

Legal Protection for Foreign Investments Aligned with the Second Principle of Pancasila: A Scholarly Exploration

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Abstract

Foreign Direct Investment (FDI) plays a crucial role in a country's economic advancement. This research focuses on assessing the legal protection afforded to FDI, with a specific emphasis on applying the second principle of Pancasila, "Just and Civilized Humanity." The goal is to ensure sustainability, respect for human rights, and active participation in foreign investments in Indonesia. The research adopts a normative legal approach, analyzing key legal documents and regulations, including Law Number 25 of 2007. The evaluation encompasses procedures and policies aimed at preserving FDI in Indonesia. The research findings highlight the significant influence of the second principle of Pancasila in establishing a legal and moral framework for the protection of FDI. This principle underscores the importance of fair and dignified treatment for all individuals, including foreign investors. These principles are explicitly outlined in Law Number 25 of 2007, which delineates the rights and responsibilities of foreign investments, advocates for equal treatment, and supports sustainable and equitable economic growth. However, challenges in implementing legal protection for FDI persist, including discrepancies in legal interpretation, bureaucratic complexities, and shifts in government policies. Addressing these issues is crucial to fostering a conducive environment for foreign investments and aligning with the ideals of Pancasila for just and civilized humanity.

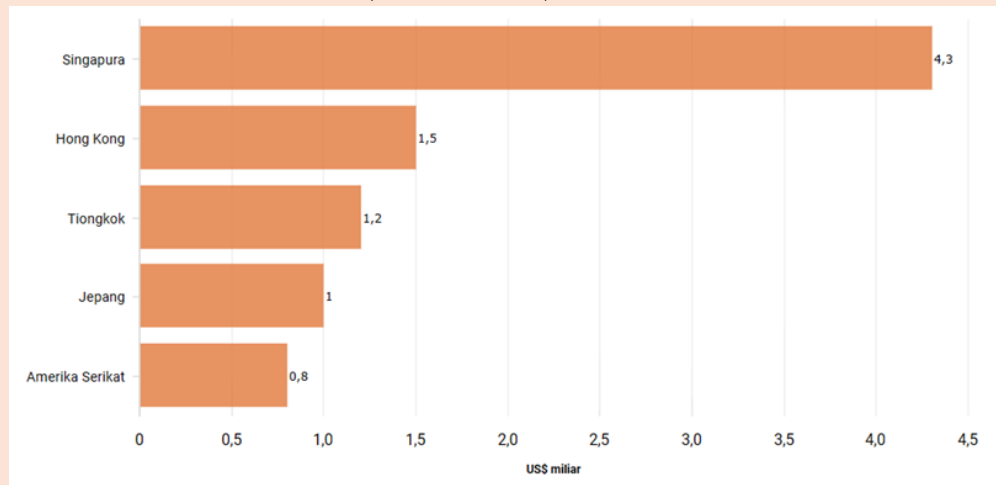
1. Introduction

The main source of Indonesia's development funds comes from within the country. However, the availability of domestic funds is very limited, so the government must seek financial support from international sources. One way to obtain funds from abroad to support Indonesia's national development is through foreign investment. Foreign investment, which is seen as a type of capital movement, has an important role in encouraging the economic progress of a nation, especially those that are in the process of development. Because foreign investors not only contribute financial capital but also share knowledge and human resources. Basically, various factors shape the tendency of foreign investors to invest their capital in a country¹. One of the attractive factors for countries receiving capital is tax policies that provide incentives, the existence of appropriate infrastructure, and the availability of trained and disciplined personnel.

Apart from these factors, the main concern for foreign investors before investing is the issue of legal certainty, which is closely related to the political stability and security of the host country. Indonesia's attractiveness in the eyes of international investors is highly dependent on the performance of the judicial system. The legal framework must provide predictability, equality, and efficiency.

¹ Made Warka, Investment & Capital Markets, RA De Rozarie, Surabaya, 2017, Pg 36.

Diagram 1. Data on Countries with the Largest Realization of Foreign Investment in Indonesia (Quarter I-2023)



Based on reports from the Ministry of Investment (Kemenves) or the Investment Coordinating Board (BKPM), investment realization in the first semester of 2022 (January-June) amounted to around IDR 584.6 trillion or an increase of 32% compared to the same period the previous year.² In the first quarter of 2023, Singapore will maintain its position as the country with the largest investment with a nominal value of US\$ 4.3 billion. Next in second place is Hong Kong with an investment worth US\$ 1.5 billion. Then followed by China with an investment value of US\$ 1.2 billion.³

If efforts to attract investment in Indonesia are not accompanied by legal certainty regarding investment activities, problems will arise and foreign investors will be less interested in investing their capital in Indonesia. This can be seen from the increasing number of industrial companies that are closing or relocating their operations to other countries. Therefore, legal regulations related to investment must be well available and can guarantee legal certainty, considering that Indonesia is a rule of law country. This is actually stated clearly in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). In fact, regulations relating to investment themselves are regulated in Law of the Republic of Indonesia Number 25 of 2007 concerning Capital Investment (hereinafter referred to as Law Number 25 of 2007) and Article 77 of Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Laws -Law Number 2 of 2022 concerning Job Creation Becomes Law (hereinafter referred to as Law Number 6 of 2023).

Investment activities are activities that involve the use of capital or investment to carry out a business activity. Foreign investors carry out these investment activities, whether all the capital is owned by foreign parties or the capital is the result of a joint venture between foreign

² Eri Sutrisno, "Foreign Investors are Increasingly Confident in Investing Capital in Indonesia," Indonesia.go.id, 2022, <https://indonesia.go.id/sistem/indonesia-dalam-angka/5503/investor-asing-makin-belief-building-capital-in-Indonesia?lang=1>. Accessed August 8, 2023.

³ Cindy Mutia Annur, "Hong Kong overtakes China, this is the country with the largest foreign investment into Indonesia," Databoks, 2023, <https://databoks.katadata.co.id/datapublish/2023/05/02/hong-kong-geser-China-is-the-country-with-the-largest-foreign-investment-into-Indonesia>. Accessed August 8, 2023

and domestic parties. Foreign investment through joint ventures is foreign investment in collaboration with domestic investors, with the foreign party controlling a maximum of 95% of the capital and the domestic investor owning a minimum of 5%.⁴

The purpose of holding this investment is actually regulated in Article 3 paragraph (2) of Law Number 25 of 2007, which consists of:

- a. Increasing national economic growth;
- b. Create jobs;
- c. Increasing sustainable economic development;
- d. Increasing the competitiveness of the national business world;
- e. Increasing national technological capacity and capabilities;
- f. Encouraging community economic development;
- g. Processing economic potential into real economic strength by using funds sourced from both domestic and foreign sources;
- h. Improving community welfare.

In the current situation and conditions, the role of foreign investors is very important. Therefore, legal regulations related to investment must be able to provide legal protection for foreign investors, so that foreign investors are interested in investing their capital in Indonesia.

This research is related to three previous studies, namely the first by Rifqi (2023) which examines legal protection for foreign investors in investing in Indonesia which is regulated by Law Number 25 of 2007. The results obtained from this normative research are that Law Number 25 of 2007 concerning Investment regulates legal protection for foreign investors in investing in Indonesia through provisions such as Article 4 paragraph (2) letters a and b, Article 6, Article 7, and Article 8. Meanwhile, this research also examines the consequences that arise for Indonesia as a result of providing legal protection to foreign investors.⁵ The following is research by Ria (2019) which examines this. Based on the findings of normative research conducted using field research methods, every foreign company wishing to invest capital in Indonesia must obtain an in-principle permit from the Investment Coordinating Board (BKPM) and the One Stop Integrated Services and Investment Agency (PTSP), so that the company can be established in Indonesia and its establishment is in accordance with the legal regulations regarding foreign investment, so that foreign investment companies are fully subject to the law. The government also helps foreign investment in Indonesia by eliminating entry tax fees on goods or electronic equipment for foreign investment in Indonesia.⁶

Furthermore, research conducted by Nanci (2020) examined foreign investment as having an important and strategic role in supporting the implementation of national economic development and increasing the economic growth of society in Indonesia, as regulated in Law Number 25 of 2007. Empirical results of normative juridical research using Using this descriptive data analysis technique, every foreign company planning to invest in Indonesia

⁴ H. Salim HS and Budi Sutrisno, *Investment Law in Indonesia*, Rajawali Pers, 2008, Pg 148-149.

⁵ Rifqi Ananda Gelora Sitompul, "Legal Protection for Foreign Investors When Investing Their Capital in Indonesia According to Law Number 25 of 2007 concerning Investment," *Civilia: Journal of Legal Studies and Citizenship Education* 2, no. 3 (2023): 118-28, <https://doi.org/https://doi.org/10.572349/civilia.v3i2.399>.

⁶ Ria Sintha Devi, "Legal Protection for Foreign Investment (PMA) in Indonesia," *Rectum Journal* 1, no. 2 (2019): 142-53, <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v1i2.227>.

must go through careful stages. Starting from submitting a principle permit to the Investment Coordinating Board (BKPM) and the One Stop Integrated Services and Investment Service (PTSP), so that the establishment of the company complies with foreign investment legal procedures and is under responsibility and supervision. Republic of Indonesia. The government also provides support for foreign investment abroad, including the costs of importing goods or electronic equipment needed for foreign investment in Indonesia.⁷

Reviewing previous research, there are differences in this research, namely: normative research which focuses on discussing in detail the depth of legal protection for foreign investment which is oriented towards the second principle of Pancasila. This research is urgent because Pancasila is the basis of the state, which in regulating legal protection for foreign investment must also be linked to the second principle of Pancasila which prioritizes one of the goals of the law, in particular the achievement of legal justice. The problems and discussions raised in this research are not the same as previous research, so this research has innovations and updates that complement the shortcomings of previous research. Responding to the background of the problems above, the objectives of this research can be described as follows: first, to analyze the nature of foreign investment; Second, analyzing legal protection for foreign investors oriented towards the second principle of Pancasila.

2. Method

The type of research used in this research is normative juridical legal research. This type of research is a type of research that uses library sources, or secondary data as a basis for research by looking for rules and books that are relevant to the problem being studied. The approach method used in this research is the Statutory approach and the Conceptual approach. The statutory approach is an approach method that refers to statutory regulations.⁸The conceptual approach is a conceptual approach method that is carried out by paying attention to the views, theories and doctrines that have developed in legal science. The thoughts of professional legal practitioners are also applied in this conceptual framework, which can later be used to examine a legal problem. The main focus is on Law Number 25 of 2007 as primary legal material which is the basic regulation regarding investment issues in Indonesia and has binding force for the community. Secondary legal materials used in this research include research results, articles, papers as well as the results of legal experts in the field of brands that support this research. These sources provide in-depth and comprehensive explanations of primary legal materials, help better understand and interpret the law, and provide diverse views on primary law brand problems in Indonesia.

3. Results and Discussion

3.1. The Nature of Foreign Investment

The definition of foreign investment is clearly stated in Article 1 number 9 of the Law Number 25 of 2007 Amended by Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022. According to the authentic interpretation, foreign investment is investment activities carried out by foreign investors to conduct business in the territory of the Unitary State of the Republic of Indonesia, either wholly or jointly with domestic investors.

⁷ Nanci Yosepin Simbolon et al., "Legal Protection for Foreign Investment (PMA) in Indonesia," *Journal of Darma Agung* 28, no. 1 (2020): 64–71, <https://doi.org/http://dx.doi.org/10.46930/ojsuda.v28i1.461>.

⁸ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2017).

Planting activities are an effort to invest capital in order to carry out business activities. Foreign investors carry out these investment activities, either entirely with foreign capital or in collaboration with domestic investors.⁹

Prof M. Sornarajah also provided an understanding of foreign investment. Foreign investment is¹⁰:

"The transfer of intangible property from one country to another country for the purpose of use in that country to generate wealth under the control of all or part of the owner of the property".

This means that foreign investment is the movement of capital, both tangible and intangible, from one country to another with the aim of obtaining profits in that country under the supervision of the owner of the capital, either in whole or in part. Foreign investment in this definition is defined as the movement of capital from one country to another. The purpose of using it is to make money. The meaning of foreign capital is also defined in Article 1 point 8 of the Law Number 25 of 2007. Foreign capital is capital owned by foreign countries, individual foreign citizens, foreign business entities, foreign legal entities, and/or Indonesian legal entities that own part or all of their capital. The definition of foreign capital is also stated in the Big Indonesian Dictionary (hereinafter referred to as KBBI). Foreign capital is capital originating from a foreign nation (country) which is invested by a country with the aim of making a profit.

In fact, regardless of the advantages and disadvantages of foreign investment, the presence of foreign investment in a country can theoretically be said to have broad benefits (multiplier effect).¹¹ Foreign investors can absorb labor in countries receiving capital, create demand for domestic products as raw materials, increase foreign exchange, especially for export-oriented foreign investors, and increase state income from the taxation sector, as well as technology transfer and knowledge transfer. .¹²

According to Dhaniswara K. Harjono, state capital needed for economic development is in the form of investment through capital investment and maximizing the use of domestic and foreign capital (investment).¹³ From this point of view, it is clear that the presence of investors plays an important role in the economic development of a country, especially in regions where foreign investment operates.¹⁴ Gunarto Suhardi stated that the presence of foreign investors is important because direct investment is better than portfolio investment because direct investment is more permanent. Apart from that, direct investment can also be an option¹⁵:

1. Providing job opportunities for residents;
2. Having multiplier power in the local economy;

⁹H. SalimHS and Budi Sutrisno, 2018, Op.Cit.,Pg 140.

¹⁰ M. Sornarajah, International Law on Foreign Investment, Cambridge University Press, 2004,Pg 7.

¹¹ Indah Sari, "Requirements for Foreign Investment (PMA) in Indonesia According to Law Number 25 of 2007 concerning Capital Investment," Aerospace Law Scientific Journal 10, no. 2 (2020): 63.

¹² Sari.

¹³ Dhaniswara K. Harjono, Investment Law: Review of Law Number 25 of 2007 concerning Capital Investment, Rajagrafindo Persada, Jakarta, 2007,Pg 6.

¹⁴ Sentosa Sembiring, Complete Investment Law Discussion with Law Number 25 of 2007 concerning Capital Investment, CV Nuansa Aulia, Bandung, 2018,Pages 8-9.

¹⁵ Gunarto Suhardi, Several Important Elements in International Trade Law, Atmajaya University, Yogyakarta, 2004,Pg 45.

3. Providing residuals in the form of equipment and technology transfer;
4. If the production results are exported, it provides a marketing channel that can be followed by local entrepreneurs and immediately provides additional foreign exchange and taxes for the country;
5. More resistant to interest and foreign exchange rate fluctuations;
6. Providing regional political and security protection because if investors come from a strong country then security assistance will also be provided.

The existence of legal regulations governing foreign investment is in line with the progressive legal theory of Prof. Satjipto Rahardjo. Because the existing legal arrangements have met the legal needs of the wider community today. It means Law Number 25 of 2007 has fulfilled the legal needs of the wider community, especially in the field of foreign investment, where the existence of these business activities has provided many benefits for all of us.

3.2. The legal substance regulated in Law Number 25 of 2007 has provided legal protection for foreign investors.

Disputes between parties are very likely to occur in foreign investment activities. These disputes are often caused by various factors, including violations of investment contracts by investors or the government, revocation of investment business permits by the government, violations of investor rights, and takeover or nationalization of foreign companies. Therefore, the legal rules governing investment must be able to accommodate future dispute resolution. Following the advent of modern law, the law had to be completely overhauled so that it could be reorganized into a rational and bureaucratic institution. Therefore, only regulations stipulated by the legislative body have binding legal force and can be called laws. According to legal progressivism, law is not king, but a tool to explain the basics of humanity which functions to provide grace for the world and humans.¹⁶

Progressive is an English word that comes from the word progress which means "moving forward". Progressive is an adjective that means advanced. Progressive law is law that is technologically advanced. Progressive literally means liking new ideas that are modern, occurring or developing steadily (supporting new directions, modern ideas, events, or steady developments), or wanting to progress, always progress, improve. Prof. Satjipto Rahardjo put forward the term progressive law which is based on the fundamental assumption that law is for humans.

Prof. Satjipto Rahardjo is concerned about the lack of contribution of legal science in enlightening the Indonesian nation and overcoming crises, including crises in the legal field itself. Therefore, he proposed a solution in the form of progressive legislation. The definition of progressive law continues to change, resulting in fundamental changes in legal theory and practice as well as various breakthroughs.¹⁷ This liberation is based on the principle that the

¹⁶ Satria Sukananda, "Progressive Legal Theory Approach in Addressing the Problem of Legal Gaps in Indonesia," *Journal of Sharia Economic Law* 1, no. 2 (2018): 135–58, <https://doi.org/http://dx.doi.org/10.30595/jhes.v1i2.3924>.

¹⁷ Nurhadi Nurhadi, "Progressive Legal Theory in Resolving Sharia Banking Business Disputes," *Samudra Perempuan Law Journal* 14, no. 2 (2019): 154–67, <https://doi.org/10.33059/jhsk.v14i2.1372>.

law exists for humans, not the law, and the law exists for a greater purpose, namely human dignity, happiness, prosperity and glory.¹⁸

Progressive law, according to Prof. Satjipto Rahardjo, is a series of radical actions involving changes to the legal system (including if necessary changing legal regulations) so that the law is more useful, especially in increasing self-esteem and ensuring human welfare, happiness and prosperity. In layman's terms, progressive law is a law that provides freedom to both think and act within the law, allowing the law to flow and complete its task of serving humans and humanity.

As a result, there is no engineering or bias in law enforcement. Because, according to him, the aim of law is to create justice and prosperity for all people.¹⁹ He tried to emphasize the conditions above in the social sciences, including law, although not as dramatic as in physics, there was a phenomenal change in the laws he formulated in sentences from simple to complex, and from fragmented to grouped. He called this a holistic view in science (law). This holistic perspective offers a visionary awareness that something in a certain order has parts that are interconnected with other parts or with the whole. Progressive law prioritizes humanity and is not dogmatic. Progressive law, among other things, can be interpreted as law that favors the people and is fair. According to progressive legal theory, law does not exist for itself, but rather for purposes outside of itself. As a result, progressive law rejects the tradition of analytical jurisprudence which is also called *rechtsdogmatiek*. These schools only look at the law and discuss and analyze it internally, focusing on the law as a system of regulations that is considered systematic and logical.

Progressive law is responsive, where the law is always linked to goals outside the textual narrative of the law. Progressive law is associated with Roscoe Pound's sociological jurisprudence because the presence of law is associated with its social goals. Because this system was incorporated into Indonesian law, progressive law invited criticism of the liberal legal system. A major shift occurred when pre-modern law became modern law. Because modern law has developed from a justice-seeking institution to a bureaucratic public institution, it is called that. The following assumptions underlie legal progressivism:²⁰ 1) The law exists for humans, not for themselves; 2) The law is always in the process of being created and is not final; 3) Law is a humanitarian institution.

The criteria for progressive law are as follows, based on the assumptions stated above: 1) The big goal is human welfare and happiness; 2) Strong human moral content; 3) Progressive law is a liberating law that operates not only in the realm of practice but also in the realm of theory; 4) Important and functional. In fact, foreign investors need to get legal protection which is clearly regulated in the legal regulations governing investment itself. So that foreign investors are interested in investing their capital in Indonesia. It can be observed together that although there are legal regulations to provide legal protection for foreign investors, they are still not free from various problems and risks that can be faced by foreign investors.

¹⁸ Satjipto Rahardjo, "Dissecting Progressive Law," Kompas, Jakarta, 2007. Pg 154.

¹⁹ Satjipto Rahardjo, *Legal Science: Search, Liberation, and Enlightenment*, Muhammadiyah University Press Surakarta, 2004, Pg 17.

²⁰ Rahardjo. Pg 20.

Many things pose risks in foreign investment activities, including the political situation, as well as the economic and monetary crisis that occurred in the country receiving the capital, which resulted in the delay of several investment projects that had been agreed with foreign investors.²¹ This is what demands that legal regulations regarding investment in Indonesia can provide legal protection for foreign investors. Because it cannot be denied that Indonesia really needs the presence of foreign investors. This means that increasing foreign investment will indirectly make a greater contribution to the Indonesian economy. The following are several forms of legal protection for foreign investors that are accommodated Law Number 25 of 2007:

1. Regarding equal treatment for all foreign investors who invest in Indonesia

Article 3 paragraph (1) letter d in conjunction with Article 6 paragraph (1) of Law Number 25 of 2007 clearly states that the Government treats all investors from any country who carry out investment activities in Indonesia in accordance with the provisions of the Legislative Regulations. Legislation with the same treatment. The same treatment does not apply to investors from countries that have negotiated special rights with Indonesia.²² The special rights in question include special rights relating to customs unions, free trade areas, common markets, monetary unions, similar institutions, and agreements between the Indonesian Government and foreign governments of a bilateral, regional or multilateral nature. relating to special privileges. certain aspects in the implementation of capital investment. Which is regulated in Article 6 paragraph (2) of the Law Law Number 25 of 2007 related to the existence of a number of bilateral international agreements between the Indonesian Government and Foreign Governments in the form of Investment Guarantee Agreements (hereinafter referred to as IGA), relating to foreign investment carried out by countries and/or their citizens based on Law Number 25 of 2007 who have special rights.

2. Related to nationalization and compensation

Article 7 of Law Number 25 of 2007 states firmly that the Indonesian government will not carry out nationalization actions or take over ownership rights of foreign investors unless required by law. In the event that the Indonesian Government takes action to nationalize or confiscate property rights, the Indonesian Government will provide compensation based on market prices. If both parties cannot reach an agreement regarding compensation or compensation, the settlement will be carried out through arbitration. If you pay attention to the provisions regarding nationalization and compensation, especially the sentence "will not carry out nationalization or expropriation", it seems that Indonesia has essentially reduced one of the rights recognized as a sovereign state according to international law. Throughout history, nationalization has been used by governments to increase cooperation with other countries and improve the country's chaotic economic situation. Because nationalization is an action that is legally recognized in international law, it is not wrong if

²¹ Muhammad Hildan Yudanto Nugroho, "Dispute Settlement Against Foreign Investors Who Violate Contracts in Indonesia," *Lakidende Law Review* 1, no. 2 (2022): 261-76, <https://doi.org/https://dx.doi.org/10.47353/delarev.v1i3.33>.

²² Agus Surachman, "Criticism of Law Number 25 of 2007 concerning Capital Investment (Legal Theory Perspective)," *Unification: Journal of Legal Studies* 05, no. 01 (2018): 24-32, <https://doi.org/https://doi.org/10.25134/unification.v5i1.740>.

a country carries out nationalization actions on condition that it complies with applicable legal provisions, meaning that it must comply with applicable laws and regulations. Nationalization must be carried out on a solid basis, meaning that it must be based on strong reasons and in accordance with the provisions agreed to in the investment contract, not just the wishes of the Indonesian government. In addition, nationalization actions of a country must be carried out in accordance with methods recognized by international law, such that nationalization actions can only be carried out by sovereign countries and must not be carried out in a discriminatory manner against foreigners or foreigners. from a particular country. Law Number 25 of 2007 regulating the issue of nationalization is more proof of the Indonesian government's good faith in collaborating with other countries in the world. With the provisions regarding nationalization, the Indonesian government voluntarily limits its right to nationalize foreign companies, namely by tightening the conditions for carrying out nationalization which is the right of a sovereign state according to international law. In addition, decisions regarding the amount, type and method of compensation payments must also be left to negotiations between the Indonesian government and foreign investors. If no agreement is reached, the problem can be resolved through an arbitration forum. In the terms of nationalization there is an obligation to provide compensation, the amount of which is determined based on market prices, namely prices determined by independent appraisers appointed by the parties using methods used internationally. If the government and foreign investors cannot reach an agreement regarding the amount of compensation, the dispute will be resolved through arbitration. This shows the government's accountability if it is forced to take nationalization action.

3. Associated with non-commercial risks

Article 8 of Law Number 25 of 2007 explains in detail regarding the transfer of assets, as well as transfer and repatriation rights in foreign currency. In accordance with the provisions of the Laws and Regulations, foreign investors can transfer their assets to the desired party. Foreign investors can also send and receive funds in foreign currencies. The transfer in question is the transfer of profits in the original currency or currency of capital to the country of origin based on the exchange rate, while repatriation is the return of the rights of a foreign investor from the country where he has lived to the country where he lives. citizenship. Capital, profits, bank interest and other assets are included among the rights of transfer and repatriation. One of the international agreements regarding guarantees in investment is the Multilateral Investment Guarantee Agency (MIGA) Convention.²³ Even though there is legal protection in the law Number 25 of 2007 Apart from bilateral agreements regarding investment protection, foreign investors must still work independently to avoid losses caused by, among other things, political risks and non-commercial risks. This was achieved by pledging its investment to MIGA. MIGA essentially provides guarantees against so-called non-commercial risks, such as monetary transfers, nationalization measures, breach of contract, and risks related to war or security disturbances.

²³ Abdul Aziz, "Multilateral Investment Guarantee Agency (Miga) as an investment guarantee for investors in Indonesia," *Journal of Social and Technology* 3, no. 5 (2023): 409-18, <https://doi.org/https://doi.org/10.59188/jurnalalsostech.v3i5.728>.

After reviewing several legal substances regulated in Law Number 25 of 2007 collectively it can be understood that apart from providing legal protection for foreign investors, several legal substances are also oriented towards the second principle of Pancasila. Because legal protection for foreign investors has provided a legal basis that respects, guarantees and protects the rights of foreign investors from discriminatory and arbitrary law enforcement. This legal protection which is oriented towards the second principle of Pancasila does not only apply to foreign investors who are individuals, but also applies to legal entities, because the essence of this second principle prioritizes the value of justice and does not differentiate between individuals and legal entities.

This is actually also the main aim of the theory of dignified justice put forward by Prof. Teguh Prasetyo²⁴. This means that the substance of the law has provided dignified justice for both domestic and foreign investors. All are not differentiated, and are considered equal before the law. These legal regulations are also an effort to humanize society, especially for foreign investors, who actually, if we look closely, have a weaker position, because they carry out business activities abroad.

The theory of dignified justice is a science, in this case law²⁵. The scope or extent of the theory of dignified justice can be seen from the structure or layers in legal science, which includes legal philosophy (legal philosophy) in the first place, legal theory in the second place, legal dogmatics (jurisprudence) in the third place, and law and legal practice. in fourth place²⁶. The tug-of-war between *lex eterna* (upper current) and *volksgeist* (undercurrent) in understanding law as an attempt to approach God's mind according to a legal system based on Pancasila, gives rise to the theory of dignified justice.

The theory of dignified justice uses a legal approach that includes legal philosophy, legal theory, legal and legal dogmatics, and legal practice, all of which are based on systematic dialectics. The goal of dignified justice is to explain the law. In the theory of dignified justice, the aim of law emphasizes justice which is interpreted as the achievement of law that humanizes humans. Justice in the sense of raising awareness that humans are the creation of the Almighty God is not the same as the Western view, for example that developed by Thomas Hobbes, that humans are animals, political animals, wolves who are ready to prey on their fellow wolves in all aspects. life, including political, economic, social and cultural life²⁷.

Dignified justice is a legal theory, which is also known in English as the concept of legal theory, jurisprudence, or legal philosophy, and knowledge of the substantive law of a legal system. The theory of dignified justice also reveals all the legal rules and principles that apply in the legal system, in this case the Indonesian positive legal system, or the Pancasila legal

²⁴ Jeferson Kameo and Teguh Prasetyo, "The Nature of (International) Economic Law in the Perspective of the Theory of Dignified Justice," *IUS QUIA IUSTUM Law Journal* 27, no. 2 (2020): 308-27, <https://doi.org/https://doi.org/10.20885/iustum.vol27.iss2.art5>.

²⁵ Teguh Prasetyo and Jeferson Kameo, "Typology of Economic Crimes in the Perspective of Dignified Justice," *Bonum Commune Business Law Journal* 3, no. 2 (2020): 201-13, <https://doi.org/https://doi.org/10.30996/jhbbc.v3i2.3479>.

²⁶ Teguh Prasetyo and Abdul Halim Barakatullah, *Legal Science and Legal Philosophy, Study of the Thoughts of Legal Experts Throughout the Ages*, Student Library, Yogyakarta, 2011, Pg 21.

²⁷ Teguh Prasetyo, *Dignified Justice from a Legal Theory Perspective*, Nusa Media, Bandung, 2015, Pages 30-31.

system.²⁸The Pancasila Legal System is a dignified system, because it is based on the national spirit (*volksgeist*). Pancasila as a positive ethic is the source of all sources of law, the soul of the nation contains the completeness needed for state administration. As positive ethics, Pancasila contains ethics, the highest and most upheld values (values and virtues), including political ethics, as a moral foundation, which is basically expected to not only provide enlightenment, but also provide a way for the journey of life. the life of a nation and state.

The theory of dignified justice as a legal theory, or legal theory, is a system of legal philosophy that discusses all the rules, principles or substantive legal disciplines. Included in the discipline of substantive law is a network of values that are interrelated and bind each other. This network of interrelated values can be found in various rules, principles, or networks of rules, and the principles inherent in them are values and virtues that are interrelated and bind each other.²⁹ The theory of dignified justice is so called because it is a form of adequate (scientific) understanding and explanation regarding the harmony of legal concepts in regulations, as well as applicable legal principles and doctrines which actually constitute the face, structure, content and spirit. society and nation in a legal system based on Pancasila, as explained by the theory of dignified justice itself³⁰.

Dignified Justice, as a great legal theory, views Pancasila as the highest basic postulate, namely the source of all sources of juridical inspiration for realizing political ethics (democracy). Law can humanize people in this way; This means that law as a complete system treats and upholds human values in accordance with the nature and purpose of life. In accordance with the second principle of Pancasila, namely just and civilized humanity, this is because humans are noble creatures created by God Almighty.

These precepts contain the value of recognizing the dignity of humans with all their rights and obligations, and so that humans also receive fair treatment from other humans and accept the same thing towards themselves, their surrounding environment, and towards their God.³¹ The theory of dignified justice contains a theoretical point of view with the postulate that all activities in a country must be based on applicable laws and regulations. From the perspective of dignified justice, Pancasila is the highest legal regulation, the source of all sources of law³².

It is said that Legislation is the highest because from the perspective of dignified justice, Pancasila is the first agreement. Those who study law understand this in the expression *pacta sunt servanda* (agreements have binding force like laws). As a law, the law can be enforced against anyone who does not want to obey and implement it. From the perspective of dignified justice, all laws and regulations, as well as all judicial decisions in Indonesia, are derivatives (soul mates) of Pancasila. In other words, all statutory regulations and court decisions that have long-term legal force are also Pancasila, because they are in the spirit of Pancasila, do not conflict with Pancasila, and do not conflict with Pancasila. Pancasila is a filter to protect society

²⁸ Prasetyo.Pg 43.

²⁹ Prasetyo.Pg 34.

³⁰ Prasetyo.PR. 62-63.

³¹ Teguh Prasetyo, *Law and Legal Systems Based on Pancasila*, Media Perkasa, Yogyakarta, 2013,Pg 93.

³² Tommy Leonard et al., "Legal Protection for Bond Investors According to Dignified Justice," *Yustisia* 9, no. 1 (2020): 152-67, <https://doi.org/https://doi.org/10.20961/yustisia.v9i1.37818>.

from regulations that are not in accordance with the nation's noble values³³. By accommodating legal regulations that regulate legal protection for foreign investors, this also happens indirectly will make a greater contribution to the Indonesian economy. Because, with the high influx of foreign capital into Indonesia, the Indonesian Government can utilize these funds as a source of financing for national development within the country. Apart from that, Indonesia can also achieve its dream of becoming a prosperous country or what is called a welfare state³⁴.

4. Conclusion

Legal substance that has been regulated in the Law Number 25 of 2007 and Article 77 of Law Number 6 of 2023 has provided legal protection for foreign investors who carry out investment activities in Indonesia. In particular regarding equal treatment for all investors from any country who invest their capital in Indonesia, nationalization followed by compensation, as well as transfer of assets, transfer and repatriation rights in foreign currency. The legal substance is also oriented towards the second principle of Pancasila. This is because legal protection for foreign investors has provided a legal basis that respects, guarantees and protects the rights of foreign investors, from discriminatory and arbitrary law enforcement. This is actually the main aim of the theory of dignified justice put forward by Prof. Teguh Prasetyo. This means that the substance of the law has provided dignified justice for both domestic and foreign investors. All are not differentiated, and are considered equal before the law. If the legal substance has been regulated in the Law Number 25 of 2007 and Article 77 of Law Number 6 of 2023 has provided legal protection for foreign investors, and is oriented towards the second principle of Pancasila. So next, law enforcement must also be considered carefully. Because, the legal substance alone is not good enough, but the law enforcement aspect must also be very good. So that the legal substance implemented can provide maximum benefits for foreign investment activities in Indonesia.

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³³ Agus Saiful Abib, "Resolving Disputes Between States and Foreign Citizens Regarding Pancasila-Based Investment," *HUMANI (Law and Civil Society)* 8, no. 1 (2018): 70–89, <https://doi.org/http://dx.doi.org/10.26623/humani.v8i1.1388>.

³⁴ Nur Rohim Yunus, "Actualization of the Welfare State on State Life in Islamic and Indonesian Dimensions," *Mizan: Journal of Islamic Law* 3, no. 2 (2015): 253–76, <https://doi.org/https://doi.org/10.32507/mizan.v3i2.165>.

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