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## Regulating Foreign Direct Investment (FDI) in Indonesia: An opinion paper on legal certainty, developmental selectivity, and sustainable openness

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### ABSTRACT

Indonesia has spent more than two decades trying to reconcile two pressures that pull investment law in different directions: the need to attract long-term Foreign Direct Investment (FDI) and the constitutional responsibility to govern natural resources, labor, land, public services, and local enterprise in the public interest. This opinion paper argues that Indonesia should not treat liberalization as the main measure of investment-law success. A more defensible model is sustainable openness: a regime that is open enough to reduce unnecessary entry barriers, but sufficiently disciplined to preserve democratic regulatory space, environmental safeguards, domestic capability building, and fair treatment for investors. The paper reviews the contemporary legal architecture of Indonesian FDI regulation, including Law Number 25 of 2007 on Investment, the Job Creation framework consolidated through Law Number 6 of 2023, the positive investment-list system, risk-based licensing through Government Regulation Number 28 of 2025, and the 2025 ministerial OSS implementing rules. It then develops a normative position on legal certainty, sectoral selectivity, licensing, investor protection, and treaty policy. The central recommendation is that Indonesia should move from formal deregulation toward transparent, reviewable, and development-oriented regulation. Legal certainty is not the absence of regulation; it is the existence of clear rules, accountable administration, credible dispute settlement, and predictable safeguards.

**Keywords:** foreign direct investment, investment law, Indonesia, OSS, positive investment list, legal certainty, sustainable development

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## 1. INTRODUCTION

Foreign Direct Investment (FDI) is often discussed as if it were a single economic good: more FDI is assumed to be better than less FDI. That assumption is too simple for Indonesia. The legal regulation of FDI in Indonesia sits inside a wider political economy of decentralization, resource nationalism, industrial upgrading, environmental risk, legal pluralism, and periodic distrust of bureaucratic discretion. Indonesia needs foreign capital, technology, managerial knowledge, supply-chain links, and export capability. At the same time, it also needs to avoid regulatory surrender, enclave investment, land conflict, low-wage dependency, environmental degradation, and treaty commitments that make ordinary public-interest regulation appear legally dangerous. The central legal question is therefore not whether Indonesia should be open or closed to FDI. The better question is what form of openness is lawful, credible, developmentally useful, and socially legitimate.

This paper is written as an opinion article rather than an empirical econometric study. Its argument is grounded in legal doctrine, public regulatory theory, and peer-reviewed evidence on FDI, institutions, spillovers, and investment protection. The position advanced here is that Indonesia should adopt a model of sustainable openness. Under this model, the state welcomes foreign investment where it contributes to productivity, jobs, technology, tax revenue, export upgrading, and regional development, but it does so through rules that are transparent, proportionate, and enforceable. Sustainable openness rejects two extremes. It rejects protectionist opacity, where restrictions and approvals become instruments of rent-seeking. It also rejects thin deregulation, where licensing is simplified but the quality of social, environmental, and legal safeguards deteriorates. The best FDI regulation is not the shortest procedure; it is the procedure that is clear, fast where risk is low, careful where risk is high, and reviewable when government decisions affect rights.

Indonesia's current regulatory architecture shows real progress. Law Number 25 of 2007 defines investment broadly and recognizes foreign investment as investment by foreign investors using foreign capital, either fully or through joint capital with domestic investors. The same law declares the importance of equal treatment, legal certainty, business certainty, and business security while preserving national interest ([Republic of Indonesia, 2007](#)). The Job Creation framework, now consolidated through Law Number 6 of 2023, pushed the state toward simplified business licensing and broader investment access ([Republic of Indonesia, 2023](#)). Presidential Regulation Number 10 of 2021, as amended by Presidential Regulation Number 49 of 2021, restructured investment fields around priority sectors, activities allocated or partnered with cooperatives and Micro, Small, and Medium Enterprises (MSMEs), activities subject to conditions, and activities generally open to investors ([Government of Indonesia, 2021a, 2021b](#)). Government Regulation Number 28 of 2025 then replaced the earlier 2021 risk-based licensing regulation and sought to strengthen legal certainty in business licensing through the OSS system ([Government of Indonesia, 2025](#)).

Recent investment data also show why the quality of regulation matters. Reuters reported, based on ministry data, that incoming FDI in 2025 reached IDR 900.9 trillion, equivalent to about USD 53.4 billion, but increased by only 0.1% from the previous year after much faster 2024 growth ([Reuters, 2026](#)). These numbers should be read cautiously because BKPM realization data exclude investment in the financial and oil-and-gas sectors, but they still illustrate the point: when global capital becomes more selective, legal predictability, credible administration, and coherent sector policy become more important than promotional slogans. Indonesia should not merely ask how to attract FDI; it should ask which legal reforms convert foreign capital into durable national capability.

## 2. METHOD

The paper uses a normative legal-policy approach. It synthesizes Indonesian statutes and implementing regulations with peer-reviewed literature on FDI determinants, institutional quality, technology transfer, investment promotion, and investor-state dispute settlement. It is therefore not neutral in the sense of merely describing existing law. It takes a position: Indonesia's investment regulation should be evaluated according to four tests. First, is the regime clear enough for investors and public officials to know the law before a decision is made? Second, is it flexible enough for the state to protect legitimate public interests, including labor, environmental quality, land rights, MSMEs, and strategic sectors? Third, does it improve the probability that FDI generates domestic spillovers rather than only private returns? Fourth, are administrative decisions and treaty commitments subject to public accountability?

This approach is justified by the FDI literature. Classical international business theory explains that multinational enterprises invest abroad when they combine ownership advantages, location advantages, and internalization advantages (Dunning, 1988). Yet location advantage is not merely geography or market size. It includes institutions, dispute-resolution credibility, licensing efficiency, infrastructure, financial depth, and regulatory stability. Studies on institutional quality find that political risk, regulatory quality, and governance infrastructure influence FDI flows (Busse & Hefeker, 2007; Daude & Stein, 2007; Globerman & Shapiro, 2002). Investment promotion can help, but only where it is paired with credible policy and implementation capacity (Harding & Javorcik, 2011). Thus, the law matters not because investors love rules as such, but because rules make future commitments calculable.

The Indonesian evidence is especially important. Research on Indonesian manufacturing suggests that FDI may increase productivity, wages, and technology transfer under certain conditions, but the benefits are neither automatic nor evenly distributed. Lipsey and Sjöholm (2004) found wage effects connected to foreign investment in Indonesian manufacturing. Arnold and Javorcik (2009) examined plant productivity and foreign ownership in Indonesia, while Blalock and Gertler (2008) showed that FDI can generate welfare gains through technology transfer to local suppliers. Sjöholm (1999) and Todo and Miyamoto (2006) emphasized competition, technology gaps, and local research capacity as conditions for spillovers. These studies support a policy conclusion: the legal regime should not focus only on entry. It should focus on what happens after entry, including supplier development, skills, competition, and compliance.

The perspective used here also recognizes the political economy of Indonesian law. Decentralization, sectoral ministries, and local permits can create problems for investors when central reforms are not translated consistently across regions. At the same time, decentralization is not simply an obstacle. It is a democratic and constitutional feature of Indonesian governance. The task is not to erase local authority, but to coordinate it through transparent standards, interoperable data, clear appeal routes, and genuine participation. In this sense, sustainable openness is both investor-facing and citizen-facing. It gives investors a predictable legal pathway while giving communities credible guarantees that investment will not proceed through shortcuts.

### 2.1. Indonesia's FDI Regulatory Architecture

Indonesia's FDI law is best understood as a layered system. The first layer is the basic investment statute. Law Number 25 of 2007 sets out the legal meaning of investment, domestic investment, foreign investment, investors, capital, and integrated licensing service. It also states that foreign investment must generally be conducted through a limited liability company incorporated under Indonesian law and domiciled in Indonesia, unless otherwise provided by law. This domestic-incorporation requirement is legally significant. It expresses the idea that foreign investors enter the Indonesian legal order not only as external capital providers, but also as corporate actors subject to Indonesian company law, tax law, labor law, land law, environmental law, and sectoral supervision.

The second layer is the Job Creation framework. Law Number 11 of 2020 was politically controversial and judicially challenged, but its core investment objective was to simplify permits and improve the business

environment. The framework was later consolidated through Law Number 6 of 2023, which enacted the Government Regulation in Lieu of Law Number 2 of 2022 into law. Whatever one thinks about the omnibus-law technique, it signaled a major shift in legal strategy: investment reform would no longer be pursued only by amending a single investment statute, but by reorganizing multiple fields of business, licensing, labor, environment, land, and local-government administration. This strategy can reduce fragmentation, but it also creates a risk that a large reform package becomes difficult for affected communities, local governments, and smaller firms to understand.

The third layer is the investment-list regime. Indonesia historically used a negative investment list, under which certain business fields were closed or conditionally open. Presidential Regulation Number 10 of 2021, amended by Presidential Regulation Number 49 of 2021, reframed the regime around investment business fields, priority activities, MSME-related allocations or partnerships, conditional activities, and generally open activities. The World Bank's early assessment of Indonesia's investment reforms found a major reduction in business activities subject to restrictions and foreign equity limits (Montfaucon et al., 2023). The opinion taken here is that this is a useful reform, but it should not be celebrated only in numerical terms. A smaller list of restrictions is not automatically a better legal system if remaining restrictions are vague, if sectoral rules reintroduce hidden conditions, or if administrative practice diverges from formal openness.

The fourth layer is business licensing. Government Regulation Number 28 of 2025 replaced Government Regulation Number 5 of 2021 and regulates risk-based business licensing. The regulation covers basic requirements, business licensing, supporting business licensing, standards and procedures, OSS services, supervision, evaluation and reform, funding, problem solving, and sanctions. The implementing ministerial regulation issued in 2025 by the Ministry of Investment and Downstreaming/BKPM provides detailed procedures for risk-based licensing and investment facilities through OSS. This is the layer that most directly affects the investor's experience. A liberal entry list means little if the OSS interface, sectoral verification, land approvals, environmental approvals, or local inspections remain unpredictable. Conversely, a well-designed OSS regime can reduce corruption opportunities, shorten low-risk approvals, and improve government monitoring.

The fifth layer is international investment law. Indonesia has had a complex relationship with bilateral investment treaties (BITs) and investor-state dispute settlement (ISDS). International agreements can strengthen investor confidence, but they can also constrain domestic regulation if drafted broadly or interpreted expansively. Losari and Ewing-Chow (2015) show how decentralization and due-process issues can interact with Indonesia's investment treaty experiences. More generally, research on BITs is mixed: some studies associate treaties with increased FDI (Neumayer & Spess, 2005), while others question the strength of the causal relationship or emphasize legal and political costs (Aisbett, 2007; Poulsen & Aisbett, 2013; Yackee, 2008). The Indonesian lesson is not to reject investment treaties completely. It is to design them carefully so that protection against arbitrary treatment does not become a weapon against proportionate public regulation (See Table 1).

**Table 1. Core Layers of Indonesia's Foreign Direct Investment Regulation**

Layer	Main legal instruments	Primary function	Opinion on regulatory quality
<b>Basic investment law</b>	Law No. 25 of 2007 on Investment	Defines investment, foreign investors, equal treatment, legal certainty, business certainty, and the PMA company requirement.	Strong foundation, but its promises depend on implementation and coordination with later reforms.
<b>Omnibus/Job Creation framework</b>	Law No. 6 of 2023, adopting Perppu No. 2 of 2022 on Job Creation	Consolidates investment and business-climate reforms across multiple regulatory fields.	Useful for coordination, but legal complexity and public legitimacy remain concerns.

<b>Investment-list regime</b>	<a href="#">Presidential Regulation No. 10 of 2021 as amended by Presidential Regulation No. 49 of 2021</a>	Classifies priority sectors, MSME-related fields, conditional fields, closed fields, and generally open fields.	Positive-list language is attractive, but sectoral clarity and consistency matter more than labels.
<b>Risk-based licensing and OSS</b>	<a href="#">Government Regulation No. 28 of 2025; Minister of Investment/BKPM Regulation No. 5 of 2025</a>	Determines business licensing requirements according to risk and operationalizes OSS procedures and investment facilities.	The decisive reform area; it must combine speed, transparency, safeguards, and enforceable service standards.
<b>International investment protection</b>	BITs, trade and investment agreements, arbitration clauses, domestic dispute-resolution law	Protects investors against arbitrary state action and provides dispute mechanisms.	Protection should be balanced with explicit regulatory space, transparency, and domestic institutional strengthening.

**Note:** The table synthesizes the legal architecture discussed in the paper. It is not an exhaustive list of all sector-specific investment rules.

### 3. RESULTS

#### 3.1. Opinion 1: Legal Certainty Requires More Than Liberalization

My first opinion is that Indonesia should stop equating investment-law reform with deregulation alone. Deregulation may reduce entry barriers, but legal certainty is a thicker concept. A foreign investor needs to know whether a sector is open, what corporate vehicle is required, which permits apply, which environmental or land approvals are needed, how long the process should take, which authority has final responsibility, what happens if officials disagree, and how adverse decisions can be reviewed. Citizens and local businesses need certainty as well: they need to know whether promised safeguards are real, whether MSME partnership obligations are enforceable, and whether environmental and labor protections are monitored after licensing.

Legal certainty is therefore a public value, not only an investor service. [Haggard, MacIntyre, and Tiede \(2008\)](#) argue that the rule of law is important for development because it structures expectations and constrains arbitrary power. In the FDI context, institutional quality can influence location decisions and risk perception ([Busse & Hefeker, 2007](#); [Daude & Stein, 2007](#)). For Indonesia, the problem is not simply that rules are too many. Sometimes rules are too unclear, too overlapping, or too dependent on informal guidance. In such situations, investors with strong networks may navigate uncertainty, but smaller investors, domestic suppliers, and affected communities suffer. The result is not true openness; it is selective access through administrative capacity and political proximity.

The legal answer is not to remove all discretion. Investment regulation necessarily requires judgment, especially in high-risk sectors such as mining, energy, infrastructure, digital platforms, health, transportation, and food systems. The answer is to discipline discretion. Every major licensing refusal, delay, or conditional approval should be accompanied by written reasons, statutory authority, clear remedial steps, and an appeal route. OSS should function not merely as a registration portal but as a legal transparency system. It should show the basis for each requirement, the responsible agency, the statutory timeline, the current status, and the reason for any extension. When investors complain about uncertainty, the state should be able to identify whether the issue is a legal conflict, technical verification, regional coordination problem, incomplete application, or policy discretion.

#### 3.2. Opinion 2: The Positive Investment List Should Discipline Hidden Discretion

The shift from a negative-list culture to a positive investment-list framework is one of the most visible changes in Indonesian FDI regulation. It sends a political message that Indonesia is open for investment except where restrictions are justified. However, legal reform should be judged by how it works after investors

choose a business classification. A positive list can still become restrictive if the KBLI classification is ambiguous, if sectoral ministries add non-transparent recommendations, if local implementation differs, or if foreign ownership conditions are changed without adequate transition. The challenge is to make the list not only positive in name, but also disciplined in legal effect.

The literature on FDI spillovers supports this concern. Foreign entry can improve productivity and technology diffusion, but only when domestic firms, workers, and suppliers can absorb the benefits (Blalock & Gertler, 2008; Javorcik, 2004; Todo & Miyamoto, 2006). If Indonesia opens sectors without building domestic absorptive capacity, the developmental return may be weak. If it restricts sectors without clear justification, it may protect incumbents rather than national interests. Hence, every restricted or conditional sector should pass a justification test. The government should ask: What public interest justifies this condition? Is the condition proportionate? Does it protect MSMEs, national security, cultural policy, food security, environmental stability, or strategic capability? Is there a less restrictive way to achieve the same purpose? Is the condition time-limited or reviewable?

This approach would improve both investor confidence and public legitimacy. It would help investors understand that restrictions are not arbitrary. It would also help citizens see that openness is not blind liberalization. A good positive-list system should publish consolidated guidance in plain language, provide binding interpretations for difficult classifications, and update restrictions through transparent consultation. Changes should include grandfathering rules or transition periods where investors relied in good faith on prior rules. Without this discipline, Indonesia risks sending mixed signals: formally open in presidential regulations, but uncertain in practical implementation.

### **3.3. Opinion 3: Risk-Based Licensing Must Be Fast for Low Risk and Serious for High Risk**

Risk-based licensing is conceptually attractive because it matches regulatory intensity to public risk. Low-risk activities should not face the same procedural burden as high-risk activities. This reduces unnecessary administrative costs and allows government resources to focus on activities that may affect health, safety, environment, land use, financial stability, or strategic resources. Government Regulation Number 28 of 2025 strengthens this approach by replacing the 2021 regulation and refining the organization of risk-based business licensing. The 2025 BKPM ministerial regulation then operationalizes risk-based licensing, investment facilities, OSS services, supervision, sanctions, and transitional rules.

The key opinion here is that risk-based licensing should not become risk-blind licensing. A faster procedure is defensible when the activity is genuinely low risk or when standardized requirements can control the risk. It is not defensible when speed substitutes for environmental analysis, land-rights clarity, labor compliance, or public consultation. Indonesia's development history shows that regulatory shortcuts can create long-term costs: land disputes, pollution, community resistance, and reputational damage. In sectors linked to natural resources and infrastructure, the cost of bad approval is often much higher than the cost of careful review. Therefore, risk-based licensing should include a strong post-licensing supervision system, public complaint mechanisms, data integration with environmental and land authorities, and sanctions that are actually applied.

The broader FDI literature supports this balance. Investors value regulatory predictability, but high-quality investors also value credible governance because weak governance can generate project delays and social conflict (Globerman & Shapiro, 2002; Jensen, 2003). Sustainable openness should therefore reward investors who comply with standards, build local capability, and respect communities. It should not reward investors who merely exploit gaps between central licensing and local enforcement. In practical terms, Indonesia should publish compliance dashboards for high-risk sectors, integrate environmental and spatial data into OSS, and create a unified record of permits, inspections, warnings, and sanctions. This would make licensing both easier and more credible.

### **3.4. Opinion 4: Developmental Selectivity Is Legitimate, But It Must Be Transparent**

Indonesia's investment policy is not purely liberal. It is developmental. The state wants FDI to support downstreaming, export upgrading, industrial capability, employment, technology transfer, regional development, and MSME participation. This is legitimate. The economic literature does not show that every form of FDI has the same value. Multinational activity differs by sector, ownership structure, input-output linkages, technology intensity, and relationship with domestic firms (Alfaro & Charlton, 2009; Antras & Helpman, 2004; Markusen & Venables, 1999). Evidence from Indonesia shows that spillovers can arise through supplier relations and productivity channels, but they depend on absorptive conditions and market structure (Arnold & Javorcik, 2009; Blalock & Gertler, 2008; Sjöholm, 1999). Developmental selectivity is therefore not irrational nationalism. It is a way to distinguish investment that deepens domestic capability from investment that merely extracts margins.

However, developmental selectivity becomes dangerous when it is opaque. Requirements for local partners, technology transfer, domestic content, export obligations, or downstream processing should be legal, published, proportionate, and compatible with Indonesia's international obligations. Selectivity should not be used to protect politically connected firms or to create discretionary bargaining. The more selective the policy, the stronger the justification should be. For example, if Indonesia prioritizes minerals downstreaming, the regulation should explain the public purpose, environmental safeguards, fiscal terms, local workforce strategy, and sunset or review mechanism. If Indonesia reserves certain activities for MSMEs or requires partnerships, it should monitor whether those partnerships actually upgrade MSME capability rather than merely creating nominee arrangements.

The political economy of resource nationalism makes this point urgent. Warburton (2017) shows that resource nationalism in Indonesia varies across sectors and ownership structures. Such variation may be inevitable, but it should be governed through law rather than informal bargaining. The goal should be disciplined industrial policy. Disciplined industrial policy allows the state to prioritize strategic sectors, but it also imposes criteria, deadlines, monitoring, and public reporting. Indonesia should therefore adopt an investment-quality scorecard for priority sectors, measuring employment, training, supplier development, technology, environmental compliance, export value, regional distribution, and tax contribution. Investment incentives should be linked to measurable performance rather than only to initial commitment values.

### **3.5. Opinion 5: Local Coordination and Public Legitimacy Are Investment-Law Issues**

My fifth opinion is that Indonesia should treat local coordination and public legitimacy as central parts of investment law, not as secondary administrative details. Foreign investors often encounter the legal system through national statutes and OSS procedures, but projects are implemented in specific provinces, districts, villages, ports, industrial estates, forests, coastal zones, and urban neighborhoods. A nationally issued license may still be vulnerable if spatial planning is unclear, land acquisition is contested, environmental approval is distrusted, customary or community interests are ignored, or local government responsibilities are not synchronized with central policy. This is not merely a problem of public relations. It is a legal-certainty problem because investors, communities, and officials can all hold different understandings of what has actually been authorized. Decentralization after Reformasi created important channels for local democracy, but it also multiplied the number of actors whose decisions can affect investment implementation (Hadiz, 2004; Losari & Ewing-Chow, 2015).

The common reform response is to centralize and accelerate approvals. Some centralization is understandable when local barriers are arbitrary or when local regulations contradict national law. Yet centralization alone can create another weakness: a project may become formally easier to approve but socially harder to implement. If affected communities believe that licensing decisions are made far away, without credible information or meaningful consultation, the state may win speed at the approval stage and lose predictability at the implementation stage. Investment regulation should therefore integrate public legitimacy into the legal architecture. For high-risk or land-intensive FDI, legal certainty should include clear spatial

information, public access to non-confidential licensing documents, accessible grievance channels, and evidence that environmental and social concerns were considered before final approval. This is consistent with the broader institutional literature: investors prefer stable governance, but stable governance depends on credible rules and social acceptance, not only on formal permission (Globerman & Shapiro, 2002; Haggard et al., 2008).

Indonesia should also recognize that regional governments are not simply obstacles. They are essential partners in making FDI productive. Many outcomes that determine the real value of FDI are local: workforce training, supplier development, infrastructure coordination, land administration, local tax and retribution practices, labor inspection, waste management, and conflict mediation. A foreign investment regime that ignores regional capacity may attract projects on paper but fail to convert them into durable development. The literature on spillovers implies that benefits from FDI are not automatic. They depend on linkages with domestic firms, human capital, and absorptive capacity (Blalock & Gertler, 2008; Javorcik, 2004; Lipsey & Joholm, 2004). These factors are often built locally. Therefore, investment law should encourage local governments to become capability-building institutions rather than only permit-checking institutions.

A practical solution would be to create an intergovernmental investment-implementation protocol for major FDI projects. The protocol should identify the national agency, regional government, sectoral ministry, environmental authority, land office, and OSS contact point responsible for each stage. It should also contain service-level commitments, data-sharing duties, escalation channels, and a transparent record of unresolved issues. For investors, this would reduce uncertainty about who is responsible for delays. For communities, it would clarify where objections, information requests, or complaints can be directed. For government, it would make it easier to distinguish between legitimate safeguards and bureaucratic obstruction. Such a protocol is more realistic than pretending that all uncertainty can be eliminated by one central portal. OSS can be the front door, but behind that door the state still needs coordinated institutions.

Public legitimacy is especially important in sectors that are central to Indonesia's current investment strategy, such as minerals downstreaming, renewable energy, infrastructure, digital services, tourism, food systems, and industrial estates. These sectors can produce national economic gains, but they can also generate concentrated local costs. The opinion offered here is that Indonesia should measure investment-law success not only by approval speed or headline FDI values, but also by the stability of implementation. A project that is licensed quickly but later delayed by land conflict, environmental protest, or inconsistent local enforcement is not a success of legal reform. It is evidence that the reform defined certainty too narrowly. Sustainable openness requires the state to ask whether the project is legally authorized, administratively coordinated, socially explained, and developmentally monitored. When these four elements are present, Indonesia can be open to foreign capital without weakening democratic accountability.

### **3.6. International Investment Agreements and Dispute Resolution**

The final regulatory issue is the relationship between domestic investment law and international investment agreements. Investor protection can be valuable when domestic institutions are weak or unpredictable. Foreign investors may seek assurances against expropriation, arbitrary treatment, discriminatory regulation, and denial of justice. Yet investment treaties can also create asymmetry: private investors obtain international claims against states, while affected communities often remain dependent on domestic remedies. Van Harten and Loughlin (2006) describe investment treaty arbitration as a form of global administrative law because it reviews public authority beyond the ordinary domestic legal system. This is why treaty design matters.

Indonesia should continue to modernize its approach to investment agreements. The empirical literature on BITs does not justify uncritical treaty expansion. Neumayer and Spess (2005) found evidence that BITs may increase FDI, but Aisbett (2007), Poulsen and Aisbett (2013), and Yackee (2008) show why causation, bounded rationality, and the rule-of-law effect are contested. For Indonesia, the most prudent position is selective treaty commitment. Investment agreements should define fair and equitable treatment

carefully, protect the right to regulate, include transparency obligations, encourage mediation and dispute prevention, and avoid vague umbrella clauses that transform ordinary contract disputes into treaty claims. They should also coordinate with domestic administrative-law reform. A state that improves domestic licensing reasons, appeal routes, and judicial review reduces the need for investors to treat arbitration as the main path to justice.

Domestic dispute resolution should not be seen as inferior by default. The investment regime should make domestic remedies credible through specialized administrative review, predictable court procedures, reliable arbitration enforcement, and clear treatment of government contracts. Investors should not face endless procedural uncertainty in local courts, but the public should also not face secret arbitration over measures that affect environmental, labor, or fiscal policy. A modern Indonesian model would combine domestic legal strengthening with carefully drafted international commitments. It would protect investors against arbitrary action without freezing policy space (See Table 2).

**Table 2. Opinion-Based Reform Agenda for Indonesian FDI Regulation**

Regulatory issue	Current legal-policy tension	Recommended opinion position	Expected benefit
<b>Legal certainty</b>	Formal rules exist, but implementation may be fragmented across agencies, sectors, and regions.	Require written reasons, binding timelines, published guidance, and appeal mechanisms for licensing decisions.	Reduces arbitrary discretion and improves investor as well as citizen confidence.
<b>Positive investment list</b>	The regime signals openness, but sectoral conditions may remain complex or hidden.	Subject restrictions and conditional openings to public justification, proportionality, and periodic review.	Makes openness more credible and prevents disguised protectionism.
<b>Risk-based licensing</b>	Speed can conflict with safeguards in land, environmental, labor, and high-risk sectors.	Accelerate low-risk approvals while strengthening verification and post-licensing supervision for high-risk activities.	Improves efficiency without sacrificing public-interest protection.
<b>Developmental selectivity</b>	Indonesia wants FDI to support industrial upgrading and MSMEs, but selectivity can become opaque.	Link incentives and conditions to measurable performance: skills, suppliers, technology, compliance, and regional impact.	Improves spillovers and reduces rent-seeking.
<b>Investment treaties</b>	Investor protection can increase confidence but may narrow regulatory space.	Use modern treaties with precise standards, regulatory-space clauses, transparency, and dispute-prevention mechanisms.	Balances investor protection with democratic policy authority.
<b>Local coordination and legitimacy</b>	Central licensing may not resolve land, spatial-planning, environmental, or community implementation risks.	Use intergovernmental implementation protocols, grievance channels, and transparent records for major FDI projects.	Converts formal approvals into stable, legitimate, and development-oriented implementation.

**Note:** The agenda is normative and does not claim to measure causal effects. It translates the paper’s opinion into implementable legal-policy actions.

### 3.7. Policy Recommendations

First, Indonesia should publish a consolidated FDI regulatory code or official digital guide that integrates Law Number 25 of 2007, the Job Creation framework, the investment list, risk-based licensing, BKPM procedures, and sector-specific rules. Investors and citizens should not need to reconstruct the law from scattered regulations. The guide should be legally authoritative or at least formally endorsed, regularly updated, and linked to OSS. It should explain the interaction between KBLI classifications, foreign ownership conditions, capital requirements, land and spatial approvals, environmental approvals, and post-licensing reporting duties.

Second, OSS should be improved as an accountability platform. It should not merely accept applications and issue registration numbers. It should show statutory authority, required documents,

responsible agencies, processing deadlines, reasons for delay, and available remedies. For high-risk investment, OSS should be linked to environmental, spatial, land, labor, and sectoral compliance databases. Such integration would reduce duplication and make supervision more reliable. It would also help prevent situations in which a project appears licensed from one perspective but contested from another.

Third, the investment-list system should adopt a public-interest justification framework. Any restriction, foreign equity limit, local partnership requirement, or sectoral recommendation should state its objective and be reviewed periodically. Restrictions that protect genuine public interests should remain. Restrictions that mainly protect incumbents or bureaucratic bargaining should be removed. This would make Indonesia more open and more sovereign at the same time: open because unnecessary barriers fall, sovereign because justified regulation becomes more defensible.

Fourth, investment incentives should be tied to performance. Tax holidays, tax allowances, customs facilities, and priority-sector benefits should be evaluated according to whether projects deliver jobs, training, supplier development, research links, export upgrading, environmental compliance, and regional benefits. Performance-based incentives are more compatible with sustainable openness than unconditional incentives. They also help the state explain to the public why foreign investors receive benefits.

Fifth, Indonesia should strengthen domestic dispute prevention. Many investment disputes begin as communication failures, permit inconsistencies, or local-central coordination problems. A specialized investment ombudsman or dispute-prevention unit could mediate issues before they become litigation or arbitration. The unit should not override law, but it could coordinate agencies, require reasons for delays, and identify systemic problems. Such a system would reduce the need for international arbitration and improve public administration.

Sixth, Indonesia should institutionalize local implementation protocols for large and high-risk FDI projects. These protocols should link OSS licensing with spatial planning, land administration, environmental supervision, community grievance systems, and regional development commitments. They should define which agency is responsible for each stage and require transparent records of delays, objections, and follow-up actions. Such protocols would reduce the gap between central approval and local implementation, which is one of the most important practical sources of investment uncertainty.

Seventh, Indonesia should modernize international investment agreements cautiously. Treaties should include precise definitions of investment, fair and equitable treatment, indirect expropriation, legitimate expectations, and non-discrimination. They should protect bona fide public regulation, require transparency in investor-state disputes, encourage early settlement, and avoid clauses that turn every regulatory disappointment into a treaty claim. This approach would align Indonesia with global investment-law reform while preserving investor confidence.

#### **4. CONCLUSION**

Indonesia's regulation of foreign direct investment should be understood as a search for balance, not as a race toward maximum liberalization. FDI can contribute to growth, productivity, wages, technology transfer, and industrial upgrading, but those benefits depend on institutional quality, absorptive capacity, sectoral linkages, and credible legal administration. A country can be formally open while practically uncertain. It can also be formally selective while substantively transparent and fair. The strongest Indonesian model is therefore sustainable openness: a regime that welcomes investment but insists on legal certainty, public-interest safeguards, domestic capability building, and accountable dispute resolution.

The current legal architecture contains the building blocks for such a model. Law Number 25 of 2007 provides the foundational language of legal certainty and equal treatment. The Job Creation framework and positive investment list seek to reduce barriers. Government Regulation Number 28 of 2025 and the 2025 BKPM implementing rules refine risk-based licensing through OSS. Yet the success of these reforms depends

on implementation. Positive-list liberalization must not be undermined by hidden conditions. Risk-based licensing must not weaken safeguards. Developmental selectivity must not become rent-seeking. Investment treaties must not remove democratic regulatory space. Legal certainty must serve both investors and the Indonesian public.

The opinion advanced in this paper is that Indonesia should move from deregulation as a slogan to legal quality as a discipline. Legal quality means published rules, reasoned decisions, coordinated agencies, proportionate restrictions, measurable incentives, reviewable licensing, and treaty commitments that are precise and balanced. This approach would make Indonesia more attractive to serious long-term investors while strengthening the legitimacy of investment policy at home. In a world where capital is mobile but social and environmental costs are local, Indonesia's investment law should not ask only how to bring foreign capital in. It should ask how foreign capital can be governed so that it becomes part of a lawful, inclusive, and sustainable development project.

For that reason, the most important future reforms may be less dramatic than new omnibus legislation. They may involve better reasons in administrative decisions, more reliable regulatory databases, stronger supervision after permits are issued, clearer communication with regional governments, and more transparent justification for restrictions. These details are often treated as technical, but they are the practical substance of investment law. Indonesia will be most credible when foreign investors can trust the process and citizens can see that openness remains subject to law.

### **Ethical Approval**

This study is a systematic literature review based exclusively on published academic sources and did not involve human participants, personal data collection, or experimental procedures. Therefore, formal ethical approval was not required.

### **Informed Consent Statement**

Not applicable because this study did not involve human participants.

### **Authors' Contributions**

Not applicable

### **Disclosure Statement**

The author declares no potential conflict of interest.

### **Data Availability Statement**

No primary dataset was generated for this study. All materials analyzed are available in the published sources cited in the reference list.

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