Infrastructure Development Don't Leave Social Development

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The omnibus law on job creation, which was passed on October 5, 2020, this is policy are opens space for investment liberalization in all sectors, including the infrastructure sector in Indonesia.

This is policies changing and revoke 82 Law from cross sectoral issues, include related transportation, such: Law on Roads, Law on Railways, Law on Road Traffic and Transportation, Law on Industry.

This law serves as a means to develop and attract investment, one of which is in the transportation sector, but ignores the aspect of protecting social and environmental responsibilities. Therefore, this law was favored by the World Bank, IMF, WTO but was protested and rejected by the small people, because of the detrimental impact of this law.
Map of development projects in Indonesia
Details of infrastructure development projects in Indonesia

Development project of the Ministry of Public Works and Public Housing, Indonesia

• Construction of 489.09 km of new roads and 49 km of expressways
• Construction of 10,372 m new bridge Construction of 3,511 new Flats
• Construction of 3,361 new Special House units
• Development of Drinking Water Supply System (SPAM) with a capacity of 1,799 liters/second
• Continuing construction of 23 units of dams (13 units of dams completed) and new construction started of 7 units of dams
• Construction and rehabilitation of 6,900 and 98,700 Ha irrigation networks respectively

Development project of the Ministry of Transportation, Indonesia

• 6,724 km Railway Line length
• Construction of 6 new Airport locations
• Construction of 8 new ferry ports
Cases on infrastructure projects in Indonesia impact to the peoples

Jakarta-Bandung high-speed train with a length of 142.3 km. The biggest investment of this project is China. And there are 133 families affected by this project in West Bandung, which resulted in their houses being cracked due to the high-speed train project.

Kulon Progo, New Yogyakarta International Airport
- 637 ha NYIA Projects
  - 11,501 people including farmers, fishermen and laborers were affected by the construction of the NYIA airport.
  - Biggest investor are from South Korea and Australia

Kertajati, New West Java international Airport
- 1.800 Ha impact 5.500 people around a projects
  - Investor: Malaysia, UAE

Mandalika Circuit are 1.035 Ha
- Impact to the 120 head of household, and there is no clarity about the eviction of their house
  - Investor: Vinci Construction, France;
Investment on infrastructure sector and excessive protection for investors through the Bilateral Investment Treaty and FTAs

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
ON THE PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of Indonesia and the Government of the Republic of Singapore (hereinafter collectively referred to as the “Parties” or individually as a “Party”),

RECOGNISING that the creation of a business-friendly environment will be conducive to the stimulation of business initiative for greater investment between the Parties;

ACKNOWLEDGING the important contribution that investments can make to sustainable development, and seeking to promote and facilitate such investments within the territories of the Parties;

RECOGNISING that the encouragement and reciprocal protection of such investments can stimulate business initiative, foster the inflow of capital and technology, and increase economic development and prosperity in both States;

REAFFIRMING the right of the Parties to regulate and to introduce new measures relating to investments in their territories in order to meet legitimate policy objectives,

CHAPTER II
PROTECTION

ARTICLE 3
TREATMENT OF INVESTMENT

1. Each Party shall accord to investments fair and equitable treatment and full protection and security.

2. For greater certainty:
   (a) “fair and equitable treatment” requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law;
   (b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investment;
   (c) the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the investment as a result; and
   (d) the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Basis of Consent Invoked to Establish ICSID Jurisdiction in Registered ICSID Cases

- Bilateral Investment Treaty: 60%
- Investment Contract between the Investor and the Host-State: 15%
- Energy Charter Treaty: 9%
- Investment Law of the Host-State: 8%
- Other Treaties*: 4%
- North American Free Trade Agreement: 3%
- Dominican Republic-United States-Central America Free Trade Agreement: 1%

Source: ICSID Caseload Statistic 2022
Figure 3. Most frequent home States of claimants, 2011–2020 (Number of known cases)

- United States of America: 84
- Netherlands: 77
- United Kingdom: 60
- Germany: 45
- Spain: 45
- Luxembourg: 38
- France: 34
- Canada: 33
- Turkey: 28
- Cyprus: 24
- Italy: 20
- Switzerland: 20

Source: UNCTAD, ISDS Navigator.
Figure 2. Most frequent respondent States, 2011–2020 (Number of known cases)

Spain 52
Bolivarian Republic of Venezuela 40
Egypt 30
Czechia 22
Peru 20
Libya 18
Poland 18
Colombia 17
Croatia 17
Mexico 17
Canada 16
India 16
Russian Federation 16

Source: UNCTAD, ISDS Navigator.
Distribution of All ICSID Cases by Economic Sector

- Oil, Gas & Mining: 25%
- Electric Power & Other Energy: 11%
- Other Industry: 10%
- Construction: 8%
- Transportation: 7%
- Finance: 7%
- Information & Communication: 4%
- Water, Sanitation & Flood Protection: 4%
- Agriculture, Fishing & Forestry: 3%
- Tourism: 3%
- Services & Trade: 17%

Source: ICSID Caseload Statistic 2022
Conclusion

- Infrastructure development should involve public participation in the process. Thus, no victim community will be harmed from the development. This is in line with the pillars of the SDGs, namely building by not ignoring the social-human aspects of development.

- Do not provide excessive protection for investors just to attract investment. In fact, there is no correlation between protection of investors and the entry of investors into the country.

- Inclusivity in development is a must. So that infrastructure development does not violate the basic social rights of the wider community.
THANK YOU!

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