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Legal Protection of Investors Through Bilateral Investment Treaties in Indonesia

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ABSTRACT: The incessant investment across countries to cooperate is poured into a cooperation agreement, namely the Bilateral Investment Treaty (BIT). BITs help resolve disputes between investors and states through the ISDS mechanism. One example is the dispute between Churchill Mining PLC from the UK and Indonesia regarding alleged license forgery, which was brought to international arbitration based on the clause in the BIT between the two countries. The problem formulations in this research are how is the binding force of Bilateral Investment Treaties in the settlement of Investment disputes in Indonesia and how is the legal protection of investors in the Bilateral Investment Treaty on the revocation of business licenses by the Indonesian government. The type of research used is normative legal research with statutory and conceptual approaches. The results of this study indicate that in line with the UUPM, BITs are designed to provide protection to the parties including regarding dispute resolution through international arbitration institutions/ICSID, as in the case of BITs involving the UK and Indonesia. The legal basis for the protection of investors in Indonesia is regulated in the UUPM. BITs generally regulate the principles of fair and equal treatment, the prohibition of expropriation without adequate compensation, and provisions regarding dispute resolution mechanisms through international arbitration such as ICSID. Then related to the revocation of mining business licenses is regulated in the Minerba Law on the authority based on the regional boundaries owned by the regional government.

KEYWORDS: Legal Protection, Investor, Agreement, Bilateral Investment, International Centre for Settlement of Investment Disputes (ICSID).

I. INTRODUCTION

Economic growth is influenced by various factors such as global conditions, government policies, and domestic situations. Productivity, unemployment rates, political stability, and investment also play a role. Sustainable economic growth is essential to support development and welfare. As the population increases each year, consumption needs rise, making it necessary to increase income periodically (Tulus Tambunan, 2023). Foreign investment is often utilized to develop infrastructure such as roads, ports, and airports, which can enhance connectivity and economic efficiency in the host country. In addition, such investment also promotes increased production, exports, and national income. However, foreign investment can also have negative impacts, such as regional development disparities and environmental degradation, particularly in sectors like mining and plantations. Therefore, it is important to apply the principles of sustainable development to balance economic growth, social equity, and environmental preservation. If not properly managed, investment can also lead to the reduction of productive land due to land-use conversion for business activities.

Foreign investment carries risks for both host countries and investors, such as policy changes, legal uncertainty, and investment disputes. Therefore, a strong legal framework is needed to protect investors' interests while promoting economic growth. If not managed according to principles of sustainable and environmentally friendly development, investment can cause serious impacts, such as deforestation due to land-use conversion and damage to terrestrial and marine ecosystems from largescale infrastructure projects. To attract and retain foreign investment, Indonesia needs to provide clear and consistent guarantees for the protection of investors' rights. Investors must feel confident that their asset ownership, profits, and dispute resolution processes will be respected without discrimination. This protection includes legal rights and fair access to the judicial system and arbitration. The presence of an independent and effective dispute resolution mechanism can enhance investor confidence in Indonesia's investment climate (Santoso, 2019).

The Indonesian government must ensure that investment policies and regulations are transparent and consistent, as sudden changes without notice can undermine investor confidence. Compliance with international agreements is also crucial, as they provide additional protection and dispute resolution mechanisms. By guaranteeing transparency, legal certainty, and fair enforcement of regulations, Indonesia can create a stable investment climate that supports sustainable economic growth. The increasing level of international cooperation and cross-border investment also demands clear legal guarantees for investors to maintain mutually beneficial relationships.

The increasing activity of cross-border investment has encouraged the establishment of formal cooperation through Bilateral Investment Treaties (BITs). A BIT is a legally binding agreement between two countries that agree to mutually facilitate and promote investment. Through this agreement, both countries commit to adhering to certain standards in the implementation of foreign investment within their respective jurisdictions (Kavaljit Singh, 2016). A Bilateral Investment Treaty (BIT), or Agreement on the Promotion and Protection of Investment (P4M), is a legally binding bilateral agreement between two countries to mutually protect and promote investment within their respective territories. BITs play a vital role in providing protection for foreign investors (aliens) in the host state and in creating opportunities for direct investment that is expected to positively impact economic growth. The primary goals of a BIT are to encourage reciprocal investment, ensure that investments are carried out safely, transparently, and without discrimination, and to support the development of international law. This agreement offers legal guarantees against arbitrary government actions toward investors, thereby increasing investor confidence. In addition, BITs provide a fair dispute resolution mechanism through the Investor-State Dispute Settlement (ISDS) system, which places investors on an equal footing with states in resolving disputes (Sara Jamieson, 2012).

Investor responsibility in conducting overseas investments is crucial to ensure the sustainability of those investments. Indonesia has entered into several bilateral investment treaties, one of which involved the British company Churchill Mining PLC and its Australian subsidiary Planet Mining Pty Ltd, which invested in a coal mining project in East Kutai, East Kalimantan. However, in 2010, the project's permit was revoked by the East Kutai Regent due to alleged falsification. As a result, Churchill and Planet filed a claim against Indonesia through ICSID, demanding USD 2 billion in compensation. The claim was rejected, and the final ruling favored Indonesia, declaring the permit revocation legally valid. This case highlights the importance of designing BITs that strike a balance between protecting foreign investors and preserving a state's right to regulate in the public interest, including environmental protection and sustainable development. Therefore, BITs should ideally include principles of sustainability, such as environmental protection, labor rights, and human rights. However, the implementation and impact of BITs still carry the potential for future disputes or legal challenges.

In practice, Bilateral Investment Treaties (BITs) are often used by investors as protection against host state policies or actions they perceive as harmful to their investments. Although BITs are theoretically reciprocal agreements between parties, in reality they are often viewed as unbalanced and more favorable to investors. BITs have become a primary source of international law in protecting foreign investments, particularly in developing countries. In contrast, developed countries rarely sign BITs with each other, as their domestic legal systems are generally strong enough to fairly protect foreign investments. Nevertheless, the presence of multinational investors often raises sensitive issues such as sovereignty, natural resource exploitation, and interference in domestic economic policy. Therefore, countries seeking to enter into BITs must be prepared to face these challenges within the framework of clear and equitable agreements (Ryan J.Bubb dan Susan Rose-Ackerman, 2007).

The government holds full authority over the issuance and revocation of Mining Business Licenses (IUP), as regulated by Law No. 3 of 2020, which amends Law No. 4 of 2009 on Mineral and Coal Mining (the Mining Law). However, this amendment has sparked debate, particularly concerning the reduced authority of local governments in the process. Local governments arguably have a better understanding of local conditions and natural resources in their regions. The centralization of authority in the new Mining Law is seen as potentially undermining the principles of decentralization and regional autonomy, which could lead to normative conflicts in the governance of mining activities in Indonesia.

Based on the background above, it is important to conduct a further review regarding the legal protection for investors in Bilateral Investment Treaties. The aim of this study is to evaluate the formulation of agreements within Bilateral Investment Treaties (BITs). Therefore, the author believes that this research, titled 'Legal Protection for Investors through Bilateral Investment Treaties in Indonesia,' is highly relevant for further examination.

II. RESEARCH METHOD

The type of research used in this study is normative legal research, which analyzes literature based on legal materials, including primary, secondary, and tertiary legal sources. This study uses a Statutory Approach and a Case Approach. This type of research focuses on secondary data, supported by literature data as the main source, namely by reading and studying books, regulations, and other writings related to the issue being researched (Soerjono Soekanto Dan Sri Mamuji, 2013).

III. RESULT AND DISCUSSION

A. The Binding Power Of Bilateral Investment Treaties In Investment Dispute Resolution In Indonesia

International law is a set of rules that governs the relationships between entities at the global level, initially only covering states, but now including international organizations, multinational corporations, and individuals. This law regulates the rights, obligations, and conflicts between states. According to Hyde, international law consists of principles and regulations that states must follow in international relations. Meanwhile, according to Mochtar Kusumaatmadja, international law encompasses the norms that govern cross-border relations, both between states and with non-state entities (Thontowi, 2006).

The sources of international law are outlined in Article 38(1) of the Statute of the International Court of Justice, which includes international treaties, international customs, general principles of law, as well as judicial decisions and the teachings of highly qualified publicists from various countries. The content of Article 38(1) of the ICJ Statute is as follows:

a) International treaties, both general and specific, that establish rules recognized by the states in dispute;
b) International customs, as evidence of general practices accepted as law;
c) General principles of law recognized by civilized nations;
d) Judicial decisions and the teachings of highly qualified publicists from various countries, as supplementary means for determining legal rules.

International law plays a crucial role in regulating relations between states and other global entities. It establishes diplomatic rules, including the status and protection of diplomats and procedures for inter-state relations, thereby fostering cooperation and dialogue. In addition, international law serves as the foundation for collaboration in areas such as economics, the environment, human rights, and security, particularly through institutions like the United Nations (Adinda Aneira Adnyana Putri, 2022). International relations are legal interactions between states that create rights and obligations for each party. These relations encompass political, cultural, and economic aspects between states and individuals across borders. The goal is to strengthen friendship and cooperation, both bilaterally, regionally, and multilaterally, through various forums. One of the sources of international law is international treaties, which include multilateral, regional, and bilateral agreements, with multilateral treaties holding the highest position as they reflect broad acceptance of international legal principles.

International treaties serve to regulate relations between states in various areas such as peace, trade, and the environment, and they legally bind the parties to comply with their provisions. These treaties also act as tools for dispute resolution through mechanisms that have been mutually agreed upon. Generally, international treaties involve agreements between states or international legal entities regarding global issues. According to Mochtar Kusumaatmadja, an international treaty is an agreement between members of the international community that aims to produce certain legal consequences (Mochtar Kusumaatmadja, 2003).

According to Boer Mauna, an international treaty is a legal instrument that reflects an agreement between states or other international legal entities to achieve common goals. Its formation is subject to international law and carries binding legal force for the parties involved (Boer Mauna, 2008). The main element of an international treaty is the voluntary agreement between the parties, in line with the principle of consensualism in Western civil law. However, this treaty is only valid if made by entities that are part of the international legal community, such as states and international organizations. Huala Adolf emphasizes that an international contract is not the same as an international treaty, as contracts are private in nature. The classification of a treaty as public or private depends on the type of law governing it public law or private law not on the status of the parties involved. Public international treaties must be subject to international law.

Investment agreements play a strategic role as a tool to encourage development and economic growth, as they allow foreign investors to enter the host country. Through these agreements, the home country can invest extensively in various sectors. To create a secure investment climate, countries need to provide legal protection for foreign investments as part of their responsibility in international relations. Countries enter into investment agreements for various motivations, such as attracting investment from developed countries or improving the country's image after nationalization. However, signing agreements does not always guarantee an immediate increase in investment. The increasing number of agreements highlights the importance of this instrument in protecting and attracting foreign direct investment. One important international instrument in this area is the International Convention on the Settlement of Investment Disputes (ICSID), which focuses on resolving investment disputes through arbitration and is also known as the Washington Convention. Additionally, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, or the New York Convention, plays a crucial role in ensuring the enforcement of foreign arbitral awards in the host country.

Investment is an activity undertaken by individuals or legal entities to increase or maintain the value of capital, whether in the form of money, skills, or intellectual property. Its main focus is the placement of funds to gain profit, particularly in the capital market. In addition to production, investment also aims to build supporting infrastructure. The term 'investment' is commonly used in the business world, while 'capital investment' is more often found in legal regulations, although both terms have the same meaning and are often used interchangeably (Supanca, 2006).

In general, investment refers to the commitment of resources for future profit, especially when in the form of money. In economics, investment can include the purchase of shares, capital goods, or the use of funds for production in order to generate future income. Indonesia, as a country with an open economic system, actively welcomes foreign investment, which plays a crucial role in economic development, job creation, and improving welfare. To support this, the government implements policies that foster a secure and attractive investment climate. Like human relationships, countries also depend on each other, a concept known as interdependence mutual reliance in various areas such as the economy and society.

According to Robert Keohane and Joseph Nye, relations between states are characterized by mutual interdependence because no state is fully capable of meeting its own needs. Every country requires resources and products from other countries. They argue that the potential for conflict can be reduced through economic cooperation and trade, particularly at the regional level, thereby encouraging countries to collaborate for mutual benefit rather than relying on military power (Ronaldo, 2018). The theory of interdependence highlights how interactions between states gradually create mutual dependence. In this relationship, stronger countries often provide assistance to others, making the recipient countries dependent. When the donor country makes a request, the dependent country tends to comply out of fear of facing consequences if it refuses (Shaw, 2008).

Indonesia has implemented various regulations, including the Investment Law and its derivatives, which govern aspects of investment such as registration procedures, the rights and obligations of investors, and dispute resolution. The government also provides incentives such as tax facilities and business permit ease to attract investors. However, challenges remain in terms of implementation and enforcement of law, given that regulations need to be adjusted to market dynamics and global developments. Understanding these regulations is important to evaluate the effectiveness of policies in creating a stable and profitable investment climate (Kusumaputra, R., & Marpaung, 2020).

Investment involves the placement of assets that can be in the form of money or other forms that have economic value. According to Law No. 25 of 2007, capital is divided into two types: Domestic Capital, which is owned by the state, individuals, or Indonesian business entities, and Foreign Capital, which is owned by foreign countries, individuals, or foreign business entities. Although the law defines foreign capital as owned by foreign parties, it does not provide a detailed explanation of the types of foreign capital used in foreign investment. Foreign investment can have either positive or negative impacts, depending on the management and implementation of the investment system in the host country (Aminuddin Ilmar, 2010).

In theory, investment liberalization not only benefits foreign investors but also should support domestic capital derived from foreign investment. Foreign investment can generate domestic income and serve as a means of developing a country's economic, social, and political infrastructure. A country can encourage certain sectors to optimize foreign investment, which, in the long term, can stabilize economic impacts. The era of trade and investment liberalization began with GATT, which aimed to reduce protectionist barriers and promote liberalization. The WTO supports global mechanisms for investment liberalization, although there is resistance from developing countries regarding the protection of sovereignty and natural resources. Bilateral Investment Treaties (BITs) play a significant role in the flow of investments, and BITs themselves are a primary instrument in cross-border investments. It is important to understand that international treaties involve subjects of international law and differ from international contracts, which only involve individuals or legal entities.

An investment agreement, as an agreement between two parties, is an object of international contract law. Generally, an investment agreement is an international treaty that binds two or more countries with a specific scope. Peter Muchlinski defines a Bilateral Investment Treaty (BIT) as an international agreement binding two countries, in which each country reciprocally agrees to adhere to the treatment standards outlined in the agreement concerning investors from the involved countries. The principle of treatment standards in BITs created by Indonesia with other countries is absolute, covering obligations to comply with provisions on fair and equitable treatment, full protection and security, as well as provisions on expropriation.

Roscoe Pound explains that the theory of will emphasizes the importance of 'will' (or intent) between the parties who make promises to one another. According to Pound, a contract or agreement is a bond between one subject and another, where most of a person's property consists of the benefits promised by the other party to be provided or delivered. These benefits are claims that can be made against a specific individual, not against the general public (Roscoe Pound, 1974). According to Pound, will is the essential element in the creation of a valid agreement. The parties involved must have a free, clear intent, without coercion or fraud. This theory emphasizes the importance of will in forming a legally valid agreement, meaning the parties must voluntarily agree with a clear understanding of the contents of the agreement. Pound stresses that will is the key in every legal relationship.

In the creation of a contract, the parties involved must have free will, free from external pressure, and fully understand the contents of the agreement. In the context of bilateral investment treaties, this means that both countries must reach an agreement with a mutual understanding of their rights and obligations as well as the economic goals they wish to achieve. The government plays a key role in approving bilateral investment treaties, striving to reach an economically beneficial agreement while considering domestic social and political interests. A country's desire to sign such agreements is often influenced by economic factors, such as access to technology, job creation, and infrastructure financing, although the government must also consider potential negative impacts, such as dependency on foreign countries or environmental damage (Chaisse, Julien, 2022).

With these provisions, the Indonesian government can still protect public interests. Regarding lawsuits filed by foreign investors concerning policies that harm them, international tribunals have provided interpretations on the application of the fair and equitable treatment principle in foreign investment. There are five key principles within this principle: 1) The principle of fairness, 2) The principle of non-discrimination, 3) The principle of consistency, 4) The principle of transparency, and 5) The principle of due process.

A Bilateral Investment Treaty (BIT) is a type of international agreement that governs investment relations between two countries. As a legal instrument, BIT is part of the broader international legal system, aimed at providing protection and promotion for foreign investors while establishing mutually beneficial rights and obligations for the countries involved. BIT plays a crucial role in creating a stable and predictable framework for cross-border investment, providing legal protection for investors and reducing the risks associated with foreign investments. Thus, BIT strengthens economic cooperation between countries and facilitates the flow of international investments (Schill, 2010).

A Bilateral Investment Treaty (BIT) serves as a primary tool to create a conducive investment environment by establishing mutually beneficial rights and obligations. Through this agreement, countries can affirm their commitment to investment protection and the reduction of trade barriers, which in turn enhances investor confidence and facilitates the flow of capital. BITs have a significant impact on investment and economic development in a country. Their main goal is to provide legal protection to foreign investors from arbitrary or discriminatory actions by the government of the host country. With BITs, foreign investors gain greater legal certainty, increasing their trust and interest in investing. BITs also facilitate a dispute resolution mechanism between investors and the state, known as the Investor-State Dispute Settlement (ISDS). With the presence of BITs, foreign investment in Indonesia can drive economic growth and development. This agreement protects the rights and obligations between Indonesia as the host country and foreign investors, in line with Law No. 25 of 2007 on Investment, which aims to improve the welfare of the people. The BIT agreement between Indonesia and other countries provides protection for investors, ultimately benefiting both parties (Sentosa Sembiring, 2010).

Jeremy Bentham, an English philosopher and legal expert, is known as the pioneer of the Theory of Utility or Utilitarianism. He defined utility as something that brings benefits, profits, happiness, and prevents harm or unhappiness. Bentham emphasized that utility can be seen from the perspective of individual and societal happiness. In the context of Bilateral Investment Treaties (BITs) between Indonesia and other countries, these agreements include the rights and obligations of the parties, provisions for standard of treatment, prohibition of nationalization, and dispute resolution mechanisms. Although the goal of BITs is to protect the interests of both parties, in practice, Indonesia as the host country often experiences losses. While foreign investment brings positive impacts to Indonesia, dependence on foreign capital has increased over time, making the country more reliant on external investments. This creates an imbalance that needs to be reassessed, particularly regarding the content and agreements within the BITs. According to Bentham’s theory, the purpose of law is to bring benefits and happiness to society. In this context, bilateral investment agreements should prioritize fair benefits for all parties. Therefore, Indonesia needs to reconsider its BIT agreements and engage in more assertive negotiations to ensure that national interests are protected while still benefiting foreign investors. With the right approach, Indonesia can create agreements that not only provide certainty for investors but also foster a fair and sustainable economy. The Theory of Utility can serve as a foundation for policy-making by the Indonesian Government, aimed at providing benefits and welfare for the society. Each country has policies tailored to its own conditions and needs. Government policies are a series of steps taken to have a significant impact on many people. Every policy that is implemented must consider certainty, benefits, and fairness for the society. Therefore, these policies need to be analyzed in-depth to minimize their negative impacts.

Indonesia, as a developing country dependent on foreign investment, faces an imbalanced bargaining position in its relationships with multinational corporations. Although Indonesia has provided ease and legal guarantees through the Investment Law (UUPM) and Bilateral Investment Treaties, the country's weak position often puts it at a disadvantage in disputes with multinational companies. Most disputes end in favor of the corporate side. Disputes in investments are inevitable, even with preventive measures in place, and require alternative resolution mechanisms when they arise (Sumarjono Maria S. W, 2008).

Bilateral Investment Treaties (BITs) are used by investors to protect themselves from policies or actions of the host country that are deemed harmful. Although BITs are meant to create reciprocal relationships between countries, in reality, they are often imbalanced. In transnational relationships, dispute resolution should be carried out peacefully using internationally recognized methods to avoid violence or war. As an international agreement, BITs must prioritize fair dispute resolution that aligns with international law, as outlined in the 1969 Vienna Convention. Some dispute resolution methods include: (Peter Bahrens, 2004):

1) Negotiation – the most basic and oldest method.
2) Fact-finding – determining rights and obligations based on different facts.
3) Good offices – using a third party to assist in the negotiation process.
4) Mediation – with a mediator from a country, organization, or individual providing advice for resolution.
5) Conciliation – more formal, involving a conciliation commission that provides a non-binding decision.
6) Arbitration – with a neutral third party providing a final and binding decision.
7) International Court – as a last resort if other methods fail to resolve the dispute.

Dispute resolution between the Indonesian government and investors is governed by the Investment Law (UUPM), as outlined in Article 32 paragraph (1), which requires both parties to resolve disputes through deliberation and consensus. If this fails, Article 32 paragraph (2) allows for resolution through arbitration, alternative dispute resolution, or courts in accordance with regulations. For disputes with foreign investors, Article 32 paragraph (4) states that resolution should occur through internationally agreed arbitration. Indonesia remains bound by international agreements that have been approved, even after amendments to Law No. 25 of 2007, until such agreements expire, as stipulated in Article 35. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Law) establishes the territorial principle and regulates that dispute resolution outside of the public courts must be based on a written arbitration agreement. Most BITs include arbitration as a dispute resolution method, and Article 1 paragraph (9) of the Arbitration Law defines an international arbitration award as one made outside the jurisdiction of Indonesia.

Bilateral Investment Treaties (BITs) essentially aim to reduce the disparities in treatment between the host country and the investing country. While international cooperation agreements may erode a country's sovereignty, BITs are expected to protect the sovereignty of countries like Indonesia. BITs serve as a document that is only invoked in the event of a dispute related to foreign investment between two countries (Selly Octaviani, 2016). The essence of Bilateral Investment Treaties (BITs) is a dispute resolution mechanism designed to protect investments. Although the Indonesian government will not eliminate this scheme, it intends to be more cautious and limit the use of international arbitration. Despite some discrepancies in Indonesia's BIT policies with other countries concerning Indonesia's independent and sovereign economic interests, the existence of BITs provides certainty for foreign investors, particularly regarding dispute resolution. Many foreign investors have sued Indonesia's investment policies, which they consider inadequate, and have brought disputes before the ICSID, which is seen as more neutral compared to Indonesian courts. For instance, in the 1977 Indonesia-United Kingdom Bilateral Investment Treaty, Indonesia committed to protecting British investors, and vice versa, the UK protected Indonesian investors.

The ICSID (International Centre for Settlement of Investment Disputes) was established under the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Article 25 paragraph (1) of the ICSID Convention regulates the parties that can submit a dispute for resolution, which include:

1) Contracting States, subdivisions, and agents of those states. A country that has confirmed its intent to sign the convention must do so no later than 30 days before the case is submitted.
2) Nationals (natural or juridical persons) of another contracting state

According to Article 42 paragraph (1) of the ICSID Convention, in resolving disputes, the law that is applied is the law agreed upon by the parties. If there is no agreement, the tribunal will use the law of the country involved in the dispute (including conflict of laws rules) as well as relevant international law.

Based on Article 42 paragraph (1) of the ICSID Convention, the hierarchy of laws applied is (i) the law chosen by the parties, (ii) the law of the respective countries, and (iii) international law. The arbitration award is final and binding. "Final" means that the decision is the final ruling that cannot be appealed, contested, or reviewed. "Binding" means that the arbitration award is mandatory for both parties involved, and they are required to implement it voluntarily. In other words, the arbitration award has a binding legal force and is enforceable on the parties (Nursadi, 2018).

An arbitration award is final and binding. "Final" means that the award is the final decision that cannot be appealed, contested, or reviewed. "Binding" means that the arbitration award is mandatory for both parties involved in the dispute, and they are required to implement it voluntarily. In practice, Indonesia regulates the enforcement of arbitration awards through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, specifically in Article 67 paragraph (1), which states that requests for enforcement of international arbitration awards must be registered by the arbitrator with the Central Jakarta District Court. After registration, an execution request can be submitted to the Chief Judge of the Central Jakarta District Court.

Article 66 of the Arbitration Law outlines several conditions for the enforcement of international arbitration awards in Indonesia, including:

a) The award must originate from a country that is bound by an agreement for the recognition and enforcement of international arbitration awards with Indonesia.
b) The award must be limited to Indonesian commercial law.
c) The award must not contradict Indonesia's public order.
d) The award must obtain an exequatur (execution order) from the Chief Judge of the Central Jakarta District Court.
e) If Indonesia is one of the parties, the execution must obtain an exequatur from the Supreme Court of the Republic of Indonesia.

Thus, while Indonesia recognizes international arbitration awards, their enforcement is still subject to the provisions in Article 66 of the Arbitration Law.

B. Legal Protection For Investors In Bilateral Investment Agreements (Bits) Regarding Business License Revocation By The Indonesian Government

Everyone is entitled to recognition, protection, and fair legal certainty, as well as to be treated equally before the law, as stipulated in Article 28D Paragraph 1 of the 1945 Constitution. Therefore, every action of the state must be in accordance with the prevailing laws. According to Setiono, legal protection aims to safeguard society from arbitrary government actions in order to maintain order and uphold human dignity. Legal protection and enforcement are crucial so that everyone can receive their rights and be protected when those rights are violated(Setiono, 2004).

Philipus M. Hadjon states that legal protection is a condition in which legal subjects must immediately receive resources to safeguard their existence, with guarantees and legal protection in political and economic decision-making, particularly in the distribution of resources. This protection encompasses dignity, human rights, and is provided to anyone who is harmed, with the state being the party that is obligated to provide it (Hadjon, 1987). In providing legal protection, the implementation tools known as legal protection mechanisms are required, which are divided into two types:

1) Preventive Legal Protection, which is the government's efforts to prevent violations through regulations aimed at setting clear boundaries to avoid transgressions.
2) Repressive Legal Protection, which is protection in the form of sanctions such as fines or punishments imposed after a violation or dispute occurs

Philipus M. Hadjon explains that preventive legal protection is aimed at every individual to enable them to claim their rights in the pursuit of justice, and it encourages the government to provide wide access to information as part of good governance practices.

Law regulates the relationships between members of society and legal subjects, which are parties that have rights and the ability to act legally. Subekti refers to legal subjects as bearers of rights, specifically humans, while Mertokusumo defines them as anyone who can possess rights and obligations. Legal protection is provided to legal subjects, whether individuals or entities, through preventive and repressive measures (Harumiati Natadimaja, 2009). Legal entities are considered legal subjects because they can have legal interests with other parties and exercise rights and legal actions just like individuals. According to Article 1654 of the Civil Code, a legal entity is defined as a legitimate association that has the authority to carry out civil acts. Legal protection serves to safeguard the rights and interests of legal subjects through applicable regulations and is an essential tool in enforcing justice, especially in economic fields such as investment. In this context, legal protection is closely related to corporate law, particularly limited liability companies, as investors are generally legal entities in the form of a limited liability company (PT). This protection is also crucial for supporting the development of the capital market (Hilda H. Dimyati, 2014).

Justice and law are closely interconnected because one of the primary objectives of the law is to achieve justice, alongside legal certainty and usefulness. In contract law, parties are free to agree on matters, but they are still limited by the rights and interests of others. John Rawls stated that justice encompasses equal basic rights and freedoms for all, and social and economic inequalities are only acceptable if they benefit the most disadvantaged and still guarantee equality of opportunity. Legal protection serves as a tool for the state to ensure the rights of citizens and other legal subjects, and it must be evaluated based on theories of justice. In the context of investment, the state guarantees legal protection for both Domestic Investors (PMDN) and Foreign Investors (PMA), as stipulated in Law Number 25 of 2007, so that investors feel secure when investing in Indonesia.

Article 4 of the Investment Law (UUPM) establishes that the basic policy of investment aims to create a conducive business climate to strengthen economic competitiveness and increase investment. The government provides equal treatment for domestic and foreign investors, ensuring legal certainty and security from the licensing process to the conclusion of business activities. Article 6 emphasizes that all investors, regardless of their country of origin, are treated equally, except for countries that have special agreements with Indonesia. This demonstrates a commitment to the principle of non-discrimination.

The Investment Law (UUPM) also grants rights to investors, including legal certainty, protection from nationalization without fair compensation, and the freedom to transfer funds. Article 7 states that expropriation can only be carried out through legislation and must be accompanied by compensation at market value. In addition to rights, investors have obligations (Article 15), such as adhering to good governance practices, fulfilling social responsibility, reporting activities to the BKPM (Investment Coordinating Board), respecting local culture, and complying with the law. The responsibilities of investors in Article 16 include using legal capital, settling obligations when business operations cease, promoting healthy competition, protecting the environment, and ensuring the welfare of workers.

The Investment Law (UUPM) is the primary regulation governing investment in Indonesia, which not only protects investors but also the interests of the host country in managing and supervising foreign investment for national benefit. In addition, Law Number 30 of 1999 concerning Arbitration provides an efficient dispute resolution mechanism for investors through out-ofcourt channels. Arbitration, as explained in Article 1, Paragraph 5, is a dispute resolution based on mutual agreement, allowing investors the flexibility to choose a faster and more private forum for settlement.

Article 4, Paragraph (1) of the Arbitration Law states that if the parties agree to resolve a dispute through arbitration and grant authority to the arbitrator, the arbitrator can determine the rights and obligations of the parties, even if not explicitly stated in the agreement. This law provides freedom of contract for the disputing parties, including choosing the institution and arbitration procedures. Arbitration awards are final and binding, as stipulated in Article 60. Meanwhile, Law Number 6 of 2023 concerning Job Creation aims to create a friendly and secure investment climate for investors, with a focus on ease of doing business and the acceleration of national strategic projects. Articles 1 and 3 emphasize protection and facilitation for investors as part of the strategy to enhance the investment ecosystem. This law also introduces a risk-based licensing system (Article 7), which categorizes businesses into low, medium, and high-risk categories to provide clarity and ease in the licensing process.

Law Number 7 of 2014 on Trade provides legal protection to investors by creating certainty and security in doing business. Article 2 emphasizes the principle of legal certainty, while Article 7 regulates the distribution of goods in accordance with ethics and regulations. Article 10 further ensures orderly distribution to avoid market distortions. In international trade, Article 49 requires exporters and importers to have licenses, with the possibility of imposing import duties to enhance competitiveness. Article 65 provides consumer protection, including the obligation for data transparency in electronic transactions, as well as a dispute resolution mechanism. Articles 67 and 68 regulate trade protection policies, including defense against accusations of dumping and unfair trade practices. Overall, this protection is preventive, focusing on regulating distribution, standardization, and market transparency.

In the context of investment, Bilateral Investment Treaties (BITs) play an important role in influencing the flow of investment between countries. A BIT is an international agreement focused on protecting investments, providing legal guarantees, and reducing risks for investors. As a key instrument in cross-border investment, BITs serve to strengthen economic cooperation between countries, facilitate investment flows, and establish mutually beneficial rights and obligations. Through this agreement, countries can demonstrate their commitment to protecting investments and reducing trade barriers, which enhances investor confidence and facilitates the movement of capital.

The development of time has blurred the boundaries between countries, creating interdependence, particularly in terms of investment. In the context of cross-border investment, especially foreign direct investment (FDI), Bilateral Investment Treaties (BITs) have become a crucial instrument for foreign investors to secure protection for their investments. A BIT is a bilateral agreement between two countries aimed at providing protection and promoting investment in each respective country. The primary goal of a BIT is to increase direct investment and offer guarantees for foreign investors when investing in the host country (Rustiadi, 2018).

A Bilateral Investment Treaty (BIT) is an international agreement that sets the terms and conditions for private investment between countries. The Treaty of Friendship, Commerce, and Navigation is an early form of such agreements, requiring the host country to treat foreign investments on equal terms or even more favorably than domestic investments. BITs are considered by some experts to reduce the potential for conflict in business transactions and help allocate funds to less developed countries. The primary goal of a BIT is to create a legal framework to promote and protect foreign investment and trade, aiming to reduce the likelihood of future disputes and establish a balance between investors and the countries involved (Sornarajah, 2010).

A Bilateral Investment Treaty (BIT) or a Double Taxation Avoidance Agreement (P4M) is a legal agreement between two countries to mutually protect and promote investment based on the principle of reciprocity. BIT/P4M plays a crucial role in protecting foreign investors in the host country and facilitating the entry of foreign direct investment, aiming to have a positive impact on the economy of the host country. Similar to the Investment Law (UUPM), BIT also provides protection for the countries involved from unfair or discriminatory treatment. BIT offers security to investors through legal protection, both preventive and repressive, including in terms of resolving international disputes.

In a Bilateral Investment Treaty (BIT), there are clauses that allow for alternative dispute resolution mechanisms, where investors whose rights have been violated can seek protection through international arbitration, such as the ICSID (International

Centre for Settlement of Investment Disputes), rather than suing the host country in domestic courts. Typically, BITs are negotiated between developed and developing countries to enhance and protect investments from developed countries in developing countries. However, in practice, BITs tend to provide more direct benefits to investors than to the host country. ICSID plays an important role as a dispute resolution forum, enabling foreign investors to file claims against the country where their investment is located if their rights are violated, with decisions made through ICSID arbitration being binding. The Investor-State Dispute Settlement (ISDS) clause in many BITs grants foreign investors the right to sue a country that unlawfully interferes with their investment.

Problems often arise when developing countries like Indonesia enter into BIT agreements with developed countries, given the significant differences in national income, technology, and labor resources. This presents a challenge for Indonesia in offering competitive advantages and negotiating leverage. Frequently, the provisions in BITs may disadvantage Indonesia, especially in terms of double taxation avoidance. Despite this, Indonesian economic actors remain committed to developing the domestic market as part of a long-term economic growth strategy.

Churchill Mining Plc. is a company incorporated under UK law and listed on the Alternative Investment Market (AIM) of the London Stock Exchange. To manage its investments in Indonesia, Churchill established and registered PT. Indonesia Coal Development (ICD) and PT. Techno Coal Utama Prima (TCUP) with the Investment Coordinating Board (BKPM). These two companies collaborated with Ridlatama Group, a national business conglomerate. In 2007, several companies within Ridlatama Group were granted mining concessions in East Kutai Regency by the Regent of East Kutai. The cooperation between Churchill (through ICD and TCUP) and Ridlatama Group was based on the 2007 Cooperation and Investment Agreement, where Churchill agreed to fund and manage exploration and feasibility studies with the aim of obtaining 75% of the benefits and control over the East Kutai Coal Project.

The main issue arose concerning the actions of the Regent of East Kutai, who issued new permits that affected the mining business licenses held by Ridlatama companies, which were of interest to Churchill and their partner, Ridlatama Group. On several occasions, Churchill and Ridlatama Group were allegedly involved in illegal activities, such as falsifying mining business permits for the East Kutai Coal Project, illegal logging in forest areas without permits, overlapping licenses with other companies, and operating without valid licenses. These actions raised significant legal and regulatory concerns for the parties involved and led to disputes over the legitimacy of the mining operations.

On February 26, 2007, the East Kutai Mining Department reported that the mining concession areas applied for by Ridlatama companies did not overlap with other permits, and the permits held by the previous companies had expired on March 10, 2006. On May 24, 2007, the Regent of East Kutai issued mining business licenses for Ridlatama companies, covering 35,000 hectares in East Kutai. Based on this report, Churchill took control of 75% of the benefits from Ridlatama's permits and raised funds for exploration. During the exploration program, Ridlatama applied for an upgrade to their mining business licenses.

On April 8, 2008, the Regent of East Kutai issued a letter confirming the validity of the permits issued to Ridlatama companies. On April 9, 2008, the Regent approved the upgrade of the mining concession from general investigation to exploration, and on July 17, 2008, he approved this upgrade without the knowledge of Ridlatama Group and Churchill. On February 23, 2009, a report from the Audit Board of Indonesia (BPK) indicated that Ridlatama's permits might be fraudulent. The Regent of East Kutai then ordered an investigation into these allegations.

On March 18, 2010, the results of the Regional Oversight Agency's investigation concluded that Ridlatama's permits were valid, but a conflict arose because the Regent issued an approval for the extension of the expired Nusantara permit. On March 27, 2009, the Regent changed Ridlatama's mining concession status to an Exploitation Mining Business License (IUP Eksploitasi), even though there was still an ongoing legal process regarding the permits. On May 14, 2010, Ridlatama was informed that the Exploitation Mining Business License issued was valid, and after confirmation, Ridlatama filed a lawsuit in the Administrative Court of Samarinda against the decision to revoke the permit, which did not follow the legal procedures. On January 27, 2011, the Head of the Legal Affairs Division at the Ministry of Energy and Mineral Resources (ESDM) stated that Ridlatama's permits were still valid and that no revocation had been communicated to the Ministry of ESDM.

During the legal process at the Samarinda State Administrative Court, Ridlatama Company found Letter No. S.10/MenhutIII/RHS/2010 from the Minister of Forestry stating that Ridlatama Company was involved in illegal mining activities in forest areas. Ridlatama Company denied the allegations, as there was no supporting evidence, and the local Dayak Chief also sent a letter in response to the complaint. On February 14, 2011, Ridlatama Company found a decision by the Regent of East Kutai revoking their permit on October 7, 2010 (Regent's Decree No. 500/548/EKO1). The Head of the Legal Division of the Ministry of Energy and Mineral Resources testified at the Samarinda State Administrative Court that the two decrees were not received by the Ministry of Energy and Mineral Resources, so they could not be enforced. On March 3, 2011, the Samarinda State Administrative Court ruled that the Regent of East Kutai did not violate procedures in revoking the permit. Because they were dissatisfied with the decision, the Ridlatama company filed an appeal on March 9, 2011, but on August 8, 2011, the High State Administrative Court upheld the Samarinda Court's decision.

On February 3, 2012, the Dayak Kenyah Customary Institution in Busang District sent a letter stating that the local community had never reported illegal activities carried out by the Ridlatama company. On March 5, 2012, Forestry Minister Zulkifli Hasan explained that exploration by Ridlatama was carried out before the Production Forest Plot Activity Permit (IKKPH) was issued, even though the permit from the East Kutai Regent listed the location of the permit in the Non-Forestry Cultivation Area (KBNK), in accordance with the East Kalimantan Regional Spatial Plan.

Churchill then filed a request for ICSID arbitration under the UK-Indonesia BIT. The cases were consolidated, and on 24 February 2014, the tribunal ruled that it had jurisdiction. Churchill Mining PLC sued Indonesia under ICSID Case No. ARB/12/14 for the revocation of its mining license and demanded compensation of USD 2,000,000,000 for the seizure of its coal assets without compensation. The ICSID Committee, consisting of arbitrators Dominique Hascher, Karl-Heinz Bockstiegel, and Jean Kalicki, ruled in favor of Indonesia and dismissed the applications for annulment of the award by Churchill Mining and Planet Mining.

In cases of alleged illegal investment involving fraud, corruption or forgery, establishing sufficient evidence can be extremely difficult. Indonesia claimed that 34 license documents were forged due to invalid signatures. The court ruled that it was not up to the plaintiff to prove its allegations, but the defendant to prove otherwise. Indonesia was required to provide sufficient evidence to support its claims, with the standard of proof based on the balance of probabilities. The court also stated that intent or motive need not be proven for forgery, but could be relevant circumstantial evidence.

The facts show that the motive for the forgery was to expand Ridlatama's mining rights in the EKCP by falsifying licenses and documents to give the impression of legitimate ownership. These forged documents were used to obtain an Exploitation License issued under the false assumption that all operations were based on legitimate mining rights. The court concluded that this forgery was a serious act due to the number of documents forged and its purpose to legitimize a fraudulent scheme to access valuable mining rights. Based on the Indonesian evidence, the court found several irregularities, such as mechanically produced signatures, duplicate documents, and inconsistencies with government data, as well as the absence of evidence of an official license application. The court also considered it strange that 10 days after the license was revoked, the license was "revived" without proper procedures.

Based on the available evidence, the tribunal concluded that a fraudulent scheme had affected the Claimants' investment in EKCP. Although the evidence indicated Ridlatama's involvement in document forgery, the tribunal considered this insufficient to impose legal consequences on the Claimants. In its decision, the tribunal ruled that the claims by Churchill and Planet were inadmissible because the 34 disputed documents, including licenses related to EKCP, were proven to be forged and invalid. Furthermore, the tribunal ordered Churchill and Planet to pay court costs and ICSID administrative fees up to USD 800,000, as well as compensate the state in the amount of USD 8,646,528 for legal costs and expenses.

In the arbitration proceedings, Indonesia contested the validity of the disputed mining licenses, raised allegations of forgery, and argued that several of the licenses used by the Claimants had been forged by them and their partners, the Ridlatama companies. Conversely, the Claimants asserted that they had acted in good faith. The tribunal held that claims based on fraud or forgery whether intentional or negligently disregarded by the Claimants were inadmissible as a matter of international public policy and must be dismissed without further analysis of any treaty breach.

"The theory of balance in contracts is essential for analyzing international arbitration awards, particularly in relation to contractual fairness and equality between parties. This theory emphasizes that agreements should reflect a balance of rights and obligations, without any party being disadvantaged or gaining an unfair advantage. International arbitration often deals with cases of contractual imbalance, where principles such as good faith and fair dealing as found in the UNIDROIT Principles support the notion of fair contracts. In some cases, strong bargaining power can result in contracts that do not reflect the true free will of both parties. Arbitration may also examine whether elements of coercion, fraud, or mistake are present in the contract.

In the investment dispute between Indonesia and the United Kingdom, the theory of balance focuses on the principle of equality of rights and obligations between foreign investors and the host state. In the context of Bilateral Investment Treaties (BITs), this theory highlights the need to balance the rights of foreign investors with the sovereignty of the host state. BITs govern the relationship between foreign investors and the host country, and the theory of balance is used to assess whether such treaties provide equitable protection safeguarding investors' rights without disregarding the state's right to regulate in the public interest.

In BITs, there are often clauses that are broad or ambiguous, such as guarantees of fair and equitable treatment. The theory of balance assists arbitrators in interpreting such clauses by seeking a balance between the rights of investors and the regulatory space of the state. This theory also guides the determination of the appropriate choice of law in arbitration. If a BIT refers to contract law principles that emphasize balance, then an arbitral award aligned with these principles will better support a fair resolution of disputes between Indonesia and the United Kingdom.

Law Number 3 of 2020, which amends Law Number 4 of 2009 on Mineral and Coal Mining, serves as the primary legal framework governing mining activities in Indonesia. This Mining Law (UU Minerba) acts as a guideline for British investors seeking to invest in Indonesia's mining sector. One of the significant changes introduced by this law is the elimination of the Contract of Work (Kontrak Karya/KK) and the Coal Mining Concession Work Agreement (PKP2B), which previously served as the legal basis for many foreign mining companies. Now, mining business permits are issued through a Business Licensing system by the Central Government, as stipulated in Article 35. Additionally, Article 47A provides legal certainty by allowing holders of Special Mining Business Permits (IUPK) to extend their permits without the need for an auction.

The Mining Law (UU Minerba) still recognizes contracts established prior to the amendment, such as Contracts of Work (KK) and Coal Mining Concession Work Agreements (PKP2B), ensuring that foreign investors holding such permits remain protected until their contracts expire. However, Article 172 grants the Minister the authority to process applications for contracts and agreements submitted before the law came into effect without requiring an auction, in support of national strategic policies. Furthermore, the Mining Law regulates downstream obligations and divestment requirements, mandating foreign companies to process and refine extracted minerals within Indonesia and to divest shares to Indonesian parties up to 51%, in accordance with Articles 102, 103, and 112.

In terms of dispute resolution, the Mining Law (UU Minerba) stipulates that mining disputes must be resolved through the courts in Indonesia, as set out in Article 154. Article 151 regulates administrative sanctions such as written warnings, fines, suspension, and revocation of licenses. Articles 158 to 164 also provide for criminal sanctions, including imprisonment or fines. These provisions may potentially conflict with the bilateral investment treaty (BIT) between Indonesia and the United Kingdom, which grants investors the right to bring disputes to international arbitration through the Investor-State Dispute Settlement (ISDS) mechanism. These changes reflect Indonesia's effort to strengthen state control over the mining sector, but they must also take into account alignment with investment agreements with partner countries, including the UK, in order to maintain investment stability and attractiveness.

Government Regulation Number 96 of 2021 regulates the technical aspects of mining business activities through four main points, as follows:

1) National Mineral and Coal Management Plan, which includes policies, management strategies, as well as monitoring and evaluation of the mineral and coal sector.
2) Ease of doing business in the mining sector, with licensing based on a Business Identification Number (NIB) and electronic integration, along with clear and simplified licensing requirements, including rock mining permits (SIPB).
3) Business and investment certainty, with the possibility of extending the exploration phase, approval for the transfer of IUP/IUPK, strict requirements for share transfers, and criteria for integrated mining operations.
4) National interest, including the obligation for domestic mineral and coal needs (PNT), mining licenses for state-owned enterprises (BUMN), and foreign share divestment.

This regulation serves as an important reference in the bilateral investment treaty between Indonesia and the United Kingdom, as it provides certainty regarding the technical aspects of investment in the mining sector. The licensing facilitation and business certainty outlined in the regulation may attract interest from British investors. Furthermore, the strict provisions on the transfer of IUP/IUPK and share divestment must be carefully considered by British investors in planning their investment strategies. Requirements related to integrated mining operations and divestment, which take into account business feasibility, also have an impact on the long-term investment plans of British companies.

Presidential Regulation Number 49 of 2021, which amends Presidential Regulation Number 10 of 2021 on Investment Business Fields, represents an important step in Indonesia's investment reform. This regulation establishes the principle that all business sectors are generally open to investment, except those that are specifically stated as closed or restricted to the Central Government. The key innovation in this regulation is the introduction of the concept of priority business fields, which are eligible for fiscal incentives such as tax holidays, tax allowances, and investment allowances. There are 245 priority business fields listed in the annex of the regulation, which the government focuses on attracting investment in. This regulation provides a more liberal and open framework for British investment, by reducing restrictions in various sectors and opening opportunities for investment diversification, both in the mining sector and related sectors.

Minister of Energy and Mineral Resources Regulation Number 43 of 2018 on the Procedures for Share Divestment and the Mechanism for Determining the Divestment Share Price governs the divestment aspects in the mineral and coal mining sector. This regulation provides technical guidelines on the divestment share offering process, evaluation of divestment shares, and the calculation of the divestment share price. The method for calculating share value must reflect the weighted average cost of capital (WACC), taking into account factors such as the company's debt interest rate and equity costs. Additionally, this regulation also sets valuation assumptions, including the use of the Reference Mineral Price or Reference Coal Price, price escalation based on internationally recognized sources, and the exchange rate as per Bank Indonesia's average rate. These provisions significantly impact the long-term investment strategy of British companies, so British investors need to understand this divestment mechanism when planning their investments in Indonesia.

International arbitration has become the primary method for resolving investment disputes, providing a means for foreign investors to assert their rights. One of the most commonly used arbitration forums is the International Centre for Settlement of Investment Disputes (ICSID), established under the 1965 ICSID Convention. Article 33(1) of the United Nations Charter states that parties in a dispute must first seek a solution through negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, or through regional agencies or arrangements, or by any other peaceful means they choose.

Although international arbitration provides protection for foreign investors, this mechanism can affect the sovereignty of the state, particularly in relation to economic and social policies. As the host country, Indonesia is required to comply with binding and final international arbitration awards, with no appeal process available in national courts. This can present challenges for Indonesia in formulating policies that prioritize national interests. In some cases, foreign investors can sue the Indonesian government if national policies are deemed to violate their rights as outlined in the BIT. One example is the dispute between Churchill Mining and Indonesia concerning the cancellation of mining permits, which required Indonesia to account for its national policy in front of international arbitration. If Indonesia loses, it risks having to pay substantial compensation, which could affect the national budget and economic policies (Huala Adolf, 2014).

Legal protection in international arbitration is often seen as more favorable to investors, as investors can directly access the arbitration forum, while the host government does not have a similar avenue to sue investors who fail to meet their obligations. This creates an imbalance in the legal relationship between the state and investors. In Indonesia, legal protection for foreign investors is regulated under Law No. 25 of 2007 on Investment, which guarantees protections such as non-nationalization and protection against expropriation. However, this protection is not absolute, as the law also grants the government the authority to seize investor assets for public interest, with fair compensation. Meanwhile, bilateral investment treaties (BITs) grant foreign investors the right to sue Indonesia in international arbitration forums if their rights are violated (Rihwanto, 2016).

The role of international arbitration in investment disputes can have a significant impact on Indonesia's national policies. When Indonesia is bound by international arbitration decisions, it may limit the government's ability to implement policies that prioritize national interests. For example, policies aimed at protecting the environment or workers' rights could be hindered if they are deemed to violate the rights of foreign investors. Moreover, international arbitration can pressure the government to adjust regulations or policies that conflict with the interests of foreign investors, thereby reducing the state's sovereignty in formulating policies that support the interests of the people and the public. ICSID was established to provide a facility for the settlement of investment disputes between the signatory countries and their nationals. For ICSID to be applicable, both parties must agree to submit the dispute to ICSID's arbitration panel, and the dispute must be related to investment matters. Under the Mining Law (UU Minerba), disputes arising from issues related to IUP, IPR, or IUPK must be resolved through domestic courts or arbitration in accordance with applicable regulations, while the legal consequences of the termination or revocation of licenses are settled based on relevant laws.

Based on the Mining Law (UU Minerba) and its explanation, there is no specific alternative dispute resolution mechanism to handle the revocation of IUP, IPR, or IUPK. Churchill Mining plc filed its claim against the Indonesian Government to ICSID based on the Bilateral Investment Treaty (BIT) between Indonesia and the United Kingdom, which serves as the legal basis for Churchill Mining plc's claim. Article 7(1) of the UK-Indonesia Bilateral Investment Treaty states: 'The party in the territory of the country where a national or company of the other party has made or intends to make an investment shall consent to a request from the national or company of the other party to submit, either to conciliation or arbitration, to the Centre established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on March 18, 1965, with respect to any dispute that may arise in connection with the investment.

Furthermore, Article 2(1) of the BIT sets additional requirements for jurisdiction, stating that the investment in question must: 'have been approved in accordance with the Foreign Investment Law No. 1 of 1967 or any regulations amending or replacing it.' In other words, this agreement only applies to investments made by nationals or companies of the United Kingdom in the territory of the Republic of Indonesia that have been approved in accordance with the Foreign Investment Law No. 1 of 1967 or any regulations amending or replacing it.

Based on the BIT, Churchill filed a claim against Indonesia in ICSID arbitration. Although ICSID is a flexible arbitration institution, the first step is to determine whether the dispute falls within ICSID's jurisdiction. Once declared to be within jurisdiction, the dispute is registered by the Secretary-General, and an arbitration panel is formed, typically consisting of three arbitrators, as agreed by the involved parties. ICSID's jurisdiction refers to the limitations of the Washington Convention that established ICSID.

However, although Indonesia has ratified the ICSID Convention, it does not mean that every dispute with foreign investors is automatically resolved at ICSID. Article 25(3) of the ICSID Convention states that the consent of the defendant state is required before a dispute is submitted to arbitration. ICSID also has procedures related to the 'arbitration clause' agreed upon by Indonesia and the foreign investor through the Investment Coordinating Board (BKPM). Even though there is an agreement to use international arbitration, there are still obstacles, such as if dispute resolution falls under the jurisdiction of the courts of the relevant country(Bambang Sutiyoso, 2006). According to these regulations, the jurisdiction of the ICSID Arbitration Tribunal is determined by three key elements: a. the dispute must arise directly from the investment; b. the parties involved must be an ICSID member state and its nationals; c. both parties must give written consent to submit the dispute resolution to ICSID.

IV. CONCLUSIONS

Based on the discussion of the main issues outlined above, the researcher can draw the following conclusions:

1) A Bilateral Investment Treaty (BIT) is an international agreement that binds two countries to protect and facilitate investments between them. The legal strength of a BIT is based on the principle of Pacta Sunt Servanda, which states that every agreement is binding as law for the parties involved, meaning a country cannot evade its obligations even with changes in domestic law. BIT also serves as a legal foundation for foreign investors, indicating the country's obligation to comply with the agreement. In the context of the theory of interdependence, BIT reflects a mutually dependent relationship between the country and investors. The theory of will emphasizes the importance of free consent between parties, while the theory of utility explains that BIT aims to create legal stability and a favorable investment climate. In Indonesia, the resolution of disputes related to BIT is regulated under the UUPM, with arbitration as an option if diplomatic resolution fails, as stated in the BIT between the United Kingdom and Indonesia.
2) Protection for investors in Indonesia is regulated under Law No. 25 of 2007 on Investment, which ensures equal treatment for all investors, both domestic and foreign, while guaranteeing legal certainty and the protection of investor rights. Article 6, Paragraph (2) allows for different treatment for investors from countries with special rights through agreements with Indonesia, which is an exception to the non-discrimination principle in BIT. In this context, the theory of contract balance analyzes international arbitration rulings concerning contractual fairness and equality between parties. BIT generally governs the principles of fair and equitable treatment, the prohibition of expropriation without adequate compensation, and the mechanism for international arbitration. The theory of justice is used to assess whether the law creates substantive justice or merely functions in a formal manner, with its application adjusted to the social, legal, and political context. Laws No. 4 of 2009 and No. 3 of 2020 indicate a shift in the authority over mining management from local governments to the central government, creating a conflict with the principle of regional autonomy, which can be analyzed using the theory of government authority and the principle of legality in administrative law and international investment law.

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