

LEGAL STRATEGIES IN INCREASING FOREIGN DIRECT INVESTMENT IN INDONESIA

Erwin *¹

Universitas Tanjungpura
erwin@hukum.untan.ac.id

Noorsidi Aizuddin Mat Noor

Centre for Real Estate Studies, Mass Appraisal, Housing and Planning RG, Real Estate
Department, Faculty of Built Environment and Surveying, Universiti Teknologi
Malaysia, 81310 Johor, Malaysia)
noorsidi@utm.my

Muhammad Bagus Adi Wicaksono

Universitas Sebelas Maret
muhammadwicaksono96@gmail.com

Abstract

Increasing Foreign Direct Investment (FDI) is one of the top priorities for governments in many countries due to its crucial role in driving economic growth and development. In order to achieve this goal, effective legal strategies play an important role in creating a conducive investment environment. The research method used in this study is the literature research method. The results show that successful IALs are those that have successfully simplified their licensing procedures and adopted transparency in the regulatory process. In addition, the provision of strong legal protection of investor rights, including through intellectual property enforcement and fair and efficient dispute resolution mechanisms, has also been shown to increase foreign investor confidence. Therefore, an effective legal strategy in enhancing IAL should include a blend of process simplification, legal certainty, investor protection, and social responsibility to create an attractive investment environment for foreign investors.

Keywords: Legal Strategy, Foreign Investment, Indonesia.

Introduction

Foreign Direct Investment (FDI) is one of the important factors in a country's economic growth. IAL not only plays a role in adding capital or funds to the economy, but also in technology transfer, improving labour skills, and opening new jobs (Aksan & Gantjowati, 2020). For developing countries like Indonesia, IAL is an important catalyst in accelerating development and global economic integration.

Foreign Direct Investment (FDI) in international literature is defined as a form of long-term investment by entities or individuals from one country in another country, where the investor has significant control or influence over the management of the

¹ Correspondence author.

Company (Al-Fadhat, 2022). IALs usually materialise in the form of the establishment of a new venture, the acquisition of shares or assets of a local company, or a joint venture with a local company, thus allowing the investor to have direct involvement in the operations of that company. In this context, such control or significant influence is often defined as ownership of more than 10% of the shares or voting rights in the business entity (Al-Sadiq, 2021). These investments differ from portfolio investments which are more speculative in nature and do not give investors significant influence or control over the management of overseas companies.

Indonesia, with its abundant natural resources and strategic location in Southeast Asia, has great potential to attract IAL. IAL brings various benefits such as capital inflows that can increase the country's foreign exchange reserves, as well as stimulating economic growth through infrastructure development, increasing production capacity, and creating added value in various industrial sectors (Alfaro & Chauvin, 2020). Foreign investment is also often accompanied by technology transfer, innovation, and global business management best practices, which are important factors in improving the productivity and efficiency of the Indonesian economy. Furthermore, it helps the domestic sector to be more competitive in the international market, boosts exports, and in turn reduces the trade deficit (Amelia, 2024).

In addition, IAL has a significant impact on job creation, which directly contributes to lowering the unemployment rate and improving people's welfare. This increase in employment opportunities is not only limited to the number, but also in terms of quality, as IAL often requires specific skills and provides training for local labour (An & Yeh, 2021). This not only builds the capacity of the Indonesian workforce, but also reduces reliance on the informal sector and increases per capita income. Foreign investment also allows for closer co-operation between countries, which can open up new market access for Indonesian products. All these aspects together contribute towards inclusive and sustainable economic growth in Indonesia (Appiah et al., 2023).

However, in practice, Indonesia faces various obstacles and challenges in attracting such investments. One of the main factors is the legal issues faced by foreign investors. This factor includes the complexity and inconsistency of regulations, convoluted licensing processes, legal certainty issues, and corruption issues (Ashurov et al., 2020).

The role of law is critical in creating a conducive investment environment. Legal clarity and certainty make the investment climate more attractive as it reduces risk and increases investor confidence (Atichasari & Marfu, 2023). Therefore, it is important to understand how legal strategies can be implemented to address these issues, whether through regulatory reform, increased bureaucratic efficiency, or stricter law enforcement.

On the other hand, global and regional dynamics, such as free trade agreements, also affect IAL flows. Indonesia needs to ensure that its legal framework remains relevant and competitive in the international arena (Atitianti & Dai, 2022).

Given the important role of legal strategies in increasing IAL, it is necessary to conduct an in-depth study to identify effective legal strategies in overcoming existing barriers, with the main objective of strengthening Indonesia's position as an attractive investment destination in the eyes of the world. This research aims to develop evidence-based policy recommendations, which not only focus on improving regulations, but also on their implementation and monitoring. As such, the background of this issue underscores the importance of a comprehensive and dynamic legal strategy in supporting and increasing the flow of Foreign Direct Investment into Indonesia.

Research Methods

The study conducted in this research uses the literature research method. The literature research method is commonly referred to as literature study or literature review. It is a research method conducted by collecting, analysing, and interpreting data from literature sources relevant to the research topic. The aim is to gain an in-depth understanding of a problem, concept, theory, or phenomenon based on published evidence and argumentation. (Afiyanti, 2014); (Ainiyah, 2021); (Alaslan, 2022).

Results and Discussion

Concept of Foreign Direct Investment

Foreign Direct Investment (FDI) is the investment of capital by investors from one country into another country with the aim of establishing a business or expanding business activities. In Foreign Direct Investment, investors provide not only capital, but also technology, management, and skills (Burlea-Schiopoiu et al., 2023). What distinguishes IAL from other types of investment is substantial control or influence over the management of the company in which the investment is made. In other words, this type of investment involves more than just capital investment, as it includes direct involvement in management (Chaisse et al., 2022).

The main characteristics of Foreign Direct Investment include long-term ownership and the investor's intention to have control over the company in which they invest. This often requires large investments in both capital and other resources (Chaouachi & Balsalobre-Lorente, 2022). IALs are usually undertaken by large companies that aim to expand their operations into global markets, access new resources, or gain a competitive advantage. Access to local markets, production efficiency, and economies of scale are some of the main benefits of IAL for companies making investments (Chen et al., 2021).

The factors that influence Foreign Direct Investment (FDI) are diverse and can be influenced by economic, political, and social conditions in both the investor's country

and the country of investment. From an economic perspective, economic growth rate, macroeconomic stability, market size, and availability of natural resources are important tailwinds for IAL (Contractor et al., 2021). Interest rates, exchange rates, and fiscal policies such as taxes and incentives also play a role. From a social perspective, the quality and availability of labour, including the cost of labour, as well as infrastructure aspects such as transportation, communication, and energy supply, are important factors that investors consider before they decide to invest abroad (Djokoto, 2021).

Meanwhile, from the political aspect, political stability and legal certainty are important factors that influence IAL. Investors tend to avoid investing in countries with high political risks such as conflict, revolution, or unconstitutional takeover of power (Esquivias & Harianto, 2020). Regulatory clarity, legal protection of foreign investment, and government policies that support a good investment climate, such as transparency of procedures and reduction of bureaucracy, are also key in attracting IAL. Other factors such as international trade agreements, economic alliances, and economic sanctions, also affect the flow of IAL into a country (Fernandez & Joseph, 2020).

Thus, Foreign Direct Investment (FDI) is an important element of the global economy, and companies' decisions to invest abroad are influenced by a variety of factors. Economic aspects such as macroeconomic stability, market size, infrastructure, human capital, and investment incentives play a significant role in attracting IAL. Political stability, legal and regulatory security, and pro-investment policies are also critical in determining the direction of foreign capital flows. Country risk, technology, innovation, and cultural and communication factors are additional elements that companies should consider when planning their investments.

IAL brings benefits both to the recipient country - such as job creation, technology transfer, and infrastructure development - and to the investor - such as new market access, supply chain efficiency, and growth potential. However, the success of the investment also depends on the company's ability to navigate the complexities of the parent and host business environments by understanding and implementing a strategy that considers all these factors comprehensively.

Law and IAL

Foreign Direct Investment (IAL) Regulatory Laws such as the Investment Law aim to provide a clear and conducive legal framework for foreign investors. These laws generally include provisions on licensing procedures, investor rights and obligations, fiscal incentives, and dispute resolution mechanisms (Firmansyah et al., 2022). The aim is to create a stable, transparent, and competitive business climate that can attract more IALs. Alignment with local and international policies is also important to ensure that the law supports national economic development while meeting global standards and expectations (Gallagher et al., 2021).

A good Investment Law also provides legal certainty to foreign investors, which is a key factor in investment decisions. Through these regulations, the government can

regulate economic sectors open to IALs, foreign ownership limits, and mechanisms for investment and intellectual property protection (Genthner & Kis-Katos, 2022). This helps in reducing political and legal risks for investors. A law's success in attracting IALs not only benefits foreign investors but also brings economic benefits to the recipient country, through increased employment, technology transfer, and economic diversification (Gyamfi et al., 2022).

However, in practice, the implementation of the Investment Law is not always straightforward. There needs to be synchronisation between existing regulations at the central level and local regulations, as well as effective coordination between various government agencies to ensure that regulations can be implemented consistently and efficiently. An additional challenge comes from the need to maintain a balance between attracting foreign investment and protecting national interests. This may involve complex negotiations over foreign ownership limits in certain sectors, fiscal incentives, and environmental and employment standards (Hamid et al., 2021).

In a dynamic global context, investment laws also need to be continuously updated to remain relevant to technological developments, changes in global trade flows, and international political dynamics. Engagement with stakeholders, including local and foreign business communities and civil society, can assist governments in drafting and adjusting regulations that support sustainable economic growth while responding to social and environmental concerns (Hanh et al., 2020). Thus, the key to successfully regulating IAL lies in striking a balance between flexibility and legal certainty, as well as between attracting foreign investment and ensuring that such investment provides broad benefits to the economy and society.

Hurdles in the Implementation of IAL Law

Implementing the Foreign Direct Investment (FDI) law encounters various hurdles that can hinder the flow of foreign investment into a country. One of the main hurdles is legal instability and frequent policy changes. Foreign investors seek certainty and stability in the legal environment in order to make long-term planning for their investments (Haudi et al., 2020). When a country changes regulations frequently or applies them inconsistently, it creates uncertainty for investors. Sudden policy changes or inconsistent application of laws can increase the accelerated risk to investments and force investors to reconsider their capital commitments in the country (Hayat & Tahir, 2021).

Another hurdle in the implementation of IAL laws is the lack of capacity and coordination among government agencies. The effectiveness of IAL laws largely depends on the ability of government agencies to organise, monitor and enforce the rules efficiently. In many cases, government agencies may not have sufficient resources, training, or technical knowledge to effectively manage foreign investment (Hussain et al., 2021). In addition, a lack of coordination and communication between different

agencies may result in protracted and overlapping licensing procedures, thus hindering the investment process and dampening foreign investors' appetite for investment (Khan et al., 2021).

In addition, the challenge of building and maintaining trust between foreign investors and local communities is also an important hurdle in the implementation of IAL laws. Issues such as land rights, local socioeconomic impacts, and environmental sustainability are often sensitive areas that require careful handling. The interests of local communities and demands for transparency and social responsibility from multinational companies can create friction if not managed properly (Liu, 2022). Therefore, inclusive and participatory policy-making, which takes into account local stakeholders and communities, is key to reducing conflicts and building harmonious relationships between foreign investors and local communities, which in turn can facilitate investment.

Legal Strategy to Increase IAL

To increase Foreign Direct Investment (FDI), the legal strategy should focus on creating a conducive environment for foreign investors. One of the key strategies is through regulatory simplification and harmonisation. Reducing bureaucracy by simplifying licensing procedures and cutting regulatory overlaps can significantly reduce the burden for investors. Harmonising local regulations with national policies is also important to eliminate confusion and ensure legal certainty (Itasari, 2020). In this regard, governments can utilise technology to improve transparency and efficiency, for example by building a unified investment portal that offers easy access to regulatory information and online application procedures (Jiang & Martek, 2021).

Furthermore, legal strategies to support IAL can also involve strengthening legal protections for investments and investors. This includes ensuring the protection of copyrights, patents, and other intellectual property, and enforcing contracts fairly and consistently (Kerner & Pelc, 2022). Governments can adopt or strengthen effective dispute resolution mechanisms, including international arbitration, to give investors confidence that they can resolve disputes quickly and fairly. This guarantee of protection is important not only to attract new investors but also to retain existing investments (Kim & Sumner, 2021).

Equally important is the development of legal infrastructure to encourage sustainable and responsible investment. This involves formulating regulations that encourage ethical and sustainable business practices, such as strict environmental standards and corporate social responsibility (Le et al., 2021). Capacity building and advocacy on the importance of sustainable investment can help create an ecosystem where foreign companies feel encouraged to contribute to inclusive socio-economic development. Such strategies not only increase IAL flows but also ensure that the

presence of foreign investors has a sustained positive impact on local economies and communities (Mahy, 2022).

In conclusion, an effective legal strategy to increase Foreign Direct Investment (FDI) should include efforts to create a stable and transparent business environment through regulatory simplification and policy coherence. Strong legal protection for investment and investor rights need to be ensured so as to create confidence and security for foreign investors. On the other hand, promoting responsible and sustainable investment by engaging ethical business practices and protecting the environment and local communities is crucial to maintaining a balance between economic growth and social welfare. These strategies can result in a conducive investment climate that not only attracts IAL, but also ensures that such investments provide long-term benefits to the host country and its people.

Conclusion

Regulations play an important role in influencing Foreign Direct Investment (FDI). Clear and consistent regulations provide legal certainty to foreign investors, which is an important factor in their decision to invest. Trust in a fair and stable legal system can encourage foreign investors to bring capital and technology to a country, thus supporting economic growth. On the other hand, excessive or frequently changing regulations can make the investment environment appear risky and unpredictable, presenting a significant barrier to IAL entry.

In addition, regulations designed to protect national interests, such as restrictions on foreign ownership or certain sectors of the economy, can limit opportunities for foreign investors. While some protectionist measures may be important for national security or the protection of local industries, too many restrictions could prevent the broader economic benefits of IALs. Therefore, finding the right balance in regulation-which protects national interests without deterring foreign investment-is essential to maximising the positive impact of IAL on local economies.

An effective legal strategy to increase Foreign Direct Investment (FDI) requires an approach that ensures legal certainty and efficiency. One key element is the simplification of licensing and regulatory procedures to reduce the administrative burden for foreign investors. This includes eliminating or integrating overlapping licences and establishing a one-stop service system where the licensing process is faster and less complicated. Making the investment process transparent through digital platforms can also boost investor confidence by giving them easy access to relevant information and application procedures. As such, simplification and transparency in the licensing process play an important role in creating a more conducive environment for IAL.

In addition, providing strong legal protection to foreign investors and their investments is key to attracting and retaining IAL. Legal strategies should include strengthening laws to protect intellectual property, enforcing contracts, and resolving disputes fairly and efficiently. Adopting or strengthening international dispute resolution mechanisms, such as arbitration, offers investors confidence that disputes will be properly addressed. Legal strategies that promote ethical and sustainable business practices, as well as environmental protection, are also critical to ensuring that IAL not only grows but also has a long-term positive impact on local economies and communities, reinforcing the positive image of foreign investment.

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