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Foreign Investment Restriction Policy in Indonesia's Investment Priority List: A Legal Perspective

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Abstract

Foreign direct investment (FDI) contributes to economic development; however, investment liberalization raises concerns regarding national sovereignty, the protection of domestic enterprises, and distributive justice. Indonesia's Positive Investment List (Daftar Positif Investasi, DPI) reflects this tension by promoting investment openness while maintaining selective restrictions on foreign participation. This study examined the legal relationship between foreign investment restrictions and investment liberalization and explored how national economic interests could be balanced with foreign capital participation. A descriptive-analytical normative juridical research method was employed, incorporating statutory and conceptual approaches. The legal materials examined included the 1945 Constitution of the Republic of Indonesia, Law No. 25 of 2007 concerning Investment, Law No. 6 of 2023, and Presidential Regulation No. 10 of 2021 concerning Investment Business Fields, as amended by Presidential Regulation No. 49 of 2021. The findings indicated that investment openness and foreign investment restrictions could coexist within a regulatory framework based on general openness and legally established exceptions, while transparency in investment-related information remained a distinct statutory obligation. Foreign ownership limitations and measures protecting domestic enterprises served as regulatory instruments for pursuing national economic objectives. The analysis further examined foreign equity ownership limits, investment-related performance requirements, and downstream industrial development through the concept of managed investment openness, emphasizing legal certainty, regulatory authority, and substantive justice. The study concluded that selective foreign investment restrictions could complement investment liberalization when supported by valid statutory authority and aligned with constitutional objectives concerning public welfare and national economic development. However, their legal justification required coherent statutory interpretation, regulatory consistency, and consideration of Indonesia's applicable international investment and trade obligations.

INTRODUCTION

Over the past several decades, economic liberalization has significantly influenced the regulatory environment governing foreign investment. Global economic integration has encouraged countries to open their domestic markets to facilitate foreign direct investment (FDI) inflows. FDI has become an important contributor to economic growth,

particularly in developing countries, where increasing investment inflows are frequently associated with broader economic development (Khun, 2018). The International Institute for Sustainable Development (IISD) has recognized the role of FDI in supporting development and addressing resource constraints, particularly in the context of expanding international investment flows since the 1980s. FDI can contribute to economic growth through employment creation, technology transfer, and potential poverty reduction in host countries (Goh et al., 2024). Beyond its financial contributions, FDI may provide long-term strategic benefits by strengthening industrial capacity, managerial capabilities, and national economic competitiveness. Foreign investors may introduce advanced technologies, management practices, and corporate governance standards that support productivity improvements and domestic enterprise development. Dunning's (1993) ownership–location–internalization (OLI) paradigm provides a theoretical framework for understanding the determinants of multinational enterprises' foreign investment decisions and the advantages associated with international production. In the context of investment law, Salim and Sutrisno (2020) emphasized the importance of balancing host countries' economic development objectives with investors' interests. Responding to international competitiveness pressures, Indonesia undertook substantial investment regulatory reforms through the Job Creation legal framework, subsequently established under Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. The restructuring of investment business fields was implemented through Presidential Regulation No. 10 of 2021 concerning Investment Business Fields, as amended by Presidential Regulation No. 49 of 2021, marking a transition from the Negative Investment List (Daftar Negatif Investasi, DNI) toward the Positive Investment List (Daftar Positif Investasi, DPI) framework.

The transition from the Negative Investment List to the Positive Investment List reflected a regulatory shift toward broader investment openness while maintaining legally established limitations on particular business activities. Under this framework, business fields were generally open to investment unless designated as closed or subject to specific conditions under applicable legislation. However, general investment openness did not imply unrestricted foreign ownership across all sectors. Indonesian investment regulations continued to establish differentiated market-entry requirements, including restrictions on certain prohibited activities (Jened, 2021; Sembiring, 2010), foreign equity ownership limitations, and business fields reserved for or requiring partnerships with cooperatives and micro, small, and medium enterprises (MSMEs). Activities involving narcotics prohibited under applicable law and the manufacture of chemical weapons, for example, were subject to specific statutory prohibitions, while certain sectors, including maritime transportation and broadcasting, were governed by foreign ownership limitations under relevant sectoral regulations (Darsita, 2026; Visa Indonesia, 2026). These provisions demonstrated that Indonesia's investment framework combined general market openness with selective regulatory restrictions intended to address sector-specific considerations and national economic priorities.

From an economic law perspective, foreign investment restrictions have generated differing theoretical and doctrinal interpretations regarding their compatibility with investment liberalization. Market-oriented perspectives generally emphasize that excessive foreign ownership restrictions may reduce competition, discourage investment, and limit the efficient allocation of international capital (Dolzer & Schreuer, 2012; Pakkanna, 2021). However, such restrictions do not automatically constitute unlawful discrimination, as their legality depends on the applicable domestic legal framework and Indonesia's international obligations. Conversely, constitutional and national economic perspectives regard certain restrictions as potential instruments for protecting strategic economic interests, maintaining regulatory sovereignty, and supporting domestic enterprises (Rajagukguk, 2018; Ramlan, 2022). These perspectives highlight the need to balance investment attraction with the protection of national economic interests. Without appropriate regulatory safeguards, substantial disparities in capital, technology, and market access between multinational corporations and smaller domestic enterprises may create competitive pressures that limit local business participation. Nevertheless, the legitimacy and effectiveness of protective measures must be evaluated according to their legal basis, regulatory objectives, and consistency with applicable legal obligations rather than presumed solely from their stated protective purposes.

Existing discussions of Indonesian investment regulation have frequently examined the economic implications of investment liberalization, foreign investment attractiveness, and regulatory reforms intended to improve the business environment (Andreadi & Anggita, 2021; Hakim et al., 2024). Other studies have considered the consequences of investment restrictions for market access, competition, and domestic enterprise protection. However, the juridical relationship between general investment openness and selective restrictions under Indonesia's post-2021 investment framework requires further systematic examination. In particular, greater analytical attention is needed to distinguish the statutory principle of transparency from the legal openness of investment business fields and to assess how foreign ownership restrictions can operate consistently within a unified regulatory framework. This distinction is essential for determining whether investment restrictions constitute legally authorized exceptions to general openness rather than inherent contradictions within investment law.

To address investment competitiveness challenges, Indonesia restructured its investment business field regulations through Presidential Regulation No. 10 of 2021, subsequently amended by Presidential Regulation No. 49 of 2021. Introduced under the original Job Creation framework, these regulations must be interpreted alongside Law No. 25 of 2007 concerning Investment, as amended through the legal framework established by Law No. 6 of 2023. Commonly referred to as the Positive Investment List, this regulatory system distinguishes priority business fields, business fields allocated to or requiring partnerships with cooperatives and MSMEs, business fields subject to specified requirements or limitations, and other business fields open to investment (ET-Consultant, 2025; Santoso, 2021). Accordingly, priority business fields constitute one category within the broader investment framework rather than representing

unrestricted foreign market access. This classification establishes differentiated investment conditions while preserving a general policy orientation toward investment openness.

The central legal issue concerns the relationship between these differentiated investment conditions, statutory openness, and constitutional economic objectives. An important distinction arises from Article 3(1)(b) of Law No. 25 of 2007 concerning Investment, which establishes the principle of openness in investment administration. As clarified in the statutory elucidation, this principle concerns public access to accurate, honest, and nondiscriminatory information regarding investment activities rather than an unconditional right to unrestricted foreign market access. Consequently, legal analysis must distinguish informational transparency under Article 3 from the regulation of open and closed business fields under Article 12 and the specific foreign ownership conditions established through implementing and sectoral regulations. Within the constitutional framework of Article 33 of the 1945 Constitution of the Republic of Indonesia, the relevant question is whether investment restrictions possess sufficient legal authority and operate consistently with national economic objectives. Their legitimacy therefore requires systematic legal examination rather than an assumption that all measures intended to protect domestic interests are necessarily justified.

Previous research has provided important insights into the developmental implications of FDI and the economic consequences of investment regulation. Blalock and Gertler (2008), using Indonesian manufacturing data, identified technology transfer to domestic suppliers and associated productivity and welfare improvements, highlighting the importance of economic linkages between foreign investors and local enterprises. More directly, Tatiara and Kudo (2021) examined successive versions of Indonesia's Negative Investment List using business-field-level planned investment data covering 2005–2018. Their analysis suggested that the introduction of the list could encourage both foreign and domestic investment, identifying parallel crowding-in responses while emphasizing the importance of detailed and transparent regulatory information. These findings indicated that investment restrictions and investment attraction should not necessarily be understood as mutually exclusive policy objectives. However, neither study directly established the juridical compatibility of specific foreign investment restrictions within Indonesia's post-2021 regulatory framework.

Complementing these findings, Hutahayan et al. (2024) analyzed survey responses from 270 investors using partial least squares structural equation modeling (PLS-SEM) and identified a positive association between legal certainty and investment decisions. Although their research focused on participants in Indonesia's securities market rather than foreign investors entering regulated business sectors, the findings provided relevant evidence concerning the importance of predictable legal institutions for investment decision-making. Similarly, the Organisation for Economic Co-operation and Development (OECD), through its OECD Investment Policy Reviews: Indonesia 2020, examined discriminatory investment barriers and recommended regulatory reforms to strengthen Indonesia's investment environment (OECD, 2020). These studies collectively emphasized the importance of investment-related economic linkages, regulatory

predictability, and transparent market-entry conditions. Nevertheless, their findings did not directly resolve the normative legal relationship between foreign investment restrictions and statutory openness under the Positive Investment List.

Taken together, the existing literature provides a foundation for understanding the economic benefits of FDI, the investment responses associated with regulatory restrictions, and the importance of legal certainty. However, a specific analytical gap remains concerning the relationship among informational transparency, business-field openness, and legally authorized investment restrictions within Indonesia's investment legislation. Addressing this gap requires a systematic interpretation of statutory provisions, implementing regulations, and constitutional economic principles. Such an approach can clarify whether selective restrictions are legally coherent components of an investment framework that generally promotes openness while retaining regulatory authority to protect legitimate national interests.

Addressing this legal issue is important because an imprecise interpretation of investment openness may create inconsistent expectations regarding foreign ownership rights and the scope of governmental regulatory authority. Equating statutory transparency with unrestricted market access could obscure legally established investment conditions, while invoking national sovereignty without examining the relevant statutory authority could undermine legal certainty. The novelty of this study lies in integrating these distinct legal dimensions within a normative analytical framework rather than treating investment liberalization and national economic protection as inherently opposing objectives. Specifically, the study connected the general openness of investment business fields with legally established exceptions, transparency requirements, and constitutional objectives supporting domestic enterprise protection. The concept of managed openness was employed to explain this regulatory relationship without assuming that every investment restriction was proportionate, legally justified, or economically effective.

Accordingly, this study aimed to clarify the juridical relationship among foreign investment restrictions, statutory openness, and the protection of national economic interests within Indonesia's investment business field framework. Two research questions guided the analysis: How should the relationship between investment restrictions and openness be interpreted under the Investment Law in conjunction with the Job Creation legal framework? How can the Positive Investment List accommodate an appropriate balance between foreign investment participation and national economic objectives? The specific objectives were to identify the legal bases and scope of relevant investment restrictions, distinguish informational transparency from foreign market access, and examine the legal coherence of foreign equity ownership limitations and domestic enterprise safeguards. Consistent with its normative juridical design, the study employed statutory and conceptual approaches rather than empirical methods intended to measure the effects of regulatory reforms on FDI inflows.

The anticipated theoretical contribution of this research was a more precise understanding of managed openness within Indonesian investment law, incorporating legal certainty, governmental regulatory authority, and substantive economic justice.

From a practical perspective, the study sought to provide an interpretive framework for assessing whether foreign investment conditions were supported by appropriate legal authority, communicated transparently, and consistent with their stated public-interest objectives. The findings were expected to assist policymakers in developing and reviewing legally coherent investment restrictions while providing investors with greater clarity regarding market-entry requirements and regulatory limitations. Cooperatives and MSMEs could also benefit from clearer interpretations of regulatory safeguards and partnership arrangements intended to support their participation in economic activities. Ultimately, the research sought to contribute to the development of a coherent investment regulatory framework that accommodated foreign capital participation while advancing the public welfare and national economic objectives reflected in Article 33 of the 1945 Constitution of the Republic of Indonesia. These contributions represented the intended implications of the normative analysis rather than empirically demonstrated economic outcomes.

METHOD

This study employed a descriptive-analytical normative legal research method to examine the relationship between the principle of investment openness and foreign investment restrictions within Indonesia's legal framework. The analysis focused on relevant statutory provisions, legal principles, and regulatory instruments, interpreted through concepts drawn from international economic law and constitutional law.

The research applied statutory and conceptual approaches. The statutory approach involved examining the 1945 Constitution of the Republic of Indonesia, Law No. 25 of 2007 concerning Investment, Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, and Presidential Regulation No. 10 of 2021 concerning Investment Business Fields, as amended by Presidential Regulation No. 49 of 2021 (Republik Indonesia, 2007, 2023). The conceptual approach involved analyzing relevant legal doctrines and theoretical perspectives, particularly state sovereignty, the right to regulate, affirmative action, and distributive justice, to assess the legal coherence of foreign investment restrictions and their relationship with national economic interests.

RESULTS AND DISCUSSION

Analysis of Juridical Synchronization: Construction of Rule and Exception in the Openness Principle and Investment Restrictions

The implementation of the Priority Investment List (DPI) under Presidential Regulation No. 10 of 2021 on Investment Business Fields as amended by Presidential Regulation No. 49 of 2021 is frequently misunderstood as absolute liberalization that negates the regulatory role of the state. Prior to 2021, Indonesia employed a Negative Investment List, a document specifying sectors closed or restricted to investors. The assumption was that anything omitted from the list was permitted. In practice, however, that list was lengthy, confusing, and deterred investor interest, making Indonesia appear closed when it was not.

The Positive Investment List reverses that logic. Based on Presidential Regulation No. 10 of 2021 and rooted in Omnibus Law No. 11 of 2020, the new baseline rule states that "all commercial business fields are open to foreign investment, unless specifically stated otherwise by regulation." In Indonesian, this regulation is officially designated as the Daftar Positif Investasi. In execution, the Investment Coordinating Board (BKPM), now known as the Ministry of Investment, serves as the primary agency coordinating investment policy and facilitating investors, including through the integrated Online Single Submission (OSS) system (Santoso, 2021; Visa Indonesia, 2026). The transformation from the Negative Investment List (DNI) to the Priority Investment List (DPI) is also a strategic move to clarify which sectors are open and prioritized for foreign investors. From a dogmatic legal standpoint, maintaining restrictions on foreign capital amid aggressive promotion of openness is often perceived as regulatory inconsistency. However, when examined through systematic legal interpretation, the relationship between investment openness and legal restrictions resides within a harmonious, unified legal logic constructed through the Rule and Exception doctrine. The foundation of this normative harmony lies in Article 3 Paragraph (1) of Law No. 25 of 2007 on Investment (Law No. 25/2007). Article 3 Paragraph (1) Letter b explicitly mandates the Openness Principle as a pillar of investment:

Article 3 (1)
Investment shall be organized based on the principles of:
(1) legal certainty;
(2) openness;
(3) accountability;
(4) equal treatment without regard to country of origin;
(5) togetherness;
(6) fair efficiency;
(7) sustainability;
(8) environmental awareness;
(9) independence;
(10) balance of progress and national economic unity.

This mandates that the government provide clear, transparent, and accessible information regarding all investment activities. Nevertheless, this Openness Principle does not stand in absolute isolation. Within the same article, lawmakers conditioned its application to run parallel with Letter i (Independence Principle) and Letter j (Principle of Balance of Progress and National Economic Unity). Placing these principles within a single statutory article demonstrates juridically that openness is subject to functional limits: openness to foreign capital must not compromise domestic economic independence and must yield balanced economic progress. This aligns with the view that integrating principles into national investment law aims to establish regulatory safeguards preventing liberalization from eroding economic sovereignty (Jened, 2021; Rajagukguk, 2018). This dogmatic construction is reinforced by the amendment to Article 12 of Law No. 25/2007 as regulated under the Investment Cluster of the Job

Creation Law. Article 12 Paragraph (1) states:"All business fields are open to investment activities, except business fields declared closed to investment or activities that can only be carried out by the Central Government."

The sentence structure of Article 12 Paragraph (1) adopts universal normative legal reasoning, dividing the norm into two hierarchical tiers:

General Rule: Indicated by the clause "All business fields are open to investment activities," providing legal certainty that the baseline investment regime in Indonesia is open to stimulate growth.

The Legal Exception: Indicated by the clause "except business fields declared closed...". In economic legal reasoning, the existence of an exception clause does not invalidate or contradict the general rule. Instead, it defines clear boundaries where the general rule ceases to apply to protect more vital interests. Consequently, restrictions on foreign capital, whether via maximum equity caps or mandatory partnership obligations, constitute legitimate legal exceptions deliberately integrated by statute to filter the adverse impacts of global market liberalization. Furthermore, foreign investment restrictions obtain moral and sociological legitimacy through Article 13 Paragraph (1) of Law No. 25/2007:

"The Government is obliged to designate business fields reserved for micro, small, medium enterprises, and cooperatives, as well as business fields open to large enterprises subject to compulsory cooperation with micro, small, medium enterprises, and cooperatives"

In constitutional law, this restriction is classified as Affirmative Action. Based on Rawls's (1971) theory of distributive justice, treating unequal subjects differently (in this case, giant transnational corporations versus small-capital local MSMEs) is legitimate and just to realize substantive justice. Without restrictions such as special allocations and mandatory partnerships under Article 13, pure openness would trigger economic cannibalism, enabling foreign capital to eliminate small domestic actors.Thus, from national investment law, foreign investment restrictions do not conflict with the principle of investment openness. Both serve as complementary legal instruments: openness acts as an engine driving efficiency and market growth, while restrictions function as a juridical control mechanism ensuring that economic expansion does not jeopardize state sovereignty or social justice goals.

Construction of Proportional Balance Between National Interests and Foreign Direct Investment Inflows

The implementation of the Managed Openness mechanism represents an effort to synchronize the protection of national interests with the attraction of Foreign Direct Investment (FDI) within the Positive Investment List (DPI) framework requires flexible yet robust legal instruments. Sornarajah (2021), in his theory on state sovereignty over foreign capital, asserts that every sovereign nation possesses an inherent right to restrict or control foreign property for public interest and national security. In the philosophy of economic law, this clash of interests is managed via managed openness. This concept rejects extreme dualism—either radical economic nationalism/isolationism or pure liberal capitalism/unregulated free markets. The implementation of managed openness

in Indonesia aligns with Kusumaatmadja's (2006) Development Law Theory, which posits that law functions not merely as an instrument for legal certainty or social order, but as a tool of social engineering capable of directing global capital flows to achieve national development goals. Furthermore, this balancing policy reflects a utilitarian approach, wherein foreign investment restrictions are morally and legally justified if they yield the greatest utility and happiness for the greatest number of people (Bentham, 1789).

In international law, state sovereignty provides legal backing for the doctrine of the Right to Regulate. This doctrine affirms that every sovereign state holds inherent authority to control economic activities within its jurisdiction to safeguard public order, national security, and environmental protection. International arbitration disputes, such as those before the ICSID, repeatedly affirm that host state foreign investment restrictions are legally valid under international law provided they satisfy the Proportionality Test (Dolzer & Schreuer, 2012). In this regard, the Central Government may conduct evaluations on the implementation of the positive investment list so that corporate operations and the investment environment can flourish, as well as to accelerate job creation. The minister responsible for coordinating economic matters is in charge of the aforementioned evaluation. Through this testing standard, restrictions within Indonesia's Priority Investment List (DPI) are constructed proportionally through three main regulatory control instruments:

Maximum Equity Caps: Restricting foreign equity ownership percentage

The current of economic globalization positions Foreign Direct Investment (FDI) as a crucial instrument in accelerating national development, economic growth, and technology transfer for developing countries, including Indonesia. The presence of foreign investors within the domestic economic ecosystem does not exist in a legal vacuum; rather, it is strictly regulated through national legal instruments and international conventions. Both local and international investors participate in Indonesia's investment landscape. Both domestic and international law regulate foreign participation in Indonesia (Salim & Sutrisno, 2020; Sembiring, 2010). The term "foreign investment" is defined in Article 3 of Law No. 25 of 2007 as any investment activity carried out in Indonesia by a foreign entity, whether with the use of solely foreign funds or in conjunction with local investors. Investors from other countries, whether people, companies, or governments, are required to follow Indonesian legislation while making investments in the country. Ideally, these investments yield economic benefits, employment opportunities, the development of underdeveloped regions, and technology transfer.

Philosophically and juridically, the policy restricting foreign share ownership in Indonesia is deeply rooted in the Constitutional Mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD 1945). The foundational concept of "Controlled by the State" grants legitimacy to the government to conduct regulatory interventions, administration, arrangements, and supervision over strategic economic sectors. Under the international investment law doctrine developed by Sornarajah (2010, 2021), a host country possesses absolute sovereignty to determine the conditions for the

admission and establishment of foreign capital. The state reserves the right to impose sectoral restrictions to protect national security, financial stability, and social justice for its citizens. Limiting the percentage of foreign capital ownership—such as a maximum limit of 49% or 67% in certain sub-sectors—is not merely a conventional form of anti-foreign capital protectionism, but rather a legal-political instrument designed to mitigate the risk of foreign economic domination over vital domestic sectors.

Maximum caps of 49% or 67% in specific sub-sectors) is not merely conventional protectionism. Under the constitutional framework of Article 33 of the 1945 Constitution and corresponding Constitutional Court decisions on the concept of "Controlled by the State," certain sectors remain restricted or closed to foreign investors (Darsita, 2026; Fahamsyah, 2014). Indonesia participates in international trade through Bilateral Investment Treaties, which refer to the system initiated by the World Trade Organization (WTO), including the TRIMs (Agreement on Trade-Related Investment Measures) rules. Indonesia has ratified several TRIMs regulations. In order for Indonesia to ratify these TRIMs requirements, its investment policies must follow the principles of non-discrimination in international commerce. These principles include:

National Treatment Principle: The obligation for the host country to treat foreign investors equally and no less favorably than the treatment accorded to domestic investors in similar situations.

Most-Favoured-Nation (MFN) Treatment Principle: The obligation to provide equal and non-discriminatory treatment to all WTO member trading partners.

However, amidst the obligation to apply these non-discrimination principles, international law continues to recognize exceptions or prudential measures to protect essential public interests, public order, and national security. Therefore, the implementation of equity caps in Indonesia remains valid under international law, provided they are formulated transparently, proportionally, and do not violate the schedule of specific commitments registered by the Indonesian government at the WTO forum. In exercising host-country control over foreign direct investment in Indonesia, according to Sornarajah (2021), the state may enact national regulations to govern investment activities. In Indonesia, when exercising state control (as a host country) over foreign investment, according to Sornarajah (2021), the state may establish national regulations to govern investments within its territory.

Presidential Regulation No. 10 of 2021on Investment Business Fields regulates the list of business fields open and closed to foreign investment, including stock ownership limits for foreign investors in certain business sectors. For example, sectors such as seaports, airport construction and operation, power generation and distribution, as well as certain medical services have strict foreign ownership limits. These restrictions aim to protect national interests and strategic state sectors. After the Job Creation Law (Undang-Undang Cipta Kerja) was passed, Presidential Regulation Number 10 of 2021 regarding Investment Business Fields was issued, and then Presidential Regulation No. 49 of 2021 was revised, a great deal of change occurred in the operational basis of investment in Indonesia. The Positive Investment List is the name given to this initiative. In theory, under this Positive List system, all sectors of the economy are welcome to

international and domestic investors, with the exception of those that have been specifically designated as off-limits or those whose operations are reserved for the federal government. Nevertheless, this openness is still controlled through several investment classifications, which include business fields open under specific conditions, encompassing foreign share ownership restrictions (equity caps). Certain sectors, such as critical transportation infrastructure (ports and airports), public electricity production and distribution, strategic telecommunications sectors, and specific medical or banking services, remain subject to strict limits on the maximum percentage of foreign share ownership (Priyambodo, 2023). In his analysis of the legal politics of foreign investment, Ramlan (2022) emphasizes that this share ownership restriction policy serves as a protective shield for national economic sovereignty. The state ensures that the holders of voting rights and strategic corporate decision-makers in sectors affecting the livelihood of the masses remain in the hands of domestic entities or citizens. The state ensures that the controlling right over strategic corporate decision-making in sectors affecting the livelihoods of the public remains in the hands of domestic entities. This system creates a balance: foreign investors can still enjoy the commercial benefits of Indonesia's economy, while sovereignty over corporate decision-making and vital policies is not lost to foreign parties.

Performance Requirements

The application of Performance Requirements within Indonesia's investment legal regime serves as a measured protection instrument to ensure that the influx of foreign capital provides tangible developmental dividends for the domestic economy. A proportional balance is achieved by imposing conditions for tangible FDI contributions as compensation for the market access granted by Indonesia. Globally, the obligation to implement Performance Requirements often clashes with the legal architecture of the World Trade Organization (WTO), specifically the Agreement on Trade-Related Investment Measures (TRIMs). The TRIMs Agreement strictly prohibits member states from implementing policies that distort free trade (World Trade Organization, 1994). To navigate this, Indonesia employs a regulatory calibration approach by utilizing the remaining policy space through legitimate national instruments.

Juridically, this implementation is reflected in the regulations concerning the mandatory absorption of local labor, strict limitations on the use of Foreign Workers exclusively for specific specialized positions, and the mandatory transfer of technology and utilization of domestic resources. Indonesian labor and immigration laws adopt a selective policy principle toward Foreign Workers. TKA access is only granted for specific managerial positions or technical roles that cannot yet be filled by local human resources. By law, companies are obligated to appoint Indonesian citizens as counterpart workers for every foreign worker employed (Aspan et al., 2020).

From the perspective of the sociology of law, these regulations act as a tool of social engineering designed to transform unskilled labor into a skilled workforce. The state's failure to oversee this obligation would perpetuate the Dependency Theory, wherein developing nations remain perpetually reliant on technology from core countries (Singer, 1950). Through the "law as a tool of social engineering" approach, the

law compels FDI to act as an enabler for upgrading national human resources and technological capacity, thereby preventing the phenomenon of an enclave economy—a condition where foreign companies exploit local resources but remain isolated from the domestic economy, generating no multiplier effect for the surrounding communities, and resulting in capital flight, where foreign investors repatriate all or most of their net profits to their home country without making significant reinvestments in the local economy. Structural efforts to break the isolation of the enclave economy are realized through the mandatory fulfillment of Local Content Requirements (Domestic Component Level or TKDN) (Hardenta & Wibowo, 2023; Wibowo, 2018). Indonesian positive law requires Foreign Direct Investment in strategic sectors to absorb raw materials, components, and services from local suppliers at a specified percentage. This policy creates backward linkages that force the integration of multinational companies with the regional Micro, Small, and Medium Enterprises (MSME) ecosystem. Without TKDN regulatory intervention, foreign investors tend to import their entire supply chain from their home countries for cost efficiency, which ultimately stifles the embryos of local supporting industries and nullifies the multiplier effect.

Regulatory-Based Industrial Downstreaming Policies (Export Bans)

The downstreaming policy constitutes the most radical yet proportional legal manifestation in balancing national interests and Foreign Direct Investment (FDI) in Indonesia today. The Government prohibits raw commodity exports (such as nickel ore and bauxite) while simultaneously opening the doors wide for foreign investment in the domestic processing and refining (smelter) industrial sectors. Indonesia's policy of banning the export of raw minerals has faced fierce opposition from importing countries, particularly the European Union (EU). This triggered an international trade legal dispute at the WTO forum in the case of Indonesia – Measures Relating to Raw Materials. The EU argued that Indonesia's measure banning nickel ore exports violated Article XI:1 of the General Agreement on Tariffs and Trade (GATT) 1994, which prohibits the application of quantitative restrictions or bans on exports and imports among WTO members (Iswandi, 2025). In its legal argumentation, Indonesia emphasized that the downstreaming policy is not an arbitrary form of protectionism, but rather a legitimate measure under the general exceptions clause of Article XX of GATT 1994, specifically:

Article XX(g) of GATT 1994:

Exceptions relating to the conservation of exhaustible natural resources, provided such measures are implemented in conjunction with restrictions on domestic production or consumption.

Article XI:2(a) of GATT 1994:

Temporary exceptions applied to prevent or relieve critical shortages of foodstuffs or other essential products for the exporting country.

Although the initial WTO Panel report ruled in favor of the EU, stating that Indonesia's export ban did not meet the qualifications of Article XI:2(a) and Article XX(g) of GATT 1994, Indonesia took legal steps to file an appeal. Indonesia's consistent action demonstrates the state's firm position in defending its regulatory autonomy to execute national constitutional mandates amidst the pressures of the global free trade regime.

The downstreaming policy via the prohibition of raw material exports is not merely a pragmatic economic maneuver; it is an assertion of state sovereignty over natural resources (SDA), which is imperatively mandated by Article 33 paragraph (3) of the 1945 Constitution (Widyaningrum & Hamidi, 2024). This provision underscores that the earth, water, and the natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people. The concept of "controlled by the state" (hak menguasai negara) provides legal legitimacy for the government to regulate, administer, and supervise the management of natural resources, including critical minerals such as nickel, bauxite, and copper (Hayati, 2019). In the framework of mining law, the transition from Law Number 11 of 1967 to Law Number 4 of 2009 (which was later amended by Law No. 3 of 2020) marked a paradigm shift from an extractive-exportive model to domestic industrialization (Hikam, 2024; Suryani, 2024). The obligation for domestic processing and refining is a legal instrument designed to halt the exploitation of natural wealth, which for decades has primarily benefited advanced industrialized nations. By compelling FDI to build refining facilities (smelters) within Indonesia's jurisdiction, the state restores the dignity of its economic constitution: ensuring that the value added from unrenewable natural resources remains rooted and circulates within the national economy.

From an investment law perspective, this policy distributes economic justice, wherein foreign investors maintain supply certainty for their industrial raw materials, but the production process must take place within Indonesian jurisdiction. This ensures that economic added value, employment expansion, and tax revenues continue to be enjoyed by the host state holding jurisdiction. Dogmatically, restrictions on foreign investment in Indonesia's Investment Priority List (DPI) policy have been constructed as a proportional screening instrument. Law no longer functions as a barrier against Foreign Direct Investment (FDI) inflows; instead, it serves as a selective regulatory gateway. By adopting the managed openness mechanism, post-Job Creation Law investment law successfully formulates a dynamic point of balance: attracting as much foreign capital as possible for macro-market efficiency and growth, while simultaneously safeguarding the essence of national sovereignty to realize the greatest prosperity of the people with substantive social justice. Foreign direct investment in Indonesia is expected not only to enhance national economic development; it is also required for the Indonesian economy to penetrate international markets amid today's rapid global economic expansion. Foreign direct investment can facilitate the enhancement of labor skills, both technically and managerially, which can be achieved through technology transfer mechanisms (Andreadi & Anggita, 2021; Yasa & Santra, 2023).

CONCLUSION

Foreign investment restrictions in Indonesia were found to be legally compatible with the principle of investment openness when supported by appropriate statutory authority. Based on a systematic interpretation of Articles 3 and 12 of Law No. 25 of 2007 concerning Investment, read in conjunction with the Job Creation legal framework,

Indonesia's investment regulatory system reflected a general rule-and-exception structure governing market access. However, the principle of openness under Article 3 primarily concerned transparency and public access to accurate, honest, and nondiscriminatory investment information, whereas Article 12 regulated the openness and closure of investment business fields. Accordingly, these provisions were interpreted as addressing distinct but complementary legal dimensions rather than establishing an unconditional right to unrestricted foreign investment. Restrictions on particular business fields constituted legally established exceptions to general market openness, subject to applicable statutory and sectoral requirements. Furthermore, the allocation of certain business fields to cooperatives and micro, small, and medium enterprises (MSMEs), together with partnership arrangements contemplated under Article 13 and relevant implementing regulations, could be understood as affirmative measures intended to support domestic economic participation and distributive justice.

Establishing a Proportionate Balance Between National Interests and Foreign Direct Investment

The balance between national economic interests and foreign direct investment (FDI) under Indonesia's Positive Investment List (Daftar Positif Investasi, DPI) was examined through the concept of managed openness, informed by development law theory and the state's right to regulate. The analysis identified three principal regulatory instruments relevant to this balance: foreign equity ownership limitations, investment-related performance requirements, and downstream industrial development policies. Foreign ownership limitations were intended to preserve regulatory control and protect designated national interests in particular sectors, while applicable performance requirements and industrial development policies could support domestic employment, technology transfer, and increased national value creation. Nevertheless, the legality of these instruments depended on their specific statutory foundations and consistency with Indonesia's applicable international obligations. Within this framework, selective investment restrictions were interpreted as potential mechanisms for reconciling foreign investors' commercial interests with the state's constitutional responsibility to promote public welfare and substantive economic justice under Article 33 of the 1945 Constitution of the Republic of Indonesia. Their contribution to achieving these objectives, however, required separate empirical assessment and could not be established solely through normative legal analysis.

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AUTHOR'S CONTRIBUTION

Fedo Wiratama Putra: Conceptualization, formal analysis (normative legal research, statutory and conceptual approach), investigation, writing – original draft, writing – review & editing. The author is solely responsible for the entire content of this article.

GENERATIVE ARTIFICIAL INTELLIGENCE USAGE STATEMENT

The author states that generative artificial intelligence (AI) was used in the preparation of this manuscript. The author acknowledges the use of generative AI to help improve language clarity and improve the grammatical structure of the manuscript. The use is done in compliance with the applicable ethical guidelines regarding the use and disclosure of generative AI in scientific research. Each author has made a substantial intellectual contribution to this work. The entire content of the manuscript has been carefully reviewed to ensure its accuracy, and the author is solely responsible for the integrity and final content of the manuscript.

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