



## Comparison of Indonesian and Malaysian Investment Laws Following Omnibus Legislation

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### Abstract

Government initiatives like the Omnibus Law encourage investment and job creation. This article examines and evaluates the investment law policy following the Omnibus Law on Job Creation compared to Malaysian legislation. This normative legal research examines challenges using progressive legal theory and statutory and conceptual approaches. According to the Omnibus Law Job Creation, the investment law policy starts with legality in risk-based business, offers investment incentives to boost foreign investment, and expands business opportunities while upholding national interest. Employment creation is more progressive under this post-omnibus law. Investment policies harmonize legislation and investment institution coordination. Indonesia has more centralized laws than Malaysia. Malaysia's legal investment policy is sectoral. Each business sector must have a supervisory entity, and all investments must register as Malaysian businesses

### I. Introduction

According to the Preamble of the 1945 Constitution, the establishment of the Unitary State of the Republic of Indonesia was intended, among other objectives, to achieve the populace's well-being. Economic growth serves as a framework for the nation in attaining its objectives. The plentiful natural resources (hereafter referred to as SDA) and accessible human resources (hence referred to as HR) are inadequate to facilitate economic development. ([Sirwanto, 2020](#)). People's participation is

opportunities so that large natural resources are managed and generate funds for development needs. The state must make policies in the investment sector to ensure legal certainty and justice. Economic development necessitates investments from investors in specific sectors that will influence the nation's economy ([Anisa, 2016](#)). Regarding investment, the state provides many facilities to encourage investment and foreign investment, including taxation, customs, depreciation or amortization, land acquisition, and immigration and import licensing ([Sutrisno, 2008](#)).

In the reform era, there was a paradigm shift in the politics of investment law since it was influenced by the World Trade Organization (WTO), ratified by Law number 7 of 1994. Investment law policy, ([Bastomi & Salim, 2021](#)) has another important meaning in relation to realizing people's welfare state, capital investment can create jobs for domestic communities. Foreign investment can provide quite large benefits, for example by creating job vacancies for host country residents so that they can increase income and living standards, creating opportunities to collaborate with local companies so they can share benefits, and increasing exports, thereby increasing the country's foreign exchange reserves and producing technology ([Vania Suardhana, 2019](#)).

The subsequent policy involved the enactment of Law Number 25 of 2007 regarding Capital Investment. The law of Capital Investment establishes fundamental investment policies, which include: 1) the implementation of non-discrimination principles, ensuring equal treatment for both domestic and foreign investors while considering national interests; 2) legal protections for investors, which guarantee legal certainty, business stability, and security throughout the licensing process and the entirety of investment activities; and 3) opportunities for the development and protection of micro, small, medium, and cooperative enterprises ([Husnulwati & Yanuarsi, 2021](#)).

Subsequently, the Government of Indonesia issued Law Number 1 of 2020 on Job Creation, which was later replaced by Law Number 6 of 2023 (often known as the "Omnibus Law"). The Omnibus Law is one of the Indonesian government's measures to encourage direct investment and make it easier to do business in Indonesia.

This government policy aims to encourage the creation of a national business climate that is conducive to investment in order to strengthen the competitiveness of the national economy and accelerate the increase in investment ([Devi, 2019](#)). Government policy aligns with various factors that influence investors' interest in investing. Minister of Investment/Head of the Investment Coordinating Board (*BKPM*) Bahlil Lahadalia stated that several factors attract investment in Indonesia, including political and legal stability, the eradication of corruption, reforming various investment regulations, and creating a middle class. which reached more than 100 million ([Laoli, 2023](#)).

Regarding Foreign Investment, in general, the condition of the Republic of Indonesia as a recipient of Foreign Capital (Host-Country), has provided guarantees to foreign investors, including legal, political, economic, security and comfort guarantees ([Devi, 2019](#)). This guarantee is evidenced by the acquisition of Foreign Investment

funds from year to year always increasing. In general, investment growth in Indonesia in the last 5 (five) years has increased, including foreign investment. For example the increase from 2019-2023 as shown in Table 1.

**Table 1.** Realization of Investment in 2019-2023

| Year | Domestic Investment IDR | Foreign Investment IDR | Total IDR        | Labor Absorption |
|------|-------------------------|------------------------|------------------|------------------|
| 2019 | 386.5 trillion          | 423.1 trillion         | 809.6 trillion   | 1,034,441 people |
| 2020 | 413.5 trillion          | 412.8 trillion         | 826.3 trillion   | 1,150,000 people |
| 2021 | 447.1 trillion          | 454.0 trillion         | 901.0 trillion   | 912,402 people   |
| 2022 | 552.8 trillion          | 654.4 trillion         | 1,207.2 trillion | 1,305,001 people |
| 2023 | 674.9 trillion          | 744.0 trillion         | 1,418.9 trillion | 1,823,543 people |

Based on table 1, the realization of investment in 2019 was IDR 809.6 trillion, consisting of domestic investment of IDR 386.5 trillion and foreign investment of IDR 423.1 trillion ([Deputy for Monetary and Balance of Payments, 2020](#)). Investment growth in 2020 reached IDR 826.3 trillion, consisting of Domestic Investment of IDR 413 trillion and Foreign Investment of IDR 412.8 trillion, labor absorption reached 1,150,000 people ([Capital Investment Coordinating Board, 2020](#)). compared to 2020, the development of investment realization during 2021 experienced an increase, reaching IDR 901.02 trillion, consisting of Foreign Investment of IDR 454 trillion and Domestic Investment of IDR 447 trillion, labor absorption decreased to only 912,402 people ([Capital Investment Coordinating Board, 2021](#)). In 2022, investment realization reached IDR 1,207.2 trillion, consisting of Domestic Investment of IDR 552.8 trillion and Foreign Investment of IDR 654.4 trillion, labor absorption reached 1,305,001 people ([Ministry of Investment, 2022](#)). In 2023, investment realization reached Rp 1,418.9 trillion consisting of Domestic Investment of Rp 674.9 trillion and Foreign Investment of Rp 744.0 trillion, labor absorption reached 1,823,543 people ([Bahlil Lahadalia, 2023](#)).

This amount of investment and labour absorption can reduce the number of unemployed in Indonesia ([Laoli, 2023](#)). However, labour force figures continue to increase. According to data from the National Statistics Agency, the total workforce based on the National Labor Force Survey (Sakernas) in February 2023 was 146.62 million people, an increase of 2.61 million compared to February 2022. The Labor Force Participation Rate increased by 0.24 percentage points. The working population is 138.63 million people, an increase of 3.02 million from February 2022. The employment opportunities that experienced the largest increase were Providing Accommodation, Food and Drink, and Other Service Activities, each amounting to 0.51 million people ([Statistik, 2023](#)).

The government continues to implement various policies to increase the amount of investment income, to create jobs and to realize the welfare of the Indonesian people. In comparison, Malaysia has implemented an investment policy, which is only sectoral in nature. Malaysia does not have laws or regulations as guidelines that regulate all

Foreign Direct Investment (FDI). Investment policy in Malaysia is regulated by sector-specific regulations issued by the Government, and various institutions are given the authority to handle investment so that it can attract investors.

In Indonesia, the most popular legal policy in 2023 is the issuance of Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation as Law (hereinafter referred to as the Job Creation Law). The government's hope is that the various legal policies regulated in the Job Creation Law can become a strong legal basis, comprehensive, guarantee certainty and make it easier for investors to carry out investment activities.

However, there are several problems that can hamper investment activities. According to Member of Commission VI DPR RI Rudi Hartono Bangun, in capital investment there are 5 (five) problems; The first is licensing. The second problem is related to land. Limited land and high land prices are barriers to investment. Third, regulations. There are often policy differences between the central government, provincial government/governors, district/regent governments and mayors.

Other problems in investment activities in the regions, for example, in the Aceh provincial government, are several obstacles that require government attention, including the low quality of Human Resources (HR) resulting in a low willingness to learn, the practice of illegal levies (extortion), other social issues by certain individuals, problems related to land disputes and other problems and the limited supporting infrastructure for export and import activities (such as road access connecting strategic areas with the city centre is not yet available properly) ([Aceh, 2022](#)).

On the other hand, the processing of business permits is still complicated. Government policies regarding licensing tend to change/overlap. The implementation of Qanun is considered to slow down still the operational activities of business actors, limited raw materials to support company production activities, both in quantity, continuity, price, as well as quality, limited distribution of product marketing and market size (market size) as well as the low purchasing power of the Acehnese people ([Aceh, 2022](#)).

Furthermore, in the Special Region of Yogyakarta, especially in Bantul, there are problems with property investment licensing, due to land availability, in addition to restrictions on land use for the economy and housing from the central government through the Minister of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) Decree No. 1589/SK-HK.02.01/XII/2021 concerning the Determination of a Map of Protected Rice Fields (LSD) which is oriented towards national food security, so that existing rice fields are protected so that they remain sustainable ([Department of Investment, 2023](#)).

It can be said that legal problems in investment basically include licensing issues, land provision and mapping, human resources, overlapping regulations between central and regional governments, limited raw materials, and corrupt practices (illegal levies). Progressive policies are needed, so that capital investment can run well and can meet the investment target in 2024, which is IDR 2,400 trillion, ([Indonesia, 2022](#)), so that the investment goal can be realized.

This study aims to analyze and examine how the investment legal policies after the Omnibus Law on Job Creation are compared with legal policies in Malaysia. By using normative legal research, namely studying and analyzing norms, rules, principles, theories, foundations and objectives of law, ([Mukti Fajar, 2010](#)) which are conceptualized in positive law with primary legal materials in the form of statutory regulations, secondary legal materials in the form of various references, journals and miscellaneous and tertiary legal materials various legal dictionaries, encyclopedias, etc. ([Mahmud, 2005](#)). A statutory and conceptual approach and a comparative approach are used to analyze the problem. The comparative approach specifically compares with Malaysian investment law policies. The legal documents acquired are analyzed through hermeneutic and systematic interpretation. Hermeneutic interpretation is utilized to study the significance of the laws and regulations about investment that are considered legal documents for this research. Systematic interpretation is used to examine the connections between the legal materials concerning investment.

## **II. Investment Legal Policy a Post-Omnibus Law on Job Creation**

In business practice, capital investment, which is a term in statutory regulations, is more popularly known as investment. Bryan A. Garner, provides a definition of investment: "An expenditure to acquire property or assets to produce revenue; a capital outlay ([Garner, 2004](#))." According to Ida Bagus Rahmadi Supanca, investment is an activity carried out by an individual (natural person) or legal entity (juridical person), in an effort to increase and/or maintain the value of their capital, whether in the form of cash (cash money), equipment, immovable assets, intellectual property rights, and expertise ([Salim & Sutrisno, 2008](#)). Basically, investment or investment is investment carried out directly by local investors (domestic investors) which is called domestic investment, or foreign investors (foreign direct investment, FDI) which is called foreign investment, and investment made indirectly by local and foreign parties (foreign indirect investment, FII).

Investment activities are directly regulated in Law Number 25 of 2007 concerning Capital Investment. According to Article 1, number 1 of Law Number 25 of 2007, investment is all forms of investment activity, both by domestic and foreign investors, to conduct business in the territory of the Republic of Indonesia. According to Article 1 number 2 of Law Number 25 of 2007, domestic investment is investing capital to conduct business in the territory of the Republic of Indonesia, which is carried out by domestic investors using domestic capital. While what is meant by foreign investment is the activity of investing capital to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, either using foreign capital entirely or jointly with domestic investors. According to M. Sornarajah, "Foreign investment involves the transfer of tangible or intangible assets from one country to another for their use in that country to generate wealth under the total or partial control of the owner of the assets." ([Salim & Sutrisno, 2008](#)).

Capital Market Law stipulates that the investment activities, both domestic investment and foreign investment, are carried out by: (1) take part in shares at the time

of establishing a limited liability company; (2) buy shares; and (3) carry out other methods in accordance with the provisions of laws and regulations.

The significance of investment activities will certainly have a positive impact on the host country, which is also the goal, which includes, among other things, increasing national economic growth, creating jobs and equitable development. The concept of investment objectives is in line with the Constitution's mandate, that the state has an obligation to realize people's welfare, which is characterized by economic growth ([Harjono, 2012](#)).

The philosophical basis for the enactment of Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) is to carry out the state's duties in creating a prosperous Indonesian society, fair and prosperous based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

This Job Creation Law has been adapted to the constitutional law system, especially regarding the law on forming statutory regulations as regulated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. It is hoped that an omnibus law model such as the Job Creation Law can provide an integral foundation in the field of accelerating investment and opening up job opportunities for the community.

According to the Job Creation Law, what is meant by Job Creation is efforts to create jobs through facilitating, protecting and empowering cooperatives and micro, small and medium enterprises, improving the investment ecosystem and ease of doing business, and Central Government investment and accelerating national strategic projects ([Arliman, 2018](#)). This omnibus law model job creation concept is a legal policy in Indonesian capital investment in order to carry out the constitutional mandate, to realize people's welfare. This policy is supported by the concept of progressive law.

According to progressive legal theory, "Law is not only a building of rules, but also a building of ideas, culture, and ideals ([Rahardjo, 2008](#)). " Progressive law departs from the maxim that: "law is an institution that aims to lead humans to a just, prosperous, and happy life" ([Aulia, 2018](#)). Based on progressive law, there are several investment policies after the Job Creation Law.

### **A. Expanding Job Opportunities**

Based on the national labour force survey (Sakernas) in August 2024, the labour force was 152.11 million people, up 4.40 compared to August 2023. The labour force participation rate increased by 1.15% compared to August 2023. The working population in August 2024 was 144.64 million people, an increase of 4.79 million from August 2023. The business fields that experienced the largest increase were Agriculture, Forestry and Fisheries, with 1.31 million people ([Statistik, 2024](#)). To expand employment, support from the legal aspect is needed.

In line with the views of the ancient Greek philosopher Aristotle, the concept of law was built to provide justice for society. The concept of justice characterizes the welfare of society because a state is formed by giving rights to

society according to its interests ([Sudiyana & Suswoto, 2018](#)). The paradigm built in the Omnibus Law Job Creation aims to create and increase employment opportunities by providing convenience, protection and empowerment for Cooperatives and Small Micro and Medium Enterprises (MSMEs) as well as national industry and trade as an effort to be able to absorb the widest possible Indonesian workforce while still paying attention to balance and progress between regions in national economic unity ([Hermawan, 2019](#)).

Furthermore, the state guarantees that every citizen obtains a job, and receives fair and decent compensation and treatment in employment relations. This policy is in line with Plato's teachings. In his book entitled *Politeia*, Plato describes a model of a just state. The country must be organized according to its parts. Justice arises when each group does what is appropriate to its place and duties. Justice is when a person carries out his work in this life according to his abilities ([Huijbers, 1991](#)).

Progressively, the Job Creation Law can provide the community with justice, benefits, and welfare. This circumstance can be seen from the achievement of investment realization in 2024, which reached IDR 1,714 trillion even though it was still dominated by Foreign Investment (PMA) of IDR 900.2 trillion (52.5%), followed by Domestic Investment of IDR 814 trillion (47.5%). The absorption of Indonesian Migrant Workers (TKI) showed a significant increase, up 34.7% from the previous year, totalling 2,456,130 people ([Moertiningroem, 2025](#)).

## **B. Small Micro and Medium Enterprises Sector Policy**

According to Law Number 20 of 2008 on Micro, Small, and Medium Enterprises, MSME is used for businesses run by individuals, households, or small-sized enterprises. First, businesses with maximum assets of Rp50 million are categorized as micro-enterprises, second, businesses with assets ranging from Rp50 million to Rp500 million are categorized as small enterprises; and third, businesses with assets ranging from Rp500 million to Rp10 billion are categorized as medium-sized enterprises.

According to the latest data from the Ministry of Cooperatives and SMEs, the number of MSMEs in Indonesia in 2024 will reach more than 65 million units. These MSMEs are spread across various sectors, including culinary, fashion, handicrafts, and digital technology ([Waluyo, 2024](#)).

Then based on the 1945 Constitution which built the concept of cooperative economics and mutual cooperation which was implemented into regulations in both the Cooperative and Micro, Small and Medium Enterprises (MSMEs) sectors, this has not been maximized at the practical level. The Omnibus Law on Job Creation is here to provide juridical strengthening of both aspects of alignment and protection for cooperatives and MSMEs ([Kesit Bambang, 2003](#)).

A significant aspect of MSME policy is the existence of an Individual Limited Liability Company (Perseroan) business form. The usual form of

company is a partnership, which can only be founded by a minimum of two or more founders. In establishing an MSME business, according to the Job Creation Law, can be established by a founder, which has the same legal consequences as an ordinary company.

### C. Investment Increase Policy

Job creation strategic policies to improve the investment ecosystem and business activities include the implementation of risk-based business licensing. Business Licensing is the legality given to Business Actors to start and run their business and/or activities. Risk-based business licensing is carried out by determining the risk level and business scale ranking of business activities. Determination of the risk level and business scale rating is obtained based on assessing the level of danger and potential for danger to occur regarding health, safety, environment, and/or resource utilization and management, which is carried out by eliminating licensing obstacles for Foreign Investment ([Wibowo & Djaja, 2013](#)).

The assessment of the level of danger is carried out by taking into account; the type of business activity, business activity criteria, location of business activity, limited resources; and/or volatility risk. Assessment of potential hazards includes; almost impossible to happen, unlikely to happen, likely to happen; or almost certainly will.

Law of the Republic of Indonesia Number 6 of 2023 introduces the assessment of the level of danger and the assessment of the potential for danger to occur, the risk level and business scale ranking of business activities are determined to be; low-risk business activities, medium-risk business activities; or high-risk business activities. Business Licensing for low-risk business activities in the form of providing a business registration number which is the legality of carrying out business activities. The business identification number is proof of the registration/registration of the Business Actor to carry out business activities and as an identity for the Business Actor in carrying out his business.

Business Licensing for medium to low-risk business activities in the form of providing a business registration number and a standard certificate, namely a statement by the Business Actor to meet business standards in order to carry out business activities. Business Licensing for medium to high-risk business activities in the form of providing a business registration number and standard certificate issued by the Central Government or Regional Government in accordance with its authority based on the results of verification of compliance with business activity implementation standards by Business Actors.

Business Licensing for high-risk business activities in the form of granting: a business registration number and a permit, namely approval from the Central Government or Regional Government for the implementation of business activities which must be fulfilled by Business Actors before carrying out their business activities. In the event that high-risk business activities require

compliance with business standards and product standards, the Central Government or Regional Government issues business standard certificates and product standard certificates based on the results of standard compliance verification.

#### **D. Policy on Providing Incentives for Foreign Investment**

Foreign investment policies relate to incentives that increase investor profits, for example tax exemptions, direct subsidies, grants, import duty exemptions, and agreements to purchase products at a certain minimum price. Incentives that reduce risk for investors; Guarantee that there will be no nationalization except with prompt, adequate and effective compensation. Guarantee to be able to use international forums in resolving disputes. For example, the International Center for the Settlement of Investment Disputes, (ICSID), market protection for investors (with quotas or high import duties for competing products) ([Zaidun, 2008](#)).

The policy is based on Law No. 7 of 1994 concerning WTO Ratification, one of the things agreed upon in the GATT-WTO is regarding trade and investment which are called Trade-Related Investment Measures (TRIMs). In the TRIMs it is determined that each country that is a signatory to the TRIMs agreement must not differentiate between domestic capital and foreign capital. This means that the investment laws of each participating country may no longer differentiate between foreign capital and domestic capital. This is the basis for investment regulations in Indonesia that adhere to the principle of equal treatment and do not differentiate between countries of origin. The principles of international trade which have become principles of foreign investment and must be spelled out in investment regulations in the investment recipient country (host country), are known as the Non-Discriminatory Principle ([Sornarajah, 2004](#)).

In the Non Discriminatory principle there are two principles, namely The Most Favored Nation Principle (MFN), which states that countries give the same treatment as that given to third countries. The goodness of this principle in its unconditional form is that it is generally applied regardless of the socio-political and economic structure of the participating countries.

National Treatment Principle, which is about equal treatment by the investment recipient country (host country) towards foreign investors and domestic investors. For example, the same sales tax would be imposed on similar products sold by foreigners and those traded in one's own country ([Vania Suardhana, 2019](#)). This principle is used as a principle in the Indonesian Investment Law, but the regulation of the Investment Law itself still differentiates treatment in determining basic policies by the government. This means that the distinction must be in accordance with the provisions of statutory regulations. The legal policy regarding nationalization requires that in the event of nationalization it must be done by law, there will be compensation according to market prices, and if there is no agreement then the problem will

be resolved through an arbitration institution.

According to Article 8 of Law Number 25 of 2007 regarding Capital Investment, investors are granted the right to execute transfers and repatriations in foreign currency. This encompasses, among other items, capital, profits, bank interest, dividends, and other income, as well as necessary funds for raw and auxiliary materials, semi-finished goods, or finished goods, and the replacement of capital goods to safeguard the viability of investors. Subsequently, supplementary capital is necessary to facilitate investments, service loan repayments, remit royalties or fees, generate income from foreign nationals employed by investment firms, and derive revenue from the sale or liquidation of investments; indemnification for losses, compensation for expropriation; disbursements related to technical assistance, fees for engineering and management services, payments under project contracts, and remuneration for intellectual property rights; as well as proceeds from asset disposals.

#### **E. Investment Business Sector Policy**

In principle, all business fields are open for investment activities, except for business fields that are declared closed to investment or for activities that can only be carried out by the Central Government. Business fields that are declared closed to investment are business fields that can not be operated as in the business fields listed in Article 12 of Law Number 25 of 2007 concerning Capital Investment as amended by Law Number 11 of 2020 concerning Job Creation.

Business fields for activities that can only be carried out by the Central Government are activities that are of a service nature or within the framework of defense and security that are strategic in nature and cannot be carried out or collaborated with other parties. The open business sector consists of: (1) Priority Business Fields; (2) Allocated Business Fields or partnerships with Cooperatives and MSMEs; (3) Business Fields with certain requirements; and (4) Business fields that are not included in letters a, b and c can be pursued by all investors.

The investment policy in the Job Creation Law has amended Article 12 of Law Number 25 of 2007. Business fields that are closed to foreign investors have changed with the addition of content in this article, namely:

1. All business fields are open to investment activities, except business fields that are declared closed to investment or activities that can only be carried out by the Central Government.
2. Business fields closed to investment as intended in paragraph (1) include:
  - a) cultivation and industry of class I narcotics;
  - b) all forms of gambling and/or casino activities;
  - c) catching fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

- d) utilization or taking of coral and utilization or taking of coral from nature which is used for building materials/lime/calcium, aquariums, and souvenirs/jewelry, as well as live coral or dead coral (recent death coral) from nature;
- e) chemical weapons manufacturing industry; And
- f) industrial chemical industry and ozone layer-depleting materials industry.

Policy in the investment business sector is regulated in Law Number 10 of 2021 concerning Job Creation, which was then followed up with Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector in conjunction with Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 regarding the Investment Business Sector.

Based on Article 2 of Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning the Capital Investment Business Sector, the capital investment business sector is:

1. All business fields are open for investment activities, except for business fields:
  - a) which is declared closed for investment; or
  - b) for activities that can only be carried out by the Central Government.
 (1a) The open business sector as intended in paragraph (1) is a commercial business sector.
2. Business fields declared closed for investment as referred to in paragraph (1) letter a are:
  - a) Business fields that cannot be operated as business fields listed in Article 12 of Law Number 25 of 2007 concerning Capital Investment as amended by Law Number 11 of 2020 concerning Job Creation; And
  - b) Alcohol-Containing Liquor Industry (KBLI 11010), Alcohol-Containing Beverage Industry: Wine (KBLI 11020), and Malt-Containing Beverage Industry.

Investment problems in Indonesia are complex and classic, requiring progressive solutions. The government has implemented various policies, especially with the enactment of the Job Creation Law which can be seen as comprehensive. Based on a comparative study with legal policy in Malaysia, Indonesian law is actually more centralized, the central government is more dominant in making policies and regulations, including the investment coordinating institution. However, there are still problems at both the central and regional levels, as stated by Rudi Hartono, Member of the DPR, as well as conditions in the Aceh Regional Government and the Special Region of Yogyakarta.

### **III. Several Progressive Legal Policies**

Several progressive legal policies are needed to overcome classic Indonesian investment problems, which have long hindered the country's economic growth and competitiveness. These issues include bureaucratic red tape, inconsistent regulations across regions, lack of legal certainty for investors, and complicated land acquisition processes. Indonesia can create a more attractive and secure investment climate by introducing reforms that simplify administrative procedures, ensure consistency and transparency in regulation, and strengthen legal protections for investors. Such legal innovations are essential for boosting domestic investment and drawing more foreign direct investment (FDI), which in turn can contribute to job creation, infrastructure development, and overall economic resilience.

#### **A. Harmonization of Regulations and Synchronization of Coordination of Investment Institutions**

The very rapid development of society, in line with current technological developments, demands legal changes, either by creating new ones, developing them or by changing existing laws for the sake of improvement. Changes that generally occur in regulation are due to changing eras, be it the economic era, social morality, or the era of the regime that controls it. Every ruler in a country will definitely implement new policies and changes to existing policies. The purpose of these changes or additions is clearly to improve certain situations in the region ([Hermawan, 2019](#)). The development of investment law is increasingly rapid because it follows developments in society and technology, it is necessary to harmonize and synchronize the coordination of related institutions. The Job Creation Law as an investment legal policy needs to be followed by implementing regulations and technical regulations at investment institutions and local governments.

Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, is a legal policy in the licensing sector that tries to simplify the licensing process. According to Government Regulation 5/2021, based on the level of risk, business licenses are qualified into first; Low-risk business license, in the form of a Business Identification Number (NIB) which is legality for business actors in running a business. second, Low medium risk in the form of NIB and standard certificate made by the business actors themselves, and high medium, in the form of NIB and standard certificate issued by the regional or central government according to their business area, third; High-risk business license in the form of NIB and Business License issued by the Regional or Central government according to their business area.

#### **B. Harmonization of Central and Regional Policies**

Based on the Decree of the Minister of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) No. 1589/SK-HK.02.01/XII/2021 on the Determination of Protected Paddy Fields Map (LSD), there are restrictions on land use for the economy and housing, so that paddy fields can

be maintained. While regional policies (e.g. Bantul) are different, there are some regions that provide green land for housing, this will cause problems in investment ([Dinas Penanaman Modal, 2023](#)).

Investors need legal certainty in carrying out business activities, which of course is guaranteed by statutory regulations. Interpretation of regulations is not always uniform, especially between central and regional officials, which can result in different policies. Harmonization of central and regional policies is important. Policy harmonization can be carried out through coordination between central and regional institutions, between OSS Institutions and ministries, Provincial Governments, and/or district/city governments.

### **C. Provision and Mapping of Investment Land**

According to Member of Commission VI of the House of Representatives Rudi Hartono Bangun, one of the problems of investors is the limited land and high land prices ([Indonesia, 2022](#)). Furthermore, based on Law Number 6 of 2023 concerning Job Creation, it regulates the Land Bank which can be said to be a special agency that manages land and functions to carry out planning, acquisition, procurement, management, utilization and distribution of land.

One of the basic rights in capital investment is the availability of land. In certain areas, land for investment is very limited, both for factory land, warehouse land and other purposes, especially in the property business sector. The government needs to ensure that land needs are met and mapped so that investors can easily access them.

There needs to be certainty regarding land use, whether for agriculture, fisheries, industry, plantations, forestry, and so on. To avoid overlapping in land use, it is necessary to fulfill the legality of the land that will be used for investment. Land certification is something that must be ensured as a form of legality, including land use.

The establishment of the Land Bank Agency is intended to ensure the availability of land in the context of public interest, social interest, national development interest, economic equality, land consolidation and agrarian reform. So that the regulation of the Land Bank is expected to bridge the state's need to meet the need for land such as for the construction of national strategic projects in the form of toll roads, reservoirs, dams or for other infrastructure development in the public interest, including investment ([Tejawati et al., 2023](#)).

### **D. Improving the quality of human resources**

Several obstacles that require government attention, including the low quality of Human Resources (HR) due to the low willingness to learn. There are 3 (three) fundamental problems in employment First; The large number of labor force, which means that the number of people who need work is large, Second; The quality of labor is relatively low, Third; Increased Unemployment due to certain factors ([Iroth, 2017](#)). Human resources are a problem in investment, which the government must pay attention to.

Based on Article 10 paragraph (3) of Law Number 25 of 2007 concerning

Capital Investment, investment companies are obliged to increase the competency of their Indonesian citizen workforce through job training in accordance with the provisions of statutory regulations. This company obligation is carried out after carrying out capital investment activities. The problem faced by investors is that when proposing investment activities, the quality level of Indonesian Human Resources is considered to be still low ([Indonesia, 2022](#)). Ideally, the quality of available Human Resources meets the quality required by investors. To increase competence, it then becomes the obligation of investors.

Quality Assurance of Higher Education stipulates that the Government of the Republic of Indonesia as the host country needs to ensure that the quality of Human Resources is guaranteed. Improving the quality of education must be a priority for the government to determine and realize the quality of human resources. The Independent Learning and Independent Campus policies, as a curriculum that accommodates work internship activities in the industrial world, are important things that must be continued. Internship program for one semester (6 months) which is converted into 20 Semester Credit Units (SKS) for applied science study programs, a policy that can support investment activities, especially in the Human Resources improvement sector.

#### IV. Comparison of Planting Legal Policies in Malaysia

Various ASEAN countries have created legal policies that can attract investors to invest their capital in their countries, comparing the investment policy in Indonesia and the investment policy in Malaysia. According to the Malaysian Ministry of International Trade and Industry/Malaysia Industrial and Trade International (MITI), Foreign Direct Investment (FDI) is an investment in the form of financial instruments, namely equity and share investment funds (including income reinvestment) and debt instruments (inter-company loans, trade credits, advances, etc.) by foreign direct investors in direct investment companies in Malaysia ([Nubli & Sivanantham, 2022b](#)).

Malaysia does not have laws, regulations, or guidelines that regulate all Foreign Direct Investment (FDI). Sector-specific regulations issued by the Government regulate Malaysian FDI. There are minimal restrictions on foreign investment in Malaysia, and foreign investors can hold up to 100% equity in all investments in new projects in certain sectors. Cross-sector FDI engagement is typically governed by regulatory approvals such as licensing, foreign shareholding restrictions, or minimum Malaysian or Bumiputera shareholding requirements in proposed investments.

Foreign investment legal policies in Malaysia regarding sectors open to foreign investors are more careful, involving certain Institutions or Authority Bodies according to the sector or field of investment. And must obtain approval from the relevant Ministry. Several agencies or ministries handling foreign investment issues in Malaysia include the following sections.

##### A. Malaysia Investment Development Authority/MIDA

MIDA was incorporated in 1967 as a statutory body under the Malaysian Industrial Development Authority (MIDA) Act. MIDA's mandate is to harmonize government promotion efforts, optimize resources, and establish

effective structured investment promotion agency (IPA) governance. Investments in the manufacturing and services sectors in Malaysia are supervised by the Malaysian Investment Development Authority (MIDA) as the Main Investment Promotion and Development Agency. Under Malaysian law Investors in the manufacturing sector must register a business entity in Malaysia and obtain a manufacturing license for the project as outlined in the Industrial Coordination Act of 1975. According to Nubli and Sivanantham, among other MIDA policies and requirements, there is a liberal expatriate employment policy ([Nubli & Sivanantham, 2022b](#)).

Equity Investment Policy, foreign investor ownership reaches 100% equity in all investments in new projects, as well as investments in expansion or diversification projects by existing companies. According to MIDA, the equity policy applies to companies that were previously excluded from having a production permit, must now obtain a production permit because their shareholder funds now amount to RM 2.5 million or more, or because the company now has a production permit involving 75 or more full-time employees. Licensed companies that were previously exempted from complying with equity provisions because their shareholder funds were less than RM2.5 million, are now allowed to own up to 100%. MIDA also provides a policy that companies whose participation has been previously approved will not be required to restructure their equity as long as the company continues to comply with the initial terms of the agreement and maintains the initial features of the agreement.

#### **B. Central Bank of Malaysia (Bank Negara Malaysia)**

Similar to the manufacturing sector, investors in the services sector must ensure that they have registered a business entity in Malaysia. Depending on the sub-sector and activities undertaken, certain equity conditions may be applied to obtain the necessary approvals, licenses, permits or registration by regulatory authorities. The regulatory body for the financial and insurance/takaful sub-sector is the Central Bank of Malaysia (Bank Negara Malaysia). The liberalization policy of the Central Bank of Malaysia is as follows: ([Nubli & Sivanantham, 2022b](#)).

1. Existing domestic Islamic banks are given the flexibility to enter into strategic partnerships with foreign players by increasing the foreign equity limit to 70% and will be required to maintain paid-up capital of at least USD 1 billion; and
2. Insurance companies and Sharia insurance operators are given greater flexibility to collaborate with foreign partners by increasing foreign equity by up to 70%. Furthermore, companies whose participation has been pre-approved will not be required to restructure their equity, as long as they continue to comply with the terms of the pre-approval and maintain the original features of the project.

### C. Ministry of Domestic Trade and Consumer Affairs

The Ministry of Domestic Trade and Consumer Affairs regulates distributive trade matters and consists of all linkage activities that channel goods and services from the supply chain to intermediaries for resale or to final buyers. The Ministry of Domestic Trade and Consumer Affairs encourages and recommends that all foreign business actors operating in the field of distributive trade services obtain prior approval from the ministry before starting their operations in Malaysia.

According to the Ministry, all companies with foreign investors involved in distributive trading must comply with the following recommendations; appoint a Bumiputera or Malay director; employ Malaysian personnel at all levels especially for management positions and above; only 15% of the total workforce consists of low-skilled foreign workers; develop and provide transparent standard operating procedures for local suppliers to market their goods; encouraging Bumiputera or Malay participation in the distributive trade sector; employ a minimum of 1% of the total workforce of people with disabilities in large formats; increasing the use of local airports and ports in goods export and import activities; encouraging the utilization of local professional services available in Malaysia; submit audited annual financial reports to the Ministry; support sustainable development initiatives and agendas as set out in the Sustainable Development Goals by the Government of Malaysia; And comply with all local government rules and regulations ([Nubli & Sivanantham, 2022a](#)).

### D. PetroliaM Nasional Berhad (PETRONAS)

PETRONAS is the authority that manages the oil and gas sector in Malaysia. This agency permits foreign investors to collaborate with local companies to improve the oil and gas sector. The requirements for obtaining permission from PETRONAS include, among other things, that a foreign company must appoint a Malaysian company to act as its agent, form a Malaysian joint venture with a Malaysian entity, or open a local branch of the company in Malaysia. Suppose a foreign investor forms a joint venture or opens a local branch. In that case, they must fulfil the requirements in the General Guidelines and apply for a permit and registration through the PETRONAS License Management System ([Nubli & Sivanantham, 2022a](#)). A comparison of investment policies in Indonesia and Malaysia can be seen in Table 2.

**Table 2.** Comparison of Investment Policies Indonesia and Malaysia

| <b>Police aspect</b>               | <b>Indonesia</b>  | <b>Malaysia</b>   |
|------------------------------------|---|---|
| Regulations                        | Centralized Regulations in the form of Laws   | Sectoral, according to the investment business sector   |
| The handling agency                | (1) Investment Coordinating Board and Ministry of Investment, for Direct Investment<br>(2) Capital Market Supervisory Agency (BAPEPAM) for indirect investment                                      | (1) Malaysia Industrial and Trade International (MITI).<br>(2) Malaysia Investment Development Authority.<br>(3) Central Bank of Malaysia<br>(4) Ministry of Domestic Trade and Consumer Affairs<br>(5) Petroliam Nasional Berhad |
| Licensing Procedures               | All business fields through the Online Single Submit (OSS) Institution  | Carried out sectorally according to the business field. for example mining, there must be approval from PETRONAS.   |
| Foreign Ownership Limits           | For foreign investment in the Financial Sector, it is 99%, for certain business fields it can be 100%.  | Capital is 100% Equity  |
| Capital Investment Business Sector | all business fields are open for investment activities, except for business fields that are declared closed to investment or for activities that can only be carried out by the Central Government. | All business fields are open for investment, with conditions determined by regulations and the handling institution.  |

## V. Conclusion

In conclusion, the investment legal strategy is implemented in accordance with international legal interests, as outlined in the World Trade Organization Agreement, and national interests as stipulated in the 1945 Constitution, which is crucial for achieving societal welfare. The fundamental policies of the Job Creation Law encompass risk-based licensing, expediting investment, maximizing job prospects, offering comprehensive facilities, expanding business sectors, and enforcing the principle of non-discrimination. Investment policies involve the harmonization of regulations, synchronization of investment institutions, alignment of central and regional policies, provision and mapping of investment land, and enhancement of human resource quality to achieve the objectives of Indonesian investment. In contrast

to Malaysia's investment legal policies, Indonesia's framework is predominantly centralized, as regional policies are largely derived from central-level legislation, including both statutes and governmental directives.

It is essential to establish equilibrium and harmonization of investment policies between the central government and regional authorities, alongside integrating domestic and foreign investment strategies. Additionally, policies must be formulated to ensure equitable distribution of investments, preventing centralization in Java and promoting investment across the entire archipelago. According to progressive law, the primary tenet of investment law is to ensure justice, benefit, and the welfare of the community as broadly as possible while attaining equitable development, as stipulated in the constitution and Job Creation Law.

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