Law and Investment Comparison in Australia, South Korea, and Indonesia

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Abstract
This essay examines the legal and policy frameworks regulating foreign direct investment (FDI) in Australia, South Korea, and Indonesia by focusing on three key areas of law: national laws on foreign investment (including treaties), competition and consumer law, and anti-corruption law. These legal domains significantly influence the decisions and risk assessments of outbound investors. The study highlights how each country's legal system—Australia's common law versus South Korea's and Indonesia's civil law traditions—affects FDI regulation. It also contrasts developed (Australia and South Korea) and developing (Indonesia) economies, revealing distinct challenges and opportunities in attracting sustainable FDI. Comparative legal analysis is used to assess the effectiveness and limitations of existing frameworks, especially in the context of pre- and post-pandemic reforms. While Australia and South Korea are seen as stable and secure environments for investment, Indonesia, despite being high-risk, offers potentially higher returns. The essay argues that legal clarity and effective governance—especially in anti-corruption and competition regulation—play a critical role in fostering investor confidence. Using a normative legal research method with descriptive, analytical, and case study approaches, the essay concludes that comprehensive understanding of these legal areas is essential for minimizing investment risks and promoting sustainable FDI flows.

1. Introduction

Foreign direct investment (FDI) plays an increasingly important part in the economies of the Asian region.[1] Not only for Asia, but FDI also impacts Australia's economies, even considering their status as developed countries. It is shown by Australia's experience as a net recipient of substantial amounts of FDI presents some interesting issues.[2] This research essay will be discussing Australia, South Korea and Indonesia law and investment policy and regulation. We will compare three significant areas of law as national laws regulating foreign investment including any treaties, competition law and consumer law, and anti-corruption law.

First, the most important thing for the investors before investing in a foreign market is understanding the national laws regulating foreign investment, including any treaties between hosted states and investors state. The investors can sketch both risk and return of investment after examining the hosted state national laws because it provides general information on how they should operate their investment. Second, competition law and consumer law equip the investors to run their business in a foreign market. Understanding this area of law also prevents investors from future problems within their competitors and customers. In addition, investors also can release market strategies for their business operation to maximize potential return in investment. Third, anti-corruption is notably essential as well since it also helping how investors to deal with the hosted-state authority. It is interesting to note that investors tend to choose a state with well-governed anti-corruption law. Corruption is considered a risk and challenge when coming to foreign markets. In a nutshell, I firmly believe those three areas of laws are essential to consider before investing, and they can reduce the risk of investment by far.

Furthermore, this research essay explores why Australia, South Korea, and Indonesia are the perfect fit for this discussion. First, the selected countries represent two different legal systems: Australia with common law legal systems and South Korea and Indonesia with civil law.

Second, it represents developed and developing countries; Australia and South Korea consider as developed countries while Indonesia is among developing countries. Third, the three chosen countries show us the diversity in social and

[1] Viviane Bath and Luke Nottage, 'Foreign Investment Law: Asian Investment and the Growth of Regional Investment Agreements' in Christoph Antons (ed), *Routledge Handbook of Asian law* (Routledge, 2017).

[2] Vivienne Bath, 'Australia and the Asia-Pacific', *Reconceptualizing international investment law from the global South* (Cambridge University Press, 2018), 146.

cultural. All those three are the general reason I selected the particular country. There is also a specific reason why I chose Australia, South Korea, and Indonesia in our discussion.

In addition, we are also discussing the pros and cons of the chosen particular areas of law and their impact on promoting sustainable foreign investment. Some discussion will touch on what law reforms be helpful for each country. We also talk about before or after pandemic reforms and what future law reforms might be beneficial for the countries to attract more and more FDI. After that, we conclude the investment and law situation across three selected countries based on three significant areas of law chosen.

2. Research Method

This study employs a normative legal research methodology, utilizing a descriptive-analytical approach and supplemented by comparative and case study methods. The primary focus is on the examination of statutory provisions and legal norms (law in books), wherein law is conceptualized as a system of rules governing appropriate human conduct. The research entails a comprehensive review of pertinent legal theories, doctrines, and regulatory frameworks. The data utilized is derived from secondary sources, encompassing primary, secondary, and tertiary legal materials. Data collection is conducted through library-based research, involving the systematic analysis of legal documents and texts. Subsequently, the data is analyzed qualitatively through structured organization and interpretation, aimed at formulating reasoned conclusions.

3. Results and Discussion

Australia

1. National laws regulating foreign investment and treaties

It is interesting to note that Australian foreign investment, particularly from the US, Japan, and China, has facilitated higher economic growth rates than what would have been achievable sole reliance on traditionally low domestic savings rates.[3] FDI in Australia is principally regulated at a national level by a combination of legislation (the *Foreign Acquisitions and Takeovers Act, 1975* (Cth) (the "FATA") and its regulation) and published federal Government policy (the "Foreign Investment Policy").[4] It appears to me those rules are practical enough to control the FDI in the Australian market. In contrast, the Australian

[3] Solomon Zeke and Khaitan Haigreve, 'Regulation of Foreign Direct Investment' in Shaun Star (ed), *Australia and India: A Comparative Overview of the Law and Legal Practice* (Universal Law Publishing, 2016), 76.
[4] *Ibid* 77.

Government proposed to reform the foreign investment regime.[5] This reform showed in the *Foreign Acquisitions and Takeovers Regulation* (Cth) 2015 (Regulation).

> The reforms were first announced in May 2015 and include: (i) incorporating into the FATA the approval requirements which currently arise only under the Foreign Investment Policy; (ii) transferring all residential real estate functions to the Australian Tax Office; (iii) increased penalties for non-compliance; (iv) the introduction of application fee; (v) increased scrutiny of foreign investment in agriculture; (vi) the establishment of an agricultural land register; and (vii) a modernisation and simplification of the foreign investment framework.[6]

Australia's foreign investment rules regulate investment by foreign persons. The term of a foreign person falls into three categories.[7] First, an individual not ordinarily resident in Australia. Second, a company in which such an individual or non-Australian company owns 20% or more of its shares. Third, a company in which two or more such individuals and or non-Australian companies in aggregate own 40% or more of its shares.[8] As part of the proposed reformation, there was a change in threshold from 15% to 20% and extended the definition of a foreign person, including any foreign government.[9] In my analysis, the Australian Government wants to maintain the attraction of foreign investment by increasing the threshold while addressing their national interest by extending the definition of a foreign person, including a foreign government.

In Australia, foreign investment is encouraged, but notification and approval are needed for a particular investment.[10] The Foreign Investment Review Board (FIRB) examines foreign investment proposals and makes recommendations to the Australian Government on those proposals.[11] The Australian Government minister responsible for foreign investment decisions is the Australian Treasurer.[12] Exploring more about the features of those FATA, Foreign Investment, and other separate legislation is essential before investing in the Australian market.

There are two crucial features in FATA. First, any proposal whereby a foreign person will acquire a shareholding interest of 20% or more in an Australian company valued or has a gross asset above A$ 252 million. Second, any proposal

[5] *Ibid*
[6] *Ibid*
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*
[10] Clayton UTZ, 'Foreign Investment', *Doing Business in Australia*) <https://www.claytonutz.com/about/international-services/doing-business-in-australia/foreign-investment >.
[11] *Ibid*
[12] *Ibid*

requiring a foreign person to acquire an interest in a particular Australian urban land for more than five years needs prior approval. Next, there are three primary features of Foreign Investment Policy. First, a foreign person must notify the Australian government and obtain prior approval before making an investment of 5% or more in the media sector, regardless of the value of the investment. Second, foreign Government must notify the Australian Government whereby the foreign Government investor will acquire an interest of 10% or more in an Australian business or company (irrespective of the value of gross assets) and an interest of less than 10% where the foreign Government can control or influence the target. Third, a foreign person must notify the Australian Government and obtain approval to acquire an interest in Australian rural land where the cumulative value exceeds A$ 15 million. In addition to FATA and Foreign Investment Policy, separate legislation regulates specific sectors with additional regulations. First, the banking sector must be consistent with the *Banking Act 1959* (Cth) and the *Financial Sector (Shareholders) Act 1988* (Cth). Second, the transportation sector must follow *Air Navigation Act, 1920* (Cth), the *Airport Act, 1996* (Cth), and the *Shipping Registration Act, 1981* (Cth). Third, the telecommunications sector must ensure compliance with *Telstra Corporation Act, 1991* (Cth).

We can conclude that national laws regulating foreign investment in Australia are very comprehensive and subject to sector industries. Even though it is complicated, the number of inward FDI coming to Australia is still a numerous rise until today. This is because Australia has a stable economy and well-establish regulations and policies for foreign investment. Not only that, the trust and international recognition help Australia maintain their inward FDI in high number. However, small and relatively new investors with limited capital are not encouraged to invest in Australia because Australia considers low-risk investment with low return on investment.

Besides national laws, Australia is also active in regional free trade agreements (FTAs), which aim to liberalise and encourage intra-regional trade and investment.[13] In 1988, when Australia signed its first bilateral investment treaties (BIT) until 2009, Australia entered into twenty-one bilateral investment protection and promotion agreements with a range of predominantly developing countries.[14] Not only bilateral, but Australia is also involved in regional treaties such as the Association of Southeast Asian Nations (ASEAN) and Trans-Pacific Partnership Agreement (TPP).[15] In some way, these FTAs and BITs are part of the consideration for foreign investors before coming into the markets.

[13] Nottage (n 1).
[14] Bath (n 2)
[15] *Ibid* 149.

2. Competition law and consumer law

Many people believe that competition law and consumer law is important. However, it depends on markets awareness about the products and services available for them. Usually, the developed countries, including Australia, govern this matter in detail because most consumers are well-educated and informed. In Australia, there is a combination of federal, state, and territory legislation to control the design and labelling of consumer products. Australian jurisdictions can vary in how they regulate certain products.[16] There is also more general legislation, such as the Australian Consumer Law (ACL) and other consumer protection legislation.[17] The ACL also contains a general prohibition on misleading or deceptive conduct in trade or commerce. In addition, Its purpose is to enhance the welfare of Australians by promoting fair trading and competition and through the provision of consumer protections.

Furthermore, several practices need to be considered, such as compliance, Australian standard, and registration. First, a compliance program should follow all the relevant regulations and policies. Failure by a manufacturer, supplier or importer to comply with these controls can incur penalties under applicable legislation. If damages are suffered as a result of non- compliance, consumers or even competitors may take legal action. Therefore, companies dealing in consumer goods should have an effective compliance program, ensuring that all risks associated with their products are identified and effectively managed.[18] Second, Australian standards are generally voluntary and not binding unless adopted by law. However, many have been adopted by legislation, making compliance mandatory. Around 2,500 Australian standards are currently referenced in legislation.[19] Failure to comply with a standard may also be evidence of negligence. Third, Registration requirements often apply in Australia to manufacturers of goods or the goods themselves.[20] All these three practices can be helpful for the investors, primarily if their investment delivers products and services.

3. Anti-corruption law

Regulators around the world, including Australia, are becoming more aggressive and cooperative in investigating and enforcing anti-bribery and anti-corruption laws.[21] Briberies and corrupt practices bring consequences, such as penalties

[16] Clayton UTZ, 'Consumer Product Regulation', *Doing Business in Australia*) <https://www.claytonutz.com/about/international-services/doing-business-in-australia/consumer-product-regulation>.
[17] *Ibid*.
[18] *Ibid*.
[19] *Ibid*.
[20] *Ibid*.
[21] Clayton UTZ, 'Anti-bribery and Corruption', *Doing Business in Australia*)

imposed on individuals and corporations. Even more extensive effects include reputational damage and a loss of confidence among employees and business counterparts.[22] Australia reputation in transparency and corruption is remarkable, and it attracts foreign investors. Although its index ranking dropped eight points over the last six years, Australia remained the thirteenth least corrupt country in the world on the Transparency International 2017 Corruption Perceptions Index, a position it has held since 2015.[23]

Australia is a party to the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention), which provides the international framework for laws dealing with transnational bribery.[24] Australia implemented the OECD Anti-Bribery Convention in 1999 by enacting anti-bribery and anti-corruption provisions in the Criminal Code. In addition, Australia's federal system of government means there is no single government anti-corruption policy.[25] Each jurisdiction has different laws – in statute and common law – for dealing with bribery and corruption. The bribery and corruption investigation is divided between the Australian Federal Police (AFP), the Australian Securities and Investment Commissions (ASIC), and the state and territory police forces. There are also several independent commissions across Australian state and territory, such as NSW Independent Commission Against Corruption (ICA) and Victoria Independent Broad-Based Anti-Corruption, but these commissions cannot charge individuals or corporations; they only have extraordinary investigative and inquisitorial powers.[26]

South Korea

1. National laws regulating foreign investment and treaties

South Korea is an attractive investment destination for foreign investors due to its political stability, public safety, world-class logistics and information and communication technology (ICT) infrastructure, highly educated and skilled workforce, and dynamic private sectors.[27] Having all those conditions does not always attract foreign investment. Studies conducted by the Korean International Trade and Association and others have shown that South Korea

<https://www.claytonutz.com/about/international-services/doing-business-in-australia/anti-bribery-and-corruption>.

[22] *Ibid*.

[23] *Ibid*.

[24] *Ibid*.

[25] *Ibid*.

[26] *Ibid*.

[27] US Department of State, 'Investment Climate Statement for South Korea') <https://www.state.gov/reports/2020-investment-climate-statements/south-korea/>.

underperforms in attracting FDI relative to the size and sophistication of its economy due to its burdensome regulatory environment.[28]

The fundamental law regulating foreign investment in South Korea is *The Foreign Investment Act* 1998 (FIPA). There are three categorised business activities based on FIPA and related regulation: open, partly restricted, or closed to foreign investment.[29] This restriction is shown us what business activities address their national interest and what they want to keep in their control. First, completely closed for foreign equity are nuclear power, radio broadcasting, and television broadcasting. Second, restricted categories varied from no more than 25%, 30%, 49%, and 50%. These business activities range from news agency activities, newspaper, power generation, cable networks, telecommunication, satellite broadcasting, faring beef cattle, etc. Third, open with regulated under relevant laws includes agriculture, chemistry production, domestic banking, etc.

In common with other national laws regulating foreign investment, FIPA purpose is to attract foreign investors. FIPA features include: (i) simplified procedures for FDI notification and registration; (ii) expanded tax incentives for high-technology investment; (iii) reduced rental fee and lengthened lease duration for government land; (iv) increased central government support for local FDI; (v) created a one-stop investment centre and (vi) establishment of a Foreign Investment Ombudsman.[30]

In addition to those features in FIPA, there are two unique strategies used by South Korea. First, South Korea Government launched a "regulatory sandbox" program to spur the creation of new products in the financial services, energy, and technology sectors.[31] Second, the Korea Trade Investment Promotion Agency (KOTRA) and the Ministry of Trade Industry and Energy (MOTIE) organised a yearly Foreign Investment Week to promote and attract investment to South Korea.[32] Not only that, but KOTRA also assist in establishing a domestically- incorporated foreign-invested company if the investment exceeds 100 million won. I firmly believe this strategy is unique, and South Korea will go the extra mile regarding services to foreign investors. Foreign Investment Week is a usual idea for most hosted states but assisting upon establishing a local company is remarkable. It gives foreign investors a comfortable and secure feeling about their investment in South Korea. In my view, South Korea playing a psychological trick on their policy; it is more likely for foreign investors to make their investment condition more than 100 million to get the assist from KONTRA.

Furthermore, South Korea has 16 FTAs encompassing trade for 58 countries and

[28] *Ibid*.
[29] *Ibid*.
[30] *Ibid*. (27)
[31] *Ibid*.
[32] *Ibid*.

91 BITs as of February 2020.[33] This number is relatively high, and South Korea is actively in FTA negotiation with the Pacific Alliance (Mexico, Peru, Columbia, and Chile) and the Eurasian Economic Union (Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan).[34] Existing and future FTAs and BITs will boost foreign investment into South Korea and cement their status as a country that liberalises their investment and trade.

2. Competition law and consumer law

The *Monopoly Regulation and Fair Trade Act* (MRFTA) is the primary source for Korean competition law. MRFTA authorises the Korea Fair Trade Commission (KFFTC) to review and regulate competition and consumer safety matters.[35] KFTC has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment, and restraining the concentration of economic power.[36] For an agency with many responsibilities, KFTC has achieved remarkable success in cartel enforcement and competition advocacy.[37] One of the strategies launched by KFTC is implementing a leniency program.

Despite the success, there is a significant challenge for KFTC from a family-controlled industrial conglomerate in South Korea known as *chaebol*. It is time to fundamentally overhaul *chaebol* regulation. But it appears to me it is an impossible mission since their powers are so indisputable. What we can do to prevent *chaebols* from obtaining more power is by protecting the minority shareholders. One way to protect them is by separating clauses from MRFTA into a special law on protecting minority shareholders of large business groups or incorporated into the Corporation Part of Korea's Commercial Code.[38] In addition to *chaebols* challenges, the foreign investor should carefully consider the state-owned enterprises because they continue to exert significant control over economic segments.[39]

Besides competition law, foreign investors must understand consumer law, especially in South Korea. It is true that South Korea is among the nation that implements the United Nation Guidelines for Consumer Protection (UNGCP). There is four primary consideration that available for foreign investors regarding the consumer law in South Korea.[40] First, reinforcement of functions to provide consumer information. Second, The KFTC and KCA have tried to develop consumer

[33] *Ibid*.
[34] *Ibid*.
[35] *Ibid*.
[36] *Ibid*.
[37] Sang-Seung and Jung Yi, Youngjin, 'A New Kids in the Block: Korean Competition Law, Policy, and Economics' (2007) 3(2) *Competition Policy International*, 153.
[38] Ibid 155.
[39] State (n 27)
[40] Korea Consumer Agency, 'Report on Implementation of the United Nations Guidelines for Consumer Protection (UNGCP) in Korea' Intergovernmental Group of Expert on Consumer Law and Policy, 3-4 July 2017).

education materials and supplementary teaching techniques. Third, issuing acts on consumer protection under the KFTC such as *Framework Act on Consumers*, the *Act on Fair Labelling and Advertising*, the *Act on the Consumer Protection in Electronic Commerce*, etc.[41] Fourth, the Korean government has set up the institutional framework for sustainable consumption and production. The key pillars are the *Framework Act on Low- Carbon Green Growth*, the *Sustainable Development Ac*t, the *Presidential Commission on Sustainable Development*, etc.[42] It appears that the Korean Government is very concerned about this issue simply because of the number of regulations and policies enforced on their market.

3. Anti-corruption law

According to Transparency International, South Korea ranked 37 out of 180 countries and territories in its 2019 Corruption Perception Index with 59 out of 100.[43] The first law that regulates corruption is the 1983 *Public Service Ethics Act* requires high-ranking officials to disclose personal assets, financial transactions, and gifts received during their term of office.[44] Followed by the *Act on Anti-Corruption and the Establishment and Operation of the Anti- Corruption and Civil Rights Commission* concern reporting of corruption allegations, protection of whistle-blowers, institutional improvement, and training and public awareness to prevent corruption, as well as establishing national anti-corruption initiatives through the Anti- Corruption and Civil Rights Commission (ACRC).[45]

It is interesting to note that political corruption practices at the highest levels of elected office have occurred despite efforts by the legislature to pass and enact anti-corruption laws such as the *Act on Prohibition of Illegal Requests and Bribes*.[46] Not only that, the Korean Government tightened regulations around the hiring of former government officials and banned THEIR employment into private sectors after retiring for a certain period. Examining all the regulations about anti-corruption law, South Korea is still considered a safe environment to invest, despite occasional corruption occurring in the high-ranked official.

Indonesia

1. National laws regulating foreign investment and treaties

Indonesia, as a developing country, requires substantial funding for further development. Government funds are very limited, and one of the alternatives to

[41] *Ibid*.
[42] *Ibid*.
[43] State (n 27)
[44] *Ibid*.
[45] *Ibid*.
[46] *Ibid*.

boost the economy is to attract foreign investors.[47] Investment policy has become one of the significant concerns of the Indonesia Government. It is necessary to stipulate the investment law that provides all the needs. The first law regulating investment begins with Law Number 1 of 1967 on Foreign Investment and Law Number 6 of 1968 on Domestic Investment.[48] After that, domestic and foreign investment came into single law by issuing Law Number 25 of 2007 on Investment (the Investment Law), which regulates domestic and foreign investments. The Investment Law was designed to make Indonesia a more competitive destination for investment, particularly its regional rivals, Cambodia, Malaysia, and Vietnam and more distant India and China.[49]

In Indonesia, recognised business entities include sole proprietorships, private limited liability companies, publicly listed limited liability companies, cooperatives, state-owned enterprises (including public companies and state share companies), civil companies, general partnerships, and limited partnerships.[50] Foreigners can invest in Indonesia but must do so through a limited liability company (*Perseroan Terbatas*, PT) (Article 5(2) of the 2007 Investment Law). Although some sectors capped or prohibited foreign ownership, this company can be a joint venture (with Indonesians or other foreigners) or a wholly foreign-owned company.[51] Companies are classified as 'foreign capital investment companies' (*Perusahaan Penanaman Modal Asing*, PMA) if they are majority-owned by foreigners when established or if foreigners buy a majority share in an existing PT (Article 5(3)).[52]

To operate legitimately, PMA companies must be approved by the Indonesian Investment Coordination Board (*Badan Koordinasi Penanaman Modal*, BKPM) and report their investment activities to the Board (Article 15(c)).[53] Not only that, but the Investment Laws also imposes other miscellaneous requirements by prioritising giving employment to Indonesians, complying with the law, creating healthy competition, and avoiding monopoly, etc. In addition, foreign investors should be aware of the minimum investment of around 10 billion rupiahs or around A$100,000 (paid-up capital at least 25% of investment plan). All shareholders, directors, and commissioners are eligible for a work permit and can be issued to foreign experts upon the successful registration for PMA companies.

In 2020, Indonesia saw massive restructuration on the law by issuing *Omnibus*

[47] Sentosa Sembiring, 'Legal Aspect of Foreign Direct Investment in Indonesia Based on the Law of Number 25 of the Year 2017 Concerning Investment' (2019) 2(1) *International Journal of Sosiological Jurisprudence* 32-40.
[48] Suradiyanto, 'The Investment Law Development to Increase Investment in Indonesia' (Pt Emerald Publishing Limited) (2019) 61(1) *International Journal of Law and Management* 17-23.
[49] Tim Lindsey and Simon Butt, 'Foreign Investment', *Indonesian Law* (Oxford University Press, 2018) 355, 356.
[50] Butt, 'Company Law' (n 49)
[51] Butt, 'Foreign Investment' (n 49)
[52] *Ibid*.
[53] *Ibid*.

Law on *Job Creation*. The Omnibus Law is designed to amend 76 existing laws and eliminate 4,451 central government regulations and 15,965 regional government regulations.[54] It consists of 11 clusters, 15 chapters, and 186 articles covering relaxation licensing requirements, investment growth, employment and labour, research and innovation, government administration, land procurement, national strategic project, and economic zone.[55] The law and its implementing regulation aim to improve Indonesia's economic competitiveness and boost the economy. But, this event triggers the nation anger toward the government. Many strikes occurred before the bill passed, demanding that the legislative support Indonesian labour rather than domestic or foreign investors. It appears to many of us that Indonesia considers as a high-risk country for investment but offer substantial potential return upon the successful investment.

Regarding BITs, Indonesia was making a bold move. In 2014, Indonesia began progressively to terminate the 67 BITs it has signed since the late 1960s.[56] However, several Regional Comprehensive Economic Partnerships are still in negotiation. This termination is the Indonesian Government strategy of organising all their BITs starting from zero again and making new deals with provisions to attract more foreign investors.

2. Competition law and consumer law

Law No. 8 of 1999 on Consumer Protection provides that suppliers must not produce or trade goods (or services) that do not comply with 'the required standard and the provisions of the law' (s 8(1)(a)).[57] Indeed, suppliers must not trade in goods that are damaged, defective, used or tainted; it is pretty general practice. Many Indonesian believes that they do not really care about the products and services as other countries. This phenomenon is because products and services are cheap, so the expectation is low about the quality. This trend will move as millennials in Indonesia become more aware because many people are willing to pay more for the same products and services. It is a high chance for foreign investors to look at the growing markets in Indonesia if they are willing to provide better customer services.

Interestingly, most customers complain about their products or services online through Kompas media. This platform can seek clarification from the

[54] PwC Indonesia, 'New Job Creation Omnimbus Law Signed', *Indonesia Omnibus Flash*) <https://www.pwc.com/id/en/publications/omnibus/omnibus-flash-2020-01.pdf>.

[55] *Ibid*.

[56] Antony Crockett, 'The Termination of Indonesia's BITs: Changing the Bathwater, But Keeping the Baby?' [836] (2017) 18(5-6) *The Journal of World Investment & Trade* 836-857.

[57] Luke Nottage, 'ASEAN Consumer Law Harmonisation and Cooperation' No 20/13, The University of Sydney Law School, 10.

manufacturer or other party involved and expect some settlement, but it varies from case to case. The only reason manufacturer responds and provides some compensation is to protect their branding image in the markets. Not only this, most e-commerce in Indonesia gives customer service support and can dispute settlement to the application platform.

Regarding Indonesia's competition law was enacted after the Asian financial crisis in 1997. The bill passed into Laws No. 5 of 1999 on Banned Monopoly Practices and Healthy Competition Law. Before this, Indonesia was a disastrous place for business competition because the monopolies were run by the president's family members and inner circle. Almost all business activities are either are private sectors or state-owned enterprises under their control. Furthermore, the Indonesian market is also dominated by a large corporate group run by a small number of elite families.

3. Anti-corruption law

Indonesia has transformed from one of Southeast Asia's most repressive and centralised political systems to its most decentralised and electorally democratic.[58] However, the corruption practises legacies still intact in Indonesia. Indonesia is known to have corruption levels amongst the highest in the world. On the Transparency International Corruption Perceptions Index, Indonesia placed 102 of 180 countries in 2020 with a score of 37 of 100.[59] There are three primary sources of laws regulating corruption in Indonesia, including Criminal Code, Laws No. 28 of 1999 on Government Practise Free from Corruption, Collusion, and Nepotism, and Laws No. 31 on Corruption Eradication. However, those regulations are still not very effective. By 2003, there were some movements and began to turn. Established in that year were two new anti-corruption institutions: the Anti-Corruption Commission (KPK) and the Anti-Corruption Court (ACC).[60] I argue that those two institutions are still under political influence even upon their establishment that they set up as an independent intuition. It is shown that several high-ranked officials can get away with their corruption cases. It is true that corruption practices repeal FDI in Indonesia.

Australian Policymakers or Outbound Investors Perspective, Law Reformation, and Post Pandemic Period

As we observed all the three areas of law across selected countries, I consider Australia's attitude toward FDI more open while South Korea and Indonesia are

[58] Simon Butt, *Corruption and Law in Indonesia* (Routledge, 2012) 1.
[59] Transparency International, 'Corruption Perceptions Index') <https://www.transparency.org/en/cpi/2020/index/idn>.
[60] Butt (n)

still restrictive. However, Australian policymakers or outbound investors think Australia, South Korea, and Indonesia have high potential investment returns. There are two reasons for outbound investors to invest in selected countries. First, Australian and Korean markets offer high technologies, industries, and high-skilled labour, while Indonesia offers abundant natural resources and cheap labour. Second, many BITs and FTAs between Australia and Asian countries help Australian policymakers or outbound investors decide before their investment if any dispute occurs.

In my view, I argue that both Australia and South Korea does not need a significant reformation. However, Indonesia still needs to revolutionise how they regulate FDI, especially on their anti-corruption law. For Australia, the main challenge is maintaining the current FDI without dropping any to neighbouring countries. I suggest that Australian policymakers try to give more incentives and assist foreign investors like the Korean Government. Next for South Korea, corruption is not the primary concern; the challenge is how to face the power of the *chaebols* and try to protect minority shareholders. Practical reformation such as fully enforcement of competition laws should be enough to secure a healthy climate for foreign investors. I support their strategies to assist foreign investors, and it should be appreciated and can be a model for other countries. For Indonesia, the attitude toward FDI should be more straightforward and avoid corruption practices at any level. If these issues can be solved, there is no reason for foreign investors to do business in Indonesia.

Australia and South Korea saw a significant drop in inward FDI concerning pandemics, while Indonesia slightly decreased because of their succession by issuing Omnibus Law. I argue that Australian border closure impacts inward FDI because its limited number of foreign investors activities. Luckily, with the strong economy and trust from foreign investors, Australia is still the favourite place to invest. For Indonesia, the strategies should be how to convince foreign investors to place their investment in Indonesia. Eradicating corruption practices and fully enforcing the Omnibus Law should be enough.

4. Conclusion

It can be conclude that many regulations and rules about foreign investment are politically sensitive areas. It is challenging to establish fair and transparent regulation to maintain and attract foreign investment and address national interest. It is interesting to note that Australia and South Korea are among the safest places, while Indonesia is still considered a high-risk country for FDI. Each country has their pros and cons regarding how it regulates FDI. As a leading country receiving FDI, Australia can be a role model for South Korea and Indonesia. It appears to me that Australia and South Korea promoting sustainable foreign investment due to economic and regulation stability while Indonesia is still left behind. It is also noticeable that Indonesia's high-risk country offers a higher potential investment return than Australia and South Korea. Finally, understanding the

national laws regulating foreign investment, competition and consumer law, and anti-corruption law influences how outbound investors invest before entering the foreign markets.

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