

Implications of the Most Favoured Nation Principle in the Investment Law for National Economic Interests

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Abstract

The Most Favoured Nation (MFN) principle and is one of the principles governing capital investment as stated in Law Number 25 of 2007 concerning Capital Investment. However, on the one hand, international agreements have their own polemics because in general many say they favor western countries (developed countries) and tend to be more detrimental to developing countries. In overcoming this situation, the middle path theory provides a view regarding Foreign Investment (PMA) which states that foreign investment has positive and negative impacts on economic development, especially for developing countries, so there is a need for a filter in applying The Most Favoured Nation (MFN) principle so that interests national economy continues to be achieved. In this writing, the author wants to analyze the role of the regime of Law Number 25 of 2007 concerning Investment in implementing The Most Favoured Nation (MFN) principle by focusing on what Indonesia should choose if there is a dilemma in choosing between upholding the principles of international agreements or interests. national economy in implementing foreign investment regulations.

1. Introduction

Foreign Direct Investment (FDI) plays a crucial role in driving a country's economic growth by providing various benefits, such as job creation that improves public welfare, technology transfer that supports innovation and enhances production quality, and the

development of industrial and trade sectors that contribute to national economic competitiveness.¹

As a developing country with abundant natural resources and a large domestic market, Indonesia has become an attractive destination for foreign investment. To support this, the government has adopted various policies to create a conducive investment environment, one of which is the enactment of Law Number 25 of 2007 concerning Investment. This law aims to attract investment, both domestic and foreign, by providing legal certainty, protection for investors, and establishing a stable investment climate.² This law comprehensively regulates the investment mechanism in Indonesia, covering both domestic and foreign investors. One of the principles applied in this regulation is the Most Favoured Nation (MFN), a concept originating from international trade law and long implemented in various international agreements.³

The Most Favoured Nation (MFN) principle is one of the key foundations in international trade and investment law. In the context of investment law in Indonesia, this principle is applied as part of the country's commitment to investment liberalization in order to create a competitive and non-discriminatory climate. The application of the MFN principle allows a trading partner country to receive treatment that is equally favorable to that granted to other countries under similar agreements. Although in theory this principle aims to create equality and encourage the flow of foreign investment, in practice, it gives rise to a number of complex legal controversies, particularly related to national legal sovereignty and the protection of domestic interests. The Most-Favoured Nation (MFN) principle in international trade law requires a country not to discriminate against foreign investors based on their country of origin. If Indonesia grants certain advantages, facilities, or special treatment to investors from one country, then similar treatment must also be given to investors from other countries that have trade or investment agreements with Indonesia, thereby promoting equality in international economic relations.⁴

One prominent example of such a controversy occurred in the case of *Churchill Mining Plc* versus the Government of Indonesia. The British company filed a lawsuit

¹ Alfrin Ernest Marthen Usmany, *et al.*, "Peran Investasi Asing Langsung Dalam Pembangunan Ekonomi Negara Berkembang: Sebuah Sintesis Literatur," *Jurnal Review Pendidikan Dan Pengajaran (JRPP)* 7, no. 2 (2024), <https://doi.org/https://doi.org/10.31004/jrpp.v7i2.26343>.

² Prabaswara Fardantio Nugroho Wibowo, "Kepastian Dan Perlindungan Hukum Dalam Penanaman Modal Di Indonesia Ditinjau Dari Undang-Undang 25 Tahun 2007 Tentang Penanaman Modal," *UNES Law Review* 6, no. 2 (2023), <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

³ Najmi Najmi and Magdariza Magdariza, "Prinsip Most-Favoured Nation Dalam Perdagangan Jasa Menuju Liberalisasi Perdagangan," *UNES Journal of Swara Justisia* 6, no. 4 (January 18, 2023): 589, <https://doi.org/10.31933/ujsj.v6i4.302>.

⁴ Kana Kurnia and Teten Tendiyanto, "Analisis Hukum Terhadap Prinsip Most Favoured Nations Dalam Sengketa Dagang Impor Produk Besi," *Logika : Jurnal Penelitian Universitas Kuningan* 11, no. 1 (2020), <https://doi.org/https://doi.org/10.25134/logika.v11i01.3196>.

against Indonesia at the international arbitration forum (ICSID) in 2012 after the government revoked the mining licenses of its subsidiary in East Kalimantan. One of the main arguments raised by Churchill Mining was that Indonesia had violated the Most-Favored-Nation (MFN) principle as outlined in the Bilateral Investment Treaty (BIT) between Indonesia and the United Kingdom. They claimed that investors from other countries received more favorable treatment than they did, leading to a lawsuit amounting to USD 1.3 billion. Although Indonesia ultimately won the case at ICSID, the incident demonstrated how the MFN principle can be used by investors to challenge state policies that are otherwise legitimate under domestic law.

Another case that sparked a similar controversy involved a dispute between Newmont Mining Corporation and the Indonesian government. The American company had threatened to bring the issue of the mineral ore export ban to an international arbitration forum by invoking the Indonesia-Netherlands BIT through the application of the MFN clause. This potential lawsuit raised concerns about limiting the government's ability to implement strategic national policies in the natural resources sector.

These two cases illustrate that the MFN principle, although normatively intended to ensure equality, can in practice serve as a strategic tool for foreign investors to sue host countries if they perceive unfair treatment even when the state's actions are aimed at protecting national interests. In this context, it becomes crucial to re-evaluate the relevance and implementation of the MFN principle in Indonesia's investment law. This study aims to further examine the legal controversy, highlighting how the MFN principle may conflict with state sovereignty and national legal certainty, and to analyze the potential for reformulating or limiting the principle in future investment agreements.

While the MFN principle is intended to promote equality and enhance competitiveness in the investment climate, its application within the context of the national economy raises a number of issues, particularly regarding its impact on Indonesia. One key issue is the extent to which this principle actually benefits Indonesia, and whether its application favors foreign investors over domestic businesses potentially creating an imbalance in economic competition.⁵ Moreover, the Most Favored Nation (MFN) principle can reduce the government's flexibility in formulating more strategic investment policies, as it requires equal treatment for all partner countries. This can pose a challenge for the Indonesian government in bilateral agreement negotiations, especially when it intends to offer special incentives to investors from specific countries considered to have strategic importance for the national economy. Under the MFN principle, any incentive granted to one country must also be extended to others, thereby limiting the

⁵ Arie Widjaya Chandra, "Implikasi Dan Implementasi Prinsip Most Favoured Nation Terhadap Penanaman Modal Di Indonesia," *Jurnal Darma Agung* 31, no. 6 (2023), <https://doi.org/https://dx.doi.org.10.46930/ojsuda.v31i6.3827>.

government's ability to design more selective investment policies that align with domestic economic interests.⁶ However, due to the obligation to provide equal treatment to all foreign investors, the government does not have full freedom to implement policies that are more favorable to the country. This can become an obstacle in attracting higher-quality investment that is oriented toward the development of domestic industries.

Indonesia is one of the 154 member countries of the WTO, with 117 of them classified as developing countries.⁷ The WTO is the only global international organization responsible for regulating the international economy and trade sector. Its main objective is to promote trade liberalization by eliminating barriers that hinder interaction between countries in global trade. Over time, the WTO has expanded its scope to cover various new issues, such as the protection of intellectual property rights (TRIPS), trade-related investment measures (TRIMS), and trade in services agreements (GATS).

Every agreement made by WTO members is based on several core principles, one of which is the Most Favoured Nation (MFN) principle, also known as the non-discrimination principle. The MFN principle is a fundamental part of various WTO agreements, including GATT, GATS, and TRIPS. This principle is introduced through the MFN clause, which requires every country to provide equal treatment to all WTO members in terms of tariffs, domestic taxes, and national regulations. The Most-Favoured Nation (MFN) principle aims to promote multilateral trade liberalization by eliminating discriminatory actions between countries, thereby creating a fairer and more open trading system. Under this principle, a country is obliged to extend the same tariff treatment and trade benefits to all its trading partners without exception. This is expected to broaden the granting of tariff concessions, reduce trade disputes, and serve as a guideline for a more stable and transparent international trade practice.⁸

The Most Favoured Nation (MFN) principle originates from international trade law, particularly within the system governed by the World Trade Organization (WTO) and various bilateral and multilateral investment agreements. This principle essentially requires that a country must treat all its trading partners equally, without granting special

⁶ Robby Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia," *Recital Review* 6, no. 2 (July 22, 2024): 254–71, <https://doi.org/10.22437/rr.v6i2.35989>.

⁷ Arriza Briella Kurniawardhani, "Sejarah Organisasi Ekonomi Internasional : *World Trade Organization (WTO)*," *Widya Winayata : Jurnal Pendidikan Sejarah* 9, no. 1 (April 30, 2021): 49–53, <https://doi.org/10.23887/jjps.v9i1.30381>.

⁸ Elizabeth Sefanya Roulina and I Gusti Ngurah Parikesit Widiatedja, "Pengaturan Prinsip Most Favoured Nation (MFN) *World Trade Organization* Dalam Pelaksanaan Ekspor-Impor Di Indonesia," *Kertha Negara : Journal Ilmu Hukum* 11, no. 5 (2023).

privileges or discriminating against any particular country.⁹ In the context of investment, this principle refers to the impossibility for Indonesia to grant special privileges to investors from one country without treating investors from other countries equally.

The Most Favoured Nation (MFN) principle in investment policy aims to prevent discrimination against foreign investors by ensuring that they are not treated less favorably than investors from other countries with similar investment agreements. The application of this principle creates transparency, predictability, and stability in a country's investment system, thereby fostering a fairer and more competitive investment climate.¹⁰ However, the implementation of the Most-Favored Nation (MFN) principle can also limit the government's flexibility in formulating investment policies that prioritize national interests, particularly in providing specific incentives to investors from strategic partner countries or in protecting domestic industries from unfair competition with foreign companies.

The Most-Favored Nation (MFN) principle in Indonesia is regulated under Article 6, Paragraph (1) of Law Number 25 of 2007, which mandates that all foreign investors must be given equal treatment regardless of their country of origin. This provision reflects Indonesia's commitment to creating a non-discriminatory and competitive investment climate and aligns with various international investment agreements that have been ratified, both bilaterally and multilaterally.¹¹ However, the implementation of this principle does not always proceed smoothly and often creates dilemmas for the government in formulating investment policies oriented toward national development.

The application of the Most Favored Nation (MFN) Principle in the Investment Law reflects Indonesia's commitment as a member of the WTO to promote fair trade among countries. As a developing country, this policy offers Indonesia the opportunity to become more actively involved in global trade by attracting foreign investment, encouraging technology transfer, and improving the quality of human resources, which is ultimately expected to contribute to national economic growth.¹² However, with the advent of economic liberalization comes other consequences, namely the enforcement of the law of nature where the strong will prevail. As a result, the Most Favored Nation (MFN)

⁹ Jodie Jeihan, Tasya Ester Loijens, and Intan Ekaningtyas, "Analisis Penetapan Evaluasi Generalized System of Preference (GSP) Amerika Serikat Terhadap Indonesia Dan Pengaruhnya Terhadap Kesepakatan Perdagangan Dibawah *World Trade Organization* (WTO)," *Jurnal Hukum Lex Generalis* 1, no. 1 (April 1, 2020): 34–50, <https://doi.org/10.56370/jhlg.v1i1.192>.

¹⁰ Serlika Aprita and Rio Adhitya, *Hukum Perdagangan Internasional* (Depok: Rajawali Pers, 2020).

¹¹ Najmi and Magdariza, "Prinsip Most-Favoured Nation Dalam Perdagangan Jasa Menuju Liberalisasi Perdagangan."

¹² Najmi and Magdariza.

principle has a detrimental effect on developing countries that still face limitations in capital and resources, making it difficult for them to compete with developed nations.

In practice, the application of the Most Favored Nation (MFN) principle in some countries is carried out with a more flexible approach, where they formally adopt the principle but apply certain exceptions based on national interests. China, for example, continues to uphold the MFN principle but also offers various special incentive schemes to investors from certain countries, indicating preferential treatment beyond the MFN provisions. Meanwhile, the United States has an exception mechanism that allows different treatment of certain countries by taking into account geopolitical factors and strategic interests, so in some cases, the MFN principle is not strictly enforced.¹³ Therefore, it is interesting to examine whether the application of the Most-Favored Nation (MFN) principle in Indonesia's investment policy aligns with national economic interests or if modifications are needed to make it more flexible and adaptive to domestic needs.

From a legal perspective, the application of the MFN principle in the Investment Law faces challenges in aligning it with various other regulations, both at the national and international levels. Nationally, investment policies must be in harmony with existing regulations, including taxation policies, business licensing, and regional provisions. Disharmony between national regulations and regional rules can lead to legal uncertainty, potentially hindering investment flows.¹⁴ Indonesia needs to ensure that the implementation of the Most-Favored Nation (MFN) principle in its domestic law aligns with the obligations agreed upon in international trade agreements, particularly within the framework of the World Trade Organization (WTO) and the ASEAN Economic Community (AEC). This is important to ensure that Indonesia's trade policies do not conflict with its agreed international commitments, thereby avoiding potential trade disputes and enhancing the confidence of investors and trade partners. Such alignment also contributes to national economic stability by ensuring that Indonesia's trade regulations do not create barriers that could reduce competitiveness in the global market. Therefore, harmonization between domestic policy and international trade rules becomes a crucial aspect of maintaining legal certainty and strengthening Indonesia's position in international trade.¹⁵

¹³ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

¹⁴ Vivi Putri Rafely, "Perlindungan Investor Asing Pasca Lahirnya Undangundang Cipta Kerja," *Unes Law Review* 5, no. 4 (2023), <https://doi.org/https://doi.org/10.31933/unesrev.v5i4>.

¹⁵ Ismaidar and Ongku Sapna Fella Hasibuan, "Politik Hukum Dalam Peningkatan Investasi Terhadap Usaha Mikro Kecil Menengah (UMKM) Di Indonesia," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024), <https://doi.org/https://doi.org/10.31004/innovative.v4i1.8404>.

Apart from the regulatory aspects, the implementation of the Most-Favored-Nation (MFN) principle in investment policy must also be examined from economic and social perspectives. One possible economic impact is the imbalance between foreign investors and domestic businesses. If foreign investors receive the same treatment as domestic investors without any special protection for local industries, then domestic companies that are still developing may struggle to compete.¹⁶ This can lead to the dominance of foreign companies in various strategic sectors, which in the long term could result in national economic dependence on foreign capital.

The increase in foreign investment in Indonesia from a social perspective can have significant impacts on the local workforce, both positive and negative. On the one hand, foreign investment creates new job opportunities and enhances workforce skills through technology transfer and training programs provided by foreign companies. This can increase the competitiveness of the local labor force in the global market. However, on the other hand, without proper investment policies, there is a risk of labor exploitation, such as low wages and poor working conditions, as well as the potential marginalization of local workers if foreign companies prefer hiring foreign workers deemed more competent. Balanced regulations and labor protection are key factors in maximizing the benefits of foreign investment for Indonesian society.¹⁷ Therefore, the implementation of the MFN (Most Favored Nation) principle in investment policy must take into account the balance between economic interests and social welfare.

In the geopolitical context, the application of the Most Favored Nation (MFN) principle is not only related to aspects of international trade, but must also consider the evolving dynamics of inter-state relations. Indonesia, as a country with an open economy, has various bilateral and multilateral agreements that govern trade and investment with partner countries, which influence national policies in applying the MFN principle. The existence of these agreements can strengthen Indonesia's position in global trade, but also requires flexibility in responding to policy changes from partner countries as well as geopolitical dynamics that may affect the stability of trade and investment. Thus, the application of MFN in Indonesia must align with national interests, international regulations, and consider aspects of economic diplomacy to maintain a balance between domestic interests and international obligations.¹⁸ Therefore, an in-depth analysis of how the Most Favoured Nation (MFN) principle is applied in inter-state investment relations

¹⁶ Ismaidar and Hasibuan.

¹⁷ Syrly Clanita Nabila and Nur Fadrih Asyik, "Pengaruh Inflasi Dan Penanaman Modal Dalam Negeri Terhadap Investasi Asing Langsung Di Indonesia Dengan Pertumbuhan Ekonomi Sebagai Variabel Moderating," *JIRA: Jurnal Ilmu Dan Riset Akuntansi* 13, no. 4 (2024).

¹⁸ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

becomes very important so that the policies adopted remain beneficial for Indonesia. Considering the previous explanation, the author is interested in further researching issues related to the Most Favoured Nation (MFN) principle in investment regulation in Indonesia. The MFN principle, as one of the fundamental principles in international trade law, has significant implications for national investment policy, particularly in the context of economic globalization and market liberalization. Hence, this research is titled "The Implications of the Most Favoured Nation Principle in the Investment Law for National Economic Interests."

The core issues analyzed in this study include two main aspects. First, how the Most Favoured Nation (MFN) principle is implemented in Law Number 25 of 2007 concerning Investment. Second, whether the implementation of the MFN principle aligns and is consistent with national economic interests as mandated by the constitution and national development goals.

In the discussion, this study will normatively analyze the MFN provisions contained in the Investment Law, including examining their legal and political background. Furthermore, it will also explore how the MFN principle is applied in international investment agreements in which Indonesia participates, and how the application of this principle in Indonesia compares with that in other countries. The discussion will also include a critical analysis of the impact of the MFN principle on the protection of national strategic sectors and the sovereignty of the state in determining the direction of economic policy. In addition, the "middle path" theory will be used as an alternative approach to assess whether the application of the MFN principle needs to be reviewed or adjusted in order to protect national economic interests without disregarding Indonesia's global commitments. With this approach, the study is expected to contribute both scientifically and practically to the formulation of fairer and more sustainable investment policies.

Research on the application of the Most Favoured Nation (MFN) principle in Indonesia's investment policy has been widely conducted, using various approaches from legal, economic, and international relations perspectives. One relevant study was conducted by Chandra (2023), which discusses the implications of the MFN principle on investment policy in Indonesia. In his research, Chandra concluded that the MFN principle has helped improve Indonesia's investment competitiveness, but still requires selective regulation so as not to weaken strategic domestic sectors.¹⁹ Another study by Fithriah (2017) highlights the application of the principles of non-discrimination and national treatment within the context of the ASEAN Economic Community, indicating

¹⁹ Chandra, "Implikasi Dan Implementasi Prinsip Most Favoured Nation Terhadap Penanaman Modal Di Indonesia."

that Indonesia's national regulations still need to be aligned with the fundamental principles of international trade to avoid conflicts with national interests.

Research by Aulia Hidayat (2024) further discusses the impact of the Most-Favored-Nation (MFN) principle in the context of the Regional Comprehensive Economic Partnership (RCEP) agreement, showing that this principle can strengthen regional economic integration, but also introduces new legal risks through the dispute settlement mechanism, which may pressure Indonesia's domestic policies.²⁰ In the study by Alfian et al. (2024), the importance of legal protection for foreign investors is emphasized; however, it is also criticized that the MFN principle potentially grants excessive privileges, which in turn hinders the competitiveness of local MSMEs.²¹

Various studies have made significant contributions to examining the Most-Favored-Nation (MFN) principle from different perspectives. However, there remain certain limitations that have not been fully addressed, particularly in the context of the *middle path theory* proposed by Sornarajah. This theory offers a new perspective that balances the need for investment liberalization with the protection of national interests, a framework that has not been widely employed explicitly in prior research. This study seeks to fill that gap by focusing on how the MFN principle in Law Number 25 of 2007 can be interpreted and implemented based on the middle path approach, taking into account geopolitical contexts, structural imbalances between developed and developing countries, and the urgency of protecting strategic national industries.

Accordingly, the novelty of this research lies in the application of the middle path theory as an analytical framework for the implementation of the MFN principle in Indonesia's investment law. This approach enables a more balanced and realistic analysis of the impact of the MFN principle, not only from a formal legal standpoint but also from socio-economic and national economic sovereignty perspectives. Moreover, this study also offers a model for harmonizing Indonesia's international commitments with its constitution-based national development agenda, particularly in the context of Article 33 of the 1945 Constitution.

2. Research Method

This research employs a normative legal research method, which focuses on the analysis of legal norms applicable within the Indonesian legal system. The purpose of

²⁰ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

²¹ Rizki Alfian et al., "Perlindungan Hukum Bagi Investor Asing Dalam Kegiatan Penanaman Modal Asing Di Indonesia Dan Implikasi Terhadap Negara," *SYARIAH: Jurnal Ilmu Hukum* 1, no. 4 (2024), <https://doi.org/https://doi.org/10.62017/syariah.v1i4.1444>.

this study is to understand, interpret, and examine legal rules related to a specific legal issue.²² In the context of this research, the normative method is used to examine the application of the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 concerning Investment, as well as how this principle affects national economic interests. Through this method, the study will explore the legal aspects of MFN principle implementation, including whether its application provides benefits or instead poses challenges to Indonesia's national economic policy and economic sovereignty.

A statutory approach is employed to analyze various regulations governing foreign investment in Indonesia, with an emphasis on Law Number 25 of 2007 on Investment. In addition, this research will also examine various implementing regulations related to investment, such as Presidential Regulations, Ministerial Regulations, and regulations from the Investment Coordinating Board (BKPM). Furthermore, the study will explore bilateral and multilateral investment agreements ratified by Indonesia, particularly those incorporating the Most-Favoured Nation (MFN) principle, including agreements within the framework of the World Trade Organization (WTO) and the ASEAN Economic Community (AEC).

Meanwhile, a conceptual approach is used to understand the fundamental concept of the MFN principle in international investment and trade law. This approach involves examining legal theories related to foreign investment, national economic policies, and the relationship between the MFN principle and a country's economic sovereignty. By using a conceptual approach, this study seeks to explore how the MFN principle can be optimally implemented within Indonesia's investment policy without compromising national economic interests. In addition, this approach will also refer to the views of legal experts in investment law and the practical application of the MFN principle in various countries to gain a broader understanding of the principle's effectiveness and challenges in the context of global investment.

This research utilizes various legal sources, including primary, secondary, and tertiary legal materials. Primary legal materials consist of applicable laws and regulations, particularly Law Number 25 of 2007 on Investment and its derivative regulations governing foreign investment in Indonesia. Additionally, primary legal materials also include international agreements ratified by Indonesia that impact national investment policy, such as trade agreements within the scope of the WTO and ASEAN. The study will also review court decisions or Constitutional Court rulings (if any) related to investment disputes and the application of the MFN principle.

In addition to primary legal materials, this research also employs secondary legal materials, namely various literature that provides additional insights into the MFN principle and investment policy. The secondary legal materials used include books,

²² Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2021).

scientific journals, academic articles, and reports from various national and international institutions such as the Investment Coordinating Board (BKPM), Ministry of Investment, World Bank, and WTO. These literatures will be used to analyze how the MFN principle has been applied in different legal systems and its impact on national economies. Moreover, the opinions of legal and economic experts in investment will also be reviewed to gain academic and practical perspectives on the MFN principle in the context of foreign investment. To strengthen the analysis, this research also makes use of tertiary legal materials, such as legal dictionaries, legal encyclopedias, and international regulatory documents related to the MFN principle and investment policy. These tertiary legal materials will serve as supplementary references to clarify the legal concepts analyzed in this study.

Data collection in this research is carried out through library research.²³ The literature study was conducted by examining various relevant legal sources, both from national regulations and international agreements. Through this method, the research will examine the legal rules governing foreign investment in Indonesia and compare them with international legal standards related to the Most-Favored-Nation (MFN) principle. In the data collection process, a selection of high-quality legal documents and academic literature from both domestic and international sources was carried out to ensure that the analysis is based on a solid and accountable foundation.

Once the data has been collected, this study uses a normative-qualitative analysis technique to examine and interpret the legal provisions governing the MFN principle in Indonesia's investment policy. The normative analysis is conducted by interpreting the provisions of Law Number 25 of 2007, comparing them with international legal principles, and assessing their implications for national economic policy. This analysis process will explore how the MFN principle is applied in Indonesia's investment regulations and how these regulations can be adjusted to be more effective in protecting national interests without violating internationally agreed commitments. In addition, this research also employs a descriptive-analytical approach,²⁴ The collected data will be systematically organized and analyzed to identify patterns, relationships, and the implications of the implementation of the MFN (Most-Favored-Nation) principle in Indonesia's investment policy. This approach enables the research to illustrate how the MFN principle functions within Indonesia's investment legal system and how existing regulations can be improved to be more adaptive to global economic dynamics.

Additionally, this study will conduct a comparative law analysis by examining how the MFN principle is applied in other countries. The purpose of this comparative analysis is to identify the strengths and weaknesses of MFN implementation in

²³ Sugiyono and Puji Lestari, *Metode Penelitian Komunikasi (Kuantitatif, Kualitatif)* (Jakarta: Alfabeta, 2023).

²⁴ Sigit Hermawan, *Metode Penelitian Bisnis: Pendekatan Kuantitatif & Kualitatif* (Malang: Media Nusa Creative Publishing, 2021).

Indonesia and to explore alternative policies that could be adopted to enhance the effectiveness of national investment regulations. By comparing Indonesia's regulations with investment practices in other countries, this research aims to provide more comprehensive recommendations for the government in managing foreign investment without compromising national interests.

By employing a normative legal research method based on statutory and conceptual approaches, and utilizing various relevant legal sources, this study aims to provide an in-depth analysis of the application of the MFN principle under Law Number 25 of 2007. Data collection is carried out through literature studies and normative-qualitative analysis to ensure that the research results have a strong legal foundation and can contribute to the development of investment policies in Indonesia. It is expected that the findings of this study can serve as a reference for formulating more effective policies in the management of foreign investment, so that the MFN principle can be optimally implemented without neglecting national economic interests.

3. Results and Discussion

Implementation of Legal Protection for Lampung Robusta Coffee Geographical Indications in Improving the Economy of West Lampung Coffee Farmers

International law does not have specific provisions for defining national interest, but the concept is explained by Morgenthau as a state's effort to maintain control over its fundamental aspects. National interest includes control over physical territory, stability and sovereignty in the economic and political systems, and the preservation of social and cultural identity as a nation's distinctive characteristic. To identify a state's national interest, there are at least five perspectives to consider: realism, liberalism, Marxism, constructivism, and the English School.²⁵

From the perspective of realism, international relations between states are viewed as an arena filled with conflict and competition, where each state acts based on its national interests to ensure its security and survival. This theory emphasizes that in an anarchic international system where no global authority can enforce rules absolutely states must rely on their own power to survive and achieve their strategic goals.²⁶ From the perspective of liberalism, national interest focuses on economic balance and a free market, where every individual has the freedom to participate in economic activities without

²⁵ Stefano Guzzini, "Embrace IR Anxieties (or, Morgenthau's Approach to Power, and the Challenge of Combining the Three Domains of IR Theorizing)," *International Studies Review* 22, no. 2 (June 1, 2020): 268–88, <https://doi.org/10.1093/isr/viaa013>.

²⁶ Dewi Kurniasih and Makmur Umar, "Pengaruh Implementasi Kebijakan Kawasan Perbatasan Indonesia-Malaysia Terhadap Efektivitas Ketahanan Wilayah Di Kabupaten Nunukan Provinsi Kalimantan Utara," *Jurnal Ketahanan Nasional* 28, no. 1 (May 24, 2022): 1, <https://doi.org/10.22146/jkn.73004>.

excessive state intervention. This principle emphasizes that a nation's stability and prosperity can be achieved through open and competitive market mechanisms, thus viewing repressive government intervention as an obstacle to economic growth and public welfare.²⁷

From the Marxist perspective, the state is viewed as an arena of struggle between social classes with differing interests within the structure of society, where the state does not function as a neutral entity, but rather as an instrument controlled by the dominant group with specific economic and political interests. This view emphasizes that the state tends to serve the interests of the ruling class such as the capitalists in a capitalist society by creating and enforcing policies that maintain their dominance over the working class.²⁸

From a constructivist perspective, national interests are not static but dynamic and continuously evolving in line with changes in the international political structure. This is due to the understanding that national interests are shaped by social interactions, norms, and identities that develop in inter-state relations. Thus, changes in global dynamics such as shifts in economic power, changes in political alliances, and the evolution of international norms and values can influence how a country defines and pursues its national interests.²⁹ From the perspective of the English School, national interests are determined by the state not solely because of its independent status, but also due to mutual recognition between states and an awareness of how a state's actions impact other entities.

Indonesia does not have an explicit statement that defines its standpoint in determining national interests. However, as a country governed by law, Indonesia's national interests can refer to the 1945 Constitution of the Republic of Indonesia (UUD 1945). In its preamble, the UUD 1945 affirms that one of the goals of Indonesia's independence is to improve the welfare of its people, create lasting peace, and realize social justice. Therefore, Indonesia's national interests are reflected in legislation based on the UUD 1945. It can thus be concluded that Indonesia's national economic interest encompasses all economic policy directions grounded in the UUD 1945, aimed at promoting the welfare of all Indonesian people without exception.

As previously mentioned, any policy adopted must align with the principle of social justice, which can essentially be described as follows:

²⁷ Kylie Tanisia, Vilkent Bradley Salim, and Bonnarty Steven Silalahi, "Perspektif Filsafat Liberalisme Dalam Konteks Perekonomian Pasar Bebas," *Jurnal Pendidikan Tambusai* 7, no. 2 (2023), <https://doi.org/https://doi.org/10.31004/jptam.v7i2.8438>.

²⁸ Subur Hendriwani, "Teori Kelas Sosial Dan Marxisme Karl Marx," *Paradigma: Jurnal Kalam Dan Filsafat* 2, no. 1 (2020).

²⁹ Rendi Prayuda and Syafri Harto, *ASEAN Dan Kejahatan Transnasional Narkotika (Problematisa, Dinamika Dan Tantangan)* (Yogyakarta: Ombak, 2020).

1. To safeguard the public interests of citizens that they cannot realize or achieve independently;
2. To guarantee the common interests of citizens that cannot be achieved individually, with the support or intervention of the state;
3. The state protects all ethnic groups, families, and individual citizens;
4. To promote the welfare and dignity of the lives of its citizens, whether achieved independently by the citizens themselves or with the assistance of the state.

The principle of social justice can be interpreted as justice that ensures every regulation provides benefits for all parties involved. When there is a conflict of interest between national interests and an international agreement regarding foreign investment, Indonesia must uphold its national laws, which are based on its national interests, while also taking into account the interests of Foreign Investors (PMA). To further understand the impact of implementing the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 concerning Investment, Table 1 presents a comparison of the positive and negative impacts of MFN implementation on the national economy.

Table 1. Positive and Negative Impacts of the Implementation of MFN in Law No. 25 of 2007

Aspect	Positive Impact	Negative Impact
Foreign Investment	Increases investment attractiveness	Dependence on foreign capital
Business Competition	Promotes healthy competition	May hinder the growth of local industries
Technology Transfer	Broader access to innovation	Incoming technology may not be suitable for local industries
Regulation	Legal certainty for investors	Risk of legal claims from foreign investors

Source: Processed from Law No. 25 of 2007 and BKPM data.

Table 2 provides an overview of how the MFN (Most Favored Nation) principle is implemented in several other countries, which can serve as a basis for comparison in assessing the effectiveness of regulations in Indonesia.

Table 2. Implementation of MFN in Several Countries

Country	MFN Implementation	Impact on Economy
China	Provides special incentives for strategic investors	Rapid economic growth, protection of local industries

United States	Has an exemption mechanism for strategic sectors	May restrict foreign investors in sensitive industries
Indonesia	MFN implementation with several exceptions	Increased investment stability, but limited policy flexibility

Source: Processed from WTO, UNCTAD, and investment policies of each country.

Table 3 contains exceptions to the MFN principle based on the provisions in GATT 1994, which provide flexibility for countries in regulating their trade and investment policies, as presented below:

Table 3. MFN Exceptions Under GATT 1994

Article	Exception	Description
Article XX	Public moral protection, human health, environment	Countries may restrict trade based on these factors
Article XXI	National security	Exception granted to countries in times of war or emergency
Article XXIV	Free trade areas, customs unions	Countries may grant special treatment within trade blocs

Source: Adapted from GATT 1994, WTO Legal Texts.

3.1 Implementation of the Most Favoured Nation (MFN) Principle in Law Number 25 of 2007 Concerning Investment

Foreign Direct Investment (FDI) plays a vital role in supporting a country's economic growth, as it helps increase capital inflows needed for business expansion and infrastructure development, creates job opportunities for the local population, and promotes technology transfer that accelerates innovation and production efficiency. Moreover, FDI contributes to strengthening national economic competitiveness by bringing in multinational companies that introduce global operational standards, enhance productivity, and expand international market access for domestic products.³⁰ Therefore, various countries, including Indonesia, strive to create a competitive investment environment through clear and supportive regulations. In Indonesia, one of the main regulations governing foreign investment is Law Number 25 of 2007 concerning Investment.

The Most Favoured Nation (MFN) principle is a fundamental concept in international trade that aims to ensure non-discrimination, both politically and

³⁰ Andreadi Andreadi, Suhaidar Suhaidar, and Wenni Anggita, "Pengaruh Foreign Direct Investment, Domestic Investment, Dan Belt And Road Initiative Terhadap Gross Domestic Product Indonesia," *IJAB: Indonesian Journal of Accounting and Business* 4, no. 2 (August 9, 2023): 52–66, <https://doi.org/10.33019/ijab.v4i2.50>.

economically, by requiring each member country of a trade agreement to grant the same treatment to all its trading partners without giving special preferences to any particular country. Under this principle, a country cannot impose more favorable tariffs or trade barriers on one country while applying stricter provisions on another. The MFN principle seeks to establish a fair and open trade system, promote global economic stability, and reduce the risk of protectionism that can hinder international economic growth.³¹

The political objective of this policy is to avoid conflicts between countries that may arise from disagreements caused by discriminatory actions in international relations, thereby maintaining global stability and cooperation. On the other hand, from an economic perspective, the policy aims to promote trade liberalization by reducing barriers that may hinder the flow of goods, services, and investments between countries, thus creating a more open, competitive, and mutually beneficial economic environment for global economic actors.³²

The Most-Favored Nation (MFN) principle is one of the non-discrimination principles that serves as a foundation in international agreements established by the World Trade Organization (WTO) and is stipulated in the General Agreement on Tariffs and Trade (GATT) 1994. This principle aims to eliminate discriminatory practices in international trade by requiring each WTO member country to grant equal treatment to all trading partners, regardless of their country of origin.³³ With the implementation of the MFN (Most Favoured Nation) principle, a country is not allowed to grant advantages or special preferences to one particular country without extending the same treatment to all other member countries, thereby creating a fairer, more open, and transparent global trading system.

To provide a clearer picture of the various controversies arising from the application of the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 concerning Investment, the following table presents a summary of the positive and negative impacts of this principle on various aspects of Indonesia's national economy. This table is also accompanied by relevant reference sources as the basis for analysis.

Table 4 Impact of Implementing the MFN Principle on the Indonesian National Economy

Economic Aspect	Positive Impact	Negative Impact	Reference Source
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³¹ Rifkah Mufida, "Penerapan Prinsip National Treatment Dalam Kasus Sengketa Impor Daging Ayam Antara Brasil Dengan Indonesia," *Justitia et Pax* 38, no. 1 (June 28, 2022), <https://doi.org/10.24002/jep.v38i1.5053>.

³² Mufida.

³³ Najmi and Magdariza, "Prinsip Most-Favoured Nation Dalam Perdagangan Jasa Menuju Liberalisasi Perdagangan."

Foreign Direct Investment (FDI)	- Increases the flow of foreign investment into the automotive and manufacturing sectors. - Encourages technology transfer and job creation.	- Potential domination by foreign investors that could threaten the sustainability of local MSMEs.	Sridianti.com (2024): The Impact of Free Trade Policies on the National Economy.
Local Industry	- Promotes innovation and improved production efficiency through global competition.	- Risk of deindustrialization in uncompetitive sectors, such as textiles and electronics.	Sridianti.com (2024): The Impact of Free Trade Policies on the National Economy.
Trade Balance	- Increase in exports of key commodities such as palm oil to ASEAN countries.	- Trade balance deficit due to a surge in imports of consumer goods from FTA partner countries.	Tamyawan, Satya (2018): The Impact of Indonesia's Preferential Tariff Reduction under ACFTA, AIFTA, and AANZFTA on Trade Balance, Output, and Welfare. Gadjah Mada University.
Consumer Welfare	- Access to imported products at more affordable prices and with a wider variety of choices.	- Dependence on imported goods that may disrupt economic stability in the event of global supply chain disruptions.	Sridianti.com (2024): The Impact of Free Trade Policies on the National Economy.
Labor Force	- Creation of new jobs in sectors receiving foreign investment.	- Structural unemployment due to the closure of local industries unable to compete with imported goods.	Sridianti.com (2024): The Impact of Free Trade Policies on the National Economy.

Economic Sovereignty	- Regional economic integration that can strengthen Indonesia's position in the global supply chain.	- Limited national policy space to protect strategic sectors due to binding international commitments.	Suherman, Muhamad: Comparison of the Regulation of the Most Favoured Nation Principle in Investor Protection Based on TRIMs and the ASEAN Comprehensive Investment Agreement (ACIA). Legal Science Proceedings.
Trade Disputes	- Opportunity to resolve disputes through agreed international mechanisms.	- Potential lawsuits from trade partner countries if Indonesia adopts policies deemed discriminatory, such as the nickel ore export ban challenged by the European Union.	Mochtar, Muhammad Fadhli (2022): The Application of the Most Favoured Nation Principle in the WTO: Case Study of the Nickel Ore Trade Dispute Between Indonesia and the European Union. Sriwijaya University.

Source: data processed by researchers, 2025

One of Indonesia's economic policies in the field of investment is governed by Law Number 25 of 2007 on Investment (Investment Law). In the preamble, it is stated that to achieve a just and prosperous society, sustainable national economic development is required, based on the principle of economic democracy as an effort to realize the objectives of the state. As a member of the WTO, Indonesia adopts the Most-Favored Nation (MFN) principle in this law, which emphasizes equal treatment for all investors regardless of their country of origin. The application of the MFN principle aims to minimize potential conflicts among parties involved in Foreign Direct Investment (FDI), including Indonesia as the host country, the investor's home government, and the investor itself. This principle provides security guarantees to investors because the host country applies equal regulations to both foreign and domestic investors without granting special treatment. Nevertheless, the Investment Law also establishes several exceptions to the MFN principle, namely:

1. Indonesia applies a fundamental investment policy by providing equal treatment for both domestic and foreign investors, while still considering national interests.
2. This equal treatment does not apply to investors from certain countries that are granted special rights based on specific agreements with Indonesia.

As with other regulations, the MFN principle in the Investment Law follows exceptions that are consistent with the GATT 1994 provisions. These exceptions include:

1. Article XX (General Exceptions), which allows for restrictions in the following areas:
 - a. Protecting public morality.
 - b. Safeguarding the health and safety of humans, plants, and animals.
 - c. Protecting patents, trademarks, copyrights, and preventing deceptive practices.
 - d. Addressing products made by prison labor.
 - e. Preserving national treasures with artistic, historic, archaeological, or cultural value.
 - f. Managing exhaustible natural resources.
2. Article XXI (Security Grounds) addresses national security concerns, including the circulation of arms, actions taken during times of war or emergency, and member states' obligations in supporting UN efforts to maintain international peace and security.
3. Article XXIV (Free Trade Area, Customs Union) regulates issues related to territorial boundaries, cross-border trade, customs unions, and the establishment of free trade areas.
4. Article XXV (Generalized System of Preferences) allows member states, through joint agreements, to take collective actions in granting exemptions from certain GATT obligations.

These exceptions to the MFN principle may serve as a mechanism for countries especially developing ones to develop regulations that favor their national interests if strict adherence to the MFN principle results in harm. The Investment Law mandates that large companies must partner with micro, small, and medium enterprises (MSMEs), as well as cooperatives. This provision is in line with the Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR RI) Number XVI of 1998 on Economic Policy in the Context of Economic Democracy, which serves as one of the legal foundations in the economic field. The policy in this regulation aims to ensure that investment becomes an integral part of the national economy and promotes overall economic growth.

From this policy direction, which requires collaboration with MSMEs, it is clear that all large investing companies, whether domestic or foreign, are subject to the same requirement of partnering with MSMEs. However, from the perspective of other foreign

investors seeking cooperation with these large companies particularly in business areas that *must* involve MSMEs this requirement may be perceived as a violation of the MFN principle. Such a condition presents a dilemma, as it could potentially be considered a breach of the MFN principle for not offering equal treatment between foreign and domestic investors.

In international investment law, there are three main approaches to managing foreign investment: the liberal approach, the protectionist approach, and the middle path (balanced approach). The liberal approach emphasizes complete freedom for foreign investors to invest without significant barriers from the host government. This approach is often adopted by developed countries with high economic competitiveness and well-established infrastructure. On the other hand, the protectionist approach focuses on protecting the domestic economy by limiting foreign investment access and promoting local industry development through affirmative policies such as subsidies, tax incentives, and foreign ownership restrictions.³⁴

Sornarajah proposes the *middle path* approach as a strategy to balance openness to foreign investment with the protection of the national economy, whereby a country must design policies that attract foreign capital without sacrificing control over strategic sectors that play a vital role in national development. This approach emphasizes that while foreign investment can bring benefits such as increased capital, technology transfer, and job creation, without proper regulation, it also carries the risk of undermining economic sovereignty and the resilience of domestic industries.³⁵

The implementation of the Most Favoured Nation (MFN) principle in Law No. 25 of 2007 in Indonesia needs to be analyzed through a middle path approach so that the government can attract foreign investment without losing control over national economic policies. This approach emphasizes a balance between investment openness and the protection of strategic sectors that play a vital role in the national economy. The aim is to ensure that, although Indonesia provides equal treatment to all foreign investors in accordance with the MFN principle, the state still retains the ability to regulate and safeguard sectors deemed crucial for economic stability and sovereignty, such as energy, agriculture, and infrastructure.³⁶ Therefore, the implementation of the Most Favoured Nation (MFN) principle must be carried out with policy flexibility that allows for the protection of certain sectors with significant impact, such as the developing domestic

³⁴ Agus Wibowo, *Analisis Investasi Dan Pasar Modal* (Semarang: Universitas STEKOM, 2023).

³⁵ Navy Sasmita, "Perlindungan Bagi Indonesia Sebagai Negara Tuan Rumah Dalam Bilateral Investment Treaty (BIT) Antara Indonesia Dan Uni Emirat Arab," *Jurnal Ilmiah Global Education* 5, no. 4 (2024), <https://doi.org/https://doi.org/10.55681/jige.v5i4.3448>.

³⁶ Najmi and Magdariza, "Prinsip Most-Favoured Nation Dalam Perdagangan Jasa Menuju Liberalisasi Perdagangan."

industry, the energy sector, and strategic infrastructure, so that Indonesia can remain competitive in the global market without sacrificing its national interests. Law Number 25 of 2007 on Investment adopts the MFN principle in order to create an open and fairly competitive investment environment, where foreign investors are guaranteed equal treatment to investors from other countries that have investment agreements with Indonesia. The implementation of this principle aims to enhance the attractiveness of foreign investment and provide legal certainty for business actors planning to invest in Indonesia, thereby creating a more stable investment climate that supports economic growth.³⁷ However, in its implementation, the MFN (Most Favored Nation) principle often presents challenges for governments, particularly in terms of flexibility in national investment policies. One major issue is the potential limitation on affirmative policies aimed at protecting domestic industries. The MFN principle requires governments to provide equal treatment to all foreign investors, without granting special privileges to investors from specific countries. As a consequence, flexibility in applying protective policies to strategic industries becomes more restricted.³⁸

In practice, foreign investors often take advantage of the Most Favoured Nation (MFN) clause to claim more favorable rights than those stipulated in the original agreement. This poses a risk for Indonesia, particularly in the context of investment dispute settlement mechanisms, where investors may refer to other investment agreements that provide better treatment to investors from certain countries and demand the same rights. As a result, the Indonesian government may face legal claims in international arbitration forums, potentially harming national investment policies and restricting its ability to enact regulations that prioritize domestic economic interests.³⁹

The application of the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 concerning Investment contributes positively to national economic interests by increasing the attractiveness of foreign investment through non-discriminatory treatment of investors from various countries, thereby creating a more competitive investment climate. In addition, this principle promotes fair business competition by ensuring that no country receives more favorable treatment than others, thereby enhancing market efficiency and the quality of business services in Indonesia. Furthermore, the implementation of MFN also expands access to foreign technology and capital, which can improve the capacity of domestic industries and accelerate the transfer of knowledge and

³⁷ Rafely, "Perlindungan Investor Asing Pasca Lahirnya Undangundang Cipta Kerja."

³⁸ Welly Surjono, "Strategi Manajemen Pemasaran Digital Dalam Meningkatkan Loyalitas Pelanggan: Studi Kasus Pada Perusahaan Start-up Teknologi Di Indonesia," *Journal of Mandalika Literature* 6, no. 1 (2025), <https://doi.org/https://doi.org/10.36312/jml.v6i1.3561>.

³⁹ Agus Sabardi et al., *Bisnis Pengantar Sukses Memulai Dan Mengelola Bisnis* (Yogyakarta: Bagian Penerbitan Sekolah Tinggi Ilmu Ekonomi YKPN, 2021).

innovation, thus contributing to more sustainable economic growth.⁴⁰ By providing fair treatment to all foreign investors, Indonesia is fostering a more stable and trustworthy investment environment, which in turn enhances global investor confidence to invest in the country.

Profit:

1. Enhancing the Attractiveness of Foreign Investment

With the application of the Most-Favored-Nation (MFN) principle, foreign investors are guaranteed non-discriminatory treatment, providing them with legal certainty and protection for their investments. This creates a sense of security for investors, as they know that Indonesia will not grant special treatment to investors from only certain countries but will treat all foreign investors fairly. As trust in Indonesia's investment system increases, the inflow of foreign capital can grow, helping to boost the economy and create job opportunities for the public.⁴¹

2. Enhancing Business Competition

By equalizing treatment for foreign investors, the competitiveness of the domestic market increases, encouraging local companies to innovate and improve efficiency. This fair competition contributes to improving the quality of products and services offered by domestic companies so they can compete with foreign enterprises. Moreover, the presence of foreign investor competition can serve as a catalyst for domestic companies to adopt best business practices, increase productivity, and accelerate the adoption of modern technologies in their operations.⁴²

3. Expanding Access to Technology and Capital

Foreign investment not only provides financial capital but also brings technical skills, innovation, and managerial methods that can accelerate the growth of domestic industries. With the presence of foreign investors who possess more advanced technology and resources, companies in Indonesia can benefit from technology transfer and the improvement of local workforce skills. Additionally, access to foreign capital helps fund infrastructure projects and the development of strategic industries that may be difficult to finance with domestic capital alone.

⁴⁰ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

⁴¹ Abdulloh Machin et al., *Gawat Darurat Medis Dan Bedah* (Surabaya: Airlangga University Press, 2018).

⁴² Wafik Azizah and Binar Nan Baik, "Memahami Liberalisasi Perdagangan: Dampak Dan Implikasinya Dalam Konteks Ekonomi Global," *Jurnal Akademik Ekonomi Dan Manajemen* 1, no. 4 (December 8, 2024): 251–65, <https://doi.org/10.61722/jaem.v1i4.3333>.

Ultimately, this has the potential to strengthen Indonesia's global competitiveness and accelerate national economic growth.⁴³

Challenge:

1. Restrictions on National Protection Policies

The Most-Favored Nation (MFN) principle requires governments to provide equal treatment to all foreign investors without discrimination, thereby narrowing the space for policies that favor domestic industries. Governments cannot easily provide special incentives to local companies without offering similar benefits to foreign investors. As a result, several domestic industrial sectors, especially those still in development, may struggle to compete with foreign companies that have greater capital and more advanced technology. In the long term, this may hinder the growth of national industries and make local businesses increasingly dependent on partnerships with foreign investors.⁴⁴

2. Risk of Legal Claims from Foreign Investors

In some cases, foreign investors may invoke the MFN clause to file legal claims against the Indonesian government if they feel they have been treated less favorably than other investors from different countries. Foreign investors often refer to bilateral or multilateral investment agreements that grant certain rights to investors from other countries and then demand the same rights based on the MFN principle. This can negatively affect legal certainty for the government in formulating investment policies, as each new policy may risk triggering costly international arbitration lawsuits, which can hinder the government's efforts to manage strategic economic sectors.⁴⁵

3. Dependence on Foreign Capital

If the MFN principle is implemented without strong regulation, Indonesia may become overly dependent on foreign investment to support its economic growth. This dependence can become a serious issue during global economic crises or if foreign investors suddenly withdraw their capital from Indonesia, potentially causing economic instability. Furthermore, the dominance of foreign investment in various strategic sectors can reduce government control over key areas such as energy, infrastructure, and natural resources. Therefore, the government needs to balance the application of the MFN principle with investment policies that

⁴³ Akhmad Al Aidhi et al., "Peningkatan Daya Saing Ekonomi Melalui Peranan Inovasi," *Jurnal Multidisiplin West Science* 2, no. 02 (February 28, 2023): 118–34, <https://doi.org/10.58812/jmws.v2i02.229>.

⁴⁴ Rafely, "Perlindungan Investor Asing Pasca Lahirnya Undangundang Cipta Kerja."

⁴⁵ Panji Purboyo, Hulman Panjaitan, and Paltiada Saragi, "Implikasi Kebijakan Terhadap Keadilan Perlakuan Dalam Pemberian Hak Istimewa Kepada Investor Asing Di Indonesia," *Journal of Mandalika Literature* 6, no. 2 (2025), <https://doi.org/https://doi.org/10.36312/jml.v6i2.3793>.

prioritize national interests and ensure that incoming foreign investment truly contributes to long-term economic development.⁴⁶

The implementation of the Most-Favored Nation (MFN) principle in Law Number 25 of 2007 offers benefits in attracting foreign investment but also presents challenges to national economic interests. From the perspective of the middle path theory developed by Sornarajah, Indonesia needs to adjust the application of MFN to remain aligned with national development strategies. To address these challenges, the government can implement strategic sector exemptions, review bilateral investment agreements, and strengthen mechanisms for resolving investment disputes. In doing so, Indonesia can continue to attract foreign investment without sacrificing its national economic interests.

3.2 Most Favoured Nation (MFN) Analysis of National Economic Interests

Foreign direct investment plays a crucial role in driving a country's economic growth, especially for developing countries like Indonesia, by bringing various significant benefits. Foreign investment not only increases capital inflows that can be used for infrastructure development and productive sectors, but also creates job opportunities that improve the welfare of the population. In addition, the presence of foreign investors encourages greater competitiveness in the industrial sector through the transfer of technology and knowledge, which ultimately contributes to sustainable economic growth and the modernization of various domestic business sectors.⁴⁷ Therefore, various policies have been designed by the Indonesian government to attract foreign investment, including the implementation of the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 concerning Investment.

The Most Favoured Nation (MFN) principle in international investment law requires a country to provide equal treatment to all foreign investors, regardless of their country of origin. In other words, investors from countries that have investment agreements with Indonesia are entitled to receive the same treatment as investors from other countries that receive the most favorable treatment. The main objectives of implementing this principle are to create legal stability, enhance investment attractiveness, and ensure fairness and equality in the treatment of foreign investors.⁴⁸ However, the implementation of the MFN

⁴⁶ Ahmad Muhammad Mustain Nasoha et al., "Ekonomi Dan Kewarganegaraan Analisis Dampak Investasi Asing Terhadap Kebijakan Kewarganegaraan Di Indonesia," *Parlementer : Jurnal Studi Hukum Dan Administrasi Publik* 1, no. 4 (2024), <https://doi.org/https://doi.org/10.62383/parlementer.v1i4.292>.

⁴⁷ Siti Komariyah, Halimatus Putriya, and R. Alamsyah Sutantio, "Dampak Investasi, Kinerja Ekspor, Dan Inflasi Dalam Penyerapan Tenaga Kerja Indonesia: Analisis Data Panel," *Ekuitas (Jurnal Ekonomi Dan Keuangan)* 3, no. 4 (April 2, 2020): 464–83, <https://doi.org/10.24034/j25485024.y2019.v3.i4.4195>.

⁴⁸ Najmi and Magdariza, "Prinsip Most-Favoured Nation Dalam Perdagangan Jasa Menuju Liberalisasi Perdagangan."

principle in Indonesia's investment policy has sparked debate, particularly in the context of national economic interests. On one hand, this principle ensures legal certainty and strengthens Indonesia's competitiveness in the eyes of foreign investors. On the other hand, the application of MFN may reduce the government's flexibility in setting protectionist policies for domestic industries and open opportunities for foreign investors to use certain legal mechanisms to gain greater profits.⁴⁹

It has been explained that there are at least two conflicting understandings related to economic theories on foreign investment, namely the classical theory on foreign investment and dependency theory, as well as a middle path theory that takes a compromise between the two perspectives.⁵⁰ This theory provides a perspective on the "impact" of foreign direct investment on the host country, particularly in developing nations.

Classical theory views foreign investment as a factor that is entirely beneficial to the host country's economy, as it contributes to various aspects of economic development. Foreign investment is considered to bring in capital that can increase production capacity and economic growth, as well as introduce new technologies that can drive innovation and efficiency in various industrial sectors. In addition, foreign investment also plays a role in infrastructure development that supports economic activities, such as transportation, energy, and communication. Furthermore, foreign investment creates job opportunities for the local workforce, thereby improving community welfare and reducing unemployment levels.⁵¹

This theory is popular in many developed countries in America and Europe and is often considered the foundational understanding behind the creation of international agreements. The dominance of the free market theory, which is popular in developed countries, is also one of the factors contributing to the popularity of this classical understanding. The process of globalization is seen as something inevitable due to technological advancements. This perspective also views multinational corporations, as the harbingers of globalization, as entities that must have unrestricted movement

⁴⁹ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

⁵⁰ Abyssinia Abay, "Dependency Theory to the Study of Foreign Direct Investment (FDI) and Its Relevance to the Horn of Africa: A Matthew Effect?," *International Affairs and Global Strategy*, October 2022, <https://doi.org/10.7176/IAGS/97-02>.

⁵¹ Rotua F N Simanjuntak et al., "Perlindungan Penanaman Modal Asing Dan Pengaruh Pertumbuhan Ekonomi Berdasarkan Neo-Classical Economy Theory," *HEMAT: Journal of Humanities Education Management Accounting and Transportation* 1, no. 2 (July 31, 2024): 668–73, <https://doi.org/10.57235/hemat.v1i2.2775>.

worldwide, with their investments needing protection to allow the process of global integration to develop.⁵²

The development of classical views in economics has led to the emergence of economic liberalism in international trade, which is reflected in the establishment of the World Trade Organization (WTO) along with various agreements. Some important agreements produced include the Trade-Related Aspects of Intellectual Property Rights (TRIPS) that regulate intellectual property, the General Agreement on Trade in Services (GATS) that focuses on trade in services, and the Trade-Related Investment Measures (TRIMS) related to investment regulations. These agreements aim to create a more open, transparent, and rules-based trading system to support global economic growth.⁵³ The classical view in international relations remains popular because it receives strong support from industrial or developed countries that have multinational corporations with significant economic interests. These countries often engage in political lobbying to ensure their governments implement policies aligned with this view, enabling them to protect and expand their business interests on the global stage. This support is not only political but also encompasses trade regulations, investments, and economic diplomacy that benefit the multinational corporations from these countries.

In contrast, dependency theory argues that foreign investment does not significantly contribute to the development of developing countries; rather, it places these countries in a condition of permanent dependency. This theory highlights how foreign investment often fails to bring meaningful technology transfer or improvement of local industrial capacities but instead strengthens the economic structures that keep developing countries dependent on developed nations. This dependency can take the form of reliance on capital, technology, markets, and economic policies controlled by foreign countries or companies, thereby hindering the long-term economic independence of developing nations.⁵⁴ This theory was developed by economists and political philosophers from Latin America, although research has also been conducted in other parts of the world. The theory views multinational corporations, which have their headquarters in their home countries, as creating subsidiaries in developing countries where they invest. These subsidiaries in developing countries are likely to prioritize the interests of the parent

⁵² Rory Horner, "Towards a New Paradigm of Global Development? Beyond the Limits of International Development," *Progress in Human Geography* 44, no. 3 (June 19, 2020): 415–36, <https://doi.org/10.1177/0309132519836158>.

⁵³ Robert Howse and Joanna Langille, "Continuity and Change in the *World Trade Organization*: Pluralism Past, Present, and Future," *American Journal of International Law* 117, no. 1 (January 25, 2023): 1–47, <https://doi.org/10.1017/ajil.2022.82>.

⁵⁴ Abay, "Dependency Theory to the Study of Foreign Direct Investment (FDI) and Its Relevance to the Horn of Africa: A Matthew Effect?"

company and its investors in their home countries. This is what leads to the hindrance of progress in developing countries, unless they are able to break free from the situation of dependency or economic attachment through foreign investment.⁵⁵ Foreign investment is seen as benefiting only the upper class in a developing country because they have formed alliances with investors. This situation leads to potential human rights violations as it creates an environment that supports the operations of multinational corporations, which must be maintained through legislation or force, and is also supported by the upper-class alliance in the developing country. This perspective reflects the longstanding resentment towards foreign investors in Latin American countries as a result of the United States' dominance over the economic life in Latin America. This theory differs from the classical theory as it also integrates non-economic interests, such as human rights and the environment.

Next came the theory known as "The Middle Path," which emerged after the failure of communist economics and the economic crisis caused by overly free (unregulated) markets. This theory sees the negative impacts of foreign investment through multinational companies, but it has also been proven that, if used correctly, multinational companies can be a driving force for improving the economy of developing countries. Based on this view, developing countries must first recognize that foreign direct investment (FDI) can have both positive and negative impacts on their economic development. With this mindset, a country is more likely to adopt FDI policies that are utilized for economic development purposes and carefully create regulations to achieve those goals.

This theory aligns with the classical theory, which emphasizes that foreign investment by multinational companies benefits the local economy, particularly through the influx of capital and technology that can enhance productivity and the competitiveness of domestic industries. Furthermore, foreign investment contributes to the creation of new jobs, which in turn increases household income and drives economic growth. Moreover, this investment opens opportunities for the host country to boost exports, both through increased production capacity and integration into global supply chains, thereby expanding market access and strengthening its economic position in international trade.⁵⁶ This view also highlights that foreign investment often brings harmful effects, especially in terms of the technology introduced to developing countries. The technology brought

⁵⁵ Ahmed Nazzal, Maria-Victòria Sánchez-Rebull, and Angels Niñerola, "Foreign Direct Investment by Multinational Corporations in Emerging Economies: A Comprehensive Bibliometric Analysis," *International Journal of Emerging Markets* 20, no. 13 (January 31, 2023): 244–69, <https://doi.org/10.1108/IJOEM-12-2021-1878>.

⁵⁶ Rossanto Dwi Handoyo, Angga Erlando, and Ilham Septiyanto, "Dampak Faktor Eksternal Terhadap Pertumbuhan Ekonomi Indonesia," *EcceS (Economics, Social, and Development Studies)* 7, no. 1 (June 14, 2020): 1, <https://doi.org/10.24252/ecc.v7i1.13382>.

by foreign investors is sometimes technology that has already been banned in their home countries due to its potential to harm life or the environment. If such technology continues to be used without proper supervision, its impact can worsen, both for the society and the ecosystem in the host country.⁵⁷

The middle path approach proposed by M. Sornarajah emphasizes a balance between openness to foreign investment and the protection of national economic interests, particularly in the context of developing countries like Indonesia. This approach underscores that although foreign investment is necessary to drive economic growth, the government must still maintain control over strategic sectors to ensure that national interests are not marginalized.⁵⁸ By implementing the right regulations, the government can ensure that foreign investment not only brings capital but also contributes to sustainable national development without compromising the country's economic sovereignty.

The middle path approach in applying the Most-Favored Nation (MFN) principle in Law No. 25 of 2007 becomes relevant because it allows for a balance between investment openness and domestic economic protection. If Indonesia is too liberal in applying MFN, foreign investors may potentially dominate various economic sectors without protection for domestic industries, which could weaken the competitiveness of local businesses. Conversely, if the policies are too protectionist, foreign investment flows may decrease, hindering economic growth and reducing the potential for job creation and technology transfer.⁵⁹ Therefore, the application of MFN should be evaluated by considering the balance between the interests of foreign investors and national interests.

The application of the Most Favoured Nation (MFN) principle in Law Number 25 of 2007 aims to ensure equal treatment for all foreign investors, thereby providing legal certainty and strengthening Indonesia's investment competitiveness on the international stage. With this principle, investors from countries that have investment agreements with Indonesia are guaranteed that they will not face discrimination in policies, regulations, or incentives provided by the government.⁶⁰ This is expected to strengthen a conducive investment climate, attract more foreign capital, and drive economic growth through

⁵⁷ P.G.C. Nayanathara Thathsarani Pilapitiya and Amila Sandaruwan Ratnayake, "The World of Plastic Waste: A Review," *Cleaner Materials* 11 (March 2024): 100220, <https://doi.org/10.1016/j.clema.2024.100220>.

⁵⁸ Raden Mas Try Ananto Djoko Wicaksono, "Analisis Perbandingan Hukum Penanaman Modal Asing Antara Indonesia Dengan Vietnam (Tinjauan Dari Undang - Undang No. 25 Tahun 2007 Tentang Penanaman Modal Dan Law No. 67/2014/QH13 On Investment)," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 2, no. 1 (February 26, 2021): 7, <https://doi.org/10.36722/jaiss.v2i1.509>.

⁵⁹ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

⁶⁰ Rafely, "Perlindungan Investor Asing Pasca Lahirnya Undangundang Cipta Kerja."

increased investor confidence in the stability and openness of Indonesia's investment system.

However, in practice, the implementation of the MFN (Most Favored Nation) principle presents several challenges that could impact national economic interests. One of the main challenges is the reduced flexibility of the government in providing special treatment to domestic industries. Because the MFN principle requires the government to treat all foreign investors equally, the space for policies that favor domestic industries becomes limited. As a result, some sectors that are still developing may struggle to compete with foreign companies that have greater capital and access to more advanced technology.⁶¹ In addition, the application of MFN also increases legal risks for the Indonesian government. In some cases, foreign investors have used the MFN clause to file legal claims against the host country by referencing other investment agreements that provide greater benefits to investors from other countries. This can hinder national economic policies, as any regulatory changes made by the government have the potential to lead to legal disputes in international arbitration forums.⁶²

The MFN (Most-Favored Nation) principle regime is one of the fundamental principles for every WTO member to create a liberal trade climate in the international environment. Trade liberalism does not always have a positive impact on every country, especially in terms of foreign direct investment (FDI). The Most-Favored Nation (MFN) principle, or the principle of non-discrimination, is a principle in international law that tends to focus more on the interests of Western or developed countries compared to developing countries. Developed countries have a dominant role in determining the form and direction of international law development. The differences in technology, capital, and expertise between developed and developing countries are the main factors contributing to the "partiality" of the MFN principle. Based on the previous middle path theory, it explains that developing countries should view foreign direct investment (FDI) as a "double-edged sword," which has both positive and negative impacts.⁶³

Pure competition, which is intended to be achieved through trade liberalization, can only be felt positively if all parties are in an equal position. Regulations limiting Foreign Direct Investment (FDI) are still considered necessary to protect the national interests of developing countries from imbalanced competition, given the limited capital and

⁶¹ Aulia Hidayat, "Penerapan Prinsip (MFN) Dalam Regional Comprehensive Economic Partnership Dan Dampaknya Terhadap Kebijakan Perdagangan Indonesia."

⁶² Gudrun Monika Zagel, "Achieving Sustainable Development Objectives in International Investment Law," in *Handbook of International Investment Law and Policy* (Singapore: Springer Singapore, 2020), 1–55, https://doi.org/10.1007/978-981-13-5744-2_57-1.

⁶³ Roulina and Widiatedja, "Pengaturan Prinsip Most Favoured Nation (MFN) *World Trade Organization* Dalam Pelaksanaan Ekspor-Impor Di Indonesia."

domestic industrial resources compared to multinational companies. It should be noted that the principle of non-discrimination does not prevent developing countries like Indonesia from developing their industries. This is because the General Agreement on Tariffs and Trade (GATT) does not prohibit protection of domestic industries, as long as such protection is implemented in the form of tariffs. The state has a role in the economy that is not limited to civil matters, but also extends to the public domain. Therefore, in principle, the state has the authority to participate through administrative legal mechanisms.

The Investment Law is aimed at eliminating the factors that hinder the development of the investment climate, one of which is creating legal certainty. However, investment policies, especially concerning Foreign Direct Investment (FDI), must still align with national development policies designed with consideration of macroeconomic aspects, economic balance among regions, business actors, and various community groups. In addition, these policies must support the role of national businesses based on the principles of good corporate governance.

Based on the above explanation, as a member of the World Trade Organization (WTO), Indonesia is bound to apply the Most-Favored-Nation (MFN) principle in its policies, particularly in the Investment Law. The purpose of the basic principles created by the WTO is to enhance trade liberalization, thereby encouraging free competition in the economies between countries. It is explained that international agreements, when examined in more depth, tend to favor Western/advanced countries rather than developing countries. This can be seen from the middle path theory in viewing FDI, which holds that foreign investment has positive effects on a country's development, but if not well-managed, it can have negative impacts on the economic growth of developing countries.

Economic liberalization, which is the goal of the MFN principle, should be further analyzed by Indonesia in responding to this principle in every international agreement that has been ratified. Indonesia, as a rule-of-law country, already has policies for its national economic interests based on Pancasila and the Constitution. The author argues that if a conflict of interest arises between the obligation to fulfill an international agreement, particularly concerning FDI, Indonesia must still prioritize its national interests, as stated in the 1945 Constitution, to advance the general welfare through economic development based on democratic principles.

4. Conclusion

Based on the discussion presented above, it can be concluded that the application of the Most Favoured Nation (MFN) principle in Law No. 25 of 2007 concerning

Investment reflects Indonesia's commitment to creating an open, competitive, and non-discriminatory investment climate to attract more foreign investment and foster national economic growth through capital accumulation, technology transfer, and job creation. However, on the other hand, the implementation of the MFN principle also presents significant challenges, including limited space for the government to formulate protective policies for strategic domestic sectors and the risk of international disputes due to investors' broad interpretation of the MFN provision. Therefore, a balanced policy approach (middle path) is needed so that Indonesia can maintain its economic sovereignty, protect national interests, and simultaneously fulfill the international commitments that have been agreed upon.

The application of the Most Favoured Nation (MFN) principle in Law No. 25 of 2007 concerning Investment offers strategic benefits in creating legal certainty and enhancing the attractiveness of foreign investment in Indonesia, but also poses significant challenges to the protection of national economic interests, particularly in the context of disparities between developed and developing countries. The three approaches of classical economic theory, dependency, and the middle path show that foreign direct investment can be a driving force for economic development but can also create dependency and structural losses if not carefully regulated. Therefore, the middle path approach becomes the most relevant alternative for Indonesia, by selectively and measurably accepting foreign investment while still prioritizing national economic sovereignty through regulations focused on sustainable development, equitable welfare, and the protection of domestic industries.

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