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# Investment Contracts and Foreign Direct Investment: A Juridical Perspective

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**Abstract:** This research examines the legal framework governing investment contracts and foreign direct investment (FDI) in Indonesia, employing a normative juridical approach that emphasises statutory analysis and a literature review, which is supplemented by a comparative law analysis. The inquiry is grounded in primary legal materials, including the Indonesian Civil Code (KUHPerdata) and Law Number 25 of 2007 concerning Investment. Secondary and tertiary materials further enrich it to provide a broader context of the regulatory landscape. The study delves into the nature of investment contracts as instruments that create legal certainty, delineate rights and obligations, and ensure the fulfilment of commitments by the parties involved throughout the investment process. It emphasises that investment contracts must fulfil the essential elements of a valid agreement as specified in Article 1320 of the Civil Code and are binding under the principle of pacta sunt servanda. Moreover, the analysis examines the interplay between investment contracts and various forms of FDI, particularly joint ventures (PT PMA), as mandated by Indonesian law. It highlights key contractual components—such as capital participation, management rights, profit repatriation, stabilisation clauses, and choice of law—that enhance clarity and predictability for investors while respecting the regulatory authority of the host state. The findings underscore the importance of a well-drafted investment contract in minimising legal uncertainty, facilitating technology transfer, and promoting sustainable economic growth, which ultimately strengthens Indonesia's appeal as a destination for foreign investment.

**Keywords:** Investment Contracts, Foreign Direct Investment, Joint Ventures

## A. Introduction

Investment is one of the fundamental pillars of modern economic growth, and every investment venture necessarily entails contractual agreements that outline the rights and obligations of the parties involved. [1]Legally, contracts possess binding authority as dictated by the principle of pacta sunt servanda. The principle of freedom of contract, as articulated in Article 1338 of the Civil Code, guarantees the validity of legally established agreements, thereby ensuring legal certainty for the parties involved. This

[1] Lorenzo Cotula, *Investment Contracts and Sustainable Development: How to Make Contracts for Fairer and More Sustainable Natural Resource Investments* (London: International Institute for Environment and Development, 2010), https://doi.org/978-1-84369-765-7 ISSN: 1605-1017.

importance is particularly pronounced in the context of investment contracts, which play a crucial role in fostering trust and predictability in capital investments—especially given the substantial and long-term financial commitments involved, which are vulnerable to risks if not protected by clear agreements. [2]The theoretical foundation underscores that a well-defined contractual existence aligns with the legal objectives of providing certainty and protection, both of which are essential in national investment law.

In the Indonesian legal system, foreign direct investment (FDI) has played a crucial role in driving economic development since the enactment of the initial Foreign Investment Law in 1967. The latest regulation, Law No. 25 of 2007 concerning Investment, emphasises that investment activities must adhere to the principle of legal certainty. 3. 3. 3.[3] To provide legal protection for foreign investors, the Indonesian government requires that all foreign investments be established as Limited Liability Companies, in compliance with relevant statutory provisions. This requirement aims to ensure legal certainty by promoting clarity in the company's articles of association, capital structure, shareholder agreements, the principle of limited liability, and the organisation of corporate bodies, all of which are essential for safeguarding investment rights. [4]

National investment regulations emphasise the importance of contracts and company establishment documents as vital components that ensure legal certainty for foreign direct investment (FDI). Investment contracts—whether as company establishment agreements, shareholder agreements, or agreements with the government—provide clarity on specific matters that may not be comprehensively addressed by law, such as profit sharing, technology transfer, guarantees of regulatory stability, and dispute resolution mechanisms. By establishing these written agreements, foreign investors gain a solid legal foundation for enforcing their rights and obligations in the event of a violation, thus enhancing their confidence and flexibility when investing in Indonesia.[5]

One of the most significant forms of foreign direct investment (FDI) is the joint venture. Indonesian legal policy has long supported joint venture arrangements between foreign and domestic investors as a strategy to attract foreign capital to the country. A joint venture (JV) is essentially a legally binding partnership between two or more parties—such as a foreign company and a domestic company—designed to achieve shared business objectives by distributing risks, capital, control, and profits according to mutual agreement.

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[2] Dewi Susanti, "Freedom of Contract in Indonesia: Scope and Limitations for Foreign Investors," Schinder Law Firm, 2024, https://schinderlawfirm.com/blog/freedom-of-contract-in-indonesia-scope-and-limitations-for-foreign-investors/.
[3] Aniek Hindrayani, "Foreign Direct Investment and Economic Growth," *Ed-Equilibrium* 1, no. 1 (2013): 51–68.
[4] Pristika Handayani and Indra Sakti, "Legal Certainty for Foreign Investment Reviewed from Law Number 25 of 2007 Concerning Investment," *Pelita* 5, no. 1 (2023): 38–49, https://doi.org/10.33373/pta.v5i1.5527.
[5] *Ibid.*

Regulations governing joint ventures are outlined in several government statutes, including Law No. 1 of 1967, Article 23, concerning Foreign Investment; Government Regulation no. 7 of 1993 regarding Shareholders of Foreign Investment Companies; Government Regulation no. 20 addressing Share Ownership in Companies Established under Foreign Investment; and the Decree issued by the Minister of State for Investment Fund Mobilization/Chairman of the Investment Coordinating Board, No. 15/SK/1994, which details the Provisions for the Implementation of Share Ownership in Companies Established within the Framework of Foreign Investment. [6]

Through this agreement, investors can solidify their arrangements regarding capital contributions, share distribution, company management, management composition, profit and loss sharing, exit strategies, and mechanisms for resolving disputes. The creation of a joint venture agreement adheres to fundamental contractual principles, including the freedom of contract, mutual consent, *pacta sunt servanda*, and the principle of good faith. This framework ensures that the contract serves as a legal foundation for the parties involved, safeguarding their respective interests and rights throughout the collaboration.

The importance of joint ventures is apparent in practice, as this structure effectively combines foreign capital with local expertise. However, it also raises the potential for conflicting interests. In the absence of a comprehensive contract, joint ventures are susceptible to future disputes stemming from disagreements over control or profit-sharing arrangements. Consequently, investment contracts serve as a crucial safeguard, aligning the expectations of the parties involved with the relevant legal framework and thereby preventing conflicts of interest, while also offering clarity on resolution processes should disputes arise.

Based on the explanation before, the purpose of this paper's analysis centres on the role of contracts within the investment legal framework, specifically examining how investment contracts provide legal certainty for foreign direct investment (FDI) and their implementation within joint venture schemes, a tangible form of FDI in Indonesia. In addition, to obtain a comprehensive study, this study also conveys a comparative approach of law with other countries. Thus, the key research questions to be addressed are: How do the provisions of investment contracts generally relate to FDI and the practice of joint ventures themselves?

## B. Method

This research employs a normative juridical method as its primary approach. This method emphasises a literature review and utilises secondary data to achieve a comprehensive understanding of the legal issues being examined, supplemented by legal

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[6] Hukumonline.com, "Learning More About Joint Ventures and Their Legal Aspects," Hukumonline.com, 2022, https://www.hukumonline.com/berita/a/mengetahui-lebih-jauh-soal-joint-venture-serta- Aspek-hukumnya-lt61e539096f48c/.

comparisons with other countries to provide a thorough study. The secondary data is categorised into three main types. First, primary legal materials, which include relevant laws and regulations. Second, secondary legal materials, consisting of literature, books, and scholarly works that support the analysis. Finally, tertiary legal materials comprise information sources, such as media supplement websites, both online and in print, which help to enhance the context of the research.

The approach taken is a statutory method, involving the examination and comparison of various regulations about investment contracts and foreign direct investment (FDI). This analysis includes a review of the Civil Code (KUHPerdata), Law Number 25 of 2007 concerning Investment, and other pertinent regulations. Through this approach, the research aims to identify applicable legal principles and provide a thorough overview of the regulatory framework governing investment practices, addressing both substantive and procedural aspects.

## C.Results *&* Discussion

### 1. Investment Contracts: A Comprehensive Overview

Law Number 25 of 2007 concerning Investment (Law 25/2007) does not explicitly use the term "investment" within its provisions. Nonetheless, in a legal framework, "investment" is typically interpreted as referring specifically to direct investment. This interpretation is underscored in the Explanation of Article 2 of Law 25/2007, which clarifies that investment across all economic sectors in Indonesia requires direct investment and excludes indirect or portfolio investment. Additionally, the General Explanation of Law 25/2007 supports this perspective by indicating that the regulation encompasses all activities related to direct investment across various sectors.[7]

Direct investment is generally characterised by the capital owner's active participation in business operations, encompassing capital management and full accountability for any potential losses that may arise. This involvement is typically realised through the establishment of a company or business entity in Indonesia. This definition is in accordance with Article 1, number 1 of Law 25/2007, which specifies that investment includes all forms of investment activities conducted by both domestic and foreign investors to engage in business within Indonesia.[8]

Risk is a crucial element in every investment decision. In financial literature, risk is defined as the degree of uncertainty and potential financial loss associated with an investment choice. In practice, investment risk can be categorised into several specific types, including business risk (the possibility of issuer bankruptcy and its repercussions for shareholders or bondholders), volatility risk (price fluctuations driven by internal and

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[7] Mas Rahmah, *Investment Law* (Jakarta: Kencana, 2020).
[8] *Ibid.*

external factors), and inflation risk (the erosion of purchasing power due to general price increases), among others.[9]

It is essential to anticipate these risks, as the possibility of worst-case scenarios is always present. Additionally, investments are intricately linked to the agreements established between the parties involved. Consequently, a mechanism is necessary to ensure that each party fulfils their respective obligations, conditions, and rights. To accomplish this, an instrument outlining the various provisions and agreements between the parties throughout the investment period is required—specifically, an investment contract.

An investment contract is a legal agreement whereby an investor commits capital to an entity, such as a company, project, or other venture, under specific terms concerning future rights, obligations, and profit-sharing arrangements. In the context of stock investments, for example, the investment contract outlines the conditions of the investment when the investor acquires shares in the company. Essentially, the investment contract formalises the relationship between the investor and the recipient of the investment (the company or financed party) by detailing aspects such as the amount of capital, anticipated returns, and any rights of control or oversight granted to the investor.[10]

From a legal standpoint, investment contracts are regarded in the same manner as other contracts. As such, they must satisfy the requirements for a valid agreement as outlined in Article 1320 of the Civil Code, which includes: (1) a mutual agreement between the parties, (2) the legal capacity or capability of the parties, (3) a clearly defined object of the agreement, and (4) a valid reason that complies with legal standards. When all these conditions are met, the investment contract binds the parties as though it were law, adhering to the principle of *pacta sunt servanda*, as articulated in Article 1338, paragraph (1) of the Civil Code.

For example, within the Indonesian capital market law, there exists a Collective Investment Contract—an agreement between the Investment Manager and the Custodian Bank that is binding on all investors collectively, as specified in Article 18, paragraph (1) of Law 25/2007. The Investment Manager is empowered to oversee the management of the joint investment portfolio, while the Custodian Bank is tasked with the collective storage of the investment assets. This definition represents one specific form of investment contract that is explicitly regulated by law, particularly in the context of mutual funds. Beyond these particular provisions, the "investment contract" can encompass direct investments (such as purchasing shares or establishing a joint venture)

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[9] US Securities And Exchange Commission, "What Is Risk?," Investor.gov, accessed September 12, 2025, https://www.investor.gov/introduction-investing/investing-basics/what-risk#:~:text=Inflation Risk.

[10] Thomas Bourveau et al., "Comply-or-Explain Regulation and Investor Protection," *Journal of Accounting and Economics* 79 (2025): 1–30, https://doi.org/https://doi.org/10.1016/j.jacceco.2025.101765.

and portfolio investments, which may be referred to by various names, including investment agreements, share subscription agreements, loan agreements, and others.

Investment contracts not only establish the foundational rights and obligations of the parties involved but also outline mechanisms for dispute resolution in the event of disagreements regarding the investment. A particularly prevalent component of these agreements is the arbitration clause, commonly found in international contracts that include foreign investors and states as parties. The primary aim of incorporating an arbitration clause is to enable the parties to select a neutral forum for resolving disputes. This choice is vital, as foreign investors often have concerns about the impartiality of national courts. Additionally, resorting to national courts can introduce complications related to sovereign immunity, which may impede the dispute resolution process.

However, these guarantees are invariably accompanied by substantial obligations that investors are required to fulfil. The existence of agreements is vital, as this legal relationship involves both investors and states as parties, each bearing equal responsibilities. In previous decades, investors often enjoyed certain exemptions; however, recent developments suggest that many agreements are now more balanced, merging protections with obligations to establish a fairer dynamic between investors and host states.

In practice, investment contracts manifest in various forms and nomenclature, depending on the nature of the investment and the sector involved. Common types of investment contracts include:

a. Share Subscription/Purchase Agreement

   This is the most common form of equity investment contract. Investors agree to acquire a stake in a company, whether it be a startup or an established entity. The agreement outlines the purchase price and the number of shares, as well as the stages of capital injection and the rights of the investor as a new shareholder. It often incorporates conditions precedent, which are preliminary requirements such as obtaining regulatory approval and completing satisfactory due diligence, that must be fulfilled before the investment becomes effective. In the context of startups or venture capital, this agreement is often referred to as an Investment Agreement. It may include investor protection provisions, such as anti-dilution, tag-along, and drag-along rights, as well as liquidation preference. Additionally, there is typically a separate Shareholders' Agreement that governs the long-term relationship between the investor and other shareholders, addressing matters such as voting rights, board composition, and exit strategies.[11]

[11] Toki Kawase, *Ibid.*

b. Joint Venture Agreement
When two or more parties come together to invest collaboratively in a new business venture, they establish a joint venture (JV) through a formal agreement. This contract includes elements of both an investment agreement and a shareholders' agreement, detailing each party's capital contributions, the formation of the joint venture entity (such as a PT PMA for a JV involving a foreign partner), share distribution, management structure, profit sharing arrangements, and the rights or protections afforded to each investor. The JV agreement also specifies the conditions under which the joint venture may be dissolved or how one party can withdraw from it. In Indonesia, partnerships with local entities are often necessary for engaging in sectors restricted to foreign investment, making the JV agreement a vital document to safeguard the control and interests of foreign investors.

c. Investment Loan Agreement
Investments do not need to take the form of equity exclusively; many are structured as debt or financing. For example, investors may provide loans to companies, which are often referred to as shareholder loans when issued by shareholders, or convertible loans when there is an option to convert them into shares at a later date. Investment loan agreements outline the loan amount, term, interest or profit-sharing arrangements, collateral (if applicable), and the investor's right to convert (in the case of convertible bonds or notes). Other investment forms include bonds or sukuk. A trust agreement between the issuer and the trustee typically governs these legal relationships. At the same time, the bond prospectus functions as an investment contract between the issuer and the bondholder. In investment loans, although investors do not possess voting rights, the contracts often contain covenants that limit the debtor's actions to safeguard the investment (eg, restrictions on incurring additional debt until repayment is made).[12]

d. Collective Investment Contract
This model refers to a specific type of contract within the capital markets sector, particularly mutual funds. In Indonesia, mutual funds often take the form of a Collective Investment Contract (KIK), which is an agreement between an investment manager and a custodian bank that collectively serves the interests of numerous investors. Individual investors do not directly sign this contract; instead, by purchasing mutual fund units, they become bound by the KIK. Besides stock and bond mutual funds, the KIK structure is also utilised for Real Estate Investment Trusts (REITs) and Asset-Backed Securities (ABS). There are two categories of KIK: Limited Participation (intended solely for professional investors, such as private equity funds)

[12] Maria Imelda Aritonang, "Implementation of Trustee Responsibilities in Issuing Bonds in the Capital Market" (Diponegoro University, 2008), https://eprints.undip.ac.id/18110/1/Maria_Imelda_Aritonang.pdf#:~:text=The agreement made is called a Trustee Agreement, not participating in the making of the agreement.

and public KIK. Essentially, this form of collective investment contract is distinctive because it constitutes a contractual association (rather than a legal entity) that simultaneously binds multiple investors under the management of an investment manager.

e. Investor–State Contracts
In strategic sectors, particularly those involving state assets or natural resources, direct contracts typically exist between foreign investors and government entities. Examples of these contracts include Contracts of Work (previously utilised in general mining), Production Sharing Contracts (PSCs) in the oil and gas sector, Public-Private Partnership (PPP) agreements for infrastructure projects, and concession contracts for managing public facilities. These agreements incorporate highly complex investment provisions, such as rights to resource exploitation, investment obligations, extended concession periods, stabilisation of tax and royalty regulations, local content requirements, and mechanisms for dispute resolution (often involving ICSID or other international arbitration). These investor-state contracts are classified as investment contracts, as they serve as the legal foundation for foreign investments in the host country. [13]

The preceding discussion clearly illustrates that investment contracts serve as vital legal instruments in establishing certainty and stability in the relationship between investors and the state. These contracts encompass not only the provisions related to investment and the rights and obligations of both parties, but they also offer a fair and impartial mechanism for dispute resolution. This framework helps maintain investor confidence while safeguarding the interests of the state. Additionally, the evolution of investment agreement practices highlights a shift towards a more balanced approach, where investor protection is matched with substantive obligations that must be fulfilled. Grasping these principles is essential for a deeper examination of the role of investment contracts in the realm of foreign direct investment (FDI), which involves cross-jurisdictional interactions and requires more complicated arrangements.

## 2. Investment Contracts and Foreign Direct Investment

Direct investment refers to a type of long-term capital investment in both new and established businesses, where the investor actively participates in managing the business process. According to the World Bank, direct investment is characterised as a long-term commitment to either a new or existing enterprise, in which the investor maintains effective control over management. [14]This definition emphasises that direct investment

[13] David R. Hesse, *Business Guide to Trade and Investment - Volume 2: International Investment* (England: Jusmundi, 2018).
[14] World Bank Group, "Data Bank Metadata Glossary," World Bank Group, accessed September 5, 2025, https://databank.worldbank.org/metadataglossary/world-development-indicators/series/BX.KLT.DINV.WD.GD.ZS#:~:text=Foreign direct investment is the, International Monetary Fund (IMF).

involves not only financial participation but also entails the investor's significant influence over the company's strategic direction, policies, and overall management.

In practice, direct investment is primarily executed through two key channels. The first is the establishment of new companies, known as greenfield investment, which facilitates technology transfer, job creation, and product innovation from the outlet. The second channel involves equity participation in existing firms, including business expansion, reorganisation, mergers, or acquisitions—referred to as brownfield investment. [15]Both forms of investment offer significant advantages to the host country, including technology transfer, enhanced managerial skills, access to international markets, and increased employment opportunities, all of which contribute to local economic growth. For example, foreign investment in Indonesia's automotive sector has spurred the development of the regional components industry and accelerated the transfer of manufacturing technology.

Direct investment can be categorised based on its source of capital, distinguishing between FDI and domestic investment. In Indonesian law, FDI is referred to as Foreign Investment (PMA) and is typically initiated by multinational corporations through the establishment of new enterprises, acquisition of majority stakes, or mergers with local firms. [16]FDI often involves long-term contracts, joint ventures, or licensing agreements. For example, several global technology companies are developing data centres in Indonesia under partnerships that include the transfer of expertise and technology, all while complying with local data protection regulations.

Foreign investment entails the transfer of assets across borders, encompassing both tangible assets, such as capital and equipment, and intangible assets, including intellectual property rights, know-how, and brand management. [17]The objective is to produce goods or services sustainably within the host country. Generally, investments can be classified into direct investment and portfolio investment. Some experts maintain that both types of investment warrants have comparable levels of international legal protection. However, direct investment is inherently more complex because it typically occurs with the explicit consent of the host government, thereby establishing a stronger foundation for accountability. Additionally, advances in international law have created opportunities to impose specific obligations on holders of portfolio investments through bilateral or multilateral agreements developed in collaboration with the host country.[18]

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[15] Ngoc Minh Nguyen, "The Effect of FDI on Domestic Entrepreneurship: The Case of Greenfield Investment and Cross-Border M&A Activities," *Journal of Economic and Development* 25, no. 1 (2023): 62–78, https://doi.org/https://doi.org/10.1108/JED-11-2022-0228.

[16] The World Bank, *Investment Law Reform: A Handbook for Development Practitioners* (Washington, DC: The World Bank Group, 2010).

[17] Leon Trakman E. and Nicola Ranieri W., "Foreign Direct Investment: An Overview," Oxford University Press, 2013, https://www.austlii.edu.au/au/journals/UNSWLRS/2016/3.pdf.

[18] A. Kamilah, "Guarantee of Legal Certainty in Investing Through Lawrence M. Friedman's Conceptual Approach in Facing the ASEAN Economic Community (AEC)," *Jurnal Res Justitia* 1, no. 2 (2019).

The role of law is a crucial factor in influencing the level of foreign direct investment (FDI) inflows into a country. Nations that maintain transparent, consistent, and predictable legal frameworks tend to attract more investors, as they offer a sense of security and certainty for conducting business. Empirical research conducted by UNCTAD demonstrates that countries with well-defined investment regulations, robust property rights protections, and efficient dispute resolution mechanisms tend to experience higher levels of FDI compared to those with weak or inconsistent regulatory environments. In Indonesia, Law Number 25 of 2007 concerning Investment serves as a vital legal instrument aimed at enhancing the investment climate and bolstering the country's appeal to foreign investors.

Moreover, direct investment serves not only as a catalyst for economic growth but also as a tool for enhancing national capacity. Foreign Direct Investment (FDI) facilitates the transfer of technology, generates employment, strengthens managerial competencies, and boosts the competitiveness of domestic industries. To fully leverage these advantages, it is crucial to establish a clear, consistent, and investment-oriented legal framework. An effective investment policy should prioritise the protection of investor rights while also striking a balance between those interests and the sovereignty of the host nation.[19]

The successful implementation of Foreign Direct Investment (FDI), even at the micro level, is heavily dependent on the existence of a comprehensive and legally binding investment contract. Such a contract serves as the legal foundation that aligns investor interests with the national legal framework, while also ensuring business certainty. This instrument meticulously regulates the rights, obligations, and mechanisms for implementing investments, thereby minimising the potential for disputes. Law 25/2007 acknowledges the strategic significance of investment contracts, particularly in Article 32, which states that conflicts between the government and foreign investors should, in principle, be resolved through mutual agreements, typically as specified in a separate investment contract or arbitration agreement. Consequently, an investment contract is not merely an accessory; it is a critical legal instrument that provides special guarantees for investors and clarifies issues that may not be explicitly addressed in existing legislation. In the absence of a robust contract, the risk of uncertainty increases, which can determine investor interest in making investments.[20]

The scope of materials governed by an FDI investment contract typically includes several essential elements to ensure a smooth and secure investment process. Primarily,

[19] Mohamad Fadhillah Dekha, "Legal Protection for Foreign Direct Investment (FDI) in the Form of Government-Business Partnership (KPBU)," *Eksekusi: Journal of Law and Public Administration* 1, no. 4 (2023): 250–61, https://doi.org/https://doi.org/10.55606/eksekusi.v1i4.706.

[20] Mohd. Hafiy Nawwaf, "The Role of Law in Encouraging Foreign Investment," Research Gate, accessed September 14, 2025, https://www.researchgate.net/publication/377469773_Peran_Hukum_dalam_Mendorong_Investasi_Asing.

the contract delineates the structure and amount of capital participation. [21]It specifies the capital contributed by the foreign investor, the form of this contribution—whether in foreign currency or assets—the investment duration, and the share ownership structure within the established joint venture or Foreign Investment Limited Liability Company (PT PMA). This provision guarantees that both parties have a clear understanding of ownership percentages and capital commitments, thus reducing the likelihood of future disputes regarding contributions and their timing.

The contract outlines the parties' rights and obligations in detail. For example, it includes the foreign investor's entitlement to participate in management or serve on the board of directors or commissioners, the right to receive dividends and profit sharing based on share ownership, the right to repatriate profits in foreign currency after meeting tax obligations, and the right to access transparent information regarding business performance. This framework is balanced by the obligations of the investor, which include adhering to local laws, conducting technology transfers or training local workers as mandated by the government, and ensuring environmental protection and corporate social responsibility (CSR) in accordance with established regulations.[22]

Third, FDI investment contracts almost invariably incorporate a dispute resolution clause. The parties involved typically agree to forgo reliance solely on domestic courts and instead opt for a neutral international arbitration forum. This arbitration clause is essential for safeguarding investors against potential biases within local jurisdictions and ensuring that disputes are resolved professionally and conclusively. The 2007 Investment Law supports this approach; for example, Article 32, paragraph (4) permits disputes between the government and foreign investors to be addressed through international arbitration, contingent upon the parties' agreement. Consequently, investment contracts often specify that, in the event of a dispute, the parties will present their case to an arbitration institution (such as the ICSID under the 1965 Washington Convention, or another arbitration forum) rather than relying on a domestic court, with the understanding that the arbitration award is final and binding.

Fourth, foreign direct investment (FDI) contracts often include legal stabilisation clauses. A stabilisation clause is a provision that ensures the investment agreement remains unchanged, regardless of any future alterations in policies or laws within the host country. This clause aims to protect investors from potential losses arising from legal changes—such as modifications in tax rates, royalties, or sector regulations—that could jeopardise the project's financial viability. By including a stabilisation clause, the host government essentially assures that the contract terms (especially those related to financial incentives and permits) will remain fixed. If any changes do occur, the investor

[21] Jan Drahokoupil, "Foreign Direct Investment," Britannica Money, 2025, https://www.britannica.com/money/foreign-direct-investment.
[22] Mohamad Fadhillah Dekha , *Ibid* .

would be entitled to compensation or restoration to safeguard their economic interests. Such clauses are commonly found in long-term investment agreements in sectors such as mining, energy, and infrastructure. For example, in earlier mining contracts, foreign investors were assured that there would be no abrupt changes to tax rates or royalties throughout the contract duration, regardless of any shifts in national legislation.[23]

Fifth, contracts may incorporate a choice of law clause. Given that foreign direct investment (FDI) often involves multiple jurisdictions, the parties typically agree on the governing law that will apply to the contract. [24]While FDI investment contracts frequently remain subject to Indonesian law—particularly when the subject matter is located in Indonesia—there are instances where the parties opt for neutral or international law for specific provisions. For example, loan or guarantee agreements may be governed by New York or English law, whereas joint venture agreements may be subject to Indonesian law. This choice of law clause promotes consistency in interpretation and helps prevent jurisdictional disputes. Additionally, there may be a forum clause that specifies the court or arbitration venue with jurisdiction in the event of a dispute, ensuring that the parties have established this arrangement in advance.

Investment contracts often include provisions designed to enhance investor protections. These may consist of indemnity clauses to address breaches of the agreement, political risk insurance, guarantees for the availability of raw materials or necessary infrastructure from the government, and force majeure provisions that outline the actions to be taken in the event of unforeseen circumstances. The inclusion of these provisions provides investors with an additional layer of legal security beyond the standard protections afforded by law, thereby allowing investments to proceed with greater certainty.

In essence, foreign direct investment (FDI) contracts encompass a wide range of regulations, covering corporate matters such as capital participation, share allocation, and management; operational issues involving resource provision, marketing, and production techniques; financial aspects such as profit sharing, taxes, and repatriation; and legal considerations, including choice of law, dispute resolution, stabilization, and protection against arbitrary actions. A well-crafted contract ensures that both parties have a clear understanding of their rights and obligations, along with the agreed-upon mechanisms, thereby reducing uncertainty in the execution of FDI.

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[23] *Ibid.*

[24] Saefullah, "Choice of Law in Settling International Treaty Disputes," *Binamulia Hukum* 11, no. 2 (2022): 117–25, https://doi.org/10.37893/jbh.v11i2.717.

### 3. The Connection Between Investment Contracts and Joint Ventures as Types of Foreign Direct Investment

As previously noted, a joint venture (JV) is a specific form of foreign direct investment (FDI). In Indonesia, joint ventures are commonly established as limited liability companies (PT) featuring a shareholding arrangement between a foreign entity and a local partner. This structure complies with Article 5, paragraph (2), of the Investment Law, which mandates that foreign investments be conducted through an Indonesian legal entity (limited liability company) registered in Indonesia. [25]

Consequently, foreign investors are generally prohibited from operating directly as branches or individuals; they must instead establish a PT Penanaman Modal Asing (PT PMA). These PT PMAs may be either 100% foreign-owned or co-owned with local shareholders, contingent upon sector regulations and the specific business strategy. Historical regulations, such as Government Regulation No. 20 of 1994 in conjunction with Government Regulation No. 83 of 2001, affirm that foreign investment can take one of two forms: first, a joint venture with capital held by Indonesian citizens or legal entities, or second, direct investment with all capital owned by foreign entities. [26]Thus, Indonesian law recognises both joint ventures and full foreign ownership as components of the FDI framework, although specific sectors may impose local partnership requirements or maximum foreign equity limits.

Motivations for forming joint ventures in the context of FDI fulfilling local requirements—such as those in sectors that mandate participation from national entrepreneurs—leveraging local expertise and networks, and sharing business risks. A notable example is PT Freeport Indonesia, a joint venture between Freeport-McMoRan, a foreign company, and Inalum, an Indonesian state-owned enterprise, focused on mining management. JVs allow foreign investors to inject capital in a shared ownership structure, resulting in technology transfer, job creation, and additional benefits for the host economy. Consequently, JVs play a crucial role in the legal framework of FDI, effectively connecting foreign capital with the local legal environment and partners in Indonesia.[27]

Facilitating foreign investment through direct investment contracts without requiring the establishment of a PT can be particularly effective in industries such as natural resources. A notable example of this is the Production Sharing Contract (PSC) scheme utilised in the upstream oil and gas sector, where foreign contractors enter into cooperation contracts directly with the government (SKK Migas) for exploration and exploitation activities, bypassing the need to form a local legal entity. In a similar vein,

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[25] Alfin Ramadhan, "Investment Contracts in the Context of Foreign Direct Investment as One of the Solutions to Achieve the Development of a New National Capital City," Journal, *PAMALI: Pattimura Magister Law Review* 5, no. 1 (March 31, 2025): 1–9, https://doi.org/10.47268/pamali.v5i1.2544.

[26] ADCO Law, "Understanding Joint Ventures," ADCO Law, nd, https://adcolaw.com/id/blog/mengenal-jointventure/#:~:text=1, meaning all capital is owned by.

[27] *Ibid.*

foreign investors can participate in Public-Private Partnership (PPP) projects or state asset management through specialised cooperation contracts, rather than establishing a joint venture (JV) company, in line with sector-specific regulations. However, outside these specified sectors, the joint venture format via a PT PMA continues to serve as the primary legal framework for foreign direct investment (FDI) in Indonesia. Consequently, discussions concerning the relationship between JVs and investment contracts primarily focus on JVs structured as limited liability companies.[28]

An investment contract, within the context of foreign direct investment (FDI), is broadly defined as an agreement that governs a specific investment project or activity. This contract may exist between an investor and a host country (or a state-owned enterprise) for particular projects, often in the extractive or infrastructure sectors, or between a foreign investor and a local private partner. Consequently, investment contracts encompass various types, including contracts of work (Production Sharing Contracts, or PSCs) with the government, as well as agreements between investors to form joint ventures. In the framework of a joint venture (JV), the primary investment contract takes the form of a JV agreement, which outlines the terms between prospective shareholders regarding the formation and management of the JV company. This JV agreement is frequently referred to as a shareholders' agreement when the joint venture is structured as a corporation.

Structurally, a JV scheme involves two interrelated levels of legal relationship: the first being the internal relationship among investors, governed by the investment contract (JV agreement) as a private document; and the second being the relationship within the legal entity of the joint venture company (PT PMA), governed by company law. Although these two levels serve different functions and possess distinct characteristics, they must be aligned to achieve investment objectives and successfully mitigate potential legal conflicts.

A joint venture company is recognised as a separate legal entity. It is primarily governed by Law No. 40 of 2007 concerning Limited Liability Companies (UU PT) and its articles of association (AD/Articles of Association). These articles serve as the fundamental constitutional document for the company, outlining regulations regarding capital structure, corporate governance organs (the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners), internal governance, rights associated with different classes of shares, and other administrative details. [29]As a document that is certified by a notary and the Ministry of Law and Human Rights, the articles of association bind not only the shareholders but also apply erga omnes to third parties (the public).

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[28] Alfin Ramadhan, *Ibid.*

[29] Remigius Jumalan, "Synchronization of Joint Venture Agreement Arrangements and Articles of Association in Joint Venture Companies," *Jurnal Bina Mulia Hukum* 2, no. 2 (2018): 1–16, https://doi.org/10.23920/jbmh.v2n2.17.

In contrast, a JV agreement (the investment contract among shareholders) is a private document that is typically not made public. It governs the shareholders' arrangements on matters that may not be extensively detailed in the articles of association or that require more specific regulations in accordance with the parties' preferences. For example, a JV agreement often includes provisions regarding daily operational and management practices, the distribution of responsibilities among the parties, and procedures for resolving disputes—elements that may not be comprehensively covered in the articles of association. The interplay between the articles of association and the JV agreement is crucial to establishing the legal relationship within the joint venture. Ideally, these two documents should be crafted in a manner that complements each other without contradictions.[30]

In conclusion, the legal relationship between a joint venture (JV) and an investment contract (JV agreement) is interdependent. In the absence of a JV agreement, investors may lack a clear understanding of the processes for collaboration and joint decision-making, potentially leading to future disputes. Conversely, without the establishment of a JV company, the JV agreement remains merely a written commitment that does not translate into actual business operations. Typically, a JV agreement requires that the parties successfully establish a business entity (such as a PT) and make investments according to the agreed proportions; failure to do so could be deemed a breach of contract. Once the PT is formed, the relationship between the parties is articulated through two channels: the corporate channel (shareholders to the company) and the contractual channel (shareholders to each other via the contract). The corporate channel is regulated by Company Law and the articles of association (which include aspects such as voting rights, dividends, and general meetings). In contrast, the contractual channel is governed by the JV agreement (including stipulations like share lock-up agreements and special quorums).

The two functions operate in parallel and are interdependent: the exercise of rights through corporate bodies (eg, voting at the General Meeting of Shareholders) is conducted in accordance with the stipulations outlined in the Joint Venture (JV) agreement. Conversely, the JV agreement often references the company's formal mechanisms for ratifying decisions. If one party breaches the contract (such as selling shares unilaterally when the JV agreement requires offering them to a partner first), the share sale may remain legally valid (provided that the procedures under Company Law are followed). However, that party may be subject to legal action by its partner for breach of contract. This illustrates that the JV agreement establishes both moral and legal obligations among investors within the company's legal framework, ensuring that shareholder behaviour aligns with the agreed-upon investment terms and conditions.

[30] *Ibid.*

## 4. Investment Contracts in Foreign Direct Investment: Comparative Review

Investment regulations vary significantly across jurisdictions. In Indonesia, foreign investors must establish a local limited liability company (PT PMA) and meet a minimum capital requirement. The 2007 Investment Law and the 2020 Omnibus Law shifted the framework from a restrictive "negative list" [31]approach to a more liberal "positive list" model, enabling 100% foreign ownership in most sectors, including telecommunications, plantations, and transportation. In contrast, the United States has no structural requirements for foreign businesses; nearly all foreign direct investment (FDI) is allowed without local participation, except in cases reviewed by the Committee on Foreign Investment in the United States (CFIUS) due to national security concerns.[32]

China employs a negative list system, ensuring that foreign investors receive equal treatment across all sectors not explicitly restricted. Singapore also boasts one of the world's most open investment climates, allowing foreign ownership primarily in sensitive areas such as media, postal services, and finance. [33]The Netherlands, adhering to European Union regulations, screens FDI in strategic industries but otherwise maintains a liberal and transparent approach, characterised by minimum permit requirements and a strong reputation for market openness.[34]

Investor protection frameworks exhibit notable variations across countries. Indonesia provides guarantees for compensation at market value in cases of nationalisation, ensures equal treatment, and permits the transfer of capital, although currency regulations may constrain these rights. Many of Indonesia's older bilateral investment treaties (BITs) have either expired or been revoked, resulting in an increased reliance on national law by investors. The United States, on the other hand, offers comprehensive protections through its robust legal system and numerous treaties, including the USMCA, which empower investors to seek arbitration against governments. [35]Similarly, China's Investment Law guarantees fair compensation for expropriation and the right to repatriate profits. Singapore is highly regarded for its legal stability, membership in ICSID, and its frequent role as an arbitration venue, while the Netherlands provides OECD-level protections due to its extensive network of BITs.

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[31] Leks & Co Lawyers, "Law of Investment in Indonesia," Leks & Co Lawyers, accessed September 23, 2025, https://www.lekslawyer.com/law-of-investment-in-indonesia/#:~:text=All business sectors or types, closed to foreign investors are.

[32] Edward S. Rivera, *FDI Restrictions: Limitations on Foreign Investment Into the United States* , nd, https://www.trade.gov/sites/default/files/2021-05/Chapter 6 - FDI Restrictions.pdf#:~:text=of an open investment regime%2C,7.

[33] CW, "China Promulgated the Negative List 2024 for Foreign Investment Access at National Level," CW, 2024, https://www.cwhkcpa.com/china-promulgated-the-negative-list-2024-for-foreign-investment-access-at-national-level/#:~:text=On November 1, 2024%2C China, investors seeking growth in China.

[34] Center For Co-Operation With Non-Members, *Foreign Direct Investment and the Environment Foreign Direct Investment and the Environment* , *OECD* (Paris: OECD, 1999).

[35] IISD, "USMCA Curbs How Many Investors Can Sue Countries—Sort of," IISD, 2018, https://www.iisd.org/articles/usmca-investors.

Dispute resolution mechanisms also differ significantly among these countries. In Indonesia, arbitration is only available if explicitly agreed upon by both the state and the investor, which can leave some investors reliant on national courts that are often viewed as lacking independence. In contrast, the United States, Singapore, China, and the Netherlands generally uphold arbitration agreements and are all signatories to the ICSID Convention, [36]thereby ensuring access to international dispute settlement options. Singapore and the Netherlands are recognised as preferred neutral venues for arbitration. At the same time, both the United States and the Netherlands have considerable experience with Investor–State Dispute Settlement (ISDS) mechanisms under BITs and free trade agreements (FTAs).[37]

Joint venture practices are exhibiting notable divergence across various countries. In Indonesia, while full foreign ownership is permitted, forming partnerships with local firms can be strategically advantageous for effectively navigating bureaucratic processes and understanding the local business culture. In contrast, the United States does not impose such requirements. Meanwhile, China continues to promote joint ventures in specific strategic industries, even in the light of recent liberalisations. Singapore and the Netherlands, on the other hand, impose no joint venture obligations, facilitating straightforward market entry and making them attractive hubs for multinational collaborations.

## D. Conclusion

Investment contracts play a crucial role in establishing legal certainty, safeguarding the rights of all parties involved, and facilitating the smooth execution of Foreign Direct Investment (FDI). Law No. 25 of 2007 emphasises the importance of direct investment as a catalyst for economic growth and development. Investment contracts serve to transform these legal stipulations into binding agreements between investors and the state. They meticulously outline key elements, including capital contributions, rights and obligations, profit-sharing mechanisms, and dispute resolution through an impartial forum. In the context of joint ventures, these contracts enhance the company's legal framework and ensure equitable and harmonious relationships among shareholders. Consequently, investment contracts not only protect investors' interests but also uphold the legal sovereignty of the host country, thereby fostering a balanced environment in which foreign investment can effectively contribute to the national economy.

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[36] Ming Du, "Explaining China's Approach to Investor-State Dispute Settlement Reform: A Contextual Perspective," *European Law Journal* 28, no. 4–6 (2023): 281–303, https://doi.org/https://doi.org/10.1111/eulj.12468.

[37] Global Arbitration Review, "Overview of Investment Treaty Programme," GAR, accessed September 22, 2025, https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/netherlands#:~:text=Most Dutch BITs require legal, business activities in the Netherlands.

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