Indonesia, Article 7 of Law Number 25 of 2007 on Investment offers protection by requiring that any expropriation follow legal procedures and include compensation at market value. Still, in practice, these protections can fall short, especially when inconsistent enforcement or the actions of non-state actors put investments at risk without clear accountability from the government.⁸⁴

b. National Treatment

The national treatment principle ensures that foreign investors are treated equally to domestic investors. This principle is fundamental for creating a level playing field and preventing discriminatory treatment. In Indonesia, this principle is enshrined in Article 6 of Law Number 25 of 2007 on Investment, which guarantees equal treatment for all investors unless otherwise required for the national interest.⁸⁵

As Wallace and Bailey point out, national treatment is not some special privilege for foreign investors; it is a basic expectation in today's global investment landscape. Countries

⁸³ Schreuer, Christoph. *The Concept of Expropriation under the Energy Charter Treaty and Other Investment Protection Treaties*. 2005.

⁸⁴ Law Number 25 of 2007, art. 7, *op. cit.*

⁸⁵ *Ibid.*, art. 6.

worldwide have gradually embraced more open policies, reducing broad and sector-specific restrictions on foreign participation. The push for the principle of fairness is also evident in international frameworks, such as the Multilateral Agreement on Investment (MAI), and WTO agreements, namely GATS and TRIMs, which aim to guarantee foreign investors fair access, particularly in service industries.⁸⁶

c. Fair and Equitable Treatment (FET)

The Fair and Equitable Treatment (FET) standard requires governments to provide a stable and predictable legal and business environment, act transparently, and respect investors' legitimate expectations. When a state acts arbitrarily, denies due process, or suddenly changes laws or their enforcement, it may be seen as violating this principle.⁸⁷

A significant challenge to Indonesia's Fair and Equitable Treatment (FET) standard does not originate from the state itself, but also from the actions of mass organizations (ormas) acting as non-state actors. In recent years, industrial areas such as Subang in West Java have seen repeated disruptions from these groups, which claim entitlement to contracts and employment

⁸⁶ Wallace, Don, Jr., and David B. Bailey. "The Inevitability of National Treatment of Foreign Direct Investment with Increasingly Few and Narrow Exceptions." *Cornell International Law Journal* 31, no. 3 (1998): 617–620.

⁸⁷ UNCTAD. *Fair and Equitable Treatment*. UNCTAD Series on Issues in International Investment Agreements II. New York and Geneva: United Nations, 2012.

opportunities in large-scale projects. In one widely reported case, construction at BYD's electric vehicle factory, an investment worth over Rp 11.7 trillion, was halted by ormas demanding roles in logistics, security, and labour supply.⁸⁸

This coercion, often referred to as “*premanisme* ormas”, creates an unpredictable and, most of the time, hostile environment for foreign investors. Industry associations have reported significant financial losses. Furthermore, in some cases, foreign firms, particularly from Japan and South Korea, have withdrawn their investments and relocated to more stable destinations such as Vietnam. While these disruptions may not constitute formal expropriation, they can still strip investors of control and operational security. In this context, such actions may be considered *de facto* expropriation or a breach of FET obligations.⁸⁹

The core issue lies in the gap between law and enforcement. While Indonesia's legal framework guarantees fair treatment, the state's failure to rein in or sanction non-state actors who interfere with investment projects exposes a severe

⁸⁸ Warta Ekonomi. “Premanisme di Kawasan Industri Jadi Ancaman Serius bagi Iklim Investasi di Indonesia.” *Warta Ekonomi*, February 18, 2025. <https://wartaekonomi.co.id/read558222/premanisme-di-kawasan-industri-jadi-ancaman-serius-bagi-iklim-investasi-di-indonesia>. Accessed June 25, 2025.

⁸⁹ Malang Raya. “Tantangan Investasi Asing di Indonesia: Intimidasi Ormas Dituding Mengancam Masa Depan Industri.” *Malang Raya*, February 9, 2025. <https://malangraya.pikiran-rakyat.com/nasional/pr-3629047099/tantangan-investasi-asing-di-indonesia-intimidasi-ormas-dituding-mengancam-masa-depan-industri>. Accessed June 25, 2025.

weakness in practice. This failure erodes investor confidence and directly contradicts the FET standard, which requires governments to ensure a stable, transparent, and non-arbitrary legal and business environment.⁹⁰

3. Role of Dispute Resolution (International Arbitration and Domestic Courts)

One of the most crucial considerations for foreign investors is the mechanism for dispute resolution. Dispute resolution is not just a matter of legal procedure; it goes to the heart of legal certainty, investor protection, and overall trust in the host country. FDI often involves long-term commitments and substantial capital. Hence, investors naturally desire reliable, impartial mechanisms to resolve disputes, particularly when conflicts arise with the host state or state-affiliated entities.⁹¹

a. International Arbitration

International arbitration is the golden standard for resolving disputes in international investment law.⁹² Organizations such as the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) offer procedures perceived to be neutral, professional, enforceable,

⁹⁰ Malang Raya, "Tantangan Investasi Asing di Indonesia," *op. cit.*

⁹¹ Schreuer, Christoph H. "Interaction of International Tribunals and Domestic Courts in Investment Law." *In Contemporary Issues in International Arbitration and Mediation: The Fordham Papers*, vol. 4, 71–94. 2010.

⁹² Parra, A. R. *The History of ICSID*. Oxford: Oxford University Press, 2012.

and free from domestic political influence.⁹³ There are several reasons why international arbitration appeals to foreign investors:

- 1) **Impartiality and neutrality:** Arbitration panels commonly consisted of international legal experts with no ties to the host country, which helps ensure fair treatment.
- 2) **Enforceability:** Arbitral awards are generally upheld and enforceable in over 170 countries under the 1958 New York Convention, including Indonesia.
- 3) **Flexibility:** Investors and states can agree on the rules, the location, the language of the proceedings, and even who sits on the tribunal.
- 4) **Confidentiality:** Arbitration is often conducted privately, which is essential when sensitive commercial interests are at stake.

Due to these strengths, international arbitration is often favored, especially in countries where domestic courts are seen as slow, corrupt, or influenced by politics.⁹⁴

b. Domestic Courts

⁹³ Blackaby, Nigel, Constantine Partasides, et al. "An Overview of International Arbitration." In *Redfern and Hunter on International Arbitration*, 5th ed., Oxford: Oxford University Press, (2009): 1-83.

⁹⁴ *Ibid.*, 1-83.

Domestic courts in many developing countries, including Indonesia, frequently face challenges that damage their reliability in the eyes of foreign investors. Common problems include:

1) Lack of Independence from Executive Influence:

The judiciary may not be fully independent from the executive branch of government. Judges may face political pressure, either directly or indirectly, when handling cases involving the government, state-owned enterprises, or individuals with political interests.

2) Inefficiency: Backlog and Procedural Complexity:

Domestic courts in countries such as Indonesia often face overwhelming caseloads, leading to significant backlogs. Civil or commercial disputes can take years to resolve, especially when appeals are involved.

3) Inconsistent Judgments and Legal Uncertainty:

Consistency in legal interpretation is a cornerstone of legal certainty. However, in many jurisdictions, courts or judges may interpret the same law differently for similar cases.

4) Limited Expertise:

Investment disputes often involve complex legal frameworks, such as bilateral investment treaties (BITs), free trade agreements (FTAs), public international law, and multi-jurisdictional contracts. Most domestic judges are trained in national law and thus may lack the technical expertise to interpret these international instruments correctly.⁹⁵

Although Indonesia has taken steps to reform its judicial institutions, public trust, particularly from foreign investors, remains fragile. Even if domestic courts are capable in theory, the perception of bias, inefficiency, or unpredictability is often enough to discourage investors from relying on them.⁹⁶

This scepticism is reflected in the way Indonesia embraces international arbitration within its legal framework. Article 32 of Law Number 25 of 2007 on Investment allows foreign investors to resolve disputes through domestic courts or international arbitration, provided both parties agree. In practice, however,

⁹⁵ Brown, Chester, and Kate Miles, eds. *Evolution in Investment Treaty Law and Arbitration*. Cambridge: Cambridge University Press, 2011.

⁹⁶ Magiera, Stephen L. *International Investment Agreements and Investor-State Disputes: A Review and Evaluation for Indonesia*. ERIA Discussion Paper Series ERIA-DP-2016-30. Jakarta: Economic Research Institute for ASEAN and East Asia, January 2017.

international arbitration is often the preferred route.⁹⁷ Indonesia has signed over 60 bilateral investment treaties (BITs), including Investor-State Dispute Settlement (ISDS) clauses. These provisions automatically entitle investors to bring their disputes before international arbitration bodies such as ICSID or UNCITRAL, bypassing the local court system altogether.⁹⁸

C. Investment Law and the Job Creation Law in Indonesia

1. Overview of Law Number 25 of 2007 on Investment

Before the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation, the main legal framework governing investment in Indonesia was Law Number 25 of 2007 on Investment. The Law was Indonesia's commitment to fostering a favorable investment climate as the legal framework for both foreign and domestic investment.⁹⁹ In general, the key provisions of the Investment Law that are most relevant to foreign investors can be summarized as follows:

⁹⁷ Law Number 25 of 2007, art. 32, *op.cit.*

⁹⁸ UNCTAD Investment Policy Hub. "Indonesia." <https://investmentpolicy.unctad.org/international-investment-agreements/countries/97/indonesia>. Accessed June 25, 2025.

⁹⁹ Sembiring, Laura Natalia. "Urgensi Perjanjian Investasi Bilateral antara Indonesia dan Negara Lain dengan Klausula Penyelesaian Sengketa Investor-State Dispute Settlement." *Dharmasiswa: Jurnal Program Magister Hukum FHUI* 1, no. 22 (2022): 1942.

- a. **Article 3** outlines that domestic and foreign investment should adhere to the principles of legal certainty, transparency, accountability, and equal treatment.¹⁰⁰
- b. **Article 4** affirms that the government grants all investors, domestic and foreign, equal opportunity to undertake business activities in open sectors.¹⁰¹
- c. **Article 6** guarantees equal treatment for foreign and domestic investors unless otherwise stipulated in laws or regulations made in the interest of national policy.¹⁰²
- d. **Article 7** provides essential legal protection against expropriation, prohibiting the government from nationalizing or taking over investor assets unless such action is justified by law and accompanied by appropriate, prompt, and fair compensation based on market value.¹⁰³
- e. **Article 8** guaranteed the right to repatriate the investors' profits, capital, royalty payments, loan repayments, and proceeds from asset sales in foreign currency.¹⁰⁴
- f. **Article 14** clarifies that specific sectors may be restricted or closed based on national priorities.¹⁰⁵ These restrictions are

¹⁰⁰ Law Number 25 of 2007, art. 3, *op.cit.*

¹⁰¹ *Ibid.*, art. 4.

¹⁰² *Ibid.*, art. 6.

¹⁰³ *Ibid.*, art. 7.

¹⁰⁴ *Ibid.*, art. 8.

¹⁰⁵ *Ibid.*, art. 14.

formally regulated under the Positive Investment List (as updated by Presidential Regulation Number 10 of 2021).¹⁰⁶

- g. **Article 15** outlines investors' obligations, which include complying with all applicable laws and regulations, implementing good corporate governance, supporting environmental protection efforts, prioritizing domestic labour and local goods, and engaging in corporate social responsibility (CSR).¹⁰⁷
- h. **Article 25** permitted foreign investors to hold land use rights (Hak Guna Usaha/HGU, Hak Guna Bangunan/HGB, Hak Pakai/HP).¹⁰⁸
- i. **Article 32** allows disputes to be settled either in Indonesian courts or through international arbitration pursuant to the agreement between the parties.¹⁰⁹

However, the real challenge is ensuring these legal protections are applied consistently and transparently. For Indonesia to truly benefit from its investment framework, national and regional authorities must uphold both the law and its underlying principles.¹¹⁰

¹⁰⁶ Presidential Regulation Number 49 of 2021 on Amendments to Presidential Regulation Number 10 of 2021 on Business Fields Open to Investment.

¹⁰⁷ Law Number 25 of 2007, art. 15, *op. cit.*

¹⁰⁸ *Ibid.*, art. 25.

¹⁰⁹ *Ibid.*, art. 32.

¹¹⁰ Sitompul, Rifqi Ananda Gelora. "Perlindungan Hukum Terhadap Penanam Modal Asing dalam Menanamkan Modalnya di Indonesia menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal." *Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 2, no. 3 (2023): 124.

2. Changes Introduced by Law Number 6 of 2023

The enactment of Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation into Law, commonly referred to as the Job Creation Law (Undang-Undang Cipta Kerja), introduces significant changes, including simplifying the investment process, offering more competitive incentives, and flexibility in capital requirements.¹¹¹ For foreign investors, these reforms carry significant implications, some encouraging, and others are more controversial, particularly when it comes to improving the ease of doing business, strengthening legal certainty, and aligning Indonesia's regulatory environment with international investment standards.¹¹²

First, one of the most notable reforms introduced by the Job Creation Law is the shift to a risk-based business licensing system, implemented through the Online Single Submission (OSS) platform and regulated under Government Regulation Number 5 of 2021.¹¹³ Instead of applying a one-size-fits-all approach, this system categorizes business activities by their level of risk; low-risk businesses only need to obtain a business identification number (NIB), Medium-risk businesses require standard certificates, and High-risk businesses must still secure full licenses and

¹¹¹ Law Number 6 of 2023, *op. cit.*

¹¹² Ruchban, Ainun Salsabila. "Kedudukan Hukum Penanaman Modal Asing di Indonesia Pasca Undang-Undang Cipta Kerja." *Causa: Jurnal Hukum dan Kewarganegaraan* 3, no. 9 (2024): 88.

¹¹³ Government Regulation Number 5 of 2021, *op. cit.*

environmental approvals.¹¹⁴ These distinctions provide significant advantages for foreign investors as they streamline bureaucracy, enhance legal clarity, and improve transparency. Ultimately, establishing and operating a business in Indonesia is easier and more predictable.¹¹⁵

Second, replacing the restrictive Negative Investment List, the Job Creation Law introduced the Positive Investment List through Presidential Regulation Number 10 of 2021.¹¹⁶ This list classifies business sectors such as:¹¹⁷

- a. **Priority Sector:** Business activities that the Indonesian government actively promotes because they are aligned with national strategic goals, such as industrial modernization, job creation, export development, and sustainability. Foreign investors are encouraged to participate in these sectors, especially when they bring technology transfer, R&D, or local workforce development.¹¹⁸
- b. **Open Sectors:** Investors can own 100% of the shares without restrictions, operate freely, and be subject to general business regulations. The aim of designating these sectors as “open” is to

¹¹⁴ Sutedi, Adrian. *Hukum Perizinan dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika, 2017.

¹¹⁵ Ida Ayu Kade Febriyana Dharmayanti and Putu Gede Arya Sumerta Yasa, “Penerapan Sistem Perizinan Berusaha Online Single Submission Risk-Based Approach (OSS-RBA) di Bidang Industri Pasca UU Cipta Kerja,” *Jurnal Komunikasi Hukum* 8, no. 1 (Februari 2022): 509–526.

¹¹⁶ Presidential Regulation Number 49 of 2021, *op. cit.*

¹¹⁷ ASEAN Briefing, “Indonesia’s Positive Investment List and the Sectors Open & Restricted to Foreign Businesses.” <https://www.aseanbriefing.com/news/indonesias-positive-investment-list-and-the-sectors-open-restricted-to-foreign-businesses/>. Accessed June 25, 2025.

¹¹⁸ Presidential Regulation Number 49 of 2021, *op. cit.*

encourage competition and foster innovation by eliminating unnecessary bureaucratic hurdles. These sectors generally have no specific minimum capital requirements, apart from those already outlined in the general rules governing foreign direct investment (FDI).¹¹⁹

- c. **Restricted Sectors:** These sectors have specific conditions that foreign investors must meet. For instance, maximum foreign ownership limits (often capped at 49% or 67%, depending on the industry), joint ventures with Indonesian partners, location-specific investment (requiring projects to be established outside Java), technology transfer requirements, and emphasis on using local materials, products, or labour, known as the local content.
- d. **Closed Sectors:** Business fields entirely off-limits to foreign (and sometimes even domestic private) investment due to their relation to national security, culture, or public interest. Currently, the number of closed sectors is very limited, generally covering defence and weapons manufacturing, certain forms of gambling and adult entertainment, as well as the preservation of cultural heritage and the harvesting of protected flora and fauna.¹²⁰

¹¹⁹ Presidential Regulation Number 49 of 2021, *op. cit.*

¹²⁰ *Ibid.*

Third, the Job Creation Law significantly amends several aspects of Indonesia's labour system, previously considered inflexible and investor-unfriendly.¹²¹ Key changes include:

a. **Greater Flexibility in Outsourcing and Contract**

Employment: Companies can now outsource a broader range of jobs, including core functions, provided labour rights and protections are upheld. The law also clarifies the status of fixed-term (contract) workers, making it easier for employers to structure their workforce based on operational needs rather than being locked into long-term employment contracts.¹²²

b. **Revised Severance Pay Obligations:** Reduces the severance pay burden on employers by introducing a modified formula and shifting part of the responsibility to the government through the newly established Job Loss Insurance (Jaminan Kehilangan Pekerjaan/JKP) program. This government-funded initiative is designed to support workers who lose their jobs. While employers are still required to provide severance and compensation, the amounts have been standardized and reduced, creating a more balanced and predictable framework for termination of employment.¹²³

¹²¹ Ministry of Investment (BKPM). *Job Creation Law Overview for Investors*. Jakarta: Ministry of Investment/BKPM.

¹²² Law Number 6 of 2023, *op. cit.*

¹²³ *Ibid.*

c. **Simplified Rules for Working Hours, Leave, and Termination:** Introduces greater flexibility in working arrangements, offering more options for shift work, flexible schedules, and adjustments to overtime and rest days. It also explains the grounds for termination and resignation. These changes provide employers more freedom to tailor work hours to the specific needs of their industry. At the same time, they reduce ambiguity in severance procedures, which were previously complex and often led to legal disputes.¹²⁴

Fourth, the law modifies the environmental permitting process, particularly the AMDAL (Environmental Impact Assessment) requirements. According to the new framework, only high-risk or large-scale projects are obliged to conduct a complete AMDAL study. For lower-risk businesses, environmental obligations can be met through simplified measures such as environmental management statements or standard declarations.¹²⁵ While these changes aim to streamline procedures and improve the ease of business, critics warn that they may weaken ecological safeguards, raising reputational and sustainability concerns, especially for foreign investors with global ESG (Environmental, Social, and Governance) commitments.¹²⁶

¹²⁴ Law Number 6 of 2023, *op. cit.*

¹²⁵ *Ibid.*

¹²⁶ Febriyanti, Dwi, Sartika Nur Aini, Alya Vena Resta, and Raka Bagaskara P.K.P. "Fungsi AMDAL dalam Pengendalian Kerusakan dan Pencemaran Lingkungan Setelah Diundangkannya UU Cipta Kerja." *Widya Pranata Hukum* 3, no. 2 (2021).

D. International Standard for Foreign Investment Protection

The protection of foreign investment is not limited to domestic legal systems. It is significantly strengthened by International legal instruments, most notably Bilateral Investment Treaties (BITs) and international dispute resolution mechanisms such as those provided by the International Centre for Settlement of Investment Disputes (ICSID).¹²⁷ These tools offer legal guarantees more than what national laws can generally guarantee, providing an added layer of security for investors, especially in jurisdictions where concerns exist about the independence, predictability, or enforceability of domestic laws.¹²⁸

1. Bilateral Investment Treaties (BITs) Standards

Bilateral Investment Treaties (BITs) are agreements between two countries that set out the terms and protections for private investments made by nationals and companies of one state in the territory of the other.¹²⁹ As of 2024, Indonesia has signed over 60 BITs, many of which are still in force, although the government continues to review, renegotiate, or terminate older, outdated agreements.¹³⁰ Several key protections commonly found in BITs include National Treatment (NT) and Most-Favoured Nation Treatment (MFN), Fair and Equitable Treatment (FET), Protection against expropriation, Free transfer of funds, and Access to Investor-State Dispute

¹²⁷ Sacerdoti, Giorgio. *Bilateral Treaties and Multilateral Instruments on Investment Protection*. ICSID Exhibit CL-0276, (2009).

¹²⁸ Kryvoi, Yarik. *International Centre for Settlement of Investment Disputes (ICSID)*. London: British Institute of International and Comparative Law, (2020).

¹²⁹ Poulsen, Lauge N. Skovgaard. "The Importance of BITs for Foreign Direct Investment and Political Risk Insurance: Revisiting the Evidence." In *Yearbook on International Investment Law and Policy 2009/2010*. New York: Oxford University Press, (2010): 539–574.

¹³⁰ UNCTAD Investment Policy Hub, "Indonesia," *op. cit.*

Settlement (ISDS) mechanisms, typically ICSID or UNCITRAL.¹³¹ BITs are significant for foreign investors seeking certainty and protection beyond what may be available under host state law. For Indonesia, BITs are a key tool for enhancing investor confidence and signaling commitment to international norms. Moreover, Giorgio Sacerdoti, a Professor of International Law at Bocconi University, emphasized that BITs remain the principal legal instrument for investment protection without universal multilateral rules.¹³²

An example of BIT investment Protection is the case of Churchill Mining & Planet Mining v. Indonesia under the Australia–Indonesia BIT and the UK-Indonesia BIT. The investors claimed Indonesia unlawfully revoked mining permits at the East Kutai Coal Project (EKCP), seeking USD 1.3 billion in damages. However, ICSID ruled against the investors on the grounds of jurisdiction. Even though it is ruled against the investors, the BIT provides them access to the Investor-State Dispute Settlement (ISDS) mechanism, the ICSID. It is ruled against the investor because the licensing documents they relied on were forged, and their failure to conduct proper due diligence constituted an abuse of rights, thus making the claims inadmissible.¹³³

¹³¹ UNCTAD Investment Policy Hub, “Indonesia,” *op. cit.*

¹³² Sacerdoti, *Bilateral Treaties and Multilateral Instruments on Investment Protection*, *op. cit.*

¹³³ *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case Nos. ARB/12/14 and ARB/12/40.

However, an article published by Lauge Poulsen, a Professor and Deputy Head of the Department of Political Science at UCL, proposes that BITs may not be as influential in shaping foreign direct investment (FDI) decisions as traditionally believed. Poulsen’s interviews with investment treaty negotiators and insurers reveal that most multinational investors rarely consider BITs in the pre-establishment phase; instead, BITs tend to become applicable only when disputes arise.¹³⁴ Regardless, BITs continue to serve a figurative and strategic function. Sacerdoti notes that without a practical multilateral investment framework, BITs remain the principal legal instruments governing cross-border investment relations. They are increasingly used to protect investments and promote responsible behaviour by states and investors alike.¹³⁵ In Indonesia’s context, while the strategic use of BITs remains relevant, Poulsen’s critique serves as a valuable reminder that relying too heavily on these treaties can create inflated expectations about their ability to attract investment.

2. ICSID and the Investor-State Dispute Settlement (ISDS) Mechanism

The International Centre for Settlement of Investment Disputes (ICSID) is a leading arbitration institution operating under the World Bank.¹³⁶ It was established by the ICSID Convention of 1965, which was designed to facilitate the resolution of legal disputes between foreign

¹³⁴ Poulsen, “The Importance of BITs for Foreign Direct Investment and Political Risk Insurance,” *op. cit.*, 539–574.

¹³⁵ Sacerdoti, *Bilateral Treaties and Multilateral Instruments on Investment Protection*, *op. cit.*

¹³⁶ International Centre for Settlement of Investment Disputes (ICSID). <https://icsid.worldbank.org/about>. Accessed June 26, 2025.

investors and states. Its creation addressed growing concerns over the lack of neutral, dependable, and enforceable mechanisms for handling investment-related disputes, particularly in developing countries, where domestic legal systems were often viewed as inadequate or biased.¹³⁷ Indonesia ratified the ICSID Convention through Law Number 5 of 1968, officially becoming a Contracting State.¹³⁸ This means that investors from other ICSID member countries can bring claims directly against the Indonesian government under Bilateral Investment Treaties (BITs) or other qualifying investment agreements if they believe their rights under those treaties have been violated.¹³⁹ The main advantages of ICSID arbitration include:

- a. **Neutrality**, operating independently from any national legal system,
- b. **Enforceability**, ICSID awards are automatically recognized and enforceable in more than 160 member countries without the need for local court approval,
- c. **Finality**, awards cannot be appealed in domestic courts and are only subject to a narrowly defined annulment process under ICSID rules,

¹³⁷ Kryvoi, *International Centre for Settlement of Investment Disputes (ICSID)*, op. cit.

¹³⁸ Law Number 5 of 1968 on the Settlement of Disputes Between the State and Foreign Citizens Concerning Investment.

¹³⁹ AKSET Law. "Indonesia Limits the Jurisdiction of the ICSID." *AKSET Law Newsflash*, December 31, 2012. <https://aksetlaw.com/news-event/newsflash/indonesia-limits-the-jurisdiction-of-the-icsid/>. Accessed June 26, 2025.

- d. **Legal Certainty and Investor Confidence**, offering a non-political, rules-based system that discourages arbitrary actions by host states,
- e. **Jurisdictional Clarity**, ICSID only hears legal disputes arising directly from an investment between a Contracting State and a national of another Contracting State, and only when both parties have consented.¹⁴⁰

In its practice, ICSID plays a leading role in international investment arbitration. As international scholars Yarik Kryvoi and Jonathan Klett note, ICSID dominates the global Investor-State Dispute Settlement (ISDS) landscape, with over 60% of known cases submitted under its rules or through its Additional Facility.¹⁴¹ Its jurisprudence has significantly shaped key areas of international investment law, including doctrines such as fair and equitable treatment (FET), protection against expropriation, denial of justice, and legitimate expectations. ICSID tribunals have also provided important guidance on damage quantification, evidentiary standards, and the delicate balance between investor rights and state regulatory sovereignty.¹⁴²

However, ICSID is not without its critics. Scholars such as Klett and Kryvoi have raised several concerns about its operation. One major issue is

¹⁴⁰ Klett, Jonathan. *National Interest vs. Foreign Investment—Protecting Parties through ISDS*. J.D. thesis, Tulane University Law School, 2016.

¹⁴¹ *Ibid.*

¹⁴² Kryvoi, *International Centre for Settlement of Investment Disputes (ICSID)*, op. cit.

the high cost of proceedings, which averages over USD 8 million and sometimes exceeds USD 40 million, creating a substantial financial burden, especially for less-resourced states and smaller investors. Another key concern is the lack of transparency, as many ICSID arbitrations are conducted behind closed doors, limiting public oversight and accountability. The absence of an appellate mechanism is also problematic.¹⁴³ It contributes to inconsistent awards and fragmented jurisprudence, creating uncertainty in international investment law.

Additionally, there are ongoing concerns about arbitrator conflicts of interest and bias. Under current rules, arbitrators may also serve as legal counsel in other ISDS cases, raising legitimate questions about their impartiality and independence. Lastly, critics point to the risk of regulatory chill, where the threat of costly investor claims and significant financial awards discourages states from introducing new regulations in areas such as public health, environmental protection, and labour rights, even when such measures serve the public interest.¹⁴⁴

These concerns have fuelled a broader discussion about the future of the Investor-State Dispute Settlement (ISDS) system. The European Commission even proposed replacing the current model with a permanent investment court system for greater consistency, transparency, and independence. Others, however, advocate reforming rather than replacing

¹⁴³ Kryvoi, *International Centre for Settlement of Investment Disputes (ICSID)*, op. cit.

¹⁴⁴ Klett, *National Interest vs. Foreign Investment—Protecting Parties through ISDS*, op. cit.

ICSID, suggesting measures like enhancing transparency, standardizing ethical rules for arbitrators, and introducing appellate mechanisms to improve fairness and coherence in decision-making.¹⁴⁵ Despite all the criticisms, ICSID continues to be regarded as the golden standard in investor-state arbitration, thanks to its strong enforcement mechanism, institutional independence, and broad international recognition.¹⁴⁶

E. Islamic Perspective on Investment

In Islamic economic jurisprudence, investment isn't just allowed, it is encouraged. It falls under muamalah, the branch of Islamic law that governs everyday economic and social transactions. In this context, investing is seen not only as a smart financial decision but also as an action with moral and spiritual value. It reflects a balance between pursuing economic growth and upholding ethical principles rooted in faith. Islamic teachings encourage the productive use of wealth and discourage hoarding or leaving assets stagnant.¹⁴⁷ This is emphasized in a hadith narrated by Umar ibn al-Khattab, in which the Prophet Muhammad SAW instructed:¹⁴⁸

Whoever takes care of an orphan who has wealth, let him do business for him and not leave it to be consumed by zakat.

Essentially, Islam offers clear guidance and boundaries for the kinds of investments considered permissible, especially for those engaged in business.

¹⁴⁵ Palombo, Emily. "Evaluating a Permanent Court Solution for International Investment Disputes." *University of Richmond Law Review* 53, no. 2 (2019): 799–854.

¹⁴⁶ *Ibid.*

¹⁴⁷ Nadilla, Trie, and Muhammad Syafril Nasution. "Investment in Islamic Perspective." *Jurnal STIBA DUBA* 3, no. 2 (2021): 86–93.

¹⁴⁸ IslamQA.info. "Wealth Should Be Invested and Not Let to Stagnate, but Only After Taking a Lot of Precautions." <https://islamqa.info/en/answers/139359/wealth-should-be-invested-and-not-let-to-stagnate-butonly-after-taking-a-lot-of-precautions>. Accessed June 26, 2025.

To ensure that investment activities align with Islamic values, it is important to have a solid understanding of the principles and ethics involved. With the right intentions and within these guidelines, investing becomes more than just a financial activity; it becomes a form of worship, bringing both worldly benefits and spiritual rewards in the hereafter.¹⁴⁹

The Qur'an also encourages investment through several of its verses.

ذَلِكَ بَعْدَ مَنْ يَأْتِي ۖ ثُمَّ ﴿٤٧﴾ تَأْكُلُونَ مِمَّا قَلِيلًا إِلَّا سُنْبُلًا فِي فَنَرُوهُ حَصَدُكُمْ فَمَا دَابَّ سِنِينَ سَبْعَ تَرَغُونَ قَالَ
النَّاسُ غَاثُ يَوْمٍ فِيهِ عَامٌ ذَلِكَ بَعْدَ مَنْ يَأْتِي ثُمَّ ﴿٤٨﴾ وَنُحْصِنُ مِمَّا قَلِيلًا إِلَّا لَهِنَّ قَدَمُكُمْ مَا يَأْكُلْنَ شِدَادٌ سَبْعَ
﴿٤٩﴾ يَعْصِرُونَ □ وَفِيهِ

Yusuf replied, "You will plant [grain] for seven consecutive years, leaving in the ear whatever you will harvest, except for the little you will eat. Then after that will come seven years of great hardship which will consume whatever you have saved, except the little you will store [for seed]. Then after that will come a year in which people will receive abundant rain, and they will press [oil and wine]. (QS. Yusuf Verse 47-49)

From the Surah above, Prophet Yusuf A.S. gives an example of the importance of saving during times of abundance to prepare for future hardship. In this modern era, this principle can be interpreted as the investment principle. When we invest abundant capital, we can prepare for the future.¹⁵⁰

﴿١٨﴾ تَعْمَلُونَ مَا بِبُحْبُوبٍ ۗ وَاللَّهُ إِنَّ اللَّهَ لَنَّ خَبِيرٌ بِمَا تَعْمَلُونَ ﴿١٨﴾ وَاتَّقُوا لِعَذَابِ اللَّهِ فَتَقَدَّمُوا مَا نَفْسُكُمْ وَتَنْتَظِرُوا ۗ وَاللَّهُ اتَّقُوا الَّذِينَ يَأْتِيهَا

O believers! Be mindful of Allah and let every soul look to what [deeds] it has sent forth for tomorrow. And fear Allah, [for] certainly Allah is All-Aware of what you do. (QS. Al-Hasyr Verse 18)

¹⁴⁹ Sakinah. "Investasi dalam Islam." *Iqtishadia: Jurnal Ekonomi & Perbankan Syariah* 1 (2015): 250.

¹⁵⁰ *Ibid.*

The Surah above urges people to consider their future by focusing on personal accountability, encouraging preparation for the Hereafter, and responsible conduct in worldly affairs. In this Surah, we are encouraged to save and invest not just for individual needs but also for the greater good of society. Investing our capital for the greater good of society can also be seen as a deed that will help us in the Hereafter.¹⁵¹

نَفْسٌ تَدْرِي وَمَا عَدَا تَكْسِبُ مَاذَا نَفْسٌ تَدْرِي وَمَا الْأَرْحَامُ فِي مَا وَبَعْلُمُ الْعَيْتُ وَيُنَزَّلُ السَّاعَةَ عَلِمَ عِنْدَهُ اللَّهُ إِنَّ
 ۞ خَبِيرٌ □ عَلِيمٌ اللَّهُ إِنَّ تَمُوتُ أَرْضٍ بِأَيِّ

Indeed, Allah [alone] has the knowledge of the Hour. He sends down the rain and knows what is in the wombs. No soul knows what it will earn for tomorrow, and no soul knows in what land it will die. Surely Allah is All-Knowing, All-Aware. (QS. Luqman Verse 34)

The Surah above states, "No soul knows what it will earn tomorrow." This explains the uncertainty of human life and our limited ability to foresee the future. Regardless, Islam calls on believers to take purposeful action (ikhtiyār), plan carefully, and trust Allah (tawakkul). Since humans cannot foresee the future, we, as humans, need to prepare for it, and by investing and giving complete trust in Allah, we can prevent bad things from happening in the future.¹⁵²

In the history of Islamic Investment, another perspective regarding investment can be traced back to Abdur-Rahman ibn Awf's (RA) story, which is one of the most inspiring examples of ethical investment and entrepreneurial spirit. He was known not only as one of the ten companions promised Paradise (Asharah

¹⁵¹ Sakinah, "Investasi dalam Islam," *op. cit.*, 250.

¹⁵² Yuliana, Indah. *Investasi Produk Keuangan Syariah*. Malang: UIN-Maliki Press, 2010.

Mubasharah), but he also stands out as a self-made entrepreneur whose wealth became a tool for improving the Muslim community. When he migrated to Medina, Abdur-Rahman arrived empty-handed. He had left behind his home, possessions, and wealth in Mecca, all for the sake of his faith. Yet, when offered help in the new city, he politely declined and asked a simple question, “Show me the market.” He began by selling butter and cheese, and with determination and consistency, he reinvested his earnings, slowly building a stable income. Over time, he started investing in property, livestock, and trade caravans.¹⁵³

He operated using models such as *mudarabah*, where profit-sharing arrangements allowed capital and labour to benefit equally. His commitment to honest business made him not just successful but respected. Yet what made his story truly exceptional was how he viewed his wealth. Abdur-Rahman never hoarded riches for personal luxury. Instead, he gave freely and often donated hundreds of camels and horses for the cause of Islam, financed expeditions, for instance, the Battle of Tabuk, and even provided for the Prophet Muhammad’s SAW widows after his passing. In modern times, we might call him an “impact investor.” Every dinar earned was a chance to fulfil a responsibility. His life shows how Islamic investment is not only about multiplying wealth but also about multiplying goods. He turned the marketplace into a path to Paradise through faith, effort, and generosity.¹⁵⁴

¹⁵³ IslamicFinder, “Story of Abdur-Rahman Ibn Awf,” <https://www.islamicfinder.org/knowledge/biography/story-of-abdur-rahman-ibn-awf/>. Accessed June 27, 2025.

¹⁵⁴ Sunan Designs, “Lessons on Business Leadership from the Sahaba: Abdur-Rahman ibn Awf & Uthman ibn Affan RA” <https://www.sunandesigns.com/lessons-on-business-leadership-from-the-sahaba-abdur-rahman-ibn-awf-uthman-ibn-affan-ra/>. Accessed June 27, 2025.

Furthermore, Fatwa DSN-MUI Number 80/DSN-MUI/III/2011 on the Implementation of Sharia Principles in Capital Markets states that all investment activities must comply with Sharia by avoiding explicitly prohibited elements, including:¹⁵⁵

- a. **Riba:** A one-sided gain arises from the unequal exchange of ribawi goods (*al-amwāl al-ribawiyah*) or from charging an extra amount on a loan's principal to delay repayment without any conditions.
- b. **Maisir:** Any transaction classified as gambling, where one party's gain comes solely from another party's loss.
- c. **Gharar:** A contractual ambiguity concerning the agreed-upon item's quality, quantity, or delivery.
- d. **Bay' al-Ma'dūm:** The act of selling items before acquiring ownership or control over them.
- e. **Bāṭil:** Contracts classified as *bāṭil* are considered null and void in Islamic law, either because they involve prohibited (haram) elements or fail to meet the essential conditions set by Sharia.
- f. **Iḥtikār:** Deliberately hoarding essential goods during periods of high demand to resell them later at significantly inflated prices.

These prohibitions help ensure that investments in Islamic finance generate lawful (*halal*) profits while also aligning with the general ethical objectives of Sharia (*maqasid al-shariah*). By adhering to these principles, Islamic investment

¹⁵⁵ Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI). Fatwa Number 80/DSN-MUI/III/2011 tentang Penerapan Prinsip Syariah dalam Mekanisme Perdagangan Efek Bersifat Ekuitas di Pasar Reguler Bursa Efek. Jakarta: DSN-MUI, 2011.

sets itself apart from conventional practices, embedding a sense of spiritual responsibility and moral understanding into economic activity.¹⁵⁶

CHAPTER III

FOREIGN INVESTOR PROTECTION: JOB CREATION LAW AND BILATERAL INVESTMENT TREATY STANDARDS ALIGNMENT

A. Changes in Legal Protection for Foreign Direct Investment (FDI) under the Job Creation Law

¹⁵⁶ DSN-MUI, *Fatwa Number 80/DSN-MUI/III/2011*, *op. cit.*

The enactment of Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022, also known as the Job Creation Law, marked a major shift in Indonesia's approach to improving its investment conditions and attracting higher volumes of foreign direct investment (FDI).¹⁵⁷ This law was introduced in response to overlapping regulations and Indonesia's regulatory environment that was too complicated, too bureaucratic, and too slow, so much so that it discouraged foreign investors from entering the Indonesian market.¹⁵⁸ To address these concerns, the Job Creation Law was created to streamline licensing procedures, adjust overlapping rules, and improve legal certainty across various sectors. It introduced significant adjustments in sectors such as labour, taxation, land acquisition, and environmental licensing, which are normally seen as obstructive to business operations. The goal was clear; It was to create a transparent, efficient, and investment-friendly environment for investors.¹⁵⁹

Given the important role FDI plays in driving economic growth and job creation in Indonesia, investors have welcomed the effort to reduce uncertainty and delays, and many sectors now find it easier to navigate regulatory processes. However, Indonesia continues to have several unresolved issues even with the enactment of the Job Creation Law. Issues

¹⁵⁷ Law Number 6 of 2023, *op. cit.*

¹⁵⁸ Hadi, Sudharto P., Rizkiana S. Hamdani, and Ali Roziqin. "A Sustainability Review on the Indonesian Job Creation Law." *Heliyon* 9, no. 2 (2023).

¹⁵⁹ Dewi et al., "The Urgency of Indonesian Omnibus Law Implementation Related to Foreign Investment," *op. cit.* 83–93.

such as legal uncertainty, inconsistent local enforcement, political interference, and lack of investor protection mechanisms remain.¹⁶⁰ Even in some cases, local community groups such as *ormas* or even regional authorities have disrupted major projects, raising concerns about the strength of investor protections in practice.¹⁶¹

As a result, while the Job Creation Law has driven Indonesia in the right direction, some investors continue to remain cautious.¹⁶² In comparative terms, countries such as Vietnam often offer more stable regulatory environments, greater legal predictability, and stronger institutional support for investors. Vietnam has successfully marketed itself as an investment-friendly destination, putting pressure on Indonesia to not only pass reforms but to implement them consistently and effectively if it hopes to remain competitive in the Southeast Asia region.¹⁶³

1. Comparing Investor Protection between Law Number 25 of 2007 and Law Number 6 of 2023

Before the Job Creation Law (Law No. 6 of 2023) came into effect, investment in Indonesia was regulated under Law No. 25 of 2007.

The new law brings changes, some designed to strengthen legal

¹⁶⁰ Gunawan, Hendra, and Syahbudin. “Legal Reconstruction of the Omnibus Law on Job Creation for Justice in Enhancing Investment and Indonesia’s Competitiveness.” *Jurnal Hukum* 41, no. 2 (2023): 253–275.

¹⁶¹ Malang Raya, “Tantangan Investasi Asing di Indonesia,” *op. cit.*

¹⁶² Diginvestasi. “Why Are Foreign Investors Avoiding Indonesia? Causes & Solutions.” <https://www.diginvestasi.com/news/detail/investasidigital/why-are-foreign-investors-avoiding-indonesia-causes-solutions?lang=eng>. Accessed June 28, 2025.

¹⁶³ Quora. “Why Is Vietnam Attracting Much More Foreign Direct Investment Than Indonesia?” <https://www.quora.com/Why-is-Vietnam-attracting-much-more-foreign-direct-investment-than-Indonesia>. Accessed June 28, 2025.

protections for investors, while others could introduce new challenges. This section examines how the two laws compare, focusing on five key protection areas for foreign investors.¹⁶⁴ First, National Treatment, Law No. 25 of 2007, guaranteed that foreign and domestic investors would be treated equally, except where the law specifically stated otherwise. The Job Creation Law keeps this principle intact but also works to open more investment opportunities through the Positive Investment List, which identifies and prioritizes strategic sectors.¹⁶⁵

Second, Legal Certainty, the 2007 law protected investor rights, promoted transparency, and ensured regulatory stability. The Job Creation Law strengthens this by introducing risk-based licensing via the Online Single Submission (OSS) system and streamlining overlapping regulations, making procedures clearer and reducing red tape.¹⁶⁶ Third, Protection from Expropriation and nationalization, both laws protect investors from nationalization or expropriation unless permitted by law, guaranteeing fair and adequate compensation and the right to judicial review.¹⁶⁷ Fourth, Capital Repatriation, the law remains the same, allowing investors to transfer capital, profits, royalties, and other assets abroad in foreign currency.¹⁶⁸ Fifth, Dispute Resolution, this provision also remains unchanged, giving investors the choice between

¹⁶⁴ Law Number 6 of 2023, *op. cit.*

¹⁶⁵ Law Number 25 of 2007, art. 3, *op. cit.*

¹⁶⁶ Law Number 25 of 2007, art. 3, *op. cit.*

¹⁶⁷ *Ibid. art. 7.*

¹⁶⁸ *Ibid. art. 8.*

resolving disputes in Indonesian courts or through international arbitration under frameworks such as ICSID or UNCITRAL.¹⁶⁹ While some legal protections changed with the introduction of the job creation law, some remain unchanged. However, other than the five legal protections, some changes can create operational risk for foreign investors.

2. Regulatory Reforms and Ongoing Legal Uncertainty

The Job Creation Law introduced the Online Single Submission (OSS) system to simplify Indonesia's complicated and overlapping regulatory environment, which has long been considered a major barrier to foreign direct investment (FDI). It adopted a risk-based business licensing approach, where licensing requirements are measured based on the risk level of business activity (low, medium, or high). This paper presents a progressive step towards administrative efficiency and greater ease of doing business, aligning with global best practices in investment governance.¹⁷⁰

However, the implementation of the OSS system has revealed significant gaps between regulatory design and operational reality. The system's effectiveness relies heavily on the uniformity between the OSS Institution, the Central Government, and the Local Governments. Yet, in practice, many Local Governments have been slow to adopt the new

¹⁶⁹ *Ibid. art. 32.*

¹⁷⁰ Christiawan, R. "Perizinan Berbasis Online Single Submission Untuk Mewujudkan Kemudahan Berusaha." *Masalah-Masalah Hukum* 50, no. 1 (2021): 60–69.

regulations or have continued to apply outdated or sector-specific rules that contradict national commands. This regulatory inconsistency creates legal uncertainty, particularly for investors skeptical about whether to follow central or local regulations.¹⁷¹

For instance, while an investor may receive central approval through the OSS system, they may still face conflicting demands from local governments on permits, land usage, or environmental compliance, potentially delaying or blocking their operations. As a result, overlapping bureaucratic responsibilities not only create additional regulatory burdens but also worsen the legal and operational risks for foreign investors.¹⁷² From the investor's standpoint, legal certainty is critical for long-term planning and risk management. If the legal framework appears uncertain or politically influenced, it can create potential volatility in the business environment. This uncertainty can delay investment decisions or cause companies to shift capital to jurisdictions where the rules are clearer and more consistently enforced.¹⁷³

3. Labour Reforms and the Potential for Social Unrest

¹⁷¹ Hasibuan, M. Angga Maulana. "Online Single Submission Risk Based Approach: Conflict of Authority Between Central and Local Government." *Locus Journal of Academic Literature Review* 1, no. 4 (2022): 198–209.

¹⁷² Komite Pemantauan Pelaksanaan Otonomi Daerah (KPPOD). "Digitalisasi OSS Berbasis Risiko Masih Bermasalah Antara Pusat dan Daerah." *KPPOD*, June 26, 2025. <https://www.kppod.org/berita/view?id=1011>. Accessed June 26, 2025.

¹⁷³ Pawestri, Widhayani Dian, Vincentius Sutanto, Kukuh Leksono Suminaring Aditya, Qona'aha Noor Maajid, and Khofifah Nura Adila. "Investment in Infrastructure: A Comparative Study of the Regulation of Online Single Submission in Indonesia, Canada, and New Zealand." *European Journal of Comparative Law and Governance* 11 (2024): 129–163.

The Job Creation Law was created to make a more flexible labour market. A few changes were made to make the labour market more flexible, including the rules governing contract employment, outsourcing, severance pay, working hours, and termination procedures.¹⁷⁴ From the government's perspective, these changes are done to reduce rigidities that have discouraged prior investment, mainly the high costs and legal complexity associated with hiring and laying off workers under the previous Manpower Law (Law Number 13 of 2003).¹⁷⁵

However, the Constitutional Court's Decision Number 168/PUU-XXI/2023 ruled that 21 articles of the Job Creation Law, mainly those related to employment, are conditionally unconstitutional.¹⁷⁶ The Court raised concerns over inadequate labour protections, permissive outsourcing practices, and simplified lay-off procedures. These factors sparked strong criticism from labour unions, civil society organizations, and academics, who claim the law favours business interests while compromising worker welfare, undermining job security, reducing severance pay, and allowing outsourcing even in core functions.¹⁷⁷

¹⁷⁴ Nugroho, Arinto, M. Rio Christiawan, Zulfikar L. M., Asri Wulandari, and Khoirul Umam. "Analysis of the Impact of the Job Creation Law on the Work Environment and Legal Protection for Workers in Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 66–106.

¹⁷⁵ Law Number 13 of 2003 on Manpower

¹⁷⁶ Constitutional Court of the Republic of Indonesia. Decision Number 168/PUU-XXI/2023.

¹⁷⁷ Gunawan and Syahbudin, "Legal Reconstruction of the Omnibus Law on Job Creation for Justice in Enhancing Investment and Indonesia's Competitiveness," *op. cit.* 253–275.

The Job Creation Law presents a hurdle for foreign investors, especially those from countries with rigid labour compliance regulations or publicly listed companies adhering to ESG (Environmental, Social, and Governance) frameworks. Exploitative or unfair labour practices, regardless of their legitimacy under Indonesian law, can lead to reputational damage, consumer boycotts, and shareholder activism.¹⁷⁸ In this case, Indonesia's attempts to create more flexibility in its labour market may be seen not as a progression but as a regression, particularly when compared with international labour standards set by the International Labour Organization (ILO) or corporate codes of conduct, which often go beyond domestic legal requirements.¹⁷⁹

Furthermore, investors considering long-term operational stability are discouraged by the potential for industrial unrest. Events such as recurring protests, strikes, or even the risk of judicial review on employment laws can delay projects, reduce productivity, and increase costs.¹⁸⁰ Uncertainty surrounding contract workers (Perjanjian Kerja Waktu Tertentu/PKWT) protections has also made it difficult for companies to predict their future labour liabilities or determine the sustainability of workforce planning, especially in highly labour-intensive sectors such as manufacturing, logistics, and construction.

¹⁷⁸ Sychenko, Elena. "Labour Rights and International Labour Standards in the ESG Agenda." *Italian Labour Law e-Journal* 16, no. 1 (2023): 136–148.

¹⁷⁹ Sychenko, Ekaterina. "ILO Contributions to the Jurisprudence of International Human Rights Bodies." *Zbornik Pravnog fakulteta u Zagrebu* 71, no. 6 (2021): 897–920.

¹⁸⁰ Mahy, "Indonesia's Omnibus Law on Job Creation," *op. cit.*, 51–75.

These uncertainties damage the very objectives the Job Creation Law was intended to support.¹⁸¹

4. Environmental Deregulation and the Risk to Sustainable Investment

The Job Creation Law also introduces the simplification of environmental licensing procedures by reducing Environmental Impact Assessment (AMDAL) requirements to only high-risk business activities. This simplification, stipulated in Government Regulation Number 22 of 2021, reflects the government's intention to reduce administrative hold-ups and accelerate project implementation by exempting medium and low-risk investments from full environmental impact assessments.¹⁸² In essence, simplification is meant to improve efficiency, reduce red tape, and place Indonesia as a smarter destination for foreign direct investment (FDI), particularly in sectors such as manufacturing, logistics, and infrastructure.¹⁸³

However, this simplification has created significant concerns among environmental groups, legal scholars, and foreign investors with ESG (Environmental, Social, and Governance) obligations. By minimizing environmental assessments for medium and low-risk

¹⁸¹ Purba, Martha Yosephine, Ani Wijayati, and Binoto Nadapdap. "Perlindungan Hukum Terhadap Pekerja dalam Perjanjian Kerja Waktu Tertentu (PKWT) Ditinjau dari Undang-Undang No.6 Tahun 2023." *Jurnal Kolaboratif Sains* 7, no. 4 (April 2024): 1513–1520.

¹⁸² Government Regulation Number 22 of 2021, *op. cit.*

¹⁸³ Yakin, Sumadi Kamarol. "Analisis Mengenai Dampak Lingkungan (AMDAL) sebagai Instrumen Pencegahan Pencemaran dan Perusakan Lingkungan." *Badamai Law Journal* 2, no. 1 (Maret 2017).

investments, the law inadvertently weakens oversight mechanisms that are crucial in maintaining ecological integrity and avoiding social harm.¹⁸⁴ The risk created by AMDAL simplification is not just theoretical. In its practice, the exemption of medium-risk projects from AMDAL oversight could lead to unmonitored environmental degradation, particularly in areas such as forests, coastal zones, and water catchment areas, all of which are sensitive to change. If underregulated development, pollution, deforestation, or habitat destruction occurs, investors could be held liable, either legally or reputationally.¹⁸⁵

Furthermore, in regions where local communities depend on natural resources for their livelihoods, environmental deregulation increases the possibility of social conflict and legal disputes. In the past few years, projects that proceeded without sufficient environmental assessment have led to land conflicts, opposition from the indigenous community, and international criticism. These kinds of outcomes will not only delay projects but also develop financial liabilities and political difficulties for investors, particularly in large-scale infrastructure sectors.¹⁸⁶ That being said, investors unfamiliar with Indonesia's socio-

¹⁸⁴ Tarmuji, Indarawati, Ruhanita Maelah, and Nor Habibah Tarmuji. "The Impact of Environmental, Social and Governance Practices (ESG) on Economic Performance: Evidence from ESG Score." *International Journal of Trade, Economics and Finance* 7, no. 3 (June 2016).

¹⁸⁵ Rosmaida, Erviyanti, and Irwan Triadi. "Pelaksanaan Analisis Mengenai Dampak Lingkungan (AMDAL) di Indonesia dalam Rangka Penegakan Hukum Lingkungan Hidup." *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia* 1, no. 2 (April 2024): 47–65.

¹⁸⁶ Rosmaida and Triadi, "Pelaksanaan Analisis Mengenai Dampak Lingkungan (AMDAL) di Indonesia," *op. cit.* 47–65.

environmental landscape may become hesitant to enter such an untrustworthy and risky environment.¹⁸⁷

5. Institutional Weakness and Persistent Dispute Resolution Challenges

One of the most fundamental factors that creates confidence for foreign investors lies in dispute resolution, which can be resolved fairly, efficiently, and transparently. While the Job Creation Law introduced various administrative and procedural reforms to improve Indonesia's investment environment, it falls short of addressing one of the most persistent concerns among foreign investors: the flaws of Indonesia's dispute resolution body. Despite its importance, the law does not reform the mechanisms available for resolving investor-state disputes, nor does it address the institutional weaknesses of the judiciary that have long been mentioned as an obstacle to legal certainty.¹⁸⁸

A study conducted by the World Bank stated that Indonesia's domestic judicial system is slow, unpredictable, and vulnerable to corruption or political interference. The inconsistent application of the law, lack of commercial court specialization, and lack of transparency in decision-making ruin the trust of investors. It further created concerns about the competence and neutrality of domestic adjudication,

¹⁸⁷ Fachrurazi, Ahmad Reza. "Legal Protection for Foreign Investors in Investing Capital in the National Capital City." *Andalas Law Journal* 8, no. 2 (December 2023): 51–66.

¹⁸⁸ Khatimah, "The Dispute Settlement over Foreign Investment in Indonesia," *op. cit.*

especially in complex transnational disputes involving large-scale FDI.¹⁸⁹

Because of these limitations, foreign investors tend to prefer international arbitration, particularly under the International Centre for Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL). These platforms offer neutrality, enforceability, and legal expertise that investors find lacking in Indonesian courts.¹⁹⁰ However, depending on the presence of Bilateral Investment Treaties (BITs) or clear arbitration clauses in investment contracts, access to such arbitration mechanisms is not guaranteed.¹⁹¹ Unfortunately, Indonesia has unilaterally terminated more than 20 of its BITs in recent years (including those with European and ASEAN countries), citing sovereignty and policy space concerns. This move has significantly reduced the legal routes available to investors seeking alternatives under international law.¹⁹²

To complicate the issue, the Job Creation Law does not mention the creation of a specialized investment court or tribunal that could offer an alternative, trusted platform for dispute resolution. The Law also does not stipulate clear procedural assurances for investor-state dispute

¹⁸⁹ Stephens, Matt, and Samuel Clark. *Forging the Middle Ground: Engaging Non-State Justice in Indonesia*. Jakarta: World Bank, 2008.

¹⁹⁰ Parra, *The History of ICSID*, *op. cit.*

¹⁹¹ Sacerdoti, *Bilateral Treaties and Multilateral Instruments on Investment Protection*, *op. cit.*

¹⁹² UNCTAD, *Investment Policy Hub: Bilateral Investment Treaties (BITs)*, *op. cit.*

settlement (ISDS) within the domestic legal system.¹⁹³ As a result, foreign investors are left in a risky position. They may be subject to unpredictable local court rulings with no clear access to independent, neutral platforms to challenge state action or regulatory change. If this happens, investors may seek protection under their home governments, triggering state-to-state dispute resolution processes that involve international affairs.¹⁹⁴

B. Alignment of the Job Creation Law with Bilateral Investment Treaty Standards in Protecting Foreign Investors

Bilateral Investment Treaties (BITs) are agreements between two nations that establish the conditions and safeguards for investments made by individuals or companies from one country in the territory of the other.¹⁹⁵ BITs are based on core principles that form the foundation of international investment law, including Legal Certainty, Fair and Equitable Treatment (FET), protection against expropriation, free transfer of funds, and access to Investor-State Dispute Settlement (ISDS) mechanisms, typically under ICSID or UNCITRAL.¹⁹⁶ When evaluating the compatibility of Indonesia's Job Creation Law (Law Number 6 of 2023) with BIT standards, it is essential to examine both the substantive content and the practical

¹⁹³ Khatimah, "The Dispute Settlement over Foreign Investment in Indonesia," *op. cit.*

¹⁹⁴ Schill, Stephan W. *The Multilateralization of International Investment Law*. Cambridge: Cambridge University Press, 2009.

¹⁹⁵ Poulsen, "The Importance of BITs for Foreign Direct Investment and Political Risk Insurance," *op. cit.* 539-574.

¹⁹⁶ UNCTAD Investment Policy Hub, "Indonesia," *op. cit.*

implementation of these legal reforms in relation to applicable international investment norms.

1. Legal Certainty and Fair and Equitable Treatment (FET)

Legal certainty and the principle of Fair and Equitable Treatment (FET) are key standards of international investment law, establishing the foundation of a host state's obligations toward foreign investors, especially under Bilateral Investment Treaties.¹⁹⁷ The FET standard requires states to act with transparency, predictability, and consistency in their relations with investors. It covers the protection of legitimate expectations, compliance with due process, and avoidance of arbitrary or discriminatory actions. When the host country fails to uphold these obligations, it can result in breaches of international law, which has the potential of exposing the host state to claims under investment treaties.¹⁹⁸

Aspect	Alignment	Gaps
Legal Certainty ¹⁹⁹	Rules are simpler and more organized.	Authorities have discretion, and local interpretation varies.
Fair and Equitable Treatment (FET) ²⁰⁰	Approvals and investment protection are supported.	No explicit FET guarantee, and investors could face unfair treatment.

¹⁹⁷ ICSID, *ICSID Convention, Regulations and Rules, op. cit.*

¹⁹⁸ United Nations Conference on Trade and Development (UNCTAD). *Fair and Equitable Treatment: A Sequel*. UNCTAD Series on Issues in International Investment Agreements II. New York and Geneva: United Nations, 2012.

¹⁹⁹ Bonniticha, Jonathan. *Investment Laws of ASEAN Countries: A Comparative Review*. Winnipeg: International Institute for Sustainable Development (IISD), December 2017.

²⁰⁰ *Ibid.*

The Job Creation Law (Law Number 6 of 2023) was introduced in response to overlapping regulations and Indonesia's regulatory environment that was too complicated, too bureaucratic, and too slow.²⁰¹ On paper, these reforms seem to support the goal of creating a more transparent and investor-friendly legal framework. However, in practice, significant procedural and substantive flaws have cast doubt on Indonesia's commitment to legal certainty and the Fair and Equitable Treatment (FET) standard.²⁰² Initially, the enactment of the Job Creation Law in 2020 was declared "conditionally unconstitutional" by the Constitutional Court in 2021 (Decision Number 91/PUU-XVIII/2020).²⁰³ The Court stated that the government failed to meet minimum standards of transparency, procedural clarity, and public participation, as required under Law Number 12 of 2011 on Lawmaking.²⁰⁴ Although the law was revised (Law Number 6 of 2023) to remedy these flaws, many argue that the process still lacked genuine engagement with society, labour groups, and environmental stakeholders.²⁰⁵

²⁰¹ Law Number 6 of 2023, *op. cit.*

²⁰² Constitutional Court of the Republic of Indonesia. Decision Number 91/PUU-XVIII/2020.

²⁰³ *Ibid.*

²⁰⁴ Law Number 12 of 2011 on Lawmaking

²⁰⁵ Gunawan and Syahbudin, "Legal Reconstruction of the Omnibus Law on Job Creation for Justice in Enhancing Investment and Indonesia's Competitiveness," *op. cit.* 253–275.

Furthermore, legal uncertainty prevails because of regulatory inconsistency between central and local governments. For example, while an investor may receive central approval, they may still face conflicting demands from local governments on permits, land usage, or environmental compliance, potentially delaying or blocking their operations. This undermines Indonesia's ability to provide a stable and consistent legal framework, which is essential under ICSID jurisprudence.²⁰⁶ In multiple ICSID cases, such as *Tecmed v. Mexico*²⁰⁷ and *LG&E v. Argentina*²⁰⁸, tribunals have emphasized that arbitrary regulatory change or poor governance can amount to a breach of FET. With that being said, this risk still exists in Indonesia's post-Job Creation Law environment.

Moreover, the lack of strong legal remedies to address regulatory inconsistencies further increases investors' risks. While Indonesia is a member of ICSID and has committed to upholding international investment standards through multiple bilateral investment treaties (BITs), the lack of consistent domestic legal frameworks and institutional coordination significantly restricts the effective implementation of these protections in practice.²⁰⁹

²⁰⁶ KPPOD, "Digitalisasi OSS Berbasis Risiko Masih Bermasalah Antara Pusat dan Daerah," *op. cit.*

²⁰⁷ *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003).

²⁰⁸ *LG&E Energy Corp., LG&E Capital Corp., and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability (3 October 2006).

²⁰⁹ Sumodiningrat, Aprilian. "Constitutional Disobedience Putusan Mahkamah Konstitusi: Kajian Terhadap Perppu Cipta Kerja." *Constitution Journal 2*, no. 1 (June 2023): 59–84.

2. Protection Against Direct and Indirect Expropriation

Protection against expropriation is one of the key principles of international investment law and a key standard upheld through Bilateral Investment Treaties. Expropriation can happen either directly, through movements like forced acquisition, or indirectly, where the state interferes with an investor’s rights in a way that significantly decreases the use and value, even without formally taking ownership.²¹⁰ Under BIT standards, expropriation is only considered lawful if it meets four collective criteria: (1) it serves a legitimate public purpose; (2) it is non-discriminatory; (3) it follows due process; and (4) it is accompanied by fast, fair, and effective compensation.²¹¹

Aspect	Description	Protection
Direct Expropriation ²¹²	The government physically seizes property or investment.	Law Number 25 of 2007 on Investment and Law Number 39 of 2004 on Nationalization.
Indirect Expropriation ²¹³	Regulatory or administrative actions effectively reduce the value or control of an investment, even without formal seizure.	No domestic law protection. Only exists through Bilateral Investment Treaties.

²¹⁰ ICSID, *ICSID Convention, Regulations and Rules*, *op. cit.*

²¹¹ Aceris Law. “Expropriation in Investment Arbitration.” <https://www.acerislaw.com/expropriation-in-investment-arbitration/>. Accessed June 30, 2025.

²¹² Law Number 25 of 2007, *op. cit.*

²¹³ Zaidun, Muchammad, Yuniarti, and Widhayani Dian Pawestri. “Investor Legitimate Expectation and Indirect Expropriation in Domestic Regulation Concerning the Application of Domestic Law Application.” *Yuridika* 37, no. 2 (May 2022): 457–472.

Indonesia's Law Number 25 of 2007 on Investment establishes core international standards by prohibiting the expropriation of investments except through a lawful process with the condition of compensation. However, the Job Creation Law (Law Number 6 of 2023) does not introduce any additional safeguards to reinforce these protections. It fails to address indirect expropriation, a more subtle form of state interference that, while not involving moves like force acquisition, can still effectively rob investors of the economic value or use of their investments.²¹⁴ The issue of indirect expropriation is particularly relevant in the context of Indonesia's decentralized governance system. Local governments may issue decisions that severely impact an investor's operation, such as revoking permits, changing land-use plans, or obstructing access to resources without following clear legal procedures or providing redress.²¹⁵

Although not formally labelled as expropriation, these actions can qualify as indirect or "creeping expropriation" under ICSID jurisprudence.²¹⁶ In many ICSID previous cases, such as Middle East

²¹⁴ Ekaristi, Pulkeria Proprieta Dewi. "Justification for Indirect Expropriation within a Government Measure." *Juris Gentium Law Review* 2, no. 1 (September 2014): 42–50.

²¹⁵ Zaidun, Yuniarti, and Pawestri, "Investor Legitimate Expectation and Indirect Expropriation," *op. cit.*

²¹⁶ Cox, Johanne M., et al. *Creeping Expropriation. In Expropriation in Investment Treaty Arbitration.* Oxford: Oxford University Press, 2019. Chapter 6. <https://jusmundi.com/en/document/publication/en-creeping-expropriation>. Accessed June 28, 2025.

Cement v. Egypt²¹⁷, Metalclad v. Mexico²¹⁸, and Tecmed v. Mexico²¹⁹, tribunals found that revocation of licenses, unclear environmental regulations, and local interference could be a form of indirect expropriation when the state effectively neutralizes the commercial value of the investment. These cases set the precedent that expropriation does not require physical confiscation of property. Rather, it is enough that the investor's rights are materially diminished or rendered useless.

Furthermore, while the Job Creation Law aims to encourage investment by simplifying regulations, it may heighten the risk of regulatory instability. In particular, the lack of coordination between central and local governments can lead to inconsistent interpretations and enforcement, where business licenses are issued and later revoked or restricted without due process.²²⁰ Such uncertainty reflects a common feature of creeping expropriation, where state actions, though indirect, greatly harm the value or operability of an investment.

3. Challenges in Dispute Resolution and the Lack of Effective Legal Remedies for Foreign Investors

Despite Indonesia's efforts to improve its investment environment through the Job Creation Law (Law Number 6 of 2023),

²¹⁷ *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award (12 April 2002).

²¹⁸ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000).

²¹⁹ *Tecmed v. Mexico*, *op. cit.*

²²⁰ Wigati, Adelisa, and Prita Amalia. "The Police Power Doctrine as a State's Protection Against the Claim of Indirect Expropriation under the International Investment Arbitration." *South East Asia Journal of Contemporary Business, Economics and Law* 28, no. 1 (December 2022): 20–25.

the law falls short of addressing the country's persistent institutional weaknesses in dispute resolution. The absence of a specialized investment court or an administrative body leaves a vital gap in handling regulatory disputes between the state and foreign investors.²²¹ Hence, foreign investors lack formal legal guarantees that disputes surfacing under the Job Creation Law, particularly those involving state or local government, will be resolved in a neutral, efficient, and expert manner.²²²

Indonesia remains a contracting party to the ICSID Convention, and foreign investors may still access ICSID arbitration when a valid bilateral investment treaty (BIT) or investment contract containing an arbitration clause is in place. However, between 2014 and 2020, the Indonesian government unilaterally terminated over 20 BITs, many of which had strong ISDS provisions.²²³ This policy shift has created a significant legal vacuum. Several of the new or renegotiated BITs are either still pending conclusion or include more restrictive ISDS clauses. As a result, investors now face greater legal uncertainty regarding their ability to access international dispute resolution mechanisms.²²⁴

The lack of a domestic alternative to international arbitration further worsens the issue. While Indonesia does offer general commercial arbitration, such as through the Indonesian National

²²¹ Khatimah, "The Dispute Settlement over Foreign Investment in Indonesia," *op. cit.*

²²² Stephens and Clark, *Forging the Middle Ground*, *op. cit.*

²²³ UNCTAD, *Investment Policy Hub: Bilateral Investment Treaties (BITs)*, *op. cit.*

²²⁴ UNCTAD, *Investment Policy Hub: Bilateral Investment Treaties (BITs)*, *op. cit.*

Arbitration Board (BANI), these instruments are not designed to address public law disputes involving state conduct or regulatory interference.²²⁵ Additionally, a study conducted by the World Bank found that Indonesia's domestic judicial system is slow, unpredictable, and susceptible to corruption or political interference.²²⁶

4. Comparative Analysis of Investor Protections: Indonesia's Job Creation Law vs. BITs with China and the Netherlands

To understand how well Indonesia's Job Creation Law (Law No. 6 of 2023) aligns with international investment standards, it is helpful to compare it with the protections offered in Indonesia's Bilateral Investment Treaties (BITs) with China (1994)²²⁷ and the Netherlands (1994)²²⁸. Regarding Fair and Equitable Treatment (FET), the Indonesia–China BIT explicitly provides that investments must receive fair and equitable treatment and adequate protection and security.²²⁹ In comparison, the Job Creation Law, while aiming to simplify regulations, does not explicitly guarantee FET. This creates a potential gap in protection, as investors in Indonesia under this domestic law may not enjoy the same clarity or predictability that the BIT offers. The

²²⁵ Badan Arbitrase Nasional Indonesia (BANI). *Peraturan dan Prosedur Arbitrase BANI 2025*. Jakarta: BANI, 2025.

²²⁶ Stephens and Clark, *Forging the Middle Ground*, *op. cit.*

²²⁷ *Agreement Between the Government of the Republic of Indonesia and the Government of the People's Republic of China on the Promotion and Protection of Investments*, signed October 23, 1994.

²²⁸ *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia on the Promotion and Protection of Investment*, signed September 22, 1994.

²²⁹ *Agreement Between the Government of the Republic of Indonesia and the Government of the People's Republic of China*, art 2(2), *op. cit.*

Indonesia–Netherlands BIT, on the other hand, explicitly guarantees FET and prohibits unreasonable or discriminatory measures, providing a strong legal standard for investor protection.²³⁰ Compared to this, the Job Creation Law again falls short, as it lacks explicit FET language, leaving investors reliant on general regulatory provisions rather than treaty-based safeguards.

In terms of expropriation, the Indonesia–China BIT protects against direct and indirect expropriation, requiring compensation that is prompt, adequate, and effective.²³¹ The Job Creation Law reinforces protection only against direct expropriation, as outlined in Law No. 25 of 2007, and offers no safeguards against indirect expropriation, which could arise from regulatory or administrative actions that reduce the value or use of an investment. Similarly, the Indonesia–Netherlands BIT protects investors from both direct and indirect expropriation, with detailed rules on compensation and due process.²³² Again, the Job Creation Law provides less comprehensive protection, highlighting a gap between domestic legislation and treaty standards.

For dispute resolution, the Indonesia–China BIT provides access to ISDS mechanisms, allowing investors to bring claims under ICSID

²³⁰ *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia*, art 3(1), *op. cit.*

²³¹ *Agreement Between the Government of the Republic of Indonesia and the Government of the People's Republic of China*, art 6(1), *op. cit.*

²³² *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia*, art 5, *op. cit.*

arbitration in certain circumstances.²³³ The Job Creation Law, by contrast, is silent on ISDS, meaning investors must rely on BITs or contractual clauses for international arbitration, creating uncertainty. The Indonesia–Netherlands BIT also grants investors access to ICSID arbitration without requiring exhaustion of local remedies, offering a stronger, more reliable dispute resolution option than the domestic law.²³⁴

CHAPTER IV

CLOSING

A. Conclusion

1. The enactment of the Job Creation Law (Law No. 6 of 2023) reflects Indonesia’s effort to improve its investment climate by simplifying

²³³ *Agreement Between the Government of the Republic of Indonesia and the Government of the People's Republic of China*, art 9, *op. cit.*

²³⁴ *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia*, art 9(4), *op. cit.*

licensing procedures, adopting a risk-based approach, and reducing overlapping regulations. These reforms have created a more efficient framework for foreign investors and expanded opportunities across strategic sectors. Nevertheless, their impact on legal protection remains limited. Persistent inconsistencies between central and local regulations, constitutional challenges to labour provisions, the weakening of environmental oversight, and unresolved weaknesses in dispute resolution continue to undermine investor confidence. Moreover, the termination of many Bilateral Investment Treaties has reduced the availability of international safeguards, leaving Indonesia less competitive compared to regional peers such as Vietnam, which offers greater predictability and institutional stability.

2. The Job Creation Law (Law No. 6 of 2023) reflects Indonesia's effort to modernize its investment framework and bring it closer to international standards under Bilateral Investment Treaties (BITs). On paper, the law promotes legal certainty, protects investors from direct expropriation, and maintains the right to capital repatriation, aligning with some of the core protections typically guaranteed under BITs. In practice, however, its alignment remains incomplete. Regulatory inconsistencies between central and local governments weaken predictability and fall short of the Fair and Equitable Treatment (FET) standard. The law also fails to address indirect or "creeping" expropriation, leaving investors exposed to administrative or regulatory

measures that could erode the value of their investments. Furthermore, dispute resolution remains a significant weakness: Indonesia has no specialized investment courts, and the termination of many BITs has reduced access to reliable international arbitration, leaving investors dependent on a domestic judicial system that is often viewed as slow and unpredictable. These gaps limit Indonesia's ability to fully meet the standards of modern BITs and create ongoing uncertainty for foreign investors.

B. Recommendation

1. To strengthen legal protection for foreign direct investment, Indonesia should prioritize consistent implementation of reforms, ensuring that local governments adhere to national regulations and eliminating conflicting interpretations. Labour flexibility must be balanced with adequate worker protections aligned with international standards to minimize unrest and reputational risks. Environmental safeguards should be maintained for medium-risk projects through targeted monitoring and reporting to prevent social conflict and ecological damage. Judicial independence must be reinforced, and the establishment of a specialized investment or commercial court should be considered to provide impartial and reliable dispute resolution. Finally, reactivating or modernizing Bilateral Investment Treaties would restore international legal guarantees and complement domestic reforms. Collectively, these measures would enhance legal certainty,

improve investor trust, and position Indonesia as a more secure and competitive destination for foreign direct investment.

2. To strengthen its alignment with BIT standards and provide more robust protection for foreign investors, Indonesia should focus on several key reforms. First, consistent implementation of the Job Creation Law must be ensured across both central and local levels to prevent conflicting regulations and reinforce legal certainty in line with the FET standard. Second, explicit protection against indirect expropriation should be incorporated, covering risks such as arbitrary permit revocations, sudden land-use changes, or local administrative interference that materially reduce investment value. Third, Indonesia should establish specialized investment courts or tribunals to provide impartial, expert, and efficient dispute resolution while ensuring access to neutral arbitration under international frameworks like ICSID or UNCITRAL. Finally, a recalibrated approach to Bilateral Investment Treaties is essential: reinstating or renegotiating BITs with clear investor–state dispute settlement (ISDS) clauses would restore international legal guarantees and complement domestic reforms. Together, these measures would close the current gaps, improve legal certainty, and bring Indonesia closer to meeting global standards of investor protection.

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