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Legal Protection for Domestic Investors Based on Investment Agreements in Indonesia

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Abstract

This study discusses legal protection for domestic investors in investment agreements in Indonesia, especially in the context of cooperation between the private sector and the government and limited liability companies. Domestic investment has an important role in supporting national economic growth, but in practice investors often face legal risks in the form of default, unilateral termination of agreements, and weak law enforcement. Using a normative juridical approach that is descriptive and analytical, this study analyzes various legal provisions that govern investor protection, such as the principle of legal certainty, the principle of pacta sunt servanda, and the right of investors to sue for compensation in accordance with the Civil Code and Law Number 25 of 2007 concerning Investment. The results of the study show that legal certainty and dispute resolution mechanisms are fundamental aspects that determine the effectiveness of legal protection for investors. The state has an obligation to provide assurance, protection, and access to fair legal remedies when there is a violation of the agreement. Therefore, it is necessary to strengthen regulations and legal implementation in order to create a healthy, sustainable investment climate, and encourage the active participation of domestic investors in national economic development.

Keywords

Domestic Investors, Investment Agreements, Legal Certainty, Legal Protection.

1. Introduction

To boost national economic growth, the Indonesian government has sought to improve the investment climate for Both Foreign and Domestic Investors (*Penanaman Modal Dalam Negeri/PMDN*). Yet in practice, PMDNs face challenges such as contractual uncertainty, weak law enforcement, and the risk of default by partners. While domestic investment is crucial for sustainable growth, its legal protection often receives less attention than Foreign Direct Investment (FDI). Legal certainty and protection are therefore essential to encourage wider participation (Taduri, 2021; Juang et al., 2025). Investment agreements are the main instruments governing investor relations with governments and business partners, but many domestic investors still suffer losses due to unequal terms and weak safeguards (Kox & Rojas, 2020; Uttama, 2021; Scherer et al., 2021). Broadly, investment refers to capital placement, cash, assets, intellectual property, or expertise aimed at maintaining or increasing value in Indonesia.

Agreements between investors and managers establish reciprocal rights and obligations (de Melo, 2020; Brada et al., 2022; Dewi et al., 2023). Default arises when obligations are not performed, are delayed, or are inconsistent with the contract. The Civil Code classifies defaults into several forms, and investors are the most vulnerable since they provide upfront capital and rely on good faith. Thus, legal protection is needed to ensure certainty and effective dispute resolution. Investment is a key alternative to address financing gaps in infrastructure development (Azizah, 2023). As Sembiring (2010) notes, investment is the use of capital to generate profits, while Fadhilah and Fuad (2023) highlight that capital can take various forms beyond cash. Nurhamim (2021) further explains that capital influences company policies and economic activity. Investments bring both positive impacts, such as job creation, technology transfer, and infrastructure growth, and risks to stability. A country's attractiveness to investors depends on its legal system's ability to provide predictability, fairness, and efficiency (Fernandez & Joseph, 2020; Bodea & Ye, 2020; Purboyo et al., 2025). For this reason, the government plays a strategic role in ensuring justice and security. The Investment Law (Law No. 25/2007) affirms legal certainty as the foundation for investment activities.

Infrastructure, a key state responsibility, supports equitable growth (Lisa et al., 2025). To accelerate provision, Indonesia introduced Public Private Partnership (PPP) schemes, first regulated under Presidential Regulation No. 67/2005 and later No. 38/2015. One common scheme is Build-Operate-Transfer (BOT), where investors finance, build, operate, and later return facilities to the government. Such cooperation agreements ensure a balance between rights and obligations. According to Article 1320 of the Civil Code, contracts are valid if they meet the requirements of consent, legal capacity, a clear object, and a lawful cause (Suharnoko, 2015). This reflects the principle of freedom of contract, allowing parties to design agreements as long as they do not contravene law or public order. This freedom covers both named and unnamed contracts (Danastri, 2005). Despite this, unilateral termination by government entities has occurred, even when investors complied with obligations. For example, 30-year cooperation agreements to construct or rehabilitate facilities have been ended without a valid legal basis, depriving investors of the right to operate and recover profits. Such actions contradict Article 14(a) of the Investment Law, which guarantees certainty of rights, law, and protection.

The Civil Code provides additional safeguards. Article 1237 regulates risk transfer, Articles 1243–1252 address compensation, Article 1266 allows cancellation of reciprocal contracts through court, and Article 1267 permits creditors to demand fulfillment or cancellation plus damages. Article 1276 provides further recourse in cases of default. Legal protection, therefore, ensures investors can seek remedies when obligations are breached. According to Rahardjo (2006), law protects

individual interests by legitimizing action, while Setiono (2004) stresses its role in preventing arbitrariness and ensuring dignity. These ideas are reflected in the 1945 Constitution of the Republic of Indonesia, namely Article 28I(4), which obliges the state to uphold human rights, and Article 28D(1), which guarantees equality before the law. This study, therefore, analyzes gaps and challenges in protecting domestic investors under investment agreements. Using a normative approach, it reviews legal rules and doctrines to strengthen the position of PMDN. Two key issues are addressed: the forms of legal protection provided by laws and regulations, and the remedies available to investors harmed by unilateral termination of agreements.

2. Methods

This research uses a normative juridical approach, which is an approach that focuses on the study of legal norms as stated in laws and regulations and legal rules that apply in society. The specification of this research is descriptive analytical, which aims to describe and analyze the applicable legal provisions, then relate them to legal theories and their implementation in positive legal practice. The data collection technique is carried out through library research, which includes primary and secondary legal materials. Furthermore, the data obtained is analyzed by a qualitative juridical analysis method, in order to obtain logical conclusions based on relevant legal norms. This paper uses a structural method of comparison, which structurally has similarities in viewing the definition of law as an identification system in society. This comparison also highlights the existence of institutions that have the authority to make or amend laws, as well as have the authority to decide on the application of laws.

To strengthen the analysis, this study also emphasizes the normative dimension of law as both a regulatory system and a social control mechanism. The normative juridical approach allows the researcher to examine how investment laws are applied in practice and whether they provide sufficient protection for domestic investors. The descriptive analytical specification helps bridge the gap between abstract legal theory and concrete legal practice, while the qualitative juridical analysis enables the formulation of logical arguments supported by statutory provisions and relevant doctrines. The structural comparative method enriches the study by demonstrating how legal institutions function not only in theory but also in real cases, particularly in relation to investment agreements. The combination of these methods is intended to produce comprehensive conclusions and recommendations that can contribute to improving legal protection and creating a more secure investment climate in Indonesia.

3. Results and Discussion

3.1. Legal Protection for Domestic Investors

One of the fundamental aspects of legal protection for investors is the guarantee of legal certainty in the implementation of agreements (Tan, 2014; Jarrett et al., 2023). The issue of legal certainty has been widely discussed in the context of investment law. Sembiring (2010) asserts that legal certainty is a fundamental pillar in creating a conducive investment climate. Without such certainty, investors are exposed to higher risks, leading to decreased confidence in the national investment framework. Kairupan (2013) further emphasizes that unequal treatment between Foreign Direct Investment (FDI) and domestic investment often creates structural injustice, even though the contribution of domestic investment to national economic development is equally significant.

Article 1338 of the Civil Code affirms that every legally made agreement is binding on the parties and must be carried out in good faith. This includes compliance with all provisions related to profit sharing, asset management, and the

fulfillment of financial obligations. The principle of *pacta sunt servanda* emphasizes that agreements validly formed have the force of law for the parties and must be honored accordingly (Chandrawulan, 2014). In practice, however, deviations often occur such as unilateral termination or breach of contract that disadvantage domestic investors. As Panjaitan (2003) noted, contractual protection must therefore be guaranteed by the state through effective law enforcement mechanisms.

In cases of default, the law provides protection for investors by granting the right to claim compensation for losses suffered (Rastuti, 2016). Article 1243 of the Civil Code explains that default can occur due to negligence, delay, or the improper fulfillment of obligations. Consequently, investors may claim three categories of compensation: (1) material losses, such as withheld share payments or other financial damages; (2) immaterial losses, including the loss of benefits or potential profits from the investment; and (3) enforcement costs, such as advocate fees and litigation expenses incurred during the legal process. These rights reflect the state's commitment to ensuring justice and accountability in contractual relationships.

The right to sue functions as a crucial legal instrument that allows investors to demand accountability from parties who commit negligence or default. In practice, this means that an investor, as the plaintiff, may petition the court to issue a ruling compelling the defendant to fulfill obligations as stipulated in the agreement and to pay compensation for any losses incurred. The existence of this right ensures that investors have a legitimate avenue to seek recovery for their violated rights. When a defendant deliberately delays obligations or disregards the outcomes of prior agreements, such behavior constitutes a violation of the principles of legal certainty and good faith, thereby reinforcing the investor's position before the court (Mahardika, 2022; Dolzer et al., 2022; Muliawan & Boediningsih, 2025).

Furthermore, Abbas (2018) highlights that Public Private Partnership (PPP) schemes, particularly in Build-Operate-Transfer (BOT) models, often raise legal issues related to the imbalance of bargaining power between the government and investors. Unilateral termination of BOT agreements demonstrates the vulnerability of domestic investors and the need for stronger contractual protection mechanisms. Soerodjo (2016) also underscores the importance of establishing detailed and comprehensive regulations to ensure fairness in such agreements.

Legal protection for investors also includes the assurance of fair, effective, and accessible dispute resolution mechanisms. If attempts at deliberation or alternative dispute resolution fail, litigation remains a lawful and justifiable step to seek justice. Through judicial processes, courts are empowered to examine the facts, determine the existence of default, and decide the appropriate form and amount of compensation to ensure fairness for the aggrieved party.

In addition, investors must uphold the principle of good faith in every stage of contractual relations from negotiation and execution to dispute resolution as stipulated in Article 1338(3) of the Civil Code (Azzahra & Siska, 2022). In contrast, the defendant's conduct in delaying obligations or requesting unnecessary re-audits indicates bad faith intended to hinder the execution of the cooperation agreement, thereby causing further harm to investors. Such behavior not only breaches the content of the agreement but also undermines trust in the legal system and the integrity of business cooperation.

The plaintiff, therefore, has a legitimate right to pursue legal action to resolve defaults committed by the defendant. The refusal to comply with previously agreed terms reflects an attempt to evade contractual responsibility, which weakens the defendant's legal position in court. Upholding legal certainty in such cases is essential to maintaining investor confidence and ensuring the long-term sustainability of cooperation agreements (Saputra & Emovwodo, 2022). As Soerodjo (2016) affirms, consistent and transparent law enforcement strengthens national

investment credibility and encourages both domestic and foreign investment, thereby contributing to economic growth and national development.

However, if the national legal system remains weak in addressing and resolving investment disputes, Indonesia may face challenges in attracting foreign capital. Strengthening investor protection both in regulatory frameworks and enforcement is therefore crucial to ensure fairness, legal certainty, and security in business activities (Sornarajah, 2020; Widijowati, 2023). Bad faith in fulfilling agreements can serve as the legal foundation for claiming greater compensation, encompassing not only material but also immaterial or moral damages arising from loss of reputation and trust (Sutedi, 2015).

When negotiations fail and contractual obligations remain unfulfilled, litigation becomes the final legal avenue available to investors. Under Article 1267 of the Civil Code, the aggrieved party has the right to demand performance of the agreement, request its cancellation, or claim damages. Thus, the plaintiff's decision to file a lawsuit with the District Court represents a lawful and proper course of action. The involvement of the Public Appraiser Service Office (*Kantor Jasa Penilai Publik/KJPP*) as an independent auditor demonstrates adherence to the principle of transparency in dispute resolution. Conversely, the defendant's unilateral decision to conduct a re-audit without mutual consent violates procedural fairness and potentially obstructs justice. The rejection of the jointly agreed audit results not only weakens the defendant's position but also strengthens the plaintiff's legal grounds to demand fulfillment of rights through judicial means.

3.2. Investment Agreements in Indonesia

A cooperation agreement is a legal instrument that binds parties to fulfill their rights and obligations proportionally within a defined legal relationship. In infrastructure and facility development, such agreements serve as a legal foundation to protect both landowners and investors, ensuring fair, sustainable, and mutually beneficial cooperation that supports public welfare. The implementation begins with the government's physical handover of the project object to the investor, followed by the construction phase, including the development of facilities. Once construction is complete, the investor holds the primary right to manage and operate the facility for the agreed period (Soerodjo, 2016). At the end of the cooperation, the land and buildings are returned to the government. This reflects contractual fairness each party gains equal rights and obligations: the landowner regains ownership, while the investor benefits from the use and management of assets within a specified time frame.

Investments through cooperation agreements are fundamentally based on trust in the legal certainty guaranteed by the state. Law Number 25 of 2007 on Investment serves as the legal foundation regulating investment in Indonesia, emphasizing the principle of legal certainty as a core element. The stronger the enforcement of this principle, the higher the level of investor confidence to invest domestically and internationally. Cooperation agreements, therefore, act as an alternative financing mechanism that must be grounded in legal certainty to ensure fair and balanced implementation of rights and obligations, fostering a sustainable investment climate.

The state holds the duty to ensure legal certainty and business security throughout the investment process. As stipulated in Article 4 paragraph (2) point (b) of the Law of the Republic of Indonesia Number 25 of 2007 on Investment, the government is obliged to ensure legal certainty, business stability, and security for investments from the licensing process to the completion of activities. Legal certainty is not only demonstrated through regulations but also through consistent law enforcement when disputes arise, as it directly affects the stability of the investment climate.

Given that cooperation agreements often last for long periods, they are vulnerable to risks such as breach of contract. This is evident in the case discussed, where a government's unilateral and improper termination of a cooperation agreement caused losses to investors who had acted in good faith and fulfilled their obligations. Under Article 14 point (a) of the Investment Law, investors are entitled to "certainty of rights, law, and protection." Accordingly, the government must ensure investors' (1) certainty of rights exclusive use of land and investment objects; (2) legal certainty that all government actions follow existing laws; and (3) protection certainty security guarantees throughout the investment process.

To optimize investor protection, normative guarantees must be supported by repressive and proactive legal measures. Investors harmed by unilateral government actions have the right to take legal steps to reclaim their rights. As stated by Prodjodikoro (1989), legal protection ensures that every legal subject can defend and preserve their rights under the law. The Investment Law provides mechanisms for dispute resolution: initially through deliberation (Article 32 paragraph 1), followed by alternative dispute resolution such as arbitration if consensus fails. When no agreement is reached, disputes may proceed to court. This framework grants investors a clear legal basis to file lawsuits against the government for unilateral actions causing losses (Harahap et al., 1989).

In civil law, agreements have the force of law between parties under the principle of *pacta sunt servanda*, meaning that validly made agreements must be honored. A party violating the contract and causing harm is legally accountable to the aggrieved party. Losses suffered by investors can stem from default or unlawful acts. If caused by default, investors may claim compensation; if caused by unlawful acts, the offending party must provide restitution for the damage. Compensation thus serves as an essential legal protection instrument, particularly when investors lose their rights or expected profits due to unjustified government actions.

Hence, arbitrary and unilateral termination of cooperation agreements by the government may be deemed an unlawful act under recognized jurisprudence. Investors who suffer losses have the right to seek legal protection by filing lawsuits demanding compensation for the government's wrongful conduct. The existence of reciprocal rights and obligations within an agreement legitimizes investors' right to sue, as the government, despite its public authority, remains subject to civil law when entering into contracts in a private capacity. Therefore, investors have equal legal standing to demand fulfillment of their rights and accountability for any unlawful or negligent government actions.

4. Conclusion

The legal protection for investors in cooperation agreements with limited liability companies largely depends on the assurance of legal certainty and the proper implementation of contractual principles, particularly the *pacta sunt servanda* principle as stipulated in Article 1338 of the Civil Code. In the event that a limited liability company commits a default that is detrimental to investors, it becomes a legal basis for investors (Plaintiffs) to demand the fulfillment of obligations or compensation. However, the panel of judges can judge that the lawsuit cannot be accepted because it is considered premature, if the agreement that is the basis of the lawsuit is not valid and binding according to the provisions agreed upon by the parties, and has not been realized within the specified period of time. Therefore, it is recommended that in the future, cooperation agreements be drafted in more detail, firmly, and with clear legal force, in order to strengthen legal certainty and prevent disputes that can be detrimental to the parties, as well as to ensure the implementation of obligations in accordance with applicable legal provisions.

Investors who feel aggrieved by their rights and lose potential profits from the management of the object of the agreement in cooperation between the private sector

and the government can take legal action in the form of a lawsuit for compensation in the event of a unilateral termination of the agreement by the government. This lawsuit can be filed on the basis of unlawful acts committed by the government, considering that such unilateral actions are considered not in accordance with the principles of justice and legal certainty. Therefore, as long as it can be proven that the government has committed a violation of the law that results in losses to investors, investors have the right to demand liability in order to obtain legal protection and recovery for their losses.

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Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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