



## Legal Protection for Foreign Investors in Investing Capital in the National Capital City

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ARTICLE INFO	ABSTRACT
<p><b>Keywords :</b> The Nation's Capital, Foreign Investment, Regulation, Legal Protection.</p> <p><b>Submitted:</b> 2023-10-19</p> <p><b>Last revised:</b> 2023-11-07</p> <p><b>Accepted:</b> 2023-12-09</p> <p><b>DOI :</b> 10.25077/alj.v8i2.58</p>	<p>The relocation of Indonesia's national capital to East Kalimantan requires a lot of capital, including from foreign investors. To safeguard the success of this project, regulation and legal protection for foreign investors in IKN are important. This ensures legal certainty and trust for foreign investors participating in the project. This legal research is normative research with secondary data qualitative analysis using a statutory approach. Data sources involve primary, secondary, and non-legal materials. Data was collected through literature studies and online sources. The government has created a special regulation, namely Government Regulation (PP) No. 12 of 2023, which supports investment in the National Capital City (IKN). While it provides strong legal incentives and protection, it is important to regularly monitor the impact of this regulation, improve conformity with environmental standards, encourage partnerships with UMKM, and intensify international promotion. As well as engaging stakeholders and improving licensing transparency. Legal protection for foreign investors in IKN is well-regulated through the UU PM and bilateral investment agreements. In the face of global competition, the government needs to maintain investment policy stability, improve ease of doing business, consider sustainable practices, and create specific legal protection regulations to attract more foreign investment for sustainable economic growth.</p>

## 1. Introduction

The territory of the Unitary State of the Republic of Indonesia stretches widely from Sabang to Merauke, where the National Capital is the Special Capital Region of Jakarta, but there have been several discourses about moving the National Capital, then called IKN, which has been launched several times. Initially, the idea to move the country's capital came from the 1st Indonesian President, Ir. Soekarno wanted to move IKN to the Central Kalimantan region, namely the city of Palangkaraya. Then, the idea of moving IKN also emerged when the Indonesian government was led by the 2nd President of Indonesia, General Soeharto, to the Jonggol area. Furthermore, in the era of the leadership of the 6th President, Susilo Bambang Yudhoyono, the idea emerged again to move IKN as a result of the floods and severe traffic jams that hit the Special Capital Region of Jakarta.<sup>1</sup>

This discourse was realized during Joko Widodo's leadership. On August 26, 2019, the President announced the location of the new IKN, which is in Kab. Kutai Kartanegara and North Penajam Paser Province. East Kalimantan. Jokowi said there were 5 (five) advantages of East Kalimantan Province, which was chosen as the newest location for IKN. Namely first, this area rarely experiences natural disasters, such as landslides and floods, and there is an absence of volcanoes, tsunamis, and others. Second, the area chosen as IKN is flanked by two cities that have experienced good development, namely Samarinda City and Balikpapan City. Third, the East Kalimantan Province area is in the center of Indonesia, which makes it a strategic region. Fourth, East Kalimantan Province is considered to have adequate infrastructure. Fifth, President Joko Widodo said that the government-owned 180 thousand hectares of land. President Joko Widodo stated that one of the purposes of moving the country's capital was to reduce the gap in development between Java and outside Java.<sup>2</sup> President Joko Widodo said that the main reason for the development of this IKN was an effort for equality in various fields such as economy, development, and population.<sup>3</sup>

The Director of Regional and Area Development of the Ministry of National Development Planning/Bappenas, Sumedi Andono Mulyo, said that the urgency of moving IKN to the East Kalimantan Province area was due to the intense migration flow to the DKI Jakarta area, which caused severe traffic congestion and also a decrease in the quality of oxygen in the area. Jakarta, the probability of natural disasters is

<sup>1</sup> Edward UP Nainggolan, 'Urgensi Pemindahan Ibu Kota Negara', *Djkn.Kemenkeu.Go.Id* <<https://www.djkn.kemenkeu.go.id/kanwil-kalbar/baca-artikel/14671/Urgensi-Pemindahan-Ibu-Kota-Negara.html>> [accessed 11 September 2023].

<sup>2</sup> Humas Prov. Kaltim, 'Pemindahan Ibu Kota Negara, Jokowi Akhirnya Memilih Kaltim', *Kaltimprov.Go.Id* <<https://www.kaltimprov.go.id/berita/pemindahan-ibu-kota-negara-jokowi-akhirnya-memilih-kaltim>> [accessed 11 September 2023].

<sup>3</sup> Humas Kemensetneg, 'Presiden Jokowi: Alasan Utama Pembangunan IKN Adalah Pemerataan' <[https://www.setneg.go.id/baca/index/presiden\\_jokowi\\_alasan\\_utama\\_pembangunan\\_ikn\\_adalah\\_pemerataan](https://www.setneg.go.id/baca/index/presiden_jokowi_alasan_utama_pembangunan_ikn_adalah_pemerataan)> [accessed 13 September 2023].

increasing, there is a clean water crisis, there is a decrease in the carrying capacity of the environment, and the life of the country is too concentrated on the island of Java.<sup>4</sup>

The development of this IKN requires quite a bit of capital and should not be a burden on the APBN. However, if it only depends on domestic capital sources, this will result in capital limitations. One way to obtain capital for IKN development is through capital investment. Capital investment is based on Article 1 number 1 of Law no. 25 of 2007 concerning Capital Investment, which explains that:

“Investment is all forms of investment activities, both by domestic investors and foreign investors, to conduct business in the territory of the Republic of Indonesia.”

Next, it is also explained in Article 1 point 1 of Government Regulation No. 12 of 2023 concerning Providing Business Licensing, Ease of Business, and Investment Facilities for Business Actors in the Archipelago Capital City,

“Investment is all forms of investment activities, both by domestic investors and foreign investors, to conduct business in the territory of the Unitary State of the Republic of Indonesia.”

It can be concluded that investment is the act of channeling capital, whether originating from within or outside the country, with the aim of doing business in Indonesia. Capital is separated into two types, namely, domestic capital and foreign capital, or what is usually called foreign capital. The definition of domestic capital is contained in Article 1 point 9 of Law no. 25 of 2007 concerning Capital Investment, namely:

“Domestic capital is capital owned by the Republic of Indonesia, individual Indonesian citizens, or business entities in the form of legal entities or non-legal entities.”

The definition of foreign capital is contained in Article 1 point 8 of Law no. 25 of 2007 concerning Capital Investment, namely:

“Foreign capital is capital owned by foreign countries, individual foreign citizens, foreign business entities, foreign legal entities, and/or Indonesian legal entities, some or all of whose capital is owned by foreign parties.”

Foreign investors themselves act as a step to spur the growth and development of the Indonesian economy, and this is a vital action that must be taken. On the other hand, foreign investment also has the potential for positive impacts, such as the transfer of knowledge and technology and increasing and expanding employment opportunities, so

<sup>4</sup> Superadmin, ‘Ibu Kota Indonesia Jadi Pindah, Apa Urgensinya?’ <<https://ip.umy.ac.id/ibu-kota-indonesia-jadi-pindah-apa-urgensinya/>> [accessed 12 September 2023].

it can provide an increase in economic growth and development in Indonesia.<sup>5</sup> In the case of IKN, foreign investment must be sought to build IKN so that it does not burden the APBN too much. Foreign investors really consider legal issues in a country, including legal certainty and protection in the country they want to invest in, to provide comfort in making investments. Therefore, it is necessary to review the regulations regarding investing in IKN and the legal protection for foreign investors.

## 2. Method

This research is normative legal research, where the research material used is secondary data, which includes primary legal material, secondary legal material, and tertiary legal material. Then, these materials were analyzed using a qualitative approach.<sup>6</sup>

The approach applied is the statutory approach (statute approach), which is an approach that involves a thorough examination and analysis of all legal rules and regulations relating to the topic being studied.<sup>7</sup> Regarding this context, the author analyzes regulations for investors in IKN and legal protection for foreign investors in IKN using two existing regulations, namely, Government Regulation No. 12 of 2023 concerning the Granting of Business Licenses, Ease of Business and Investment Facilities for Business Actors in the National Capital and Law no. 25 of 2007 concerning Capital Investment.

The materials used for this matter are primarily legal, secondary, and non-legal materials. Primary legal materials are materials that include laws, official records, court decisions, and official government documents.<sup>8</sup> Secondary legal materials are legal sources, which include legal literature such as books, journals containing basic legal principles, views of legal experts (doctrine), results of legal research, legal dictionaries, and legal encyclopedias.<sup>9</sup> Non-legal materials are research materials that include textbooks outside the legal field that are relevant to research, such as books on politics, economics, census data, company annual reports, language dictionaries, and general encyclopedias.<sup>10</sup>

In this research, the collection of legal materials or secondary data was carried out through a literature study, which included various types of legal, primary, secondary, and non-legal materials. Searching for this material can be done through reading,

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<sup>5</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 <<https://doi.org/10.21067/jph.v8i1.8500>>.

<sup>6</sup> Bachtiar, *Metode Penelitian Hukum* (Pamulang: UNPAM Press, 2018).

<sup>7</sup> Muhaimin, *Metode Penelitian Hukum. Mataram* (Mataram: Mataram University Press, 2020).

<sup>8</sup> *Ibid*, hlm. 59.

<sup>9</sup> *Ibid*, hlm. 60.

<sup>10</sup> *Ibid*

observing, listening, and searching through online sources, such as websites or the internet.<sup>11</sup>

### 3. Regulations for Investors Investing Their Capital in the National Capital City

Before investing capital in a country, investors, both domestic and foreign, usually consider several factors. Several things that are taken into consideration by investors before allocating their capital are investment risk (country risk), range of bureaucracy, transparency and legal certainty, technology transfer, investment guarantees and protection, employment, availability of infrastructure, availability of natural resources, market access, tax incentives, and Non-tax, as well as dispute resolution procedures.<sup>12</sup>

In investing capital in IKN, investors must follow several stages. The first round is the submission of a Letter of Intent (LOI), the second round is one meeting, the third round is a Response Letter, the next round is a Feasibility Study, and the fifth round is LOI Review and Prioritization, followed by the sixth round Confirmation Letter, after that, there is the seventh round is Non-Disclosure Agreement and Data Request, and the final round is Deal Closing.<sup>13</sup> If the investors have passed all the existing stages, then they are eligible to invest their capital in the IKN.

Regulations on investors, domestic or foreign, who intend to allocate their capital in IKN itself have been specifically stipulated in Government Regulation No. 12 of 2023 concerning the Granting of Business Licenses, Ease of Business, and Investment Facilities for Business Actors in the National Capital, hereinafter referred to as PP 12/2023. In Article 1, number 9 PP 12/2023, it is explained that:

“Business Actors are individuals or business entities that carry out business and/or activities in certain fields.”

Domestic or foreign investors, in this case, are defined as business actors, whether in the form of individuals or business entities. In PP 12/2023, Article 4, paragraph (2) explains the regulations for business actors who will carry out business activities in IKN. These business actors are not required to confirm taxpayer status or obtain business permits in IKN. Business development can be encouraged by this policy, which can improve the economy and create new jobs. It will use an integrated OSS or Online Single

<sup>11</sup> *ibid*, hlm. 65.

<sup>12</sup> Indah Sari, ‘Syarat-Syarat Penanaman Modal Asing (Pma) Di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal’, *Jurnal Ilmiah Hukum Dirgantara*, 10.2 (2020), 50–75 <<https://doi.org/10.35968/jh.v10i2.462>>.

<sup>13</sup> Natasha Khairunisa Amani, ‘9 Investor Masuki Tahap Akhir Investasi Di IKN’, *Liputan6.Com* <<https://www.liputan6.com/bisnis/read/5387819/9-investor-masuki-tahap-akhir-investasi-di-ikn>> [accessed 29 September 2023].

Submission system, as stated in Article 4, paragraph (3) PP 12/2023. According to Article 1 number 12 PP 12/2023, it is explained that:

“Electronically Integrated Business Licensing System (Online Single Submission), hereinafter referred to as the OSS System, is an integrated electronic system managed and organized by the OSS Institution for the implementation of Risk-Based Business Licensing,”

This develops the idea of integrating licensing online between regional and central governments with the main aim of speeding up licensing procedures, accelerating capital investment, and encouraging the growth of business activities in the regions. OSS is expected to be able to handle licensing problems that have been occurring, especially regarding the slow licensing process in several regions of Indonesia. In general, the idea of licensing through OSS is to facilitate business by providing one national portal, business identity, and business license format,<sup>14</sup> and OSS is a form of implementation of Law No. 11 of 2020 concerning Job Creation. Then, related to Business Licensing, in this PP, there are also no restrictions regarding foreign capital ownership in certain fields, as written in Article 5 of PP 12/2023. Based on the things mentioned above, it can be concluded that the government wants to make investment opportunities available to foreigners as widely as possible. However, according to Article 6 PP 12/2023, the PP states that:

“Business Licensing in the Capital City of the Archipelago and Partner Regions as intended in Article 5 applies to partnership requirements with micro, small, medium or cooperative businesses in accordance with the provisions of statutory regulations.”

This explains that although the government opens up opportunities for foreign investment as widely as possible, it also does not ignore the economy of the surrounding community and tries to boost the local economy. For this reason, the government requires foreign investors to carry out partnerships with MSMEs or cooperatives. There is. This shows commitment to supporting the growth of MSMEs. These businesses can develop by collaborating with MSMEs to gain greater resources, markets, and opportunities. By ensuring that all types of businesses and communities have equal access to business opportunities, this policy supports economic inclusion, meaning that MSMEs have more opportunities to participate in economic development and compete in larger markets. Local economies, especially in Partner Regions, can be strengthened through partnership terms. This can help create jobs, increase income, and reduce economic inequality at the regional level.

<sup>14</sup> Budi Utomo Jaya Putra, Syarief Makhya, and Maulana Mukhlis, ‘Implementasi Kebijakan Perizinan Sistem Online Single Submission (Studi Pada Dpmpptsp Kabupaten Lampung Selatan)’, *Jurnal Analisis Sosial Politik*, 5.1 (2021), 1–11.

In PP 12/2023, Article 7 explains the requirements that need to be implemented, namely the basic requirements for Business Licensing and/or Sector Business Licensing. This provides legal certainty to business actors by detailing the requirements that must be met. This is vital for business actors to have a concrete understanding of what is needed to start and operate their business. The basic requirements and licensing of sector businesses can vary depending on the type of business being run. This is done to enable different types of businesses to operate and ensure that they comply with the relevant regulations in their industry. According to PP 12/2023 in Article 8, in terms of basic requirements for Business Licensing, investors must fulfill three things. Firstly, the suitability of space utilization activities is the harmonization of business plans with spatial planning and zoning plans. The IKN Authority grants this permit to business actors whose locations are in accordance with the IKN spatial plan, based on what is written in Article 9 paragraph (2). The second is environmental approval, which refers to AMDAL in the IKN area.<sup>15</sup> The meaning of AMDAL is contained in Article 22 of Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which amends Law no. 32 of 2009 concerning Environmental Protection and Management Article 1 number 11, namely:

“Environmental Impact Analysis, hereinafter referred to as Amdal, is a study of the significant impacts on the Environment of a planned business and/or activity, to be used as a prerequisite for decision making regarding the implementation of a business and/or activity and included in the Business Licensing or Central Government approval or Local government.”

Sustainable development, also known as environmentally sound development, involves the use of a number of instruments, including AMDAL, to achieve and maintain the goals of sustainable development.<sup>16</sup>

Business actors are required to submit detailed environmental management plans and detailed environmental monitoring plans. This is based on Article 10, paragraph (2) PP 12/2023. It is very important to prepare RKL and RPL carefully and effectively to ensure that business activities are sustainable and comply with applicable environmental regulations. Business actors must cooperate with local environmental authorities to ensure that their RKL and RPL comply with the legal rules and regulations that apply in the environmental context. If there are violations or significant negative effects, environmental authorities will usually take action.

The final requirement for a Business License is to obtain Building Approval and a Functional Worthiness Certificate. These two permits will be given after the Business

<sup>15</sup> PP 12/2023, Pasal 10 ayat (1)

<sup>16</sup> Indah Sari, ‘Amdal Sebagai Instrumen Dalam Mempertahankan Sustainable Development Yang Berwawasan Lingkungan’, *Jurnal Ilmiah Hukum Dirgantara*, 8.2 (2014), 59–79 <<https://doi.org/10.35968/jh.v8i2.255>>.

Actor fulfills the requirements related to space utilization and environmental approval. This is based on Article 11, paragraph (1) PP 12/2023. Before obtaining building approval and a certificate of functional suitability, business actors must ensure that their land use is in line with existing regulations and spatial plans. This is an important step to verify these activities are in line with zoning and land uses regulated by spatial planning authorities. This can involve complying with various regulations, such as permits and city zoning ordinances. In addition to building approval and a certificate of functional fitness, business actors must also obtain environmental approval in accordance with Article 10. This indicates that before starting or planning activities that have a significant impact on the environment, they must comply with applicable environmental procedures and requirements. Business actors have the right to carry out construction in accordance with the plans that have been submitted to the IKN Authority. In accordance with Article 11 paragraph (3) PP 12/2023, namely:

“Providing building approval and a certificate of functional fitness as intended in paragraph (1) is subject to a fee of Rp. 0.00 (zero rupiah) for a certain period of time.”

The relevant government wants to provide easier access for business actors or individuals who want to obtain building approval and a certificate of functional fitness, similar to what is reflected in the policy. By avoiding costs, businesses or building owners can avoid financial problems. By reducing the initial costs that building owners or businesses must pay, this policy could encourage more people to start building or renovation projects that might previously have been hampered by approval fees. The Functional Worthiness Certificate, in accordance with the provisions of Article 11 paragraph (5), for buildings is valid for 20 years and can be extended according to evaluation in accordance with the law governing buildings. This policy emphasizes the functional suitability of buildings so that functional fitness certificates are not only given automatically for twenty years but can be extended based on the condition and maintenance of the building. This encourages building owners to maintain their buildings well in order to obtain an extension. A twenty-year term provides long-term protection for building owners. This can give them confidence that they can use the building for a long time without having to renew the certificate too often. Additionally, this time period can be an incentive for building owners to allocate more money to repairs and maintenance.

Apart from Business Licensing, there are also Business Licensing Sectors, which consist of around 18 sectors as stated in Article 12 PP 12/2023, namely:

“maritime and fisheries, agriculture, environment and forestry, energy and mineral resources, nuclear power, industry, trade, public works and public housing, transportation, health, medicine and food, education and culture, tourism, postal religion, telecommunications, broadcasting, as well as electronic systems and



transactions, defense and security, employment, finance, and other priority sectors determined by the Head of the Authority.”

Verification in the process of granting approval of the basic requirements for Business Licensing and/or Sector Business Licensing for certain levels of risk in IKN is carried out by the IKN Authority. If a business actor has obtained a Business License, the business actor is obliged to report in the form of a report on investment activities through the OSS system, as written in Article 13 paragraph (1).

Land located in IKN, as stated in Article 16 paragraph (1), has been designated as state property and Assets Under Management, the authority and management of which is carried out by the IKN Authority. Land, which is an Asset under Management that is granted Management Rights, can be allocated to Business Actors in the form of Land Rights. These land rights take the form of business use rights, building use rights, and use rights based on Article 17, paragraph (1) PP 12/2023.

The government, through PP 12/2023, makes it easier to do business at IKN. In the case of land, for example, Article 17 paragraph (3) explains that:

“The Nusantara Capital Authority guarantees the certainty of the period of HGU, HGB, or use rights to Business Actors as stated in the agreement.”

Business actors are given certainty regarding the terms of Business Use Rights, Building Use Rights, and different use rights. For example, the term Cultivation Rights above the IKN Authority Management Rights is granted for a maximum of 95 years through the first cycle. Then, within a grace period of 10 years, before the first cycle of Cultivation Rights expires, Business Actors can submit an application for the granting of Cultivation Rights for a second cycle with a maximum period of 95 years in accordance with the land use agreement. Then, for building use rights and use rights, each is given a period of 80 years through the first cycle as stated in Article 19 paragraph (1) and Article 20 paragraph (1) PP 12/2023. Then, land rights in the form of business use rights, building use rights, or use rights above management rights are subject to a tariff for the acquisition of land and building rights of 0% of the acquisition value for a certain period of time, in line with the statement in Article 21 paragraph (1) PP 12/2023, namely:

“The granting of HAT in the form of HGU, HGB, or use rights above HPL is subject to BPHTB at a rate of 0 (zero percent) of the acquisition value for a certain period of time.”

On the other hand, land rights can also be transferred, inherited, or charged with mortgage rights if they have been approved by the IKN Authority in accordance with Article 21 paragraph (2) PP 12/2023. Also, the party receiving the transfer of land rights is also subject to a 0% fee for the acquisition of land and building rights.

The government also provides Income Tax Facilities for business actors in IKN as stated in Article 27 paragraph (1) PP 12/2023, namely in the form of:

- Reduced corporate income tax for domestic corporate taxpayers;
- Income Tax on financial sector activities in the Financial Center;
- reduction in corporate income tax for the establishment and/or transfer of head offices and/or regional offices;
- reduction in gross income for carrying out work practice, apprenticeship, and/or learning activities in the context of coaching and developing certain competency-based human resources;
- reduction in gross income for certain research and development activities;
- reduction in gross income for donations and/or costs for building public facilities, social facilities and/or other non-profit facilities;
- Income Tax Article 21 is borne by the government and is final;
- 0% final income tax on income from gross turnover of certain businesses for MSMEs;
- reduction of Income Tax on the transfer of rights to land and/or buildings.

Apart from the regulations above, PP 12/2023 also regulates policies regarding foreign workers, corporate waste tax reduction facilities, customs, and so on.

If we pay attention to the regulations above, the government provides many conveniences for these regulations, from which it can be concluded that the government wants to attract more capital investment to help accelerate the development of IKN as a whole.

#### **4. Legal Protection for Foreign Investors Investing in the National Capital**

Legal protection is one of the many aspects that influence investors' decisions when carrying out investment activities in a country. Basically, legal protection for foreign investors when allocating their capital in IKN is not specifically made in any regulations; however, in this country, domestic investors or foreign investors are protected by Law Number 25 of 2007 concerning Capital investment. The Indonesian government provides legal protection for foreign investors through Law Number 25 of 2007 concerning Investment, hereinafter referred to as the PM Law. The PM Law is the basic law that regulates foreign investment or domestic investment in this country. The government provides investment permits for investors with the main aim of providing official legality for their businesses. This licensing also provides certainty and legal protection to individuals and legal entities investing capital. The licensing process through the OSS institution is a significant step in the Government's efforts to provide legal certainty to the business world and investment. OSS institutions have an important role in providing permits for various types of businesses that investors wish to carry out.

By obtaining permits through OSS institutions, investors can experience significant variations compared to the licensing process in the past. This creates a friendlier environment for investment and gives investors confidence that their businesses will have a strong legal basis. Thus, OSS institutions play a key role in facilitating investment and encouraging economic growth and development.<sup>17</sup>

In this country, based on Article 3 paragraph (2) of the PM Law, the implementation of capital investment aims to increase national economic growth, create jobs, increase sustainable economic development, increase the competitiveness of the national business world, increase national technological capacity and capabilities, encourage the development of the people's economy, processing the potential economy into real economic strength by using funds originating from both within the country and from abroad and improving community welfare.

The government provides the same treatment to all investors from any country who carry out investment activities in Indonesia, in line with what is written in Article 6 of the PM Law. This means that when investing in IKN, the government also does not differentiate between the countries of origin that invest in IKN. This is also an application of the principle of equal treatment and does not differentiate between countries of origin.<sup>18</sup>

In the context of asset transfer, Indonesia allows investors to transfer their assets to the desired party but must comply with regulatory provisions. This is stated in Article 8, paragraph (1) UUPM, which states:

“Investors can transfer the assets they own to parties desired by the investor in accordance with statutory provisions.”

The Indonesian government also gives foreign investors the right to take home capital profits and sell assets from their investment from the country of their investment destination (Host State) to their country of origin using foreign currency. This aspect is based on Article 8, paragraph (3) UUPM. The conclusion is that the Government allows foreign investors to bring profits from their investments in IKN back to their home countries.

In Indonesia, provisions regarding nationalization are regulated in Article 7 of the PM Law, and nationalization actions cannot be carried out by the government arbitrarily or

<sup>17</sup> E C A Marbun, ‘Mengkaji Kepastian Hukum Dan Perlindungan Hukum Terhadap Investasi Di Indonesia Melalui Lembaga Perizinan Online Single ...’, *Dharmasiswa: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*, 2.3 (2022), 1243–56  
<<https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss4/8/%0Ahttps://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1133&context=dharmasiswa>>.

<sup>18</sup> Agung Sujati Winata, ‘Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing Dan Implikasinya Terhadap Negara’, *Ajudikasi : Jurnal Ilmu Hukum*, 2.2 (2018), 127 <<https://doi.org/10.30656/ajudikasi.v2i2.902>>.

without a strong legal basis. Nationalization can only occur based on the rules contained in existing laws. If such action needs to be taken, the government will provide appropriate compensation for the market value of the affected property. If there is a disagreement between the government and the property owner, then arbitration can be used as a mechanism to resolve the dispute. If a country wants to nationalize investment contracts, the step in question needs to receive recognition and approval from the international community.<sup>19</sup>

The PM Law, specifically Article 32 of the PM Law, also explains dispute resolution. If there is a dispute between the Indonesian government and foreign investors, the government and foreign investors can make efforts to reach a consensus at the beginning. If consensus deliberation fails, the dispute can be resolved through international arbitration.

Apart from the above, foreign investors can make bilateral investment agreements or what is usually called a Bilateral Investment Treaty (BIT). Bilateral investment agreements have three main objectives:

1. Developed countries that are investors want to protect investors from their country and their investment in the destination country. This involves legal protection and security for their investment.
2. Developing countries that are recipients of capital want to attract foreign investors with this agreement. This agreement can also help create political and legal stability in the country, in addition to its economic impact.
3. Countries receiving capital also receive a guarantee that if their citizens invest in the investing country (developed countries), they will be given protection equivalent to that received by foreign investors. In simple terms, there is equality in protection for all parties involved in bilateral investments.<sup>20</sup>

The Bilateral Investment Treaty (BIT) determines investment protection guidelines that recipient countries must follow, including:

- a. Guarantee fair and equal treatment for all types of investment, both foreign and domestic, without discrimination.
- b. It provides full protection and security against risks such as war, armed conflict, revolution, state emergency, riots, or rebellion, which could cause company losses. Typically, this involves compensation or restitution.

<sup>19</sup> Iman Ali rahman and Dewa Sukma Kelana, 'Perlindungan Hukum Bagi Investor Asing Menurut Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal', *Jurnal Ilmiah Hukum Dan Keadilan*, 9.1 (2022), 92–103 <<https://doi.org/10.59635/jihk.v9i1.187>>.

<sup>20</sup> Laura Sembiring, 'Urgensi Perjanjian Investasi Bilateral Antara Indonesia Dan Negara Lain Dengan Klausula Penyelesaian Sengketa Investor-State Dispute Settlement', *"Dharmasiswa" Jurnal Program Magister Hukum FHUI*, 1.4 (2022) <<https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss4/22>>.

- c. Protect investment from expropriation or nationalization, and emphasize that the country receiving the capital provides compensation if this happens.
- d. Regulate procedures for resolving comparable disputes between investors and the state, usually termed "Investor-State Dispute Settlement (ISDS)."<sup>21</sup>

The Indonesian government has also taken important action by ratifying the convention that established the Multilateral Investment Guarantee Agency (MIGA) based on Presidential Decree No. 1 of 1986. This step gives a good perception to foreign investment entities that allocate capital to this country. The ratification of the MIGA convention shows that Indonesia is committed to providing legal protection for foreign investors for risks related to their investment in this country. This creates a sense of certainty and confidence for foreign investors, considering that their capital allocation will receive appropriate protection in Indonesia. This action helps increase Indonesia's attractiveness as an investment destination for foreign investors, as it provides strong legal protection. Thus, this can encourage increased foreign investment in the country, which in turn contributes to the country's economic development and development.<sup>22</sup>

## 5. Conclusion and Suggestion

### 5.1. Conclusion

- 1) The government has created special regulations, namely Government Regulation (PP) no. 12 of 2023, to provide comfort and incentives for investors, both domestic and foreign, who wish to invest their capital in the National Capital City (IKN). This regulation regulates various aspects, including licensing, land ownership, taxes, and MSME partnerships and cooperatives. This regulation shows the government's commitment to facilitating investment in IKN while ensuring a positive impact on economic growth and economic inclusion. However, this regulation also maintains a balance by paying attention to environmental and sustainability aspects. In this case, environmental requirements and an environmental management plan are vital to ensure project sustainability. The government has taken progressive actions to support investment and development in IKN, and this regulation provides a clear framework for investors. This regulation aims to spur economic growth and development, create new job opportunities, and accelerate overall IKN development.
- 2) Legal protection for foreign investors who allocate their capital in the Indonesian National Capital (IKN) is supported by various laws and regulations, with the main focus being Law Number 25 of 2007 concerning Capital Investment. This law

<sup>21</sup> *Ibid*, Hlm. 1944

<sup>22</sup> I Pradiptha, 'Perlindungan Hukum Bagi Investor Terhadap Pengambilalihan Perusahaan Penanaman Modal', *Jurnal Hukum*, 2013, 1–5.

provides a legal foundation for foreign investment in this country, guarantees legal protection, and provides legal certainty through the OSS institution. The Indonesian government provides equal treatment to all investors without distinguishing between their countries of origin, reflecting the principle of equal treatment and not distinguishing between countries of origin. Foreign investors also have the right to transfer assets, take-home profits, and undergo an international arbitration process if a dispute arises. In addition, Indonesia has ratified the MIGA convention, which indicates the country's commitment to providing legal protection to foreign investors for the risks associated with allocating their capital. This action creates a positive investment atmosphere and fosters interest in Indonesia as a destination for foreign investment. Overall, strong legal protection and bilateral investment agreements such as the Bilateral Investment Treaty (BIT) make Indonesia an attractive destination for foreign investors. This has the potential to encourage increased foreign investment, which can contribute to the country's economic growth and development.

## 5.2. Suggestion

- 1) A number of actions can be taken to ensure that the regulations discussed in the journal are successful. First and foremost, continuous monitoring and evaluation of the impact of regulations on economic growth and capital investment in the National Capital City (IKN) is needed. Compliance with RPL and RKL environmental standards must be improved. Technical and financial assistance must be provided to encourage partnerships with MSMEs. International promotion is necessary to attract foreign investors. Local stakeholders and communities must be involved. The licensing and land management process must be more transparent. Regulations must be updated and deepened regularly. Bilateral agreements and international cooperation can also help foreign investment. To ensure environmental sustainability, monitoring of the environmental impacts of large projects must be tightened. With these steps, regulations in IKN can be more effective in supporting economic growth and sustainable development as well as attracting more investors.
- 2) If the Indonesian government wants to attract foreign investors, especially in developing IKN, they must maintain a stable investment policy, increase ease of doing business, and provide strong legal protection. In addition, it is important to encourage investment promotion as well as bilateral investment agreements that take into account sustainable and environmental practices. Apart from that, the government needs to specifically enact legislation regarding legal protection for foreign investors in IKN. Therefore, Indonesia becomes more attractive for investment and supports sustainable economic growth and development.

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