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Legal Politics of Investment Screening in Indonesia's Foreign Investment Reform

Politik Hukum Penyaringan Investasi dalam Reformasi Penanaman Modal Asing di Indonesia

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Abstract: This study examines the significance and regulatory models of investment screening mechanisms within Indonesia's legal and political framework for foreign direct investment (FDI). Using a normative juridical method combined with a political-legal approach, the research critically assesses the global shift toward FDI screening as a means of safeguarding national interests. It specifically analyzes Indonesia's existing legal instruments—such as Law No. 25 of 2007 and the Online Single Submission (OSS) system—which currently lack substantive provisions for national security evaluation and the protection of strategic sectors. The findings reveal that Indonesia has yet to establish a coherent legal basis for investment screening, resulting in regulatory vulnerabilities in managing foreign capital and safeguarding economic sovereignty. Drawing on comparative experiences from jurisdictions like the United States (CFIUS), the European Union, and Australia, the discussion underscores the need for a shift from administrative facilitation to a proactive legal mechanism grounded in the principles of risk, sovereignty, and sustainability. The study concludes that reforming Indonesia's investment policy is not only necessary for ensuring regulatory consistency but also vital for establishing a national screening mechanism capable of evaluating the long-term strategic impact of foreign investments, thereby aligning Indonesia with global best practices while preserving its autonomy in economic governance.

Keywords: foreign investment; investment screening; legal reform; national interest;

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INTRODUCTION

Indonesia, as a developing country, continues to open its doors to foreign direct investment (FDI) as part of a broader strategy to promote national economic growth. FDI is often positioned as a catalyst for industrial advancement, technology transfer, and job creation. However, alongside these potential benefits, there is a growing concern about foreign dominance in strategic sectors, particularly given that investment oversight in

Indonesia remains largely administrative and has yet to engage with more substantive dimensions. Several countries have institutionalized investment screening mechanisms to filter foreign investments that may pose risks to economic security—a regulatory approach that has not yet been fully integrated into the Indonesian legal system (Dimitropoulos, 2020). The absence of such mechanisms creates a legal vacuum that could potentially overlook the protection of strategic national interests.

Global trends suggest that the legal architecture of investment regulation is undergoing a shift from a classical liberal paradigm toward a more selective and responsive model that accounts for national security considerations. This transformation is reflected in the growing adoption of investment screening mechanisms across various jurisdictions, recognizing that foreign investment—particularly in strategic sectors—is not politically neutral. In the Southeast Asian context, there exists a structural imbalance between capital inflows and the institutional capacity of states to proactively safeguard national interests (Salacuse, 1984). At the same time, the development of regulatory frameworks that are more attuned to geopolitical risks and the long-term implications of foreign ownership has become a central theme in the discourse of international economic law (Salacuse, 1984). Nonetheless, Indonesia has yet to fully engage with these evolving normative trajectories.

It is evident that the absence of a legal design capable of serving as a systematic and measurable instrument for screening strategic investments indicates that Indonesia's foreign investment regulation remains heavily reliant on an administrative facilitation paradigm. This suggests that the law has not yet functioned as a sovereign instrument for filtering and protecting long-term national interests within the broader framework of economic governance. This institutional void becomes increasingly salient amid intensifying global economic tensions, in which foreign investment is often used as a vehicle to project political and technological influence (Anthony, 2018). As a result, Indonesia's current legal framework lacks the adaptive capacity required to safeguard economic sovereignty in the face of these evolving geopolitical dynamics.

This article seeks to articulate the urgency and policy direction for reforming Indonesia's foreign investment law by proposing a regulatory model for investment screening that balances economic openness with the protection of national interests. In doing so, the study aims to provide a theoretical contribution to the development of investment law and serve as a policy input for lawmakers and regulatory authorities.

The approach employed in this article is normative juridical, supported by qualitative analytical methods. The study adopts a legal politics perspective by elaborating constitutional

principles and regulatory frameworks governing investment, while also examining comparative international contexts to formulate an investment screening model tailored to Indonesia's needs. This research relies on secondary data, consisting of both primary and secondary legal materials, which are systematically analyzed using prescriptive-analytical techniques.

RESULTS AND DISCUSSION

Investment Screening as a Legal-Political Instrument to Uphold Economic Sovereignty and Social Justice

In Indonesia's constitutional conception, the state is not merely an administrative entity managing capital flows, but a custodian of public welfare and a protector of strategic resources that are intrinsically linked to the collective life of its people. This role is rooted in the principle of social justice as enshrined in Article 33 of the 1945 Constitution, which explicitly mandates that sectors vital to the state and essential to the livelihood of the people must be controlled by the state (Haris, 2024).

In this context, the investment screening mechanism must not be perceived merely as a technical procedure or an investment facilitation tool, but rather as a manifestation of the state's commitment to economic sovereignty and the protection of public interests. The state bears the responsibility to ensure that every incoming investment delivers not only financial gains but also respects the foundational values of the Constitution and does not disrupt the established social equilibrium (Anggara, 2024).

Investment screening is fundamentally not merely a technocratic matter of assessing capital feasibility; it touches on the deeper dimension of how economic power is distributed within society. In the absence of an adequate selection mechanism for foreign investment, the space for capital accumulation tends to be monopolized by powerful transnational economic entities, thereby narrowing the access of local economic actors to manage strategic resources.

This structural disparity gradually fosters a new form of oligarchy that not only disrupts domestic economic equilibrium but also undermines the state's authority in

charting its development trajectory. Within the framework of distributive justice, investment screening functions as a state intervention to ensure that the economic benefits of investment are not concentrated in the hands of a few dominant actors, but are instead equitably distributed to communities directly affected by economic activities (Anthony, 2018). Absent such mechanisms, investment risks becoming a vehicle of social exclusion, marginalizing the rights of vulnerable groups over land, the environment, and their livelihoods (Cotula, 2012).

From the perspective of virtue ethics, the state is not merely a regulator enforcing the law in a mechanistic fashion, but a moral agent expected to embody the virtues of practical wisdom (phronesis), justice (dikaiosyne), and courage (andreia) in shaping public policies that affect the common good. Foreign investment entering the state's jurisdiction cannot be viewed as a value-neutral entity; rather, it constitutes a decision imbued with ethical dimensions, as it directly impacts the lives of citizens and the long-term direction of national development.

Within this framework, the state bears an active duty to discern and select forms of investment that align with the nation's collective values, while rejecting those that threaten to erode economic dignity or deepen structural dependency. The morality of such policy choices demands more than mere compliance with legal procedures; it requires accountability to future generations. A state that prioritizes nominal economic growth while neglecting normative dimensions ultimately risks forfeiting the ethical foundations upon which its legitimacy rests (Adger et al., 2017)

The concept of investment screening gains its moral relevance when approached from a communitarian perspective, wherein economic policy is inseparable from the state's obligation to safeguard the integrity of local communities and ensure the continuity of deeply rooted social values. Unfiltered foreign investment poses the risk of disrupting social structures, triggering forced displacement, and widening inequalities in the distribution of access to and benefits from development initiatives.

The state cannot solely rely on macroeconomic calculations, as development that neglects social dimensions tends to erode public trust and undermines national

solidarity—the very foundation of democratic stability. Investment screening, therefore, represents a tangible expression of intergenerational responsibility: ensuring that today's economic decisions do not compromise the right to life and the sustainability of future communities.

Within this framework, the state's courage to reject forms of investment that threaten environmental sustainability, local wisdom, or the balance of social ecosystems constitutes a manifestation of the principle of collective protection grounded in relational justice (Trubek et al., 2013)

Indonesia's constitutional commitment, as articulated in Article 33 of the 1945 Constitution, positions the state not merely as a market regulator but as the mandated guardian of national prosperity, ensuring that strategic sectors are managed to the greatest benefit of the people. In this context, the investment screening mechanism becomes an inherent component of the state's responsibility to exercise oversight over incoming foreign capital that may influence the trajectory of national development.

In the absence of a structured and constitutionally grounded selection system, the state forfeits a vital mechanism to assess whether incoming investments align with the principles of economic sovereignty and social justice. The lack of substantive regulation for screening foreign investments not only creates a legal vacuum but also opens the door to deviations from the public interest first principle, which ought to be the primary orientation of national economic policy (Guzman, 1995). Furthermore, the gap between national economic law and constitutional commitments reflects an imbalance between liberalization and the protection of public interest, potentially weakening the state's position within the global legal order (Schneiderman, 2016)

As the currents of economic globalization continue to expand cross-border capital flows, developing countries like Indonesia face a structural dilemma: whether to open themselves to foreign investment to stimulate growth, or to safeguard sovereignty over strategic sectors that shape the nation's developmental trajectory. This tension cannot be reduced to a binary opposition between protectionism and

liberalism; rather, it constitutes a reflective policy space that demands the state's courage to define the boundaries of sovereignty in a proportional and context-sensitive manner.

In an interdependent global economy, openness is indeed inevitable; however, without a substantive investment screening mechanism, the state remains vulnerable to losing its capacity to filter investments that may have long-term implications for national stability. This tension is reflected in the efforts of various countries to construct legal frameworks that enable a balanced evaluation of foreign investments—respecting the principle of non-discrimination while safeguarding national security and economic integrity (Rana Saad Shakar et al., 2025). Indonesia, in this regard, continues to face significant challenges in formulating legal instruments capable of bridging market demands with the principle of sovereignty, as overly administrative approaches often overlook the strategic dynamics inherent in foreign investment (Diamond & Liddle, 2011)

The investment screening mechanism can no longer be framed merely as an administrative tool for managing foreign capital flows; rather, it must be understood as a constitutional and moral articulation of the state's identity—asserting the boundary between openness and sovereignty. Amid a global landscape increasingly shaped by economic integration, the state's capacity to establish substantive criteria for investment is not a form of resistance to modernity, but an expression of courage in shaping a national development future grounded in social justice and collective dignity.

Constructing a Legal Formulation for Foreign Investment Screening in Indonesia

The legal formulation of foreign investment screening in Indonesia should not be perceived merely as a reactive measure to the dynamics of global capital flows, but rather as an effort to construct a normative system capable of wisely governing the intersection between economic interests and public sovereignty. To date, the legal approach has remained predominantly procedural-administrative in nature and has not substantially assessed the strategic risks embedded in incoming investments.

The reliance on risk-based licensing mechanisms—framed within the logic of bureaucratic efficiency—has, in practice, failed to provide adequate space for evaluating the potential economic, social, and political impacts of foreign investment in vital sectors. When regulations do not distinguish between speculative and productive investments, the state forfeits its ability to align investment flows with the trajectory of sustainable national development ("Balancing Risks," 2023). In this context, the legal framework cannot remain confined to merely prescribing entry procedures; it must evolve into a selective instrument capable of applying long-term risk-based considerations, including the authority to reject or defer investments that contradict constitutional values or threaten national interests (Trebilcock & Howse, 1998).

Indonesia's investment legal politics is situated within a tension between the aspiration to attract foreign capital through economic liberalization and the imperative to retain control over strategic sectors with long-term implications for national sovereignty. This friction arises from the fact that legislative direction is often driven by the pragmatic logic of short-term development, whereas the protection of strategic interests has yet to be adequately embedded in the prevailing normative framework.

As a result, regulatory development in Indonesia tends to be reactive and sectoral, lacking an institutional design capable of integrating a unified vision of sustainable national development. In policy practice, the implementation of the OSS system and the formulation of the investment priority list have indeed accelerated licensing procedures. However, these mechanisms fall short of addressing the evaluative dimensions of political, environmental, or social risks inherent in certain types of foreign investments (Chan & Meunier, 2022).

This creates a gap in the integration between technocratic instruments and the foundational values of the state that should serve as the basis for policymaking. A legal politics framework that fails to articulate a balance between liberalization and substantive control risks producing cosmetic regulations—superficial in nature and lacking genuine protection for the nation's vital assets.

One of the most frequently cited models in the formulation of national investment screening policies is the mechanism implemented by the United States through the Committee on Foreign Investment in the United States (CFIUS). This mechanism illustrates that investment screening is not merely a matter of administrative procedure, but rather a form of strategic state prudence in responding to the influx of foreign capital that may affect national security and control over critical technologies.

What distinguishes the CFIUS approach from other systems is its integration of intelligence analysis into the evaluation process, as well as the legal flexibility it affords the government to reject or unwind transactions based on threat parameters to critical infrastructure or domestic supply chains (Da Silva, 2025). This approach reflects a nuanced understanding that in the age of geoeconomics, foreign investment is no longer a politically neutral activity—it can function as a means of strategic penetration by other states into sensitive areas of national jurisdiction.

CFIUS does not operate merely as a technocratic body, but rather as a deliberative interagency forum that brings together elements of national security, defense, and finance. The incorporation of a "threat-based justification" principle in CFIUS policy frames investment screening not as a violation of economic openness, but as an exercise of sovereignty oriented toward risk prevention (Tinti, 2025). From this practice, Indonesia can learn that strengthening an investment screening system need not conflict with liberalization commitments, as long as it is grounded in legitimate strategic reasoning and firmly anchored in legal norms.

The European experience in developing an investment screening system under Regulation (EU) 2019/452 demonstrates that cross-national coordination need not be executed solely through a central authority, but can instead be structured via a dialogue mechanism among member states based on minimum standards for safeguarding national security and public order.

This framework underscores that openness to foreign investment must be balanced with the capacity to collectively evaluate risks inherent in cross-border transactions, particularly in the technology, energy, and digital infrastructure sectors. Unlike the centralized model exemplified by the United States' CFIUS, the European

Union's approach places greater emphasis on the principles of subsidiarity and proportionality, allowing member states to retain policy autonomy insofar as it aligns with jointly agreed minimum standards (Wernicke, 2020).

This model demonstrates that investment screening can be established without sacrificing economic integration, as long as there is a legal architecture that ensures transparent participation among actors and an information-sharing framework that is institutionally accountable (Sattorova et al., 2020).For Indonesia, the key lesson from this practice is the importance of developing a screening system that is not only effective in selecting investments, but also capable of cultivating a culture of collective oversight involving multiple stakeholders, including sectoral regulatory bodies and civil society.

Australia's approach to foreign investment screening through the Foreign Investment Review Board (FIRB) offers a perspective that emphasizes conceptual flexibility in defining national interest. Unlike models that rely entirely on codified rules and rigid indicators, the FIRB system provides interpretive space for the government to evaluate investments contextually, taking into account dimensions such as economic security, impact on domestic employment, environmental sustainability, and the involvement of foreign governments in the proposed transactions.

This model enables the state to remain adaptive to global dynamics without losing control over its strategic resources (Dupont & Reckmeyer, 2012).One of the core strengths of this system lies in its capacity to articulate economic sovereignty through administrative practices that still uphold the principles of transparency and public accountability. Investment evaluations are not carried out by a single technical agency but instead occur through a consultative structure involving relevant ministries, intelligence agencies, and fiscal policy actors. The final decision rests with the Treasurer as the executive representative, but it is reached through a multi-layered deliberative process. In the context of Indonesia, the FIRB model is worth examining because it offers a synthesis between openness and protection, and it allows the state to define national interest through parameters that are not static but evolve in accordance with societal needs and geopolitical challenges (McCalman et al., 2024)

The absence of a risk-based investment screening mechanism and substantial parameters within Indonesia's legal framework creates a normative gap that severely undermines the state's capacity to proactively safeguard its economic sovereignty. Existing regulations, such as Law Number 25 of 2007 on Investment and its derivative provisions, remain largely entrenched in an administrative approach focused on ease of doing business. This orientation neglects the strategic dimension necessary for the state to conduct substantive evaluations of the motives and long-term consequences of foreign investment.

The absence of clear definitions for key concepts such as "strategic sectors," "national interest," or even "threats to economic security" renders Indonesia's investment selection process overly formalistic, failing to account for the multidimensional nature of contemporary global investment (Crystal, 2009). Regulatory fragmentation across sectors such as energy, technology, and natural resources further exacerbates the issue, as each domain operates under its own supervisory logic, lacking an integrated regulatory coordination mechanism.

As a result, the state lacks sufficiently robust legal instruments to reject investments that, in practice, harm local communities or create structural dependencies on external actors. Moreover, the absence of a comprehensive risk assessment mechanism hampers policymakers' ability to anticipate the potential for international arbitration when the state seeks to revoke permits or intervene on the grounds of protecting strategic interests (Adarkwah & Benito, 2023).

Building an effective investment screening system requires clarity on the substantive principles underpinning decision-making. Within the context of international economic law, the principle of nondiscrimination is often upheld to prevent differential treatment of foreign investors; however, within national legal frameworks, this principle must be balanced with the need to protect strategic sectors that have direct implications for national security and public welfare.

The principle of nondiscrimination should not be interpreted as an obligation to always accept investments, but rather as a commitment to approve or reject them based on objective, transparent, and legally accountable reasons (Mariotti, 2025). Furthermore, the principle of transparency must be upheld through the mandatory

publication of evaluation criteria, public participation in policy assessments, and the accountability of screening institutions to prevent the mechanism from becoming a closed political tool.

Equally important, the national security review approach must be incorporated as part of a substantive legal framework, granting the state the authority to assess potential threats not only from military dimensions but also from digital economy, food security, and strategic technological infrastructure (Heidari, 2022). Finally, the public interest clause should be explicitly articulated to ensure that every screening decision consistently references constitutional values prioritizing the welfare of the broader population. By coherently integrating these four principles, the state can design an investment screening system that is not merely reactive to global pressures but proactively shapes a sovereign, just, and adaptive legal ecosystem.

The legal formulation of investment screening should not be positioned as an impediment to capital flows, but rather as an affirmative mechanism that ensures economic openness does not come at the expense of national sovereignty and social justice.

Amid the tension between liberalization and protection, risk-based screening offers a middle ground that enables the state to perform a reflective function regarding the direction of national development without disregarding commitments to international legal principles. A screening system designed with substantive indicators, cross-sectoral institutional involvement, and multidimensional security parameters provides the state with the legitimacy and capacity to exercise selective discretion grounded in solid legal foundations.

CONCLUSION

This study finds that Indonesia's current legal framework for foreign investment lacks a coherent screening mechanism capable of evaluating the long-term strategic impacts of foreign capital inflows. The analysis of Law No. 25 of 2007 and the implementation of the OSS system reveals that investment regulation remains largely procedural, without incorporating national security or strategic sector assessments. Drawing on comparative models such as the United States' CFIUS, the EU framework,

and Australia's regime, the research demonstrates that successful screening mechanisms are characterized not by uniform institutional design but by clarity of regulatory principles, functional coordination among agencies, and the ability to adapt to geopolitical risks. Based on these findings, the article argues that Indonesia must move beyond administrative facilitation and adopt a normative legal approach that integrates the principles of risk management, economic sovereignty, and sustainability into its investment governance. The scholarly contribution of this study lies in proposing an investment screening model tailored to Indonesia's constitutional and regulatory context, offering a legal foundation for balancing openness to foreign investment with the imperative of protecting long-term national interests.

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