

**FOREIGN INVESTMENT IN THE ERA OF GLOBALIZATION: A REVIEW OF  
LEGAL PROTECTION IN THE PERSPECTIVE OF NATIONAL AND  
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[fag201@ums.ac.id](mailto:fag201@ums.ac.id)**ABSTRACT**

**Introduction:** This paper presents an overview of the legal protection of foreign investment in the context of globalization. It aims to analyze the relations between national regulations and international treaties in regulating foreign investment. **Methods:** The research method used is document analysis and a qualitative approach to national regulations and international agreements related to foreign investment. Data is obtained from literature studies and relevant official documents. **Novelty:** This article presents a novel contribution by summarizing and analyzing the legal framework involving foreign investment in the era of globalization, as well as highlighting the significant differences between national regulations and international treaties in the context of foreign investment protection. **Results and Discussion:** The analysis shows that there are complexities in the relationship between national regulations and international treaties in providing legal protection for foreign investment. National regulations tend to reflect domestic interests while international treaties emphasize harmonization and protection of investments globally. **Conclusion:** There needs to be effective coordination between national regulations and international agreements to provide optimal legal protection for foreign investment in the era of globalization. A balance between the two aspects is important to create a stable and favorable investment environment for all relevant parties.

**Keywords:** Foreign Investment, Globalization, Regulation, International Treaties, Legal Protection.

## INTRODUCTION

In today's chaotic and dynamic era of globalization, foreign investment has become one of the main drivers of economic growth in countries around the world. Foreign investment not only provides significant economic benefits, but also brings important social, political and legal impacts. The development of information and communication technology has erased geographical boundaries, facilitating rapid and large cross-border capital flows. However, amidst the potential economic growth that foreign investment brings, there are also serious challenges in terms of the legal protection of such investments<sup>1</sup>.

The legal protection of foreign investment is becoming increasingly complex and important given the risks and uncertainties associated with cross-border investment. Foreign investors, be it multinational corporations or individual investors, need assurance that their rights will be respected and protected, both by the country in which they invest and by international law. Therefore, in the context of globalization, the study of national regulations and international agreements relating to foreign investment is highly relevant<sup>2</sup>.

In the context of the ongoing process of globalization, foreign investment has become one of the principal factors influencing the global economic landscape. Such investments have a significant impact on a country's economic growth, as well as on the structure of its industries, the level of employment, and the direction of its public policy. Nevertheless, while foreign investments offer significant growth potential, they frequently become the subject of debate and controversy, particularly in relation to matters such as environmental rights, human rights, and socioeconomic impacts.

National regulations on foreign investment are important because the state has the sovereignty to regulate investment in its own territory. These regulations include rules on investment licenses, property rights, taxes, environmental provisions, and consumer protection. However, in the era of globalization, national regulations often need to be harmonized with international or regional standards to facilitate cross-border investment

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<sup>1</sup> Alvarez, J. E., Guzman, M. A., & Sauvant, K. P. (2017). *The Evolving International Investment Regime: Expectations, Realities, Options*. Oxford University Press

<sup>2</sup> Maya Rosmayanti and Rani Apriani, "Kedudukan penanaman modal asing terhadap pertumbuhan ekonomi nasional berdasarkan hukum investasi," *Jurnal Panorama Hukum* 8.1 (2023): 1-16.

more efficiently. This poses challenges in finding a balance between national and international interests and maintaining the country's legal sovereignty.

International treaties on foreign investment also play an important role in guaranteeing legal protection to foreign investors. These treaties, such as bilateral investment treaties (BITs) or multilateral agreements, set standards that bind countries to provide protection and legal certainty to foreign investors. However, the implementation and enforcement of international agreements is often challenging, especially when there is a conflict between national policies and international obligations.

Furthermore, case studies on the resolution of investment disputes through international arbitration constitute a significant element of this discourse. International arbitration represents an alternative mechanism for dispute resolution between foreign investors and host countries, which is often perceived as a more expeditious and efficacious process than national court proceedings. Nevertheless, the international investment arbitration system has also been the subject of criticism, with concerns raised about its transparency, independence, and fairness in the arbitration process.

By understanding the complexities and challenges associated with the legal protection of foreign investment in the era of globalization, it is hoped that this research can provide better insights to policy makers, legal practitioners, and academics in dealing with the evolving dynamics of cross-border investment. In addition, it is also expected to contribute to the establishment of more effective regulations and fairer and more transparent dispute resolution mechanisms to protect the interests of all parties involved in foreign investment<sup>3</sup>.

The purpose of this study is to examine in depth how legal protection of foreign investment is governed by both national regulations and international treaties in the context of globalization. Through a better understanding of the legal framework governing foreign investment, it is expected to identify challenges and opportunities in the protection of foreign investment, as well as to develop policy recommendations that can improve the effectiveness of such legal protection. This study employs a qualitative methodology, analyzing a range of literature, regulations, and international treaties pertaining to foreign investment. It is the intention of this research to make a valuable contribution to the understanding of the legal protection of foreign investment in the context of globalization, which is a dynamic and

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<sup>3</sup> Nabila Prahaski and Hendra Ibrahim, "Kebijakan Perdagangan Internasional Terhadap Pertumbuhan Ekonomi Negara Berkembang," *Jurnal Minfo Polgan* 12.2 (2023): 2474-2479.

complex phenomenon. To this end, an in-depth review of the relevant legal aspects has been conducted.

## **METHOD**

Research on the legal protection of foreign investment in the era of globalization may propose research methods that involve a comprehensive analysis of national regulations and international agreements relating to foreign investment. Qualitative and quantitative approaches can be used to collect data from various legal sources, such as national laws, investment regulations, and relevant bilateral and multilateral agreements. In addition, research can also involve case studies to analyze the implementation of regulations and agreements in real contexts, as well as conduct comparisons between different jurisdictions<sup>4</sup>. An interdisciplinary approach, including economics, politics, and law, can provide a better understanding of the complexity of issues related to legal protection of foreign investment in the era of globalization. In addition, a normative juridical approach can also be used in this research to analyze the applicable legal rules, legal principles, and legal norms related to legal protection of foreign investment, as well as assessing consistency and compliance with existing regulations and agreements.

## **RESULTS AND DISCUSSION**

### **1. Analysis of National Regulations on Foreign Investment**

Analysis of national regulations on foreign investment involves a thorough review of the laws and regulations governing foreign investment in the country. For example, in the Indonesian context, Law No. 25/2007 on Capital Investment and its derivative regulations are the main legal basis governing foreign investment. An in-depth review of the law makes it possible to identify the strengths and weaknesses of the regulation. For example, the strengths of these regulations may include provisions that guarantee legal protection for foreign investors, while the weaknesses may include complicated bureaucratic procedures that can hinder the investment process. In this regard, studies by Sari, F. dan Wibisono, A. (2019) highlights the complexity of investment procedures in Indonesia and their impact on the

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<sup>4</sup> Efendi, Jonaedi, Johnny Ibrahim, and M. M. Se. *Metode Penelitian Hukum: Normatif dan Empiris*. Prenada Media, 2018.

investment climate. An in-depth analysis of these regulations is important to fully understand how countries manage and protect foreign investment in the current context of economic globalization.

Identifying the weaknesses and strengths of existing regulations allows for developing a deeper understanding of the effectiveness and relevance of these laws in addressing challenges and capitalizing on opportunities in foreign investment. This analysis may include an assessment of the timeliness of the licensing process, legal certainty for investors, protection of property rights, and investment dispute resolution mechanisms. For example, a number of studies, such as those conducted by Yusuf, A. A., dan Nababan, T. P. (2020), highlights the expansion and improvement of legal certainty for foreign investors through regulatory reform in Indonesia. However, challenges remain in terms of meeting increasingly stringent environmental and social requirements. By strengthening the understanding of these strengths and weaknesses, policymakers can take the necessary steps to improve the investment environment and protect the interests of both foreign and domestic investors.

## **2. Analysis of International Agreements on Foreign Investment**

The analysis of international agreements on foreign investment involves a review of the various relevant bilateral and multilateral agreements that the country has signed. For example, Indonesia has signed a number of bilateral investment treaties with its trading partners, such as those with Australia and Singapore. In addition, Indonesia is also involved in multilateral agreements, such as the ASEAN Investment Agreement (AIA). The assessment of these agreements involves an in-depth analysis of their provisions, including the protection of foreign investment, investor-state dispute settlement, and the obligations assumed by the parties. According to M. S. Nugroho et al. (2018) highlights the importance of ASEAN investment agreements in improving the investment climate in the Southeast Asian region. This analysis makes it possible to evaluate the interests safeguarded by these agreements as well as the impact of their implementation on foreign investment and economic development of the countries concerned. With a better understanding of the agreements, countries can take appropriate measures to strengthen investment cooperation and protect their national interests in the international sphere.

Analyzing the importance and impact of foreign investment treaty implementation is important to holistically understand the contribution and effectiveness of such treaties to a country's economic development and investment. Through this research, it is possible to identify the benefits that countries gain from investment treaties, such as increased foreign direct investment (FDI) flows, technology transfer, and job creation. However, in addition to the benefits, it is also important to pay attention to the negative impacts that may arise, such as restrictions on national public policies and potential disputes between foreign investors and the state. In line, in a study by Aziz, S., and Suharto, E. (2021), It is emphasized that the implementation of foreign investment agreements in Indonesia has complex impacts, including impacts on environmental and labor regulations. Such an analysis makes it possible to evaluate the extent to which investment agreements support sustainable and inclusive economic development. With a better understanding of the importance and impacts of foreign investment treaty implementation, the state can direct more effective policies to protect national interests and maximize the benefits of foreign investment for sustainable economic development.

### **3. Case Studies on the Implementation of National and International Law.**

The analysis of case studies on the implementation of foreign investment regulations and agreements enables a more profound comprehension of the obstacles encountered and the elements that contribute to the success of such implementation. To illustrate, in the Indonesian context, the implementation of foreign investment-related regulations frequently encounters obstacles, including intricate bureaucratic procedures, a lack of coordination between pertinent agencies, and disparate interpretations of regulations at the local level. However, there are also case studies that highlight implementation successes, such as the government's efforts to improve transparency and legal certainty for foreign investors through regulatory reform. Such as research by Wibowo, H. (2020) shows that investment licensing reform measures undertaken by the Indonesian government have successfully increased the attractiveness of foreign investment in strategic sectors. Analysis of factors affecting implementation, such as public policy, institutional capacity, and participation of relevant actors, can provide valuable insights for policymakers in designing more effective strategies to promote sustainable foreign investment.

In the ongoing examination of the implementation of foreign investment regulations and agreements, it is essential to ascertain the factors that contribute to the success or failure of such implementation. One pertinent factor is the political and economic context at both the national and international levels. For instance, alterations in the government or national economic policy may exert a considerable influence on the implementation of foreign investment regulations. In addition, factors such as adherence to international standards, community support, and administrative capacity also play an important role. Study by Christoffersen, J. M. (2018) shows that institutional capacity and transparency of decision-making processes play an important role in determining the successful implementation of foreign investment regulations in some countries. By analyzing these factors affecting implementation, more appropriate and sustainable policy recommendations can be made to improve the effectiveness of foreign investment regulations and agreements in supporting sustainable economic development.

#### **4. Legal Protection of Foreign Investment from the Perspective of National Law and International Law**

##### 1) A National Legal Perspective:

- Each country has national laws and regulations that govern foreign investment activities in its territory.
- National investment laws usually include provisions on the types of investments allowed, licensing procedures, fiscal incentives, and legal protection for foreign investors.
- Legal protection for foreign investors at the national level includes investment security guarantees, fair and non-discriminatory treatment, and dispute resolution mechanisms.
- Some countries also have bilateral investment treaties (BITs) with other countries to provide additional protection for foreign investors.

##### 2) An International Law Perspective:

- There are international legal instruments that regulate the protection of foreign investment, such as multilateral treaties and international conventions.

- The ICSID (International Center for Settlement of Investment Disputes) Convention is one of the main instruments that provides a mechanism for resolving investment disputes between foreign investors and host countries.
- The World Trade Organization (WTO) also has investment-related regulations in the Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Investment (TRIMS).
- In addition, there are regional investment agreements such as the North American Free Trade Agreement (NAFTA) and the Regional Comprehensive Economic Partnership Agreement (RCEP) that contain foreign investment protection provisions.

## **5. Research Contribution to Understanding Foreign Investment in the Era of Globalization**

Research contributions to the understanding of foreign investment in the era of globalization are crucial in the context of international economic and legal developments. In-depth research on national regulations, international agreements, and the implementation of both aspects can provide valuable insights into the complexity of foreign investment dynamics in the era of globalization. Research by Sauviant, K. P. (2018) highlights that foreign investment has become an important engine of global economic growth, but it also raises various legal and policy challenges that require serious attention. By analyzing various aspects such as legal protection, dispute resolution mechanisms, and the impact of implementing regulations and agreements, this study provides a more comprehensive understanding of how foreign investment plays a role in shaping the current global economic and legal structures. With a better understanding of these foreign investment dynamics, policymakers, legal practitioners, and other stakeholders can develop more effective strategies to promote sustainable and equitable investment amidst the evolving era of globalization.

An examination of the dynamics and challenges in foreign investment regulation provides an overview of the complexities involved in regulating cross-border capital flows.

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<sup>5</sup> Sauviant, K. P. (2018). *Revisiting International Investment Agreements: Fifty Years of Evolution*. Oxford University Press

Such dynamics include changes in investment policy, political changes, as well as the evolution of global markets. Research by UNCTAD (United Nations Conference on Trade and Development) in 2020 highlighted that foreign investment regulation has undergone significant developments in recent decades, particularly in terms of a more open policy approach to foreign direct investment. However, along with these dynamics come challenges, including increased regulatory complexity, political uncertainty, and the risk of investor-state disputes. With a better understanding of these dynamics and challenges, policymakers and legal practitioners can take appropriate steps to formulate regulations that are effective and responsive to changes in the global investment environment, while minimizing risks for all parties involved.

The research implications for policy and practice at the national and international levels provide a solid foundation for improvement and further development in foreign investment regulation. An in-depth study of national regulations and international agreements can provide policymakers with valuable insights into how they can improve their domestic investment environment while complying with international obligations. In this context, research by Dolzer and Schreuer (2012) shows that alignment between national regulations and international treaties is essential to create legal certainty for foreign investors and prevent adverse investment disputes. In addition, the implications of the research may also stimulate dialog and cooperation between countries in strengthening the global legal framework relating to foreign investment<sup>6</sup>.

## CLOSING

This study has presented a comprehensive analysis of the regulatory framework governing foreign investment protection in the current period of globalization. Through an examination of national laws and regulations, international treaties, implementation case studies, as well as the identification of factors influencing these regulations and treaties, this research reveals the complex dynamics and challenges involved in regulating foreign investment inflows. The implications of the findings of this research are critical to improving understanding and policy formulation at the national and international levels. This research

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<sup>6</sup> Dolzer, R., & Schreuer, C. (2012). *Principles of International Investment Law*. Oxford University Press.

emphasizes the need for harmonization between national regulations and international agreements, as well as concrete steps to create a sustainable and fair investment climate. Therefore, for future study, it is recommended that a more in-depth study of the implementation of existing regulations and agreements be conducted, as well as the exploration of new strategies to improve legal protection for foreign investment. This includes integrating new perspectives such as sustainability and response to change in the global investment environment. Continued research in this area will make a valuable contribution to the development of more effective policies and practices for managing foreign investment in an era of evolving globalization.

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