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From Occupation to Strategic Cooperation: Indonesia And Timor-Leste BIT's as a New Institutional Economics

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ABSTRACT: This study analyzes how the New Institutional Economics (NIE) theory, through the preparation of the Bilateral Investment Treaty (BIT) is used to protect bilateral cooperation activities between Indonesia and Timor-Leste, especially to provide certainty and protection for investors in making investments. The importance of preparing the BIT between Indonesia and Timor-Leste will be a strategic step toward increasing bilateral cooperation between the two countries, which remains generally non-binding, into an agreement with international legal force. The high value of Indonesia's outward investment in Timor-Leste requires an institutionalization tool that can legally bind both countries. The Bilateral Investment Treaty is an institutional tool that can provide clarity on the norms, ethics, and rules that will regulate investment cooperation between the sovereign entities, Indonesia and Timor-Leste.

KEYWORDS: Institutionalization, Bilateral Investment Treaty, Outward Investment, Investment, Indonesia, Timor-Leste

I. INTRODUCTION

Current geopolitical and geoeconomic fragmentation creates trade and investment dynamics that require government intervention to implement various policy measures for the national interest. Facing these challenges, Indonesia actively engages in international cooperation with international organizations and partner countries, both bilaterally with 162 countries (Ministry of Foreign Affairs, 2025) and multilaterally, including BRICS (Brazil, Russia, India, China, and South Africa), as well as accession to the Organization for Economic Cooperation and Development/OECD, and regionally, namely ASEAN, both in the form of binding and non-binding agreements.

Historically, Timor-Leste, once part of Indonesia's sovereignty, separated and became independent in 2002. Bilateral relations remain constructive across the economic, political, social, cultural, and defense and security sectors. Economically, Indonesia and Timor-Leste have been cooperating since before Timor-Leste's independence, leading to numerous Indonesian companies investing in Timor-Leste, both privately and government-owned.

Geographically, Timor-Leste, which borders directly on the Province of East Nusa Tenggara (NTT), has a significant impact on trade flows for the province. Strategically, Timor-Leste is also a maritime gateway to the Australian market, thereby providing opportunities for Indonesian businesses to gain open market access. According to press releases issued by the Ministry of Investment and the Downstream Investment Coordinating Board (BKPM) in 2024 and 2025, Timor-Leste's Foreign Direct Investment (FDI) in Indonesia is very minimal. Furthermore, according to a United Nations release on the Least Developed Countries (LDCs) in 2024, Timor-Leste is still included among 43 other countries. However, according to data from the Ministry of State-Owned Enterprises, Indonesian state-owned enterprises (SOEs) are actively investing in Timor-Leste, as are a significant number of private business actors. To date, Indonesian business actors in Timor-Leste have not received any guarantees of protection for their business activities. These issues need to be addressed by the state to ensure it is present and can intervene in business activities both within and outside Indonesia.

According to UNCTAD data, the institutionalization of cooperation in international investment agreement documents has successfully prevented Indonesia from incurring losses in international lawsuits. To date, Indonesia has never experienced material losses related to lawsuits in international arbitration, either for regional and multilateral cooperation (such as ASEAN, OIC, or OIC) or bilateral in the form of the Agreement on the Promotion and Protection of Investment (P4M) or known as the Bilateral Investment Treaty (BIT). The Indonesian government does not have an internationally binding institutional framework to protect Indonesian business actors in Timor-Leste.

II. FORMULATION OF THE PROBLEM

By 2024, Indonesia had established BITs with 28 countries, including Singapore, the United Arab Emirates, and most recently, Switzerland. The plans of the Indonesian and Timor-Leste governments to establish BITs, despite Indonesia's much smaller territory, significantly lower GDP per capita, the absence of FDI in Indonesia, and Timor-Leste's status as a Least Developed Country, provide a new perspective on bilateral cooperation within the investment agreement/BIT framework.

There have been 18 bilateral agreements between Timor-Leste and Indonesia from 2004 to 2022, with at least 5 signed in 2023 and 12 in 2024(Ministry of Foreign Affair, 2024), all of which are non-binding. Bilateral cooperation signed since 2004 has resulted in a draft agreement in the form of a Memorandum of Understanding, Plan of Action, or Agreement limited to the public sector (social, cultural and educational cooperation, health, transportation and science), there has not been any legally binding bilateral economic cooperation such as BIT which can provide protection for Indonesian investors in the Timor Leste region.

Therefore, this research is expected to contribute to the literature on International Relations by strengthening the institutionalization of bilateral investment cooperation. The author's research question is: "Why did Indonesia agree to draft a Bilateral Investment Treaty (BIT) with Timor-Leste?" It is hoped that this research will identify the steps the Indonesian government has taken to strengthen institutionalization and achieve increased economic growth.

III. CONCEPTUAL FRAMEWORK

A Bilateral Investment Treaty (BIT) is an investment agreement that establishes various legally binding rules governing how two parties implement investment activities. In addition to containing a code of ethics and limitations on the scope of investment activities, a BIT provides a legally binding framework that facilitates entrepreneurs in filing lawsuits with international organizations if the host state fails to comply with the BIT. The existence of institutions results in cost efficiency. The basic understanding of institutional theory is that individuals strive to maximize their capabilities. Second, considerations regarding the exchange of goods and services can serve as a basis for developing a framework between the parties. Third, considerations for minimizing transaction costs for law enforcement.

Based on these three fundamental principles, the government must play a crucial role in enforcing agreements effectively. New Institutional Economic Theory is not only a theory of ownership but also encompasses political processes, theories related to the state, and how state institutional structures determine and enforce property rights.

New Institutional Economics (NIE) Theory is essentially the study of contracts, applicable to both economics and politics. NIE analyzes specific contracts involved in legal cases, political policy rules, and property rights. Institutions are defined in several ways. First, institutions are regularities in repeated interactions between individuals. Institutions provide a clear framework for determining how something will be achieved and produced. Institutions are not institutions; rather, they are customs or rules that provide a series of incentives and disincentives for individuals. In their implementation, institutions require clear enforcement, whether through self-enforcement, through codes of ethics, or through third-party oversight or monitoring. Institutional theory also involves analyzing the political structures of society and how these structures can provide effective enforcement measures and rules, particularly in global market activities.

A free market does not necessarily mean an efficient market. An efficient market implies a clear legal system, a clear and impartial third party from the government to enforce it, and a set of attitudes toward contracts and trade that encourage people to engage in them at low cost (Douglas, 1986).

IV. RESEARCH METHOD

This paper focuses on Indonesia's efforts to agree on investment cooperation by using the Bilateral Investment Treaty instrument as an institutionalization of values, norms, and legally binding rules to protect business actors both domestically and internationally. The Bilateral Investment Treaty is legally binding so that it can create trust and comfort for business actors in conducting business activities. This study uses qualitative research, namely a research strategy that emphasizes the use of words rather than numbers in collecting and analyzing data and information (Bryman, 2012), and is explanatory in nature, so that it is hoped for this research can test new institutional economics theory. The scope of this research is generally limited to the period when Indonesia and Timor Leste initiated and agreed to cooperate on the investment agreement (since 2020), until 2025, when a substantive agreement has been reached and awaits the signing of the BIT by the two leaders of state.

This study uses primary data from first-party sources (in this case, relevant ministries/institutions) and secondary data from books, scientific journals, articles, and government publications. The data and information obtained were then analyzed and elaborated, using the theory to answer the author's research questions.

V. DISCUSSION

The Urgency of Developing the Indonesia-Timor-Leste BIT

A. Economic Considerations – Inward Investment

Economic considerations, such as inward investment, will improve the recipient country's economy, and institutional quality is an important factor that can encourage FDI in each country. This index measures the amount of inward investment from foreign investors that can increase economic growth (Adegboye et.al, 2020). Based on Asian Stats Key Indicator data, Indonesia is the second-highest FDI destination in the ASEAN region from 2017-2024(ASEANstats, 2024), while, according to the Asian Development Bank in 2019, Indonesia is the fifth-highest investment destination in Asia after China, India, Singapore, and Hong Kong(Asian Development Bank, 2019).

Based on Indonesia's FDI ranking over the past few decades, there has been no significant change. The countries with the largest share of FDI in Indonesia include Singapore, Hong Kong, China, Malaysia, Japan, and South Korea. Timor-Leste's FDI in Indonesia is recorded as very minimal compared to other border countries. Based on data from the Ministry of Investment and Downstream Investment/BKPM, Timor-Leste only showed insignificant investment realization in Indonesia in 2017, 2018, and 2023. Over a 10-year period, Timor-Leste's investment value amounted to only US$233,300,000 or Rp3,622,810,000.00, not even reaching the top 100 countries in Indonesia's investment ranking, as depicted in Figure 01. This amount is very small compared to other ASEAN countries. If the decision to explore BITs were based on FDI value, Timor-Leste would certainly not be able to demonstrate this priority.

Pic V.1 Timor-Leste's Investment Realization in Indonesia

In terms of trade, the value of trade between East Nusa Tenggara, Indonesia, and Timor-Leste, based on data from the Central Bureau of Statistics in 2023, shows that the largest export destination for goods from the province of East Nusa Tenggara in 2023 was recorded as Timor-Leste, where exports reached 77.19%, the highest compared to Vietnam, China, Japan, the United States, and other countries. The main commodities contributing from NTT include the food industry, furniture, chemicals and chemical products, and the non-metallic mining industry(BPS, 2023).

B. Economic Considerations – Outward Investment

This economic consideration, in the form of outward investment, refers to Indonesian businesses investing in Timor-Leste. In terms of investment, according to an IMF report and Central Bank of Timor-Leste data, Indonesia was the largest investor in Timor-Leste in 2023, accounting for 40% of total FDI inflows, followed by China at 20%.

Indonesia has contributed significantly to infrastructure. Two airports built by Indonesian investors are Oekusi Airport, operated by PT Wijaya Karya (Persero) Tbk, and the Timor-Leste Ministry of Finance Building, operated by PT Pembangunan Perumahan (Persero) Tbk (Kumparan, 2022). Other state-owned enterprises (SOEs) that have invested in Timor-Leste include Pertamina, Bank Mandiri, Telkomsel, and Bank BRI. Through Pertamina International Timor, this Indonesian SOE contributes over 50% of Timor-Leste's fuel needs(Goodstats, 2024). Hutama Karya has signed a contract for an infrastructure project in Timor-Leste, including road construction in Malina, the country's third-largest city. The Central Bank of Timor-Leste (BCTL) revealed that Indonesia's FDI into Timor-Leste in 2023 reached US$85.3 million, exceeding that of Vietnam and Singapore(SindoNews, 2024).

Meanwhile, in 2024, Indonesian investment in Timor-Leste reached USD 1,307 million, dominated by state-owned enterprises (SOEs), including Telkomcel (USD 169 million), Pertamina (USD 20 million), Bank Mandiri (USD 753 million), and Bank BRI (USD 365 million). This indicates that bilateral cooperation between Indonesia and Timor-Leste will be more effective, given that it focuses on key sectors (Narayan, 2022).

Timor-Leste's importance as a trade and investment partner is reflected in the high value of Indonesian trade with Timor-Leste, which accounts for 35% of Timor-Leste's imports. This aligns with the analysis by Grosse, R., Trevino, and Len (2009), which demonstrates that the drafting of BITs between developed and developing countries can provide legal protection for investments beyond domestic law. Developing countries will agree to the drafting of this BIT as part of efforts to develop the investment climate and attract foreign investors to improve the economy.

These international agreements strongly emphasize the state's role as a sovereign entity, thereby shaping policies for running a country. Globalization and international cooperation will encourage states to transnationalize their roles, from merely maintaining sovereignty to becoming a "transnational state," as proposed by Ulrich Beck and Edgar Grande (2007, 2004), namely a state that maintains and develops its power through regional/international cooperation and involvement in various international negotiation processes. This fact makes the central role of the state a "necessary state" concept initiated by Eppler (2005), which must perform at least four types of roles: monopoly tax collection for welfare distribution, second as law enforcement, third as a shaper of national identity, and fourth, providing social and political justice for all citizens. Affirming this view, the Indonesian Embassy in Dili in its 2024 performance report also stated that the analysis of the success of achieving the investment target of up to USD 1,307 million from the initial target of USD 995 million was due to, among other things, the commencement of several Indonesian government projects that were hampered in 2023 and the existence of plans to prepare a BIT to the full support of the Indonesian government for Timor-Leste's accession to become a member of ASEAN in principle (KBRI Dili, 2024). Bilateral Investment BIT will be the right institutionalization tool to open up the wider Indonesian market by presenting an agreement at the international level and binding international law.

C. Geographical Considerations

According to UNCTAD data, Indonesia has 21 BITs in force by 2024, eight of which are BITs with Indonesian border regions, including those in force (Singapore and Thailand), signed (Philippines), and terminated (Cambodia, Lao PDR, Malaysia, Vietnam, and Australia). Other countries that share a direct border with Indonesia but do not yet have investment agreements with Indonesia include Papua New Guinea and Timor-Leste. Of these two countries, Papua New Guinea has no direct investment in Indonesia. Meanwhile, Timor-Leste still records inward investment, although it is not significant.

Pic V.2. Timor-Leste Map Position

According to Robert Gilpin (1987), foreign investment can be viewed as an extension of managerial control of one country over another. Indonesia's investment in Timor-Leste can open up new, broader markets. Furthermore, this bilateral economic activity has existed since Timor-Leste became part of Indonesia. Timor-Leste's economic instability will have a significant impact on Indonesia, particularly the East Nusa Tenggara (NTT) region, and Indonesia needs to maintain economic cooperation and political stability in border areas. Indonesia needs to secure its border areas not only through traditional security platforms but also through economic policy agreements. Beyond the economy, security and political stability will be key considerations for investors when investing in a region.

D. Bilateral Investment Treaty As An Institutionalization Of Investment Cooperation

Indonesia's partnership with Timor-Leste has been increasingly well-established, not only through support for Timor-Leste's accession to ASEAN and discussions on resolving border conflicts, but also through the strengthening of economic partnerships. In the economic sector, both countries have agreed to increase cooperation in creating an investment climate. This cooperation agreement is driven by efforts to draft BITs. This international cooperation will be possible if countries adjust their behavior by adapting to the actual preferences or anticipated activities of other parties, so that the agreed-upon policies are perceived by the partner country as facilitative steps to realize its own goals (Keohane 1984:51).

The government regulates various investment activities and sets market rules. Investors can be foreign entities, including individuals (foreign investors), foreign companies, or sovereign foreign governments. In this case, multinational corporations are foreign investors because they use funds from global financial markets to operate worldwide. Through trade and investment (in the financial and real sectors), foreign investors play a vital role in any economy (Laopadis, 2021).

A Bilateral Investment Treaty is a cooperative agreement governing bilateral investment between countries, involving various stakeholders, including business actors and international organizations. Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (1985), in their book "Bringing the State Back in" demonstrate that the state plays a crucial role in investing in various public sectors, including public services, infrastructure, education, natural resources, taxation for welfare, and implementing various social initiatives such as health insurance, old-age security, and social security. Through BITs, the state can safeguard national interests while still protecting business activities.

The BIT has an agreement structure that considers power to encourage convergence across the economic and political dimensions and to mitigate the forces that determine the transition to a new trajectory of economic and political cooperation. The investment activity regulations contained in the BIT will reflect the New Institutional Economy by incorporating legally binding agreements on values, rules, norms, property rights, the duration of the agreement, and minimizing expenditure. The BIT also includes an expropriation clause to safeguard assets owned by investors in both countries engaged in investment activities. This aims to strengthen the certainty of property rights ownership in the investment destination.

The bilateral agreement in the BIT is legally binding under international law because it allows each party, in this case, the state and the investor, to obtain protection in the event of a lawsuit before an international court. This is regulated in the dispute resolution clause. However, such lawsuits can be considered after prior consultation between both parties. This step can be used to prevent future losses.

Narayan-Narayan and Syarifuddin (2022) conducted research on bilateral and multilateral investment cooperation to assess the effectiveness of both cooperation schemes. Empirical results indicate that multilateral trade agreements have a greater impact than bilateral trade agreements. Bilateral trade only has a positive impact on foreign investment in primary sectors, such as outward investment by Indonesian state-owned enterprises and the private sector in Timor-Leste, such as construction, energy, and communications (Jatmika, M.I., Jabar, M.A., 2024). Based on research conducted by Egger and Pfaffemeyer (2004), BITs will have a significant positive impact on outward investment, such as that undertaken by Indonesian state-owned enterprises. However, this will only occur if the BIT has been ratified/is in force, where the agreement is incorporated into the domestic regulations of each country.

According to the government portal (Ministry of Foreign Affairs, 2025), the two countries have substantively completed the draft text of the BIT agreement in the third round, which will be finalized at the signing stage by the two heads.

VI. CONCLUSIONS

The growing interest of Indonesian businesses in investing in Timor-Leste has led to the need for, and the initiation of, investment protection measures. Since the 2018 meeting between the two leaders at the Bogor Presidential Palace, the Presidents of Indonesia and Timor-Leste have agreed to negotiate and reach an agreement on investment promotion and protection, as well as on the avoidance of double taxation. At another bilateral meeting, the Speaker of the Indonesian House of Representatives proposed the establishment of a Bilateral Investment Treaty between Indonesia and Timor-Leste (Kompas, 2022) until the agreement was reached by the President of the Republic of Indonesia and the Prime Minister of the Democratic Republic of Timor-Leste during Timor-Leste's state visit to Indonesia in 2023 (Cabinet Secretariat of the Republic of Indonesia, 2023). This strengthening of economic cooperation was further strengthened by a joint press statement by the President of the Republic of Indonesia and the Prime Minister of the Democratic Republic of Timor-Leste on January 26, 2024, which agreed to create a good investment climate through an investment protection agreement. Having a legally binding agreement, particularly in conducting economic trade activities involving various stakeholders, will increase investor confidence in the destination country. High levels of investment will impact a country's economy. The BIT will institutionalize binding norms, ethics, and regulations between Indonesia and Timor-Leste. From a cost perspective, regularity will prevent increased costs due to international lawsuits. The BIT framework regulates the stages of soft diplomacy consultations, both between countries and between private parties. Preferences for sectors that are the primary focus of cooperation can also be outlined in the BIT framework, allowing for incentives and disincentives, depending on the interests and agreements of the countries involved. The BIT is an appropriate New Institutional Economic instrument to protect both investment activities and assets owned by Indonesia and Timor-Leste. For Indonesia, the BIT can secure outward investment from Indonesian investors in Timor-Leste, both in the private sector and state-owned enterprises. Timor-Leste's important position as a trade and investment partner is reflected in the high value of Indonesian trade with Timor-Leste, which accounts for 35% of imported products. This is in accordance with the analysis by Grosse, R., Trevino, Len (2009), which states that the preparation of BITs between developed and developing countries can be used to provide legal protection for investments beyond the rules applicable domestically. Developing countries will agree to the preparation of this BIT as part of developing the investment climate and to attract foreign investors for economic growth. From Timor-Leste's perspective, this BIT can be an instrument for attracting new investment because it provides a protection platform for Indonesian investors seeking to invest in Timor-Leste, especially now that Timor-Leste has been officially recognized as a new member of ASEAN, a region experiencing new global economic growth. The BIT will attract investment from both countries and provide investors with the comfort and confidence to invest in Timor-Leste.

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