




Reorienting Investment Dispute Resolution in Indonesia: Towards a Fair and Efficient System

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Abstract

In the era of Industry 4.0, the surge in foreign investment and the proliferation of global trade agreements have intensified the need for more reliable dispute resolution mechanisms. While the Investor-State Dispute Settlement (ISDS) system has long been the standard, it faces widespread criticism for its lack of transparency, fairness, and absence of an appellate mechanism. In response, the Investment Court System (ICS) has emerged as a novel alternative, introducing significant reforms such as the appointment of more qualified arbitrators, greater neutrality, enhanced transparency, and, crucially, a structured appeals process that offers stronger legal certainty. Although no disputes have yet been resolved through ICS, raising questions about its efficiency, the system represents a promising advancement in creating a more equitable and

trustworthy framework. The appellate mechanism of ICS, in particular, addresses a critical shortcoming of ISDS, where arbitration awards are often challenged in national courts, leading to legal uncertainty. By balancing investor protection with state sovereignty to regulate in the public interest, ICS has the potential to enhance legal clarity, foster public confidence, and create a more stable and inclusive global investment environment.

Keywords *Dispute Resolution, Investor-State Dispute Settlement, Investment Court System, International Arbitration*

Introduction

As a developing country, Indonesia needs substantial capital funds to continue sustainable development, especially through investment activities. Sustainable economic development will be able to stimulate economic growth by creating new jobs, improving people's welfare, and increasing domestic income.¹ Foreign investment contributes significantly to economic growth. Foreign investment brings foreign capital and experience that will enhance, expand, and strengthen domestic economic and development potential. Foreign investment provides a long-term relationship with the global economy. With the right rules, foreign direct investment can benefit both the host country and the investor.

In other words, foreign direct investment encourages the exchange of knowledge and experience between countries.² Recipient countries have the opportunity to market and expose their products to the rest of the world. Such large-scale investment activities can pose

¹ Manuasa Saragi, "Litigasi dan Non Litigasi untuk Penyelesaian Sengketa Bisnis Dalam Rangka Pengembangan Investasi di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa." *E-Journal Graduate Unpar* 1, no. 2 (2014): 54-73.

² Budi Hariyanto, and Rusfilda Batu. "Penerapan Model 'Alternative Dispute Resolution' dalam Penyelesaian Sengketa Investasi dengan Pemerintah Berdasarkan Undang-Undang Penanaman Modal." *IUS: Jurnal Ilmiah Fakultas Hukum* 11, no. 1 (2023): 14-28.

implementation problems, especially between investors and governments. The number of international investment treaties has tripled. This is one result of economic globalization. Economic globalization occurs as a result of global political developments, the growing importance of free market practices, the development of multinational corporations, advances in information and transportation technology, and increased financial investment in various countries around the world.³

Foreign investment is an important role in contemporary economic growth, and when coupled with trade, foreign investment has a significant impact on companies' ability to offer goods and services on a world scale. These investment treaties are incorporated into international treaties such as Free Trade Agreements, Multilateral Investments, and Bilateral Investment Treaties.⁴ Bilateral investment treaties provide foreign investors with appropriate substantive and procedural protection as they control the receiving country's behavior towards its investments and investors. These protections usually include guarantees from the receiving country to provide foreign investors with, among other things, equal compensation for expropriation, freedom from unreasonable or discriminatory actions, guarantees of National Treatment, Fair and Equitable Treatment, full protection and security, and foreign investors should be treated in the same manner as provided for in international law. International.⁵ The resolution of international investment disputes is becoming increasingly important. However, since there are no international negotiations or treaties specifically governing investments, nor are there international investment courts, arbitral tribunals usually follow the existing arbitration rules developed by the United Nations Commission for International Trade Law

³ Svetlana Vitalievna Salmina, Elmira Kamilevna Khafizova, and Yulia Nikolaevna Balabanova. "Educational research on solving real tax problems in cross-border e-commerce." *Propósitos y Representaciones* SPE3 (2021): e1291-e1291.

⁴ Fatma Muthia Kinanti, and Garuda Wiko. "Investment Court System Sebagai Alternatif Penyelesaian Sengketa Penanaman Modal Asing". *Arena Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2023): 338-361.

⁵ Gautami S. Tondapu, "International Institutions and Dispute Settlement: The Case of ICSID." *Bond Law Review* 22, no. 1 (2010): 81-95.

(UNCITRAL) or the International Centre for Settlement of Investment Disputes (ICSID).⁶

Foreign investors provide significant benefits to a country. The benefits in question include the ability of foreign investors to absorb labor in capital recipient countries, create demand for domestic products as raw materials, increase state foreign exchange, especially for export-oriented foreign investors, increase state revenue from the tax sector, and transfer of technology and knowledge.⁷ As a result of the rapid growth of global investment, an investment dispute resolution mechanism known as Investor-State Dispute Settlement (ISDS) was established with the aim of protecting the interests of foreign investors who invest, so as to attract investors to invest in other countries.⁸ Investor-State Dispute Settlement (ISDS) is one of the dispute resolution processes for Foreign Direct Investment (PMA). A FDI is an international financial movement in which a company from one country starts or expands its operations in another country. This dispute settlement system exists in many international investment treaties, including bilateral free trade agreements. (FTA), such as the Comprehensive and Economic Trade Agreement (CETA), the People's Republic of China (China)-Australia FTA (ChAFTA), or plurilateral regional economic agreements, such as the Energy Charter or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The need for governments to grow their economies, along with the onset of globalization and liberalization, has united these interests to establish multi-stakeholder investment regimes.⁹ There is a sense of mutual need, offering, and acceptance of each other, which leads to collaboration. Typically, collaboration is built on agreement. The same

⁶ Clarissa Nadya Arina, "Logical Consequences in Indonesia's Position in Investment Disputes in Arbitration Forum ICSID." *Indonesian Law Journal* 15, no. 1 (2022): 37-55.

⁷ Ranti Yulia Wardani, and Nawalage S. Cooray. "Saving potential of regional comprehensive economic partnership (RCEP): Implication for China and Japan." *Journal of Economic Info* 6, no. 1 (2019): 34-42.

⁸ Frederic Gilles Sourgens, "Value and Judgment in Investment Treaty Arbitration." *Journal of Dispute Resolution* 2018, no. 1 (2018): 185-196.

⁹ Ahmad Fajar Herlani, "Pilihan Forum Penyelesaian Sengketa Investasi." *Nurani Hukum* 3, no. 2 (2020): 49-56.

is true for investment. There is always a risk that can lead to difficulties or even disputes that require settlement based on agreement.¹⁰ ISDS clauses are found in a variety of international treaties, including Free Trade Agreements (FTAs), Bilateral Investment Treaties, Multilateral Investment Treaties, national investment laws, and investment contracts. ISDS generally takes the form of arbitration proceedings.

According to ¹¹International investment arbitration, also known as investment treaty arbitration or investor-state arbitration, is a procedure that allows foreign investors to obtain binding settlement of claims against a host country that is believed to have violated treaty investment protection or, in certain circumstances, has violated its contractual commitments or national foreign investment laws. Thus, if an investor from one country (home country) invests in another country (host country), and both have agreed to ISDS, and the host country violates the investor's rights (such as the right not to expropriate property without prompt, adequate, and effective compensation), the investor can sue the host country in arbitration rather than the host country's domestic courts.¹² ISDS effectively provides restitution to disgruntled investors in the form of substantial cash compensation. Such compensation is often offered as a means for investors to recover their initial investment when they want to exit the host country, and the amount can be substantial compared to the actual host country's resources.

ISDS are widely seen as unnecessary in industrialized countries because ISDS grant rights to international investors that cannot be

¹⁰ Kathrine Audrey Delila Quinones Tobing, "Analisis Klausul Penyelesaian Sengketa di Bidang Penanaman Modal Asing Pada Perjanjian Investasi Bilateral antara negara Indonesia dengan negara Singapura Tentang Promosi dan Perlindungan Investasi." *Mutiara: Multidisciplinary Scientific Journal* 1, no. 9 (2023): 551-564.

¹¹ Arie Ahsanurrohim, "Tinjauan Yuridis Pelaksanaan Penyelesaian Perselisihan Penanaman Modal dan Intervensi Kekuasaan Kehakiman di Indonesia dalam Pelaksanaan Arbitrase Internasional." *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 9694-9704.

¹² Waluyo Waluyo, M. Kenza Radhya E.A., and Ersya Dwi Nurifanti. "Online Dispute Resolution Sebagai Alternatif Penyelesaian Sengketa Fintech di Era Industri 4.0." *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2056-2066.

enjoyed by domestic investors and citizens.¹³ Therefore, this instrument is seen as 'neoliberal' that allows private companies to take issue with the host country's environmental and health regulations, as well as social protection norms. Under the Investor-State Dispute Settlement mechanism, an investor may sue a host country for arbitration if he or she feels aggrieved by that state. In practice, this instrument provides investors with legal protection for their investments, if investors believe that decisions taken by the host country affect their investments in the sense that they violate the principles of fair and equal treatment, or result in indirect expropriation, then investors can traditionally be solely responsible for enforcing international law. In the event of a violation of international law, a state harmed by another state's violation may use retaliatory measures such as retaliation in extreme cases, the use of force, to compel the violating state to abide by its commitments. However, ISDS is seen as an exception to the dispute resolution process, which is a more private method of resolving issues between investors and the state.

Based on investment agreements¹⁴ Only foreign investors can sue the government, and only countries can be held accountable for violations of treaties. Investor-State Dispute Settlement cannot invalidate a country's national laws or regulations that conflict with foreign investment treaties, but may provide financial compensation (in the form of monetary awards) to investors who have been negatively affected or harmed by that country's laws. Traditionally, legal steps taken by the community to obtain justice and legal clarity for the conflicts faced are by choosing a court institution.¹⁵ Judicial procedures in this institution are seen as capable of resolving conflicts with the aim of obtaining justice and legal clarity. The court as a judicial institution formed by the state, has its own system in examining, adjudicating, and

¹³ Kornelius Benuf, et al. "Pengaturan Dan Pengawasan Bisnis Financial Technology di Indonesia: Indonesia." *Dialogia Iuridica* 11, no. 2 (2020): 46-69.

¹⁴ Helmi Kasim, "Arbitrase sebagai mekanisme penyelesaian sengketa penanaman modal." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 1 (2018): 79-96.

¹⁵ Ahsanurrohim, "Tinjauan Yuridis Pelaksanaan Penyelesaian Perselisihan Penanaman Modal dan Intervensi Kekuasaan Kehakiman di Indonesia dalam Pelaksanaan Arbitrase Internasional."

deciding a case that must be passed by the parties.¹⁶ Unfortunately, at the empirical level, important principles in the administration of justice are often increasingly difficult to predict and even abandon. As a result, the legal procedure becomes complicated because it takes a long time and the costs that must be incurred by the parties to get justice are high.

Nevey Varida Ariani stated that there is also a perception that "*the role and function of the judiciary is considered too onerous, slow and time-wasting, very expensive and unresponsive to the public interest, or considered too formalistic and too technical*".¹⁷ Legislation that can be used to achieve and implement mutually beneficial solutions in land dispute resolution is, of course, alternative dispute resolution. Of course, a decision becomes effective if it is chosen and mutually agreed upon by the parties to the dispute as part of the problem's resolution efforts. In the Investor-State Dispute Settlement mechanism, an investor can bring a host country to arbitration if he believes the country has made a mistake, and in fact, this instrument provides the investor with legal protection for his investment. If the investor feels that the choices made by the country in which he invests have an impact on the investment in the sense of violating the principles of fair and equal treatment or resulting in indirect expropriation, the investor can sue that country in international courts.¹⁸

The state is fully responsible for the enforcement of international law.¹⁹ In the event of a violation of international law, a state harmed by another state's violation may use countermeasures such as retaliation, retaliation, and, in extreme cases, the use of force, to compel the

¹⁶ Congyan Cai, and Anthea Roberts. "Introduction to the Symposium on the BRICS Approach to the Investment Treaty System." *AJIL Unbound* 112 (2018): 187-190.

¹⁷ Rahmi Yuniarti, "Efisiensi Pemilihan Alternatif Penyelesaian Sengketa dalam Penyelesaian Sengketa Waralaba." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 3 (2016). 551-568.

¹⁸ Made Oka Cahyadi Wiguna, "Peluang Penyelesaian Sengketa Perdata Tentang Tanah Melalui Alternative Dispute Resolution." *Masalah-Masalah Hukum* 47, no. 1 (2018): 47-55.

¹⁹ Amelia Maulanasari, "Remedies dalam Putusan ICSID dalam Sengketa Investasi Internasional". *Thesis*. (Surabaya: Universitas Airlangga, 2018).

violating state to abide by its commitments.²⁰ However, ISDS is seen as an exception to the dispute resolution process, which is a more private method of resolving issues between investors and states. Only foreign investors can sue the government under an investment treaty, and only a country can be held accountable for breach of the treaty. Investor-State Dispute Resolution cannot invalidate a country's national laws or regulations that conflict with foreign investment treaties, but may provide financial damages (in the form of monetary awards) to investors who have been negatively affected or harmed by that country's laws.

Based on the description that has been discussed previously, the purpose of writing this article is to evaluate the impact of the establishment of the International Commercial Court (ICC) on the global investment climate. Through comparison with the ISDS system. It is hoped that this article can be a reference for the Indonesian government to choose the use of a dispute resolution system with the ICC System which better reflects the evolution of international law in a more modern direction and is responsive to the challenges of globalization by offering a more flexible approach than the ISDS system.

This study adopts a normative juridical approach, focusing on the legal standards established in relevant laws and regulations. The research primarily utilizes a legal research methodology that emphasizes the analysis of literature sources, commonly referred to as secondary data. These sources include positive laws, regulations, and case law related to investment, ease of doing business, investment dispute resolution, and judicial decisions in investment disputes. The paper explores legal concepts, the structure of legal systems, and the synchronization of legal frameworks. The sources of law consulted are both primary and secondary, encompassing applicable statutes and regulations, as well as scholarly publications. Through this analytical approach, the study aims to examine and address key issues, ultimately drawing conclusions based on a thorough review of literature regarding the legal arguments surrounding the need for a concept aligned with the Investment Court System (ICS), which is emerging as a new alternative for investor-state dispute protection.

²⁰ Milan Šušić, "Importance and impact of foreign investment on the economic development of Bosnia and Herzegovina." *Economics-Innovative and Economics Research Journal* 6, no. 1 (2018): 63-80.

Investment in Indonesia: Current Developments and Dispute Resolution

Indonesia offers two primary types of investment: direct and indirect. Direct investment involves investors establishing a presence in Indonesia through business operations, such as mergers and acquisitions, or by investing in companies engaged in commercial activities. In contrast, indirect investment entails the acquisition of securities, such as shares in Indonesian companies, on the capital markets. Foreign investors making direct investments must operate through a limited liability entity. The growth of investment, both local and international, often leads to disputes, necessitating mechanisms for resolving investment conflicts. For countries like Indonesia, investment is a key avenue for securing funds to support development and government initiatives. As such, Indonesia presents an attractive investment environment, drawing both domestic and foreign capital through these two investment channels.²¹

Direct investment refers to foreign entities establishing a tangible presence within a host country. This investment can take various forms, including Wholly Foreign-Owned Enterprises (WFOEs), where the foreign investor retains full control over the business, or Joint Ventures (JVs), where the foreign entity partners with domestic firms to pool resources and expertise. Another common avenue for direct investment is through Mergers and Acquisitions (M&As), which allow foreign companies to acquire or merge with existing businesses in Indonesia. A crucial regulatory stipulation is that all foreign direct investments must be conducted through a limited liability entity. This requirement serves

²¹ See Michael Carney, and Marleen Dieleman. "Indonesia's missing multinationals: Business groups and outward direct investment." *Bulletin of Indonesian Economic Studies* 47, no. 1 (2011): 105-126; Shafiq Dhanani, and Syed Asif Hasnain. "The impact of foreign direct investment on Indonesia's manufacturing sector." *Journal of the Asia Pacific Economy* 7, no. 1 (2002): 61-94; Muhammad Iqbal Baiquni, and Vena Lidya Khairunissa. "Analysis of the Impact of Foreign Direct Investment: Solutions to the Indonesia Economy during The Covid-19 Pandemic." *Law Research Review Quarterly* 8, no. 2 (2022): 171-184.

to enhance transparency and accountability in business operations, ensuring a more structured and regulated investment environment.²²

For investors seeking a more passive involvement, indirect investment opportunities are available through participation in the Indonesian capital markets. In this context, foreign entities can acquire securities such as stocks, which provide an ownership stake and potential for capital appreciation in Indonesian companies, or bonds, which offer fixed-income returns on loans issued by the government or corporations. These investment avenues allow foreign entities to engage with Indonesia's economy without the need for direct operational control.

In 2023, total investment realization reached Rp1,207.7 trillion (US\$81.2 billion), with domestic investment accounting for Rp653.3 trillion (US\$43.9 billion) and foreign investment contributing Rp554.4 trillion (US\$37.3 billion). Key sectors attracting investment include transportation, logistics, communication, electricity, gas, water, mining, real estate, and manufacturing. While official data for full-year 2024 is not yet available, ongoing investment trends indicate continued interest in Indonesia's promising economic prospects. To stay updated on the latest investment figures and trends, refer to the Indonesia Investment Coordinating Board (BKPM) website, reputable news sources, industry reports, and international organizations.²³

Investors benefit from the return of their investment in the host country, while the host country receives the required finance. Not only Indonesia, other countries also welcome the presence of international investors. In general, investors will choose countries that have large natural resources, however, one of the investor evaluation criteria is the quantity of international investments made by the host country. A

²² See Hadi Sasana, and Salman Fathoni. "Determinant of foreign direct investment inflows in ASEAN Countries." *JEJAK: Jurnal Ekonomi dan Kebijakan* 12, no. 2 (2019): 253-266; Luh Putu Yeyen Karista Putri, et al. "Comparative Analysis of Indonesia's Minimum Capital Requirements for Foreign Direct Investment." *Lex Scientia Law Review* 7, no. 1 (2023): 179-214; Anugrah Adiastuti, "Implementasi Foreign Direct Investment (FDI) di Indonesia (Sebelum dan Setelah diundangkannya Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal)." *Pandecta Research Law Journal* 6, no. 2 (2011): 139-149.

²³ Indonesia Investment Coordinating Board (BKPM). "Profile Institution of BPKM", <https://www.bkpm.go.id/en/about-bkpm/profile-of-institution>.

conflict resolution pattern is a format or framework for resolving disputes or disagreements between parties.²⁴ Dispute resolution patterns can be categorized into two types, namely dispute resolution through the courts and alternative dispute resolution. Dispute resolution through the courts (litigation) is a dispute resolution technique in which the court resolves the dispute and the parties are bound by a judge's decision.

As Indonesia's investment landscape thrives, attracting both domestic and foreign capital, the potential for disputes also rises. These disagreements can stem from various complexities within the investment environment. One common issue is contractual disagreements. These arise between investors and Indonesian entities involved in the project. Disputes can erupt over the interpretation of investment terms, disagreements on project execution timelines or milestones, or conflicts regarding profit sharing arrangements.

Another potential challenge comes from unforeseen regulatory changes. Government policies can evolve over time, and sometimes these shifts can significantly impact investment profitability or even project feasibility. For instance, changes in environmental regulations or tax laws could create unforeseen costs or limitations for investors. The most severe scenario involves expropriation, where government actions directly or indirectly deprive investors of their ownership rights. This can happen through outright nationalization of assets or through the imposition of unreasonable regulations that render the investment valueless. Expropriation disputes can be particularly complex and damaging to investor confidence.

The enforcement of investment dispute claims in Indonesia is governed by a comprehensive legal framework encompassing various statutes, regulations, and international treaties. The cornerstone of this framework is the Constitution of the Republic of Indonesia, which enshrines the protection of property rights and guarantees equal treatment under the law. The Law No. 1 of 2000 on Foreign Investment further elaborates on the rights and obligations of foreign investors, including mechanisms for dispute resolution. It establishes the *Badan*

²⁴ José Manuel Álvarez Zárate, "Legitimacy Concerns of the Proposed Multilateral Investment Court: Is Democracy Possible?," *Boston College Law Review* 59 (2018): 2765-2790.

Koordinasi Penanaman Modal (BKPM), the Investment Coordinating Board, as the primary authority for facilitating investment and mediating disputes.²⁵

The Law No. 25 of 2004 on the National Development Planning System underscores the role of investment in fostering national development and economic growth. It emphasizes the importance of creating a stable and predictable investment environment. In addition to domestic legislation, Indonesia has ratified several international treaties that provide additional avenues for dispute resolution, such as the Agreement on Promotion and Protection of Investments and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.²⁶

Dispute resolution through alternative dispute resolution occurs outside the courtroom and may include techniques such as negotiation, conciliation, and arbitration. In general, the parties choose alternative dispute resolution outside the court because the litigation process takes a long time, involves many procedures, and the results are not a win-win solution. Dispute resolution through the court has several disadvantages, including the settlement takes a relatively long time and is formal (must follow the trial schedule determined by the court), expensive case costs (usually the parties use legal counsel and other costs

²⁵ See Simon Butt, "Foreign investment in Indonesia: The problem of legal uncertainty." *Foreign investment and dispute resolution law and practice in Asia*. (London: Routledge, 2012), pp. 112-134. Furthermore, in this context, Simon Butt examines the challenges foreign investors face in Indonesia due to legal uncertainties. He argues that despite the country's potential as an attractive investment destination, inconsistent and unclear legal frameworks create significant obstacles. These include ambiguous regulations, frequent changes in laws, and inadequate enforcement, which undermine investor confidence. Butt explores how these issues can lead to disputes, especially in sectors involving foreign direct investment. He highlights the importance of a stable and predictable legal environment for fostering sustainable foreign investment and providing effective dispute resolution mechanisms. The chapter also discusses how Indonesia's legal system, including the role of courts and arbitration, addresses these challenges. Butt's analysis emphasizes the need for comprehensive legal reforms to mitigate risks and ensure a more transparent, reliable framework for foreign investors in Indonesia.

²⁶ Republic of Indonesia. *Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal* [Law Number 25 of 2007 concerning Investment]. Available online at <https://peraturan.go.id/id/uu-no-25-tahun-2007>.

during the trial process), the court is considered less responsive (not fast in serving the community), court decisions do not always solve problems, the competence of judges at times.²⁷

The ISDS mechanism is contained in international agreements such as investment contracts, treaties (for example, Bilateral Investment Agreements), and national investment laws.²⁸ This mechanism can also be found in international agreements such as the Comprehensive Trade and Economic Agreement (CETA), the China-Australia Free Trade Agreement (ChAFTA), and plurilateral regional economic agreements such as the Energy Charter and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). ISDS is a dispute resolution mechanism between investors and host governments that allows investors to sue the host country if the country violates investor obligations or investor protection, causing foreign investors to suffer losses. ISDS is a type of protection offered by the host government to foreign investors, which prevents the host country from acting arbitrarily towards them. Dispute resolution through ISDS arises as a result of concerns about the dispute resolution process in national courts. National courts are seen as biased and tend to favor their own country, even when the host country is at fault and has damaged a foreign company. In addition, ISDS exists to address various dispute resolution issues through State Dispute Settlement (SSDS). SSDS is a dispute resolution process between the home country and the host country. Foreign investors cannot sue the host country directly; They must go through the state as legal subjects.²⁹

Investment disputes in Indonesia are resolved through the courts if they occur between local investors and the government.³⁰ When making an investment agreement, the parties must have agreed on an

²⁷ Benuf, et.al., "Pengaturan dan Pengawasan Bisnis Financial Technology di Indonesia: Indonesia."

²⁸ Giana Matauseja, "Investment Court System (ICS) Sebagai Alternatif Baru Investor-State Dispute Settlement (ISDS)." *Dharmasisya: Jurnal Program Magister Hukum FHUI* 1, no. 2 (2021): 779-788.

²⁹ Susan K. Sell, and Owain D. Williams. "Health under capitalism: a global political economy of structural pathogenesis." *Review of International Political Economy* 27, no. 1 (2020): 1-25.

³⁰ Judhy Maramis Walangare, "Penyelesaian Sengketa Tentang Penanaman Modal dalam Negeri Menurut Undang-Undang Nomor 25 Tahun 2007." *Lex Crimen* 5, no. 4 (2016): 44-51.

investment dispute resolution mechanism and a court or arbitration that will adjudicate the case. According to Law No. 25 of 2007 concerning Capital Investment (Investment Law), the settlement of domestic investment disputes begins with deliberation and agreement. Deliberation is a type of negotiation procedure in which the parties are given the opportunity to negotiate in advance with the aim of reaching a mutually beneficial solution without going through many stages or taking a long time. If the investment dispute cannot be resolved through debate, the parties may resort to arbitration, alternative dispute resolution, or judicial proceedings in accordance with applicable laws and regulations.

Alternative dispute resolution options include consultation, negotiation, mediation, conciliation, and expert judgment. Arbitration for investment disputes shall be agreed upon by the parties. If no agreement is reached through arbitration, the investment issue will be resolved in court. Foreign investment dispute resolution, unlike domestic investment dispute settlement, is often conducted outside the courtroom. Foreign investors have doubts about the fairness of local courts during the case hearing process and after court rulings.

The resolution of investment disputes through the Investor-State Dispute Settlement (ISDS) system in Indonesia as emphasized by Salim³¹ generally follows a structured process. The first stage, Pre-Claim, requires the investor to attempt an amicable resolution of the dispute with the state through negotiation or mediation. If these efforts fail, the investor can then proceed by filing a claim with the International Centre for Settlement of Investment Disputes (ICSID) or any other arbitration forum specified in the Bilateral Investment Treaty (BIT).

In the Filing of a Claim stage, the investor must submit a formal written claim to the designated arbitration body, providing details about the parties involved, the nature of the dispute, and the specific claims made by the investor. Following this, an Arbitration Panel is formed by ICSID or the agreed-upon forum. This panel is typically composed of one to three independent and impartial arbitrators who are responsible for resolving the dispute.

³¹ Zárte, "Legitimacy Concerns of the Proposed Multilateral Investment Court: Is Democracy Possible?."

The next step, Arbitration Proceedings, allows both parties to present their evidence and arguments before the panel. The hearings can be held at a mutually agreed location. After reviewing all evidence, the panel will issue an Arbitral Award—a final and binding decision that may include compensation, directives for specific actions, or both. Lastly, the Enforcement of the Arbitral Award ensures that the ruling is carried out. The award can be enforced in any country that is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, providing a global mechanism for compliance.

Different perspectives on the benefits and disadvantages of foreign investment and investor protection, particularly ISDS, have emerged in recent years. Some proponents of this system argue that protection against foreign investment in general has proven useful in terms of increasing foreign investment flows, the functioning of global markets, economic growth, and human capital development in both exporting and capital-importing countries, and that it has also contributed positively to the improvement of the rule of law at the international level.³²

Most proponents of the ISDS system are on the side of investors. Investors can sue the investment destination country provided that both countries agree to include the ISDS mechanism in the dispute settlement chapter of their bilateral investment treaty. Indonesia has several bilateral investment treaties in which the ISDS mechanism is included in the dispute settlement chapter. Another advantage, it is claimed that the ISDS system uses arbitration which is considered faster and more flexible than domestic litigation. This process does not involve an appeal to a higher court, so the arbitration decision is final and binding. Through this mechanism, investors feel more confident to invest in countries that may have political or economic risks. This can contribute to economic growth and the development of certain sectors within the recipient country.³³

However, protection of foreign investment and investors is considered not fair when compared to the protection of genuine

³² Muhammad Syaifuddin, "Perspektif Global Penyelesaian Sengketa Investasi di Indonesia." *De Jure: Jurnal Hukum dan Syar'iah* 3, no. 1 (2011): 58–70

³³ Martine Eklesia, "Penyelesaian Sengketa Investor Asing dalam Mekanisme Investor State Dispute Settlement (ISDS) dan Implikasinya dalam Sistem Hukum Indonesia." *Lex Administratum* 10, no. 5 (2022).

investors and their assets.³⁴ Investment treaties with separate investment arbitrations have produced conflicting results. This can happen in:

1. Courts may reach different results on the same criteria in the same agreement.
2. Courts under different agreements may reach different judgments on the same parties, facts, and investment rights. This is the method used by the parties to exercise their investment rights under various agreements;
3. When courts under different agreements evaluate the situation of the same trade and investment rights agreement, but give opposite decisions.

According to Klanger ISDS have received criticism mainly from poorer countries for their limited negotiating power, which forces their investors to bear the consequences. Investor-State Dispute Settlement, which is expected to retain power over the implementation of international investment treaties, is distinguished by the fact that governments are subject to external supervision by foreign arbitral tribunals.³⁵ With foreign arbitral tribunals issuing inconsistent or even conflicting awards, there is no adequate system in place to correct or limit such errors, as well as to minimize repetitive proceedings. Thus, this gap can have a detrimental impact on the effectiveness, reliability, predictability, and credibility of Dispute Resolution between Investors and States. According to Juan Benedetti,³⁶ criticism of ISDS can be summarized in three points, namely:

1. The lack of consistency in the decisions
2. The lack of impartiality of the arbitrators; and
3. The lack of transparency of the proceedings.

In addition, the process to be followed is very long and expensive in terms of arbitrators, lawyers, and the process itself. Monetary rewards will most likely be very high, and as a result, governments may be obliged to spend enormous amounts of public money to maintain the

³⁴ Syaifuddin, "Perspektif Global Penyelesaian Sengketa Investasi di Indonesia."

³⁵ Catherine Yannaca-Small, "Fair and equitable treatment standard in international investment law." *Journal of International Economic Law (China)* 13, no. 3 (2006).

³⁶ Matauseja, "Investment Court System (ICS) Sebagai Alternatif Baru Investor-State Dispute Settlement (ISDS)."

legitimacy of their programs.³⁷ Low-income countries can be forced to pay large sums of money because they lack the ability to defend themselves appropriately when dealing with transnational corporations that have above-average incomes. As stated earlier, the current control methods are inadequate and unsatisfactory. The use of ad hoc annulment committees (ICSID system) has hindered the establishment of a uniform agenda and jurisprudence. In addition, ISDS does not have an appellate system, making it difficult to overturn erroneous awards or discipline incompetent arbitrators. The lack of openness in ISDS is seen as limiting third-party participation.

The arbitration mechanism under investment treaties (*international treaty arbitration*) is different from the international contract arbitration mechanism. In an investment treaty, a state party declares in advance to investors that it is willing to resolve investment disputes through arbitration. This is referred to as "general consent". Foreign investors may not be required to provide permission at the commencement of the agreement, but they can do so in the event of a dispute. This is consistent with the requirements of the Law on Investment, which states that international arbitration can only be conducted with the consent of the parties, i.e. foreign investors and host countries. General consent provides protection to the host country because ISDS litigation can only be brought in one way.³⁸

Indonesia has actually become one of the countries affected by the weaknesses in the ISDS system itself. This is based on data at ICSID related to investments submitted by foreign investors to the Indonesian government which caused losses to the government including the dispute between Amco Asia Corporation and Others, Rafat Ali Rizvi, Churchill Mining PLC, Cemex Asia Holdings Ltd, and PT Kaltim Prima Coal and others against the Government of Indonesia (International Center for Settlement of Investment Disputes (ICSID)).³⁹

³⁷ Vida Azaria, and Prita Amalia. "ASEAN Investment Dispute Settlement Mechanism Through Regional Investment Court Framework." *Jurnal Poros Hukum Padjadjaran* 4, no. 2 (2023): 277-293.

³⁸ Syahrul Fauzul Kabir, "Krisis dan Reformasi: Penyelesaian Sengketa dalam Perjanjian Investasi Bilateral di Negara Dunia Ketiga." *Mimbar Hukum* 33, no. 2 (2021): 401-435.

³⁹ Yannaca-Small, "Fair and equitable treatment standard in international investment law."

In October 2018, Indonesia signed a BIT with Singapore which was then ratified through Presidential Regulation Number 97 of 2020. The 2018 Indonesia-Singapore BIT marks a new era in international agreements in the investment sector, considering that in 2013 Indonesia terminated the 2005 Indonesia-Singapore BIT with the aim of renegotiating and obtaining a more favorable bilateral agreement. That in the 2018 Indonesia-Singapore BIT there is a chapter that regulates the settlement of investment disputes through the ISDS mechanism, specifically Investor-State Arbitration (ISA) international arbitration. This mechanism gives foreign investors the right to sue the Indonesian Government if there is an alleged violation of the agreed investment agreement, through international arbitration. ISDS is often considered unfair as it tends to give more protection to foreign investors.⁴⁰

Essentially, this mechanism provides an opportunity for aggrieved foreign investors to bring claims against the host country, with ISDS support in the form of financial compensation to recoup the investment. It is considered that ISDS is not always necessary to provide full protection to foreign investors, especially in developed countries. The protections afforded to these investors are often not available to the recipient country. In addition, ISDS's favoring of foreign investors in dispute resolution may violate the Fair and Equitable Treatment (FET) principle and potentially lead to indirect expropriation. Therefore, until now the 2018 Indonesia-Singapore BIT is still considered unbalanced regarding the rights and obligations of foreign investors and the Indonesian government, especially in the settlement of disputes between foreign investors and the Government of Indonesia, with the settlement model with the ISDS mechanism still having many shortcomings so that the need for improvement of the settlement mechanism with the aim of not degrading the sovereignty of the Indonesian state.⁴¹

Therefore, based on the description of the advantages and disadvantages of the ISDS system to be comprehensively applied in Indonesia is not the right choice. Through this model, sovereign states

⁴⁰ I. Gusti Ngurah Parikesit Widiatedja, and I. Gusti Ngurah Wairocana. "The Lack of the Environmental Concern in Indonesia's Bilateral Investment Treaties." *Hasanuddin Law Review* 3, no. 3 (2017): 231-245.

⁴¹ Mukhamad Zulkarnain, "Problematika Investor State Dispute Settlement dalam Bilateral Investment Treaty Indonesia-Singapura 2018." *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 15, no. 2 (2023): 332-345.

can be harmed more than foreign investors. Thus, it seems that only foreign investors then benefit and protection from the implementation of this system. Seeing that there are still many shortcomings in the ISDS mechanism, it is necessary to improve the settlement mechanism with the aim of not degrading the sovereignty of the Indonesian state.

Investment Court System as a New Alternative

Growing concerns about the international investment regime and dispute settlement system between investors and countries prompted the EU to establish a System of Investment Courts and Multilateral Investment Courts.⁴² Public opinion in the EU is increasingly opposed to ISDS and, more broadly, investment treaties. Due to the shortcomings of ISDS, the European Commission proposed the establishment of a multilateral Investment Court System for current and future free trade agreements with third countries, with the aim of instituting investment protections at the international level to provide consistency and coherence when interpreting and applying the provisions of these agreements.⁴³

By creating ICS to be able to further strengthen public confidence in the objectivity and fairness of ISDS, which is claimed to have weaknesses in the current system.⁴⁴ ICS applied to domestic courts, and considered that it was imperative for judges to be nominated freely and that there should be an appellate system, which could be drawn from the system now found in WTO dispute settlement mechanisms.

The Investment Court System (ICS) is part of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), which symbolizes the EU's new approach to investment-related issues, with the aim of reducing the harm of abuse or misconduct while maintaining the power to regulate in the public interest. The Investment Court System will deal with a number of issues, the most significant of which is a permanent court modelled after an international tribunal, consisting of

⁴² Zulkarnain.

⁴³ Shilpa Singh Jaswant, "Establishment of Investment Court System Under Ceta and EU-Viet Nam FTA and Its Compatibility with EU Law." *Europa-Kolleg Hamburg, Institute for European Integration, Study Paper* 02/19 (2018).

⁴⁴ Sell, and Williams. "Health under capitalism: a global political economy of structural pathogenesis."

a court of first instance and a court of appeal. The Investment Court System (ICS) represents a groundbreaking innovation in the realm of investment dispute resolution. It is envisioned to provide a more equitable, transparent, and efficient framework for addressing conflicts between investors and states. Key Expectations of the ICS:

1. **Enhanced Public Trust:** By fostering transparency and professionalism throughout its proceedings, the ICS aims to rebuild public confidence in investment dispute resolution mechanisms.
2. **Strengthened Legal Certainty:** The ICS's clear rules of priority and robust enforcement mechanisms are expected to enhance legal certainty for both investors and states, ultimately promoting investment and economic growth.
3. **Striking a Balance between Investor Rights and Public Interest:** The ICS seeks to strike a delicate balance between safeguarding investor rights and upholding public interests. Its fair and transparent dispute resolution mechanisms aim to protect investor rights without compromising a state's sovereignty to regulate in the public interest.

The Investment Court System (ICS) plays a pivotal role in enhancing legal certainty for both investors and states under international investment agreements. By promoting transparency, the ICS ensures greater openness in its proceedings. Trials are open to the public, and documents presented during the case are published, allowing for broader access to information. Additionally, the ICS permits third-party participation from interested groups, such as NGOs, trade unions, and community organizations, to intervene in the proceedings. Moreover, ICS arbitrators (judges) are held to higher standards than their counterparts in the ICSID system, ensuring greater accountability. The following outlines how the ICS fosters these key principles:⁴⁵

1. *Clear Rules of Priority*

Unlike the current ISDS system, which can involve multiple and potentially conflicting arbitration tribunals, the ICS establishes

⁴⁵ Abdulkadir Jailani, "Indonesia's perspective on review of international investment agreements." In *Views and Experiences from Developing Countries* (Geneva: South Centre, 2015), pp. 215-231.

clear rules of priority. These rules dictate which forum (the ICS or domestic courts) has the primary jurisdiction to hear an investment dispute. This eliminates the possibility of parallel proceedings and conflicting rulings, fostering predictability and clarity for both parties.

2. *Permanent Court Structure*

The ISDS system relies on ad-hoc tribunals established for each specific case. This can lead to inconsistencies in interpreting and applying investment treaty provisions. The ICS, however, features a permanent court structure with a first-instance court and an appellate system. This permanent body allows for the development of a consistent jurisprudence over time, ensuring that similar cases are treated similarly and legal interpretations are well-established.

3. *Enhanced Transparency and Consistency*

The ICS proceedings are more transparent compared to ISDS. This includes open hearings in certain cases, publication of relevant documents, and potentially the involvement of interested parties (NGOs, trade unions) with relevant expertise. This transparency allows for greater scrutiny of the decision-making process, promoting consistency and reducing the risk of arbitrary rulings.

4. *Thorough and Consistent Application of Treaties*

The appellate system within the ICS allows for the review of first-instance court decisions. This ensures that legal errors are corrected and interpretations of investment treaty provisions are consistent across cases. This consistency provides greater predictability for both investors and states, allowing them to make informed decisions regarding investments and regulatory measures with a clearer understanding of potential legal outcomes.

The overall impact of these features is a more robust legal framework for investment disputes. Investors benefit from greater predictability and reduced risk when making investments in countries with ICS-based agreements. States, on the other hand, gain a more stable environment for attracting foreign investment, as investors are more likely to invest in jurisdictions with clear and consistent legal

interpretations.⁴⁶ This fosters a more predictable and secure environment for international investment, ultimately contributing to economic growth and development.

Under the Investment Court System (ICS), arbitrators are required to meet specific qualifications as defined by the judicial institutions of the respective country or as recognized legal experts, with demonstrated experience in public international law. This contrasts with the qualifications under the current Investor-State Dispute Settlement (ISDS) system, particularly within the ICSID framework, where no such precise qualifications are mandated. Despite the institutional and procedural reforms introduced by ICS, the system has been met with criticism from some scholars and practitioners who question the foundational principles of the new framework. Critics argue that the establishment of ICS represents a "*re-politicization*" of investment dispute resolution. The ICS aims to address concerns about impartiality in ISDS by removing the ability of the parties to appoint arbitrators, thereby reducing potential biases.

Aligning the ICS with Indonesia's Constitution requires careful consideration and potential constitutional amendments to ensure compatibility with the country's fundamental principles. There are also concerns about the potential erosion of state sovereignty, highlighting the need for strong safeguards. These safeguards should include exceptions for legitimate public policy measures and mechanisms for reviewing ICS rulings to prevent overreach. Furthermore, a comprehensive evaluation of the financial implications and efficiency gains of ICS is necessary to assess its overall cost-effectiveness compared to the current ISDS system.

TABLE 1. Difference between ISDS & ICS System

Aspect	ISDS (International Centre for Settlement of Investment Disputes)	Investment Court System (ICS)
Dispute Resolution Mechanism	Arbitration	Arbitration and Mediation

⁴⁶ Kyla Tienhaara, "Investor-State Dispute Settlement", In Peter Drahos, *Regulatory Theory: Foundations and Applications* (Canberra: ANU Press, 2017).

Aspect	ISDS (International Centre for Settlement of Investment Disputes)	Investment Court System (ICS)
Competent Authority	Three-member Arbitration Panel	Panel of Judges and Mediators appointed by ICS
Decision	Final and binding	Final and binding for Arbitration, and Non-binding for Mediation
Costs	Higher	Lower for Mediation, and varies for Arbitration
Duration	Longer	Shorter for Mediation, and varies for Arbitration
Openness of Process	Open to the public	Closed to the public for Mediation, and Open to the public for Arbitration
Conformity with Indonesian Law	Ratification of the ICSID Convention means Indonesia is bound by the rules and decisions of ICSID. However, it is important to note that the ICSID Convention only applies to investments protected by the ICSID Convention.	The ICS rules are still under negotiation and have not been ratified by Indonesia. Therefore, their conformity with Indonesian law needs to be analyzed on a case-by-case basis.
Accountability	<ul style="list-style-type: none"> • Less transparent system for appointing arbitrators. • Lack of an appeals mechanism. • Limited public oversight of the arbitration process. 	<ul style="list-style-type: none"> • More transparent system for appointing judges and mediators. • Appeals mechanism available. • Stronger public oversight of the dispute resolution process, including publication of awards and related documents.

The Investment Court System (ICS) treads a careful line, balancing the often-conflicting needs of investor protection and a state's right to regulate for the public good. This balancing act is achieved through several key features. First, highly qualified and impartial judges

are paramount. Their expertise in international investment law ensures a deep understanding of both investor rights and treaty provisions, while strict impartiality requirements prevent them from favoring either side. This guarantees fair and objective decisions in each case.

To effectively address these challenges, Indonesia should embark on comprehensive research and consultations with stakeholders to fully understand the implications of ICS. Engaging civil society, academia, and legal experts in the decision-making process will foster transparency and accountability. Investing in capacity building and institutional development is essential to support the effective implementation of ICS. Furthermore, international collaboration with countries that have already adopted ICS can provide valuable insights and best practices.

The ICS also acknowledges the legitimacy of both sides. It recognizes the rights of investors enshrined in investment treaties, protecting them from arbitrary government actions that could unfairly disadvantage their investments. However, it also recognizes a state's right to regulate in the public interest, allowing for measures that promote public health, environmental protection, or social welfare without automatically infringing upon investor rights. Furthermore, the ICS embraces transparency unlike the current ISDS system. Open hearings (in certain cases) and published documents allow for public scrutiny of the process. Additionally, potential participation from interested parties like NGOs and unions further fosters accountability. This transparency allows for informed public debate and ensures that disputes are resolved fairly for all stakeholders involved.

However, other analysts warn that the changes include a political component that could undermine the new system's success in depoliticizing investment conflicts, which is seen as one of its most significant achievements. By carefully addressing these challenges and implementing ICS thoughtfully, Indonesia can harness its potential to strengthen legal certainty, attract foreign investment, and foster a more conducive environment for sustainable economic growth. However, a cautious and well-informed approach is paramount to ensure that ICS aligns with Indonesia's national interests and upholds the sovereignty of the state while safeguarding investor rights and promoting responsible investment practices. Decision-making, enforcement, finality, efficiency, and cost have all been challenged. Some analysts are still

unsure whether these things will have a greater influence than ISDS, or vice versa.

Conclusion

In conclusion, the establishment of the Investment Court System (ICS) was driven by the need to address the shortcomings of the Investor-State Dispute Settlement (ISDS) system, particularly concerns over impartiality, transparency, and the absence of an Appellate Court. While some experts remain sceptical about the efficiency of the new system, especially given that no cases have yet been resolved under ICS, it is clear that the ICS introduces significant reforms aimed at improving fairness and neutrality. The inclusion of more qualified arbitrators, enhanced transparency, and the establishment of an Appellate Court to provide binding and final decisions represent meaningful strides toward addressing the criticisms of the ISDS system. Although the ICS is still in its nascent stages and may have some unresolved challenges, it is likely to offer greater benefits than its predecessor. These reforms can help reduce the confusion and delays often caused by challenges to foreign arbitral awards in national courts, ultimately fostering a more reliable and effective dispute resolution mechanism for international investment.

References

- Adiastuti, Anugrah. "Implementasi Foreign Direct Investment (FDI) di Indonesia (Sebelum dan Setelah diundangkannya Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal)." *Pandecta Research Law Journal* 6, no. 2 (2011): 139-149.
- Ahsanurrohim, Arie. "Tinjauan Yuridis Pelaksanaan Penyelesaian Perselisihan Penanaman Modal dan Intervensi Kekuasaan Kehakiman di Indonesia dalam Pelaksanaan Arbitrase Internasional." *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 9694-9704.
- Arina, Clarissa Nadya. "Logical Consequences in Indonesia's Position in Investment Disputes in Arbitration Forum ICSID." *Indonesian Law Journal* 15, no. 1 (2022): 37-55.

- Azaria, Vida, and Prita Amalia. "ASEAN Investment Dispute Settlement Mechanism Through Regional Investment Court Framework." *Jurnal Poros Hukum Padjadjaran* 4, no. 2 (2023): 277-293.
- Baiquni, Muhammad Iqbal, and Vena Lidya Khairunissa. "Analysis of the Impact of Foreign Direct Investment: Solutions to the Indonesia Economy during The Covid-19 Pandemic." *Law Research Review Quarterly* 8, no. 2 (2022): 171-184.
- Benuf, Kornelius, et al. "Pengaturan Dan Pengawasan Bisnis Financial Technology di Indonesia: Indonesia." *Dialogia Iuridica* 11, no. 2 (2020): 46-69.
- Butt, Simon. "Foreign investment in Indonesia: The problem of legal uncertainty." *Foreign investment and dispute resolution law and practice in Asia*. (London: Routledge, 2012), pp. 112-134.
- Cai, Congyan, and Anthea Roberts. "Introduction to the Symposium on the BRICS Approach to the Investment Treaty System." *AJIL Unbound* 112 (2018): 187-190.
- Carney, Michael, and Marleen Dieleman. "Indonesia's missing multinationals: Business groups and outward direct investment." *Bulletin of Indonesian Economic Studies* 47, no. 1 (2011): 105-126.
- Dhanani, Shafiq, and Syed Asif Hasnain. "The impact of foreign direct investment on Indonesia's manufacturing sector." *Journal of the Asia Pacific Economy* 7, no. 1 (2002): 61-94.
- Eklesia, Martines. "Penyelesaian Sengketa Investor Asing dalam Mekanisme Investor State Dispute Settlement (ISDS) dan Implikasinya dalam Sistem Hukum Indonesia." *Lex Administratum* 10, no. 5 (2022).
- Hariyanto, Budi, and Rusfilda Batu. "Penerapan Model 'Alternative Dispute Resolution' dalam Penyelesaian Sengketa Investasi dengan Pemerintah Berdasarkan Undang-Undang Penanaman Modal." *IUS: Jurnal Ilmiah Fakultas Hukum* 11, no. 1 (2023): 14-28.
- Herlani, Ahmad Fajar. "Pilihan Forum Penyelesaian Sengketa Investasi." *Nurani Hukum* 3, no. 2 (2020): 49-56.
- Indonesia Investment Coordinating Board (BKPM). "Profile Institution of BPKM", <https://www.bkpm.go.id/en/about-bkpm/profile-of-institution>.

- Jailani, Abdulkadir. "Indonesia's perspective on review of international investment agreements." In *Views and Experiences from Developing Countries* (Geneva: South Centre, 2015), pp. 215-231.
- Kabir, Syahrul Fauzul. "Krisis dan Reformasi: Penyelesaian Sengketa dalam Perjanjian Investasi Bilateral di Negara Dunia Ketiga." *Mimbar Hukum* 33, no. 2 (2021): 401-435.
- Kasim, Helmi. "Arbitrase sebagai mekanisme penyelesaian sengketa penanaman modal." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 1 (2018): 79-96.
- Kinanti, Fatma Muthia, and Garuda Wiko. "Investment Court System Sebagai Alternatif Penyelesaian Sengketa Penanaman Modal Asing". *Arena Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2023): 338-361.
- Matauseja, Giana. "Investment Court System (ICS) Sebagai Alternatif Baru Investor-State Dispute Settlement (ISDS)." *Dharmasiswa: Jurnal Program Magister Hukum FHUI* 1, no. 2 (2021): 779-788.
- Maulanasari, Amelia. "Remedies dalam Putusan ICSID dalam Sengketa Investasi Internasional". *Thesis*. (Surabaya: Universitas Airlangga, 2018).
- Putri, Luh Putu Yeyen Karista, et al. "Comparative Analysis of Indonesia's Minimum Capital Requirements for Foreign Direct Investment." *Lex Scientia Law Review* 7, no. 1 (2023): 179-214.
- Republic of Indonesia. *Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal* [Law Number 25 of 2007 concerning Investment]. Available online at <https://peraturan.go.id/id/uu-no-25-tahun-2007>.
- Salmina, Svetlana Vitalievna, Elmira Kamilevna Khafizova, and Yulia Nikolaevna Balabanova. "Educational research on solving real tax problems in cross-border e-commerce." *Propósitos y Representaciones* SPE3 (2021): e1291-e1291.
- Saragi, Manuasa. "Litigasi dan Non Litigasi untuk Penyelesaian Sengketa Bisnis Dalam Rangka Pengembangan Investasi di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa." *E-Journal Graduate Unpar* 1, no. 2 (2014): 54-73.

- Sasana, Hadi, and Salman Fathoni. "Determinant of foreign direct investment inflows in ASEAN Countries." *JEJAK: Jurnal Ekonomi dan Kebijakan* 12, no. 2 (2019): 253-266.
- Sell, Susan K., and Owain D. Williams. "Health under capitalism: a global political economy of structural pathogenesis." *Review of International Political Economy* 27, no. 1 (2020): 1-25.
- Singh Jaswant, Shilpa. "Establishment of Investment Court System Under Ceta and EU-Viet Nam FTA and Its Compatibility with EU Law." *Europa-Kolleg Hamburg, Institute for European Integration, Study Paper* 02/19 (2018).
- Sourgens, Frederic Gilles. "Value and Judgment in Investment Treaty Arbitration." *Journal of Dispute Resolution* 2018, no. 1 (2018): 185-196.
- Šušić, Milan. "Importance and impact of foreign investment on the economic development of Bosnia and Herzegovina." *Economics-Innovative and Economics Research Journal* 6, no. 1 (2018): 63-80.
- Syaifuddin, Muhammad. "Perspektif Global Penyelesaian Sengketa Investasi di Indonesia." *De Jure: Jurnal Hukum dan Syar'iah* 3, no. 1 (2011): 58-70.
- Tienhaara, Kyla. "Investor-State Dispute Settlement", In Peter Drahos, *Regulatory Theory: Foundations and Applications* (Canberra: ANU Press, 2017).
- Tobing, Kathrine Audrey Delila Quinones. "Analisis Klausul Penyelesaian Sengketa di Bidang Penanaman Modal Asing Pada Perjanjian Investasi Bilateral antara negara Indonesia dengan negara Singapura Tentang Promosi dan Perlindungan Investasi." *Mutiara: Multidiciplinary Scientifict Journal* 1, no. 9 (2023): 551-564.
- Tondapu, Gautami S. "International Institutions and Dispute Settlement: The Case of ICSID." *Bond Law Review* 22, no. 1 (2010): 81-95.
- Walangare, Judhy Maramis. "Penyelesaian Sengketa Tentang Penanaman Modal dalam Negeri Menurut Undang-Undang Nomor 25 Tahun 2007." *Lex Crimen* 5, no. 4 (2016): 44-51.
- Waluyo, Waluyo, M. Kenza Radhya E.A., and Ersya Dwi Nurifanti. "Online Dispute Resolution Sebagai Alternatif Penyelesaian Sengketa Fintech di Era IndustrI 4.0." *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2056-2066.

- Wardani, Ranti Yulia, and Nawalage S. Cooray. "Saving potential of regional comprehensive economic partnership (RCEP): Implication for China and Japan." *Journal of Economic Info* 6, no. 1 (2019): 34-42.
- Widiatedja, I. Gusti Ngurah Parikesit, and I. Gusti Ngurah Wairocana. "The Lack of the Environmental Concern in Indonesia's Bilateral Investment Treaties." *Hasanuddin Law Review* 3, no. 3 (2017): 231-245.
- Wiguna, Made Oka Cahyadi. "Peluang Penyelesaian Sengketa Perdata Tentang Tanah Melalui Alternative Dispute Resolution." *Masalah-Masalah Hukum* 47, no. 1 (2018): 47-55.
- Yannaca-Small, Catherine. "Fair and equitable treatment standard in international investment law." *Journal of International Economic Law (China)* 13, no. 3 (2006).
- Yuniarti, Rahmi. "Efisiensi Pemilihan Alternatif Penyelesaian Sengketa dalam Penyelesaian Sengketa Waralaba." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 3 (2016). 551-568.
- Zárate, José Manuel Alvarez. "Legitimacy Concerns of the Proposed Multilateral Investment Court: Is Democracy Possible?." *Boston College Law Review* 59 (2018): 2765-2790.
- Zulkarnain, Mukhamad. "Problematika Investor State Dispute Settlement dalam Bilateral Investment Treaty Indonesia-Singapura 2018." *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 15, no. 2 (2023): 332-345.

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