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Analysis of Foreign Investment Regulations in Indonesia from the Perspective of a Legal System that Supports Ease of Doing Business and Legal Certainty for Investors

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Abstract: Foreign investment plays a strategic role in driving economic growth and enhancing Indonesia's global competitiveness. To create a conducive investment climate, the government has implemented regulations within a pro-business legal framework, including Law Number 25 of 2007 concerning Investment, which has now been updated through Law Number 6 of 2023 concerning Job Creation, along with its implementing regulations, such as Government Regulation Number 5 of 2021 concerning Investment and regulations related to the Negative Investment List (DNI). These regulations aim to provide ease of doing business, legal certainty, and protection for foreign investors. However, their implementation still faces challenges in the form of licensing complexity, overlapping regulations, legal uncertainty, and restrictions in several strategic sectors. This research uses a normative juridical method with a statutory and conceptual approach, as well as data from academic literature and related legal documents. The analysis reveals that although regulatory updates through the Job Creation Law and the Online Single Submission (OSS) system have improved the ease of doing business, legal gaps and inconsistencies remain that impact investor confidence. Therefore, regulatory harmonization and strengthened legal implementation are needed to create a more competitive and resilient investment environment.

Keyword: Regulation, Foreign Investment, Pro-Business Legal System, Investment Policy.

INTRODUCTION

Foreign investment plays a strategic role in Indonesia's economic development, serving as a primary source of increased investment, job creation, and technology transfer (Rosmayanti & Apriani, 2023). Increased foreign capital flows also expand international trade networks and strengthen Indonesia's position in the global economy (Sari et al., 2025). Foreign direct investment not only contributes to gross domestic product (GDP) growth but also helps strengthen the national industrial structure by increasing efficiency and competitiveness (Prahaski & Ibrahim, 2023). The government recognizes that investment attractiveness is determined not only by natural resource potential but also by legal stability,

policy transparency, and business certainty (Triana et al., 2024). These factors are key indicators for investors in assessing a country's suitability as a long-term investment destination.

Indonesia's investment climate has shown positive improvement over the past two decades, although it remains less competitive than some ASEAN countries such as Singapore, Malaysia, and Vietnam (Putri et al., 2018). The World Bank's Ease of Doing Business report indicates that licensing reforms have improved Indonesia's ranking, but not significantly enough to make it a top investment destination in the region (Oktaviana & Wulandari, 2022). Many investors still face complex administrative hurdles, uncertainty in regulatory implementation, and high transaction costs. Competitor countries such as Vietnam have succeeded in attracting significant investment by offering more stable legal certainty, a simplified licensing system, and clear fiscal incentives (Prastiti, 2022). This situation has prompted the Indonesian government to continuously review regulations to be more adaptive to global market needs.

The government's role is crucial in developing regulations that support the ease of doing business and provide legal certainty for investors (Sinaga, 2017). Pro-investment policies were then implemented through structural reforms, specifically the Omnibus Law, namely Law Number 6 of 2023 concerning Job Creation, which revises various sectoral provisions, including those related to investment (Kusbandini et al., 2023). This regulation is designed to simplify the licensing process, reduce bureaucratic obstacles, and integrate various digital-based public services. The government is also striving to create an investor-friendly legal ecosystem by establishing a risk-based Online Single Submission (OSS) system (Angkareda, 2025). This regulatory reform is a crucial step in strengthening investor confidence in the legal system and national economic policy.

Various problems persist despite the progressive implementation of the investment law. Licensing complexity remains at the regional level due to the lack of uniform policy implementation between the central and regional governments (Setlight et al., 2025). Dissonance between regulations also creates uncertainty in legal application, particularly when one regulation conflicts with another. Foreign investors often face difficulties in understanding the limits of permitted investment sectors, particularly in strategic sectors that require special permits (Rachman et al., 2025). Weak coordination between agencies slows down the investment process and risks undermining global investor confidence. This situation demonstrates that improving the ease of doing business requires more than just deregulation; it also requires consistent and equitable law enforcement.

Foreign investment, according to Law Number 25 of 2007 concerning Investment, is the activity of investing capital to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, either using foreign capital entirely or in partnership with domestic investors (Sari I., 2020). This definition was later updated through Law Number 6 of 2023 concerning Job Creation, which expanded the definition of investment to include aspects of digitalization and risk-based regulation. The law emphasizes the need for protection and legal certainty for investors so that investment activities can run fairly, efficiently, and sustainably. The regulation also encourages the creation of an open competitive investment climate oriented towards national economic growth. This concept demonstrates that the existence of PMA is not only an economic instrument, but also a legal instrument that requires regularity in its application.

Domestic Investment (PMDN) differs from Foreign Investment (PMA), particularly in terms of capital sources, regulations, and business ownership. PMDN is conducted by Indonesian citizens or Indonesian legal entities, with all capital owned by domestic parties. In contrast, PMA involves capital participation from foreign parties, either directly or through joint ventures (Putri & Manisha, 2021). This difference results in different legal treatment,

particularly in terms of licensing, business sector restrictions, and legal protection. The government strives to balance these two types of investment to create synergy between national and global interests.

Basic principles of foreign investment include the principles of non-discrimination, fair treatment, and legal certainty (Purboyo et al., 2025). The principle of non-discrimination emphasizes that foreign investors must be treated equally with domestic investors as long as they comply with statutory provisions (Thalib, 2024). The principle of fair treatment ensures that every investor receives fair and proportional treatment without abuse of authority (Febriano et al., 2025). Meanwhile, legal certainty serves as the primary foundation, ensuring that every government decision is predictable based on applicable regulations (Dewi & Apriani, 2022). These three principles constitute international standards, also adopted by Indonesia in various bilateral and multilateral agreements. The implementation of these principles is crucial for investor confidence in the consistency of national economic policies.

Relevant legal principles in investment include legal certainty, benefit, and justice, as proposed by Gustav Radbruch. The principle of legal certainty requires clear, consistent, and enforceable norms to avoid uncertainty for business actors. The principle of benefit focuses on creating economic and social benefits for the community from investment activities. The principle of justice ensures that investment policies not only benefit investors but also consider the rights of the community and the interests of the state (Halilah & Arif, 2021). The balance between these three principles is the benchmark for the success of modern and equitable investment law.

The legal system theory developed by Lawrence M. Friedman provides an analytical framework for how law works through three main elements: legal structure, legal substance, and legal culture. The legal structure encompasses the institutions and officials that carry out legal functions; legal substance encompasses the regulations that form the basis for regulation; and legal culture relates to public awareness and behavior toward the law (Al Kautsar & Muhammad, 2022). All three must work in harmony for the investment legal system to function effectively and support ease of doing business. An imbalance in any one element can hamper regulatory implementation and create uncertainty for investors.

The concept of good governance is closely related to investment because it emphasizes the principles of transparency, accountability, participation, and the rule of law. Good governance is a crucial foundation for building public and investor trust in economic policies (Siregar et al., 2025). The application of good governance principles ensures that the investment licensing process is transparent, non-discriminatory, and free from corruption (Afrilian et al., 2025). Furthermore, the Ease of Doing Business indicator is used to measure the extent to which the government system supports ease of doing business through efficient regulations and public services. The relationship between Good Governance and Ease of Doing Business serves as a global benchmark for the success of investment reforms in Indonesia.

The Indonesian investment legal system has undergone a long evolution from the New Order era to the reform period and the advent of the Omnibus Law. In the early days, investment policy focused on attracting foreign capital to develop infrastructure and basic industries, while during the reform era, the policy direction shifted toward economic openness. Significant changes occurred with the enactment of the Job Creation Law, which aimed to integrate various investment regulations into a single, efficient legal entity. Institutions such as the Investment Coordinating Board (BKPM), now the Ministry of Investment, play a crucial role in regulating, supervising, and facilitating investment in Indonesia. National investment law has also become increasingly intertwined with various international agreements, such as Bilateral Investment Treaties (BITs) and the ASEAN

Comprehensive Investment Agreement, which provide standard protection and legal certainty for foreign investors.

METHOD

This research uses a normative juridical method that focuses on the analysis of written law and applicable legal principles to examine foreign investment regulations in Indonesia. The approaches used are the statute approach and the conceptual approach. The statute approach is used to systematically examine various regulations that form the legal basis for investment in Indonesia, including Law Number 25 of 2007 concerning Investment, Law Number 6 of 2023 concerning Job Creation, Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing (which has been revoked by Government Regulation Number 28 of 2025), and the Presidential Regulation concerning the Investment Priority List. This approach helps in understanding how legal norms are regulated, interpreted, and implemented to support the ease of doing business and legal certainty for foreign investors. Meanwhile, a conceptual approach is used to examine legal ideas and theories related to the investment legal system, the principles of legal certainty, utility, justice, and Lawrence M. Friedman's legal system theory, which encompasses the structure, substance, and culture of law. This approach provides a theoretical foundation for understanding the relationship between applicable regulations and the reality of investment law implementation in Indonesia. Research data was obtained through a literature review covering primary, secondary, and tertiary legal materials such as laws, scientific journals, law books, and official government documents. The analysis was conducted qualitatively by interpreting relevant legal provisions and theories to produce a comprehensive understanding of the effectiveness of the legal system in supporting ease of doing business and legal certainty for foreign investors in Indonesia.

RESULTS AND DISCUSSION

Legal Regulations for Foreign Investment in Indonesia

Law Number 25 of 2007 concerning Investment is the primary foundation for investment activities in Indonesia, both domestic and foreign. Article 3 paragraph (1) emphasizes that investment is based on the principles of legal certainty, transparency, accountability, equal treatment, and environmental awareness. This law also regulates basic investment principles, such as equal treatment for all investors (Article 6 paragraph (1)) and guarantees legal protection against unilateral nationalization or takeover (Article 7 paragraphs (1)–(2)). The goal is to create a healthy, competitive, and sustainable investment climate, as affirmed in Article 4 paragraph (1), which states that investment policy is directed at accelerating national economic development and improving public welfare.

A major update to investment regulations occurred through Law Number 6 of 2023 concerning Job Creation, which replaces some provisions in Law 25 of 2007. This law was drafted using an omnibus law method, combining various cross-sectoral provisions into a single, integrated legal framework. The main focus is bureaucratic simplification, policy alignment between agencies, and strengthening national investment competitiveness. These reforms are expected to reduce administrative barriers that have been a major obstacle for foreign investors. Furthermore, the Job Creation Law introduces a more flexible, risk-based approach to investment licensing, replacing the slow and inefficient conventional licensing system.

The government issued Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing, which was later revoked by Government Regulation Number 28 of 2025, as a follow-up to the Job Creation Law. This regulation stipulates that investment licensing levels are determined based on the risk level of business

activities, which are divided into low, medium, and high risk, as stated in Article 5, paragraph 3, letter (a). This system facilitates investors because business licenses can be issued more quickly for low-risk activities through an electronic system. This approach also provides procedural certainty by integrating various sectoral permits into a single integrated system. The government strives to ensure that licensing is transparent, measurable, and no longer dependent on subjective interpretations by bureaucratic officials.

The Presidential Regulation on the Investment Priority List (DPI) replaces the Negative Investment List (DNI), which previously limited business sectors for foreign investors. Through the DPI, the government shifted from a restrictive approach to an investment promotion approach. Sectors deemed strategic for national development are given priority and fiscal incentives such as tax exemptions or ease of licensing. This step demonstrates a paradigm shift, with the government now acting more as an investment facilitator than a restrictive regulator. The DPI system also provides clarity to foreign investors regarding which business sectors are open and can be entered under certain conditions.

The concept of ease of doing business has become a key instrument in measuring the effectiveness of Indonesia's investment legal system. The government is striving to improve the ease of doing business ranking by digitizing licensing services through the Online Single Submission (OSS) system. This system allows investors to process all permits online without having to go through multiple institutions. The primary goal is to reduce the costs and time required to start a business in Indonesia. The implementation of the OSS demonstrates the government's commitment to creating a more efficient, transparent, and accountable investment mechanism.

The One-Stop Integrated Service System (PTSP) is a key pillar of investment licensing reform in Indonesia. Through the Integrated Investment System (PTSP), all investment administration processes previously scattered across various agencies can now be conducted within a single institution, the Ministry of Investment/BKPM. This concept was adopted to facilitate inter-agency coordination and expedite the licensing process for foreign investors. The Integrated Investment System (PTSP) also serves as a means of monitoring investment activities to ensure they comply with applicable laws. The effectiveness of this system depends heavily on the quality of public services and the integrity of the officials who carry out their functions.

The implementation of the OSS and PTSP policies has had a positive impact on increasing foreign direct investment (FDI) in Indonesia. Investors now have easier access to obtaining business permits without cumbersome bureaucratic hurdles. The accelerated administrative process contributes to increased investor confidence in the stability of national economic policy. The government also aims to create cross-ministerial data integration to make the licensing process more efficient and freer from administrative duplication. However, technical obstacles remain, such as the readiness of digital infrastructure and differences in human resource capacity between regions.

Legal certainty for foreign investors is a key factor in determining the success of investment policies. Investment law must ensure that every investor's rights are protected from arbitrary actions or sudden policy changes. Legal certainty also includes protection of asset ownership and the right to transfer profits to the investor's country of origin. The government strives to reinforce these guarantees through various implementing regulations and bilateral investment agreements. Legal certainty provides investors with a sense of security for long-term investments in Indonesia.

Investment dispute resolution mechanisms are an essential part of the legal protection system for investors. Indonesia offers two dispute resolution channels: national arbitration regulated by the Indonesian National Arbitration Board (BANI) and international arbitration,

such as the International Center for Settlement of Investment Disputes (ICSID). This mechanism provides investors with an option to obtain justice outside the conventional judicial system, which is often considered slow. The government also guarantees the implementation of arbitration awards as a commitment to the rule of law. The existence of this dispute resolution mechanism increases global confidence in the credibility of Indonesian law.

Challenges to legal certainty in foreign investment continue to arise due to overlapping authority between the central and regional governments. Extensive decentralization often gives rise to differing interpretations of investment regulations, leading to inconsistent implementation on the ground. Some regions have implemented additional policies inconsistent with central regulations, creating uncertainty for investors. This problem is further exacerbated by weak coordination between institutions and a suboptimal oversight system. Efforts to harmonize regulations and improve legal capacity at the regional level are crucial steps to strengthen legal certainty for investment in Indonesia.

Analysis of the Legal System that Supports Ease of Doing Business and Legal Certainty

The Regulation on the Implementation of Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law represents a milestone in legal reform in the investment sector. This regulation emphasizes the simplification of business licensing through a risk-based approach, as stipulated in Government Regulation Number 5 of 2021, which was later revoked through Government Regulation Number 28 of 2025. This system transforms the traditional, cumbersome licensing paradigm into an integrated electronic system through the OSS-RBA (Online Single Submission Risk-Based Approach). Its primary objective is to provide legal certainty and ease of doing business for investors, both domestic and foreign. The licensing process, which previously required months, can now be completed online in a more efficient manner.

The implementation of the OSS-RBA has been proven to have a positive impact on increasing foreign direct investment (FDI). Data from the Ministry of Investment shows that after the system's implementation, the number of investment projects increased significantly, particularly in the new and renewable energy, automotive manufacturing, and digitalization of public services sectors. Simplifying licensing reduces transaction costs and expedites the investment administration process. This reinforces the positive perception of Indonesia's business climate among global investors. The implementation of a risk-based licensing system also provides space for private sector innovation without losing legal control from the state.

However, the implementation of the OSS-RBA still faces technical and institutional challenges, particularly at the regional level. Many local governments are not yet fully prepared to adapt conventional licensing systems to the digital-based OSS mechanism. Network connectivity constraints, low human resource capacity, and bureaucratic resistance are factors that hinder the system's effectiveness. Coordination between central and regional agencies is also lacking, leading to overlapping authority and inconsistent regulatory interpretation. This situation means some investors continue to face uncertainty in obtaining business permits.

The OSS-RBA system simplifies investment in solar and geothermal power generation projects. Permits that previously required cross-ministerial recommendations can now be submitted through a single digital portal. The manufacturing sector also enjoys similar benefits, with accelerated factory construction permits and raw material procurement. Meanwhile, the digital sector has received a strong boost through accelerated licensing for data centers and telecommunications infrastructure. The implementation of the OSS-RBA

emphasizes the importance of an integrated legal system that balances the needs of economic growth with legal certainty.

The Indonesian investment legal system consists of three main components, as outlined by Lawrence M. Friedman: legal structure, substance, and culture. The investment legal structure encompasses institutions such as the Ministry of Investment, the Investment Coordinating Board (BKPM), and sectoral supervisory agencies with administrative authority. The legal substance is contained in laws and regulations, such as Law Number 25 of 2007 concerning Investment and its implementing regulations. Meanwhile, the legal culture reflects the behavior, values, and legal awareness of the public and business actors regarding applicable regulations. These three elements must function harmoniously to create an investment legal system that is effective and adaptable to global economic changes.

Evaluations of the investment legal system indicate that synchronization between central and regional regulations is still suboptimal. Many regions establish investment policies that are inconsistent with national guidelines, particularly regarding spatial planning, the environment, and technical licensing. Regional regulations that conflict with central regulations often create legal uncertainty for investors. The central government has attempted to strengthen coordination through cross-sectoral regulatory harmonization policies, but their implementation still requires consistency and strict oversight. This situation demonstrates that the investment legal system still requires strengthening in terms of planning, control, and law enforcement.

Legal certainty is closely linked to the level of investor confidence in a country. Inconsistent or discriminatory law enforcement can reduce investor interest in investing. Clarity of regulations, transparency of procedures, and consistency of implementation are key determinants in attracting long-term investment. Constantly changing regulations without adequate publicity also raise doubts about the stability of investment policies. Therefore, the investment legal system needs to place the principles of legal transparency and predictability as the primary foundation of national economic development policies.

The main problem with foreign investment lies in the inconsistency and disharmony between regulations. Differences in interpretation between ministries, institutions, and local governments often create unclear procedures that hinder investment realization. Sectoral laws such as the Mineral and Coal Mining Law, the Environmental Law, and the Manpower Law sometimes overlap with investment provisions. This disharmony slows the decision-making process and increases legal risks for investors. This situation indicates that integrating cross-sectoral legal systems remains a significant challenge for the government.

Weak transparency and coordination between institutions also undermine the effectiveness of the national investment system. Many investors experience difficulty accessing information regarding permit status, environmental regulations, or other technical provisions. This lack of transparency opens up opportunities for corruption and abuse of authority. Furthermore, inter-institutional coordination is not yet fully efficient because sectoral egos still dominate investment policymaking. This situation demands improvements to inter-agency working mechanisms to be more collaborative and digitally integrated.

The issue of economic sovereignty presents a unique challenge in attracting foreign investment. The government must balance national interests with those of global investors. Providing overly lenient investment facilities can create dependence on foreign capital, while excessive restrictions risk reducing Indonesia's competitiveness. Regulation of share ownership limits, technology transfer, and natural resource protection requires careful management. This balance can be achieved if investment policies are oriented toward sustainable development and economic equality.

Investment law reform is aimed at creating regulations that are synchronized, transparent, and responsive to global dynamics. The government needs to strengthen

harmonization between regulations by establishing a National Investment Legal Framework that integrates various sectoral regulations into a single, cohesive legal system. Regular evaluation of laws and technical regulations is essential to ensure that each provision remains relevant to national economic needs. Increasing the capacity of law enforcement agencies is also crucial to ensure that the resolution of investment disputes is carried out quickly, fairly, and with integrity.

The One Gate Policy concept is a strategic solution for creating legal certainty for investment. Integrating digital systems between the OSS-RBA (Investment Information System) system, the systems of technical ministries, and regional governments will strengthen the effectiveness of business licensing. This system not only simplifies the process for investors but also enables the government to conduct real-time monitoring of all investment activities. The use of big data and artificial intelligence can help prevent administrative irregularities and increase public accountability. Policy digitization is key to modernizing the national investment legal system.

Strengthening oversight and law enforcement mechanisms is a crucial pillar in maintaining investment fairness. Every violation, both administrative and criminal, must be prosecuted in accordance with applicable laws to create a deterrent effect and ensure legal certainty. The involvement of independent institutions such as the Ombudsman and the Corruption Eradication Commission (KPK) in monitoring investment policies can also increase transparency and bureaucratic integrity. The state has an obligation to ensure that law enforcement against investment violations is carried out without political interference or short-term economic interests. Equitable investment law reform will strengthen Indonesia's position as a trusted investment destination globally.

CONCLUSION

Investment regulation in Indonesia has shown significant progress with the enactment of Law Number 6 of 2023 concerning Job Creation, which updates the provisions of Law Number 25 of 2007 concerning Investment. These changes simplify licensing, strengthen the OSS-RBA system, and improve the ease of doing business, which is expected to attract more foreign investment. However, its effectiveness still faces challenges in the form of regulatory disharmony between sectors and a lack of synchronization between the central and regional governments. Inconsistent law enforcement and weak supervisory agency capacity mean that investors do not feel fully secure in legal certainty. A sound investment legal system depends not only on formal regulations but also on effective institutional structures and a legal culture that supports stability and trust in business.

Efforts to strengthen the investment legal system need to be directed at policy harmonization, consistent law enforcement, and modernization of licensing governance. The government must ensure that every regulation issued has a clear link between sectors to avoid overlapping authority. Institutional capacity, both at the central and regional levels, needs to be improved to carry out investment oversight and service functions professionally and transparently. Digitizing the licensing system is a strategic step to accelerate administrative processes, increase public accountability, and minimize the potential for bureaucratic irregularities. Planned and sustainable legal reforms will build investor confidence and strengthen Indonesia's competitiveness as a global investment destination.

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