



Investment Policies in Indonesia that Do Not Favor Investors from a Legal Protection Perspective

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ABSTRACT

This study aims to analyze the extent to which investment policies in Indonesia provide legal protection and certainty for investors, to identify the main structural and institutional obstacles in their implementation, and to examine the interaction between central and regional governments in regulating investment activities. Employing a normative legal research method with a library research approach, this study analyzes primary legal materials such as investment laws and related regulations, supported by secondary and tertiary legal sources including scholarly literature and legal dictionaries. The findings indicate that legal uncertainty in investment implementation is primarily driven by inconsistent policies, weak coordination between central and regional authorities, complex licensing procedures, and the misuse of discretionary power by certain officials.

INTRODUCTION

Investment in Indonesia, which is intended to promote public welfare and prosperity, represents the original ideals and aspirations of the nation and the state, commonly referred to as a “developing country.” Income disparities across Indonesia’s 38 provinces, stretching from Papua to Sumatra and characterized by uneven distribution, have become a significant reference point for the Indonesian government in its efforts to improve national welfare through investment, both domestic and foreign (Oei, 1969). At the national level, per capita income calculated by dividing national income by the total population serves as an indicator for assessing and evaluating the level of welfare and prosperity of a country. In this regard, Indonesia’s per capita income remains relatively low when compared to that of developed countries (Bramantyo, 2021; Yusnita et al., 2025).

Investment constitutes a crucial component of national economic development, including in the agricultural sector. From a long-term macroeconomic perspective, investment increases the capital stock, and the expansion of capital stock enhances production capacity, thereby accelerating the rate of national economic growth. The government has undertaken various efforts to encourage investment by both domestic and foreign investors through a range of policies and regulations (Budiarta, 2018; Taduri, 2021). Nevertheless, investment development, particularly in agriculture, is influenced not only by government policies and regulations but also by broader environmental factors, including policies issued by ministries outside the Ministry of Agriculture and by non-ministerial institutions. Foreign investment, in particular, is subject to more stringent requirements to attract investors to place their capital in Indonesia. This discussion highlights investment in one specific sector, namely agriculture, although Indonesia still possesses substantial untapped potential in other sectors, with abundant natural resources extending from Sabang to Merauke (Magiera, 2017; Van der Eng, 2009).

The legal framework governing investment in Indonesia is regulated through various laws and regulations that provide guidance and rules for investment implementation and business activities. These regulations are designed to create legal certainty and direction for investors. In principle, Indonesian investment law seeks to regulate general investment principles, define the rights and obligations of investors, provide facilities and incentives, and ensure legal protection for investment assets and business activities, including mechanisms for dispute resolution and the enforcement of social and environmental responsibility (Baharumshah & Almasaied, 2009). Regulatory reforms have also been pursued to simplify business licensing, accelerate investment procedures, and enhance Indonesia’s investment attractiveness through risk-based licensing systems, tax incentives, sectoral prioritization, and the use of integrated electronic licensing platforms (Amin et al., 2023).

Despite the abundance of regulations intended to safeguard and support investment activities in Indonesia, numerous problems persist in practice. The legal framework often appears comprehensive and well-structured on paper, yet its implementation tends to be inconsistent and, at times, merely symbolic. Investment activities are fundamentally beneficial and strategic for economic development if they are implemented in accordance with prevailing laws and regulations. Law Number 25 of 2007 on Investment, which was enacted with the objective of accelerating national economic development, reflects a commendable vision. However, its practical impact requires continuous re-evaluation, particularly through empirical assessments conducted by both central and regional governments regarding its actual contribution to national economic development (Amin et al., 2023; Zarkasi, 2010).

The enactment of Law Number 25 of 2007 was motivated by several considerations, including the need to realize a just and prosperous society in line with the principles of Pancasila and the 1945 Constitution, the recognition of investment as an integral component of a democratically managed national economy, the necessity of increasing capital investment to accelerate economic growth, and the demand to create a more conducive investment climate amid global economic changes and Indonesia's active participation in international cooperation. Consequently, earlier investment laws governing foreign and domestic investment were deemed insufficient and required replacement to better align with contemporary economic conditions (Amin et al., 2023; Sari, 2020).

Foreign investment, as defined in earlier legislation, refers to direct investment in which the investor bears the risk directly and conducts business operations within Indonesia. Scholars have described foreign investment as capital investment activities involving a foreign element, which may be identified through differences in nationality, capital origin, or other related factors. Investment, in economic terms, represents a commitment to allocate current assets over a certain period in the future in order to obtain returns that compensate for the investor's sacrifices, including asset illiquidity, inflation, and uncertainty of future income. Nonetheless, it cannot be denied that Law Number 25 of 2007 has not yet fully provided adequate legal protection for investors, whether domestic or foreign (Amin et al., 2023; Sihombing, 2009).

In linguistic and conceptual terms, policy is understood as a combination of expertise, skills, and wisdom, as well as a set of concepts and principles that serve as the basis for planning and implementing actions in governance and organizational management. Ideally, policy should protect and favor legal subjects in accordance with applicable regulations. Government-issued policies inherently constitute binding legal rules that must be complied with by relevant legal subjects. The Indonesian government has demonstrated seriousness in formulating policies related to investment and legal protection for investors, including systems, procedures, and implementation mechanisms at both central and regional levels. However, weaknesses in bureaucratic oversight and regulatory consistency remain significant challenges (Marzuki, 2008; Mas, 2020).

Indonesia's abundant natural resources and strategic geographical position should, in theory, attract substantial investment. Yet, policy inconsistency, regulatory uncertainty, and weak implementation have undermined investor confidence. Frequent regulatory changes and discretionary practices by certain officials at both central and regional levels further exacerbate these conditions. In practice, investors often encounter unofficial financial demands during licensing processes, disguised as negotiations, which contradict the principles of transparency and legal certainty. Although electronic and integrated licensing systems have been introduced to simplify procedures, their implementation is frequently compromised by vested interests, resulting in inefficiencies and legal ambiguity (Devi, 2019; Panjaitan, 2003).

Empirical analyses indicate that domestic investment has a positive and significant impact on economic growth, both partially and simultaneously. Higher realization of domestic investment corresponds with increased economic growth, underscoring investment as a key driver of long-term economic expansion. Sustained growth requires continuous increases in aggregate expenditure, which can only be achieved through consistent investment expansion. Therefore, while investment remains a fundamental engine of economic growth, unresolved legal and institutional issues continue to pose serious obstacles to the creation of a truly investor-friendly and legally secure investment climate in Indonesia.

THEORETICAL REVIEW

Investment in Indonesia, which is intended to promote public welfare and prosperity, represents the original ideals and aspirations of the nation and the state, commonly referred to as a "developing country." Income disparities across Indonesia's 38 provinces, stretching from Papua to Sumatra and characterized by uneven distribution, have become a significant reference point for the Indonesian government in its efforts to improve national welfare through investment, both domestic and foreign (Oei, 1969).

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METHODOLOGY

The method employed in this study is a library research approach, which involves systematically examining, reviewing, and analyzing various legal sources relevant to the topic under discussion. This method emphasizes an in-depth study of statutory regulations, legal doctrines, and scholarly literature that serve as the main references and analytical support for this paper. Through library research, the study seeks to construct a comprehensive legal understanding by interpreting norms, principles, and concepts contained in laws and regulations related to investment policy and legal protection in Indonesia.

This research relies on three categories of legal materials. First, primary legal materials consist of binding legal sources, particularly principal legislation such as Law Number 25 of 2007 on Investment, as well as organic regulations, including specific regional regulations (Peraturan Daerah), which are examined in accordance with the analytical needs and the title or focus of this study. These primary materials form the core legal basis for analyzing the consistency, effectiveness, and legal certainty of investment policies in Indonesia.

Second, secondary legal materials are used to explain, interpret, and critically assess the primary legal materials. These include textbooks, scholarly books, academic journals, and scientific articles that discuss investment law, legal protection, economic policy, and related legal theories. Secondary materials play an important role in providing doctrinal perspectives, expert opinions, and conceptual frameworks that support deeper legal analysis.

Third, tertiary legal materials are utilized to clarify and supplement the understanding of both primary and secondary legal materials. These materials include legal dictionaries, encyclopedias, and relevant internet-based data sources, such as the Indonesian Dictionary (Kamus Besar Bahasa Indonesia), which assist in defining key legal terms and concepts. By integrating these three types of legal materials, this study aims to produce a systematic, coherent, and academically rigorous analysis of investment policies and their implications for legal protection in Indonesia.

RESEARCH RESULTS

One of the key affirmations contained in Law Number 25 of 2007 on Investment concerns the principle of legal certainty and non-discrimination. This principle emphasizes that the Investment Law explicitly does not differentiate between investors and guarantees that foreign investors obtain rights and obligations equal to those of domestic investors. In this context, legal protection is positioned as a fundamental element to ensure fairness and balance in investment activities conducted within the territory of Indonesia.

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the dimension of “ought to be” (*das sollen*), containing rules regarding what should be done. Norms are the product of deliberate human actions. Laws, which consist of generally applicable rules, serve as guidelines for individual behavior in society, both in relationships among individuals and in their interactions with the broader community. These rules function as limitations on how society may impose obligations or take actions against individuals. The existence of such rules and their proper implementation give rise to legal certainty. The concept of deliberation itself refers to a careful and thorough process of considering available options, involving all relevant parties, and prioritizing logic, reason, dialogue, and consensus over power. Decision-making through deliberation is therefore intended to produce legitimacy and certainty, which are essential in long-term investment activities in Indonesia. Given that investment activities have taken place for a long period and continue across the entire Indonesian territory, both domestic and foreign investors require clarity and firmness in the application of investment-related laws and regulations.

One of the major challenges affecting the competitiveness of direct investment in Indonesia lies in policy inconsistency, regulatory fragmentation, and weaknesses in implementation, particularly in relation to the roles and functions of the Investment Coordinating Board (BKPM) as a one-stop service center for licensing and investment facilities, as well as an investment promotion agency. This condition reflects not only inconsistency but also legal uncertainty that confuses investors and potential investors. In practice, investors often experience prolonged waiting periods due to the need for coordination among relevant agencies, which frequently lack a unified understanding of licensing requirements. As a result, uncertainty arises regarding the standards that investors must fulfill in accessing licensing services (Handri Raharjo, 2018).

Policy instruments used to control or restrict direct investment in Indonesia are reflected in various legislative limitations, including restrictions on the entry of foreign capital and companies, limitations on foreign share ownership, special treatment for foreign investors, operational restrictions such as local content requirements and minimum export obligations, and the provision of investment incentives, particularly in the form of tax concessions. Although Law Number 25 of 2007 stipulates that its provisions apply to investment in all sectors throughout the territory of the Republic of Indonesia, the implementation of these policy instruments often involves complex procedures and overlapping regulations. Faced with such conditions, investors may ultimately withdraw or abandon their intention to invest.

The most significant investment-related problems in Indonesia can be broadly identified in three areas. First, licensing issues remain a persistent obstacle, as investment licensing systems at both central and regional levels are widely regarded as complicated, time-consuming, and bureaucratic. Lengthy procedures that may take months or even years often result in stalled or abandoned investment projects. Second, land acquisition constitutes another major challenge, involving disputes over land ownership, inflated land prices, and conflicts related to customary land rights, which frequently discourage investors from proceeding with development plans. Third, regulatory and policy uncertainty continues to undermine investor confidence, as overlapping regulations and frequent policy changes between central and regional governments create inconsistency and unpredictability. Changes in regional leadership often lead to shifts in regulatory frameworks, forcing investors to restart licensing procedures from the beginning.

The legislative branch, both at the national and regional levels, is expected to take a more active role in directly reviewing the implementation of investment laws and regulations in practice. However, political constraints may hinder such oversight, particularly when executive and legislative actors are affiliated with the same political parties, potentially leading to political conflicts that ultimately affect investors. In this context, legal protection becomes crucial. According to Philipus M. Hadjon, legal protection refers to safeguards provided to legal subjects through legal instruments, whether preventive or repressive, aimed at ensuring justice, order, utility, peace, and legal certainty. Legal protection may take written or unwritten forms and is closely related to how law regulates rights and obligations while providing justice to those who defend their rights.

For investors operating in Indonesia, legal protection must be aligned with existing laws and regulations. As legal subjects, investors possess legal standing that should not be easily compromised. Although profit-sharing or informal arrangements are sometimes perceived as practical solutions, such practices undermine legal certainty and contradict the principles of good governance. Investors are therefore encouraged to understand and master applicable investment regulations, engage in discussions with internal legal divisions, and, where necessary, cooperate with legal consultants specializing in investment law. In practice, however, interactions with bureaucratic front-line officials during the licensing process often involve informal demands for service fees, justified as means to expedite procedures, which further weakens trust in the legal system.

The investment climate in Indonesia is influenced by multiple interrelated factors, including political, social, and economic stability; the implementation of good corporate governance by bureaucratic institutions; legal certainty and law enforcement; compliance with international legal instruments; infrastructure conditions; the availability of skilled labor and industrial harmony; regulatory certainty in taxation and regional levies; protection of intellectual property rights and land ownership; and other supporting factors. Strengthening these elements is essential for creating a conducive and competitive investment environment.

Indonesia requires governance at both central and regional levels that is genuinely compliant with enacted laws and regulations, particularly those governing investment activities. Investors, as legal subjects, deserve recognition and fair treatment, given the substantial capital, labor, and time they commit. As explained by Soerjono Soekanto, the effectiveness of law enforcement and legal protection is influenced by five factors: the law itself, law enforcement officials, supporting facilities and infrastructure, societal acceptance, and cultural values. These factors collectively determine whether legal norms function effectively in practice (Setiadi & SH, 2017).

Investment objectives should be carefully analyzed by policymakers, as investment outcomes, including regional revenues derived from taxation, can serve as important instruments for regional economic development. To enhance legal protection for investors in Indonesia, measures such as institutional strengthening, increased legal literacy, regulatory harmonization, consistency in policy implementation, bureaucratic simplification, and fair law enforcement are urgently needed. Furthermore, firm regulatory enforcement, including the imposition of strict sanctions on government officials who violate established rules without regard to nepotistic relationships, is essential.

Ultimately, investors pursue returns on their invested capital based on rational calculations. As legal subjects, they are entitled to fair treatment in accordance with prevailing laws and regulations. Legal protection is an inherent asset attached to both legal subjects and objects, which must be safeguarded to support Indonesia's transformation from a developing country into a developed nation.

DISCUSSION

The findings of this study indicate that, although Indonesia has established a comprehensive legal framework governing investment, particularly through Law Number 25 of 2007 on Investment, the practical realization of legal protection and certainty for investors remains problematic. Normatively, the Investment Law emphasizes the principles of legal certainty and non-discrimination, guaranteeing equal treatment between domestic and foreign investors in terms of rights and obligations. However, this normative commitment has not been fully translated into consistent and predictable implementation at both the central and regional levels. This gap between law in the books and law in action reflects a structural weakness in Indonesia's investment governance system and undermines investor confidence.

From a legal-theoretical perspective, Kelsen's concept of law as a system of norms underscores the importance of consistency and deliberative application of legal rules. Legal certainty can only be achieved when norms are applied coherently and predictably. In the Indonesian investment context, overlapping regulations, frequent policy changes, and discretionary practices by bureaucratic actors weaken the normative force of investment laws. As a result, investors face uncertainty not because of the absence of regulation, but because of excessive, fragmented, and inconsistently enforced regulations. This condition contradicts the very objective of Law Number 25 of 2007, which was enacted to accelerate national economic development through a more conducive investment climate (Harjono, 2012; Rachbini, 2008).

The role of institutions responsible for investment governance, particularly the Investment Coordinating Board (BKPM), also emerges as a critical issue. While BKPM is formally designated as a one-stop service center for licensing and investment facilitation, empirical realities suggest that inter-agency coordination remains weak. The lack of harmonized standards among ministries and regional governments often leads to prolonged licensing processes and contradictory requirements. This institutional fragmentation not only delays investment realization but also creates opportunities for informal practices that erode the principles of transparency and accountability. Consequently, the intended efficiency of integrated licensing systems, including electronic-based services, has not been fully achieved.

The discussion further reveals that the main obstacles to investment in Indonesia licensing complexity, land acquisition disputes, and regulatory inconsistency are deeply interconnected. Licensing delays are frequently exacerbated by land-related conflicts, particularly in regions where customary land rights are strong and inadequately integrated into formal legal frameworks. Regulatory inconsistency between central and regional governments compounds these issues, as decentralization has granted significant regulatory authority to local governments without adequate oversight and harmonization. This situation often forces investors to restart administrative processes when political leadership changes, thereby increasing transaction costs and investment risk.

In terms of legal protection, the concept articulated by Philipus M. Hadjon highlights that protection should be both preventive and repressive, ensuring justice, legal certainty, and order. In the context of investment, preventive protection should manifest in clear, stable, and transparent regulations, while repressive protection should involve effective dispute resolution mechanisms and sanctions against violations. The findings suggest that preventive legal protection in Indonesia remains weak due to inconsistent policies and poor bureaucratic governance. Moreover, repressive mechanisms are often ineffective, particularly when violations involve government officials, as sanctions are rarely enforced firmly and impartially.

The persistence of informal practices, such as unofficial fees during licensing processes, indicates a broader governance problem rather than isolated misconduct. Such practices reflect deficiencies in good corporate governance within public administration and undermine Indonesia's commitment to creating an investor-friendly environment. This condition is particularly concerning given Indonesia's abundant natural resources and strategic geographical position, which should otherwise serve as strong comparative advantages in attracting investment. Instead, governance-related risks often outweigh these advantages in investors' risk assessments.

Furthermore, empirical evidence showing the positive and significant impact of domestic investment on economic growth reinforces the argument that improving the investment climate is not merely a legal concern but also an economic imperative. Sustained economic growth requires continuous increases in aggregate expenditure, and investment plays a central role in this process. Therefore, legal uncertainty and weak investor protection do not only affect individual investors but also hinder broader national and regional economic development objectives.

This discussion also underscores the importance of the legislative branch in overseeing the implementation of investment laws. Effective legislative oversight is necessary to ensure that executive actions align with statutory mandates. However, political interests and party affiliations often limit the effectiveness of such oversight, resulting in weak accountability. Without robust checks and balances, regulatory inconsistencies and bureaucratic discretion are likely to persist, further weakening legal protection for investors.

Overall, the discussion demonstrates that Indonesia's investment challenges are not rooted in the absence of legal norms but in deficiencies in institutional coordination, regulatory harmonization, and law enforcement. Strengthening legal protection for investors therefore requires a holistic approach that integrates normative clarity, institutional reform, bureaucratic integrity, and political commitment. Only through consistent application of investment laws, firm enforcement against violations, and genuine adherence to the principles of legal certainty and non-discrimination can Indonesia create a sustainable and competitive investment environment that supports its long-term economic transformation.

CONCLUSIONS AND RECOMENDATIONS

In conclusion, the fundamental problems in the implementation of investment in Indonesia can no longer be overlooked, particularly issues related to land acquisition, complex licensing procedures, and regional policies that vary across the territory of the Republic of Indonesia. The complexity of capital investment and investment activities is often driven by the actions of certain individuals who misuse their authority and positions to exert pressure on investors in pursuit of personal gain that is inconsistent with existing laws and regulations. Although the legal relationship between the Central Government and Regional Governments in regulating investment can be considered normatively coherent, in practice legal loopholes are frequently exploited in an open and

coordinated manner by unscrupulous actors at both levels of government in the locations where investment activities are carried out.

In response to these conditions, it is essential to emphasize that, in principle, no investment-related problem in Indonesia is insurmountable, provided there is genuine good faith on the part of policymakers and government authorities at both the central and regional levels to advance national and regional economic development through investment. It is therefore necessary to reaffirm strict compliance by all components of the Indonesian state with applicable laws and regulations, accompanied by the imposition of stronger and more effective sanctions civil, criminal, and administrative against individuals who deliberately create obstacles to investment activities.

ADVANCED RESEARCH

Furthermore, continuous and comprehensive reviews of Indonesia's investment laws and regulations are required, involving academics and higher education institutions, particularly in light of rapid technological advancement, evolving social dynamics, and the growing importance of legal protection in shaping a fair, transparent, and sustainable investment climate.

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