Kanun: Jurnal Ilmu Hukum
Vol. 27, No. 1, (April, 2025), pp. 249-265.

FREEDOM OF CONTRACT AND STATE INTERVENTION IN INDONESIA AND SUDAN: FOREIGN INVESTMENT LAW PERSPECTIVE

Ni Wayan Julia Pradnya Radjani[1], I Gede Agus Kurniawan[2], Nahi Hashim Fathi Aboalela[3]

[1,2] Fakultas Hukum Universitas Pendidikan Nasional, Denpasar, Bali, Indonesia
[2] Al-Neelain University, Khartoum, Sudan
✉ corresponding author email: juliapradnyarad@gmail.com

Submitted: 11/02/2025; Accepted: 14/03/2025; Revision: 10/04/2025;
Approved: 30/04/2025

DOI: https://doi.org/10.24815/kanun.v27i1.51793

ABSTRACT

This study examines the relationship between freedom of contract and state intervention within the framework of foreign investment law in Indonesia and Sudan, focusing on how both countries balance legal certainty for investors with the protection of national interests. Employing a normative legal research method with comparative and conceptual approaches, this study analyzes primary legal sources, i.e. the 1945 Constitution of Indonesia, Sudan's Investment Promotion Act (2021), and relevant investment regulations, alongside secondary sources including academic literature and economic policy documents. The findings reveal that Indonesia adopts a regulated freedom model, where the principle of contractual autonomy is recognized insofar as it aligns with the constitutional mandate of Article 33 of the 1945 Constitution through the doctrine of State Control Rights (Hak Menguasai Negara, HMN). State intervention is implemented under the Right to Regulate framework, particularly through strategic sector restrictions and the industrial downstreaming (hilirisasi) policy designed to ensure domestic value creation. Conversely, Sudan applies a value-based freedom model rooted in Islamic law, in which contractual freedom is constrained by the principles of Hisbah and prohibitions against riba (usury), gharar (uncertainty), and maysir (speculation). The legitimacy of Sudan's intervention also derives from post-conflict reconstruction needs and the imperative to safeguard economic stability. The comparative analysis demonstrates that although their philosophical foundations differ, both countries reject the notion of absolute contractual freedom and reaffirm that state sovereignty remains a fundamental element in their investment law regimes. This research emphasizes the importance of a socially responsible freedom model as a convergence point between national investment law and the evolving global economic legal order.

Keywords: *Freedom of Contract; State Intervention; Foreign Investment Law; Sudan; Indonesia*

INTRODUCTION

A The principle of freedom of contract is a fundamental pillar in civil law and international economic law, which affirms the autonomy of parties to determine the content, form, and performance of an agreement. Freedom of contract is regarded as a manifestation of the autonomy of will, where the state should not interfere with the free will of parties who are voluntarily bound by a contract.[1] This principle forms the basis for the legitimacy of the emergence of various forms of modern legal relations, including foreign investment agreements that require legal certainty and contractual justice. However, the increasingly complex development of the global economy shows that this freedom cannot be completely separated from state intervention. A need arises to balance contractual freedom and the state's regulatory authority.

Freedom of contract within the framework of international law functions as a primary instrument for creating stability in relations between investors and host states. Foreign investors demand legal certainty and contractual flexibility to be able to mitigate business risks, including political and economic risks.[2] Through this principle, the parties have the space to formulate contract clauses that reflect a proportional balance of rights and obligations.[3] However, the state as a subject of public law retains the right to intervene in economic activities that may affect national interests. Therefore, freedom of contract cannot be understood as absolute freedom, but rather as a freedom that is subject to the state's right to regulate principle.[4]

The state's regulatory authority (right to regulate) is a manifestation of state sovereignty in safeguarding national interests, economic stability, and public order.[5] The state has the right to restrict the content or performance of a contract if the contract is

[1] Rebecca Stone, "Putting Freedom of Contract in Its Place," *Journal of Legal Analysis* 16, no. 1 (January 1, 2024): 94–119, https://doi.org/10.1093/jla/laae004.
[2] Benny Hutahayan et al., "Investment Decision, Legal Certainty and Its Determinant Factors: Evidence from the Indonesia Stock Exchange," *Cogent Business & Management* 11, no. 1 (December 31, 2024): 1–17, https://doi.org/10.1080/23311975.2024.2332950.
[3] N Agus Adyatma Narwadi, I Nyoman Budiana, and I Gede Agus Kurniawan, "Reconstruction of Business Legal Ethics from the Perspective of the Principles of Good Faith and Contractual Fairness," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 30, 2025): 7788–7804, https://doi.org/10.31941/pj.v24i2.6888.
[4] Kornelia Rismarini, Bella Nadhillah Rachmania, and Verly Arizal, "Measuring The Validity of Unilateral Non-Competition Clauses in Employment Agreements: A Civil and Employment Law Perspective," *Advances In Social Humanities Research* 3, no. 5 (June 7, 2025): 390–400, https://doi.org/10.46799/adv.v3i5.436.
[5] Erdal Dursun, Mohammad Ekram Yawar, and Anwarulhaq Amani, "The Role and Importance of National Economic Law in The International Legal Order," *EuroGlobal Journal of Linguistics and Language Education* 2, no. 2 (February 26, 2025): 46–74, https://doi.org/10.69760/egjlle.2500082.

deemed to conflict with national law or threaten public interests.[6] In this context, the principle of freedom of contract faces constitutional limitations and public policies that form the basis for state intervention. This point of tension gives rise to a dialectic between the private autonomy of investors and the state's mandate to ensure social justice and the welfare of the people. This results in the balance between individual freedom and collective interests becoming a central issue in modern investment law.

As a rule of law based on a civil law system, Indonesia recognizes the principle of freedom of contract as regulated in Article 1338 in conjunction with Article 1320 of the Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata).[7] Those provisions affirm that every legally made agreement shall be binding as law on the parties who enter into it. However, this freedom is limited by subjective and objective conditions, including the existence of a lawful cause and compliance with propriety, morality, and public order. In practice, the principle of freedom of contract cannot stand alone without considering the context of national economic policy. Therefore, the state has the authority to regulate the scope of contractual freedom through investment law instruments.

The transformation of investment law policy in Indonesia is clearly evident through the enactment of Law Number 25 of 2007 on Investment and Law Number 6 of 2023 on the Stipulation of Government Regulations in Lieu of Law on Job Creation. Both regulations mark a paradigm shift from absolute freedom to regulated freedom, where contractual freedom is governed within the framework of national development policy.[8] The government intervenes through the Priority Investment List (DPI) instrument, which regulates strategic sectors and foreign capital ownership.[9] This mechanism ensures that incoming investment not only provides economic benefits but also contributes to technology transfer and national capacity building. Thus, contractual freedom in

---

[6] Deny Haspada, "Legal Analysis of Abuse of Conditions in Banking Credit Agreements in Indonesia: Implications for International Consumer Protection," *Cogent Social Sciences* 11, no. 1 (December 31, 2025): 1–15, https://doi.org/10.1080/23311886.2025.2492837.

[7] Andhika Ariayuda et al., "The Binding Force of Goods/Services Procurement Contracts from the Perspective of Article 1338 of the Indonesian Civil Code," *Interdisciplinary Social Studies* 5, no. 1 (December 23, 2025): 359–68, https://doi.org/10.55324/iss.v5i1.988.

[8] Muhammad Azam et al., "Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia," *MILRev: Metro Islamic Law Review* 4, no. 2 (September 1, 2025): 1074–96, https://doi.org/10.32332/milrev.v4i2.11334.

[9] Garth Imanuel Koleangan, "The Purpose of Implementing the Negative Investment List Is to Control Foreign Ownership Domination," *Journal of Law, Politic and Humanities* 5, no. 4 (May 11, 2025): 3094–3105, https://doi.org/10.38035/jlph.v5i4.1734.

Indonesia is conditional and directed at achieving a balance between investors' interests and national interests.

Unlike Indonesia, Sudan has a unique legal system as it combines civil law principles with Islamic law (Sharia).[10] This system duality reflects Sudan's effort to maintain the legitimacy of a Sharia-based national law while adapting to international legal practices. Within the framework of contract law, freedom of contract is recognized, but it must be subject to the principles of Islamic morality and justice. Sharia values such as the prohibition of riba (exploitation), gharar (uncertainty), and maysir (speculation) serve as normative limitations on the content of contracts.[11] Therefore, contract law in Sudan has a strong ethical dimension, where contractual freedom is always linked to moral and social responsibility.

Sudan enacted the Investment Promotion Act 2021 as the main legal basis governing investment mechanisms. This law provides various incentives and guarantees protection against nationalization without fair compensation, as an effort to attract foreign capital into the country. However, the state still maintains significant control over strategic sectors, especially energy, natural resources, and infrastructure. This approach shows that contractual freedom in Sudan remains under state control to safeguard economic sovereignty and the principles of distributive justice.[12] Thus, investment law in Sudan reflects a balance between economic liberalization and the Sharia values that underpin its national legal system.

Indonesia and Sudan are developing countries currently undergoing legal reforms to enhance investment competitiveness. While differing in their legal systems, both face similar dilemmas regarding how to attract foreign investment without compromising economic sovereignty. Indonesia represents a civil law country with an administrative approach to state intervention, while Sudan presents a hybrid Islamic-civil model with a focus on moral and distributive justice. This comparative study is important for

[10] Abdelaziz Mohamed Hamad Satti, "The Fiduciary Obligation: A Proposal for the Sudanese Courts and Legislature," *Journal of Afro-Asian Studies*, no. 27 (November 30, 2025): 56–80, https://doi.org/10.63939/JAAS.2025.N27.56-80.
[11] Mohammad Alhejaili, "Harmonising Derivatives with Shari'ah: Ethical Practices and Regulatory Insights," *International Journal of Islamic and Middle Eastern Finance and Management* 18, no. 5 (August 12, 2025): 1132–49, https://doi.org/10.1108/IMEFM-03-2024-0163.
[12] I Gede Agus Kurniawan, Putu Aras Samsithawrati, and Princess Alyssa D. Tee-anastacio, "Justice and Ethics in Business Law: A Legal Philosophy Perspective," *Batulis Civil Law Review* 6, no. 3 (December 7, 2025): 151, https://doi.org/10.47268/ballrev.v6i3.3357.

uncovering how both legal systems balance the private interests of investors and the public responsibilities of the state. Thus, this comparison is not only theoretical but also holds strategic value in the development of investment law in Global South countries.

The urgency of this research lies in the need to understand the application of the principle of freedom of contract in two different legal contexts. Academically, this research offers an intercontinental perspective between Southeast Asia and North Africa an area that has thus far received limited attention in global investment law literature. Normatively, this research contributes to the formulation of the boundaries of legitimate state intervention in foreign investment contracts without violating international law principles. Furthermore, this research also has the potential to enrich understanding of how religious values and public morality can be integrated into modern economic law policies.

Research conducted by Éva Török in the International Review of Applied Sciences and Engineering examines the relationship between freedom of contract and economic reality using an applied legal analysis approach. Török emphasizes that freedom of contract cannot be separated from the socio-economic factors that shape the parties' relationship in an agreement. The study finds that freedom of contract is often influenced by unequal bargaining power and state intervention aimed at protecting public interests. However, the research focuses more on the European context and does not explicitly discuss the application of this principle in foreign investment law. Additionally, Török has not thoroughly examined how the balance between contractual freedom and state intervention is realized in the legal systems of developing countries, leaving room to expand the analysis in a cross-country legal context such as Indonesia and Sudan.[13]

Meanwhile, Ilias Alami in Dialogues in Human Geography discusses the political-economic dynamics behind foreign investment screening mechanisms implemented by post-globalization countries. The research highlights how state intervention in foreign investment flows has become a new form of economic protectionism, packaged in the rhetoric of national security and sustainable development. He emphasizes that while state intervention is necessary to safeguard national interests, such practices can create legal

[13] Éva Török, "Applied Analysis of the Legal and Economic Context of Freedom of Contract – A Case Study," *International Review of Applied Sciences and Engineering* 16, no. 3 (October 13, 2025): 428–36, https://doi.org/10.1556/1848.2025.00968.

uncertainty for investors. The limitation of Ilias Alami's research lies in the absence of normative analysis on how the principle of freedom of contract interacts with state intervention within the framework of formal investment law. Therefore, further research is still needed to connect legal and economic aspects simultaneously, with a focus on the normative balance between freedom of contract and state intervention.[14]

This research offers a comparative-normative approach that combines legal and economic policy analysis between two developing countries — Indonesia and Sudan which have different legal systems and economic ideologies. The novelty of this research lies in its attempt to map the relationship between freedom of contract and state intervention in the context of foreign investment law in each country. Unlike Éva Török's study, which emphasizes the micro-contractual context in Western legal systems, or Ilias Alami's research, which focuses on the global political-economic dimension, this research presents a cross-system legal perspective (civil law–hybrid Islamic law) in the Global South region. Thus, this research contributes to enriching international investment law literature with a new conceptual model that balances legal certainty, contractual justice, and state economic sovereignty.

The objective of this research is to analyze the application and limitations of the principle of freedom of contract within the framework of foreign investment law in Indonesia and Sudan, as well as to assess the extent to which this principle can provide legal certainty for foreign investors without disregarding the national interests of each country. Furthermore, this research aims to identify the forms and legitimate bases of state intervention in foreign investment contracts in both countries, with a focus on the balance between contractual freedom and state sovereignty. Through a comparative approach, this research seeks to formulate a conceptual model that places freedom of contract and state intervention in a harmonious relationship, to strengthen the foundation of fair, adaptive, and sustainable investment law in developing countries.

RESEARCH METHOD

[14] Ilias Alami, "Foreign Investment Screening Mechanisms and Emergent Geographies of (Post)Globalization," *Dialogues in Human Geography*, October 7, 2024, 1–24, https://doi.org/10.1177/20438206241278733.

This research uses a normative legal research method with a comparative and conceptual approach to examine the application of the principle of freedom of contract and state intervention in the foreign investment law of Indonesia and Sudan. Primary legal materials used include the Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), Law Number 25 of 2007 on Investment, Law Number 6 of 2023 on Job Creation, and the Investment Promotion Act 2021 of Sudan along with its implementing regulations. Secondary legal materials include textbooks, scholarly articles, research findings, and international journals discussing foreign investment law, freedom of contract, and state sovereignty. Tertiary legal materials include legal dictionaries, legal encyclopedias, reports from international organizations such as the UNCTAD Investment Report and OECD Investment Policy Framework, and official documents of international legal bodies. Data processing techniques are carried out through inventory, classification, and systematization of legal materials, while data analysis techniques use a qualitative-comparative method interpreting, comparing, and drawing normative conclusions on the similarities and differences in foreign investment law regulations between Indonesia and Sudan.

.

RESEARCH OUTCOME AND DISCUSSION

1. Freedom of Contract in the Legal Framework of Foreign Investment in Indonesia and Sudan

The principle of freedom of contract in foreign investment law is rooted in the concept of autonomy of will the right of the parties to determine the content, form, and terms of a contract in line with their interests. In the context of international investment, freedom of contract is not merely a civil law right, but also functions as a legal protection mechanism against political and administrative risks that may arise from state actions.[15] According to the classical doctrine outlined by Treitel, "a contract freely entered into must be respected as the law between the parties",[16] which was later crystallized in the principle of pacta sunt servanda. This principle forms the basis for foreign investors' trust that the host state

[15] Mehrdad Jamalifar, Seyyed Mehdi Allame, and Mojtaba Nikdoosti, "The Impact of Fundamental Rights on the Adjustment of Private Contracts," *Legal Studies in Digital Age* 4, no. 2 (2025): 1–10, https://doi.org/10.61838/kman.lsda.143.

[16] Al-Hussein Yusuf Al-Maskery, "Force Majeure and Its Application to Supervening Events in International Petroleum Contracts," *Arab Law Quarterly*, October 22, 2025, 1–22, https://doi.org/10.1163/15730255-bja10191.

will not arbitrarily alter the substance of the agreement. However, the effectiveness of this principle is highly dependent on the host state's legal system and institutional structure, particularly in terms of law enforcement and regulatory stability.

In Indonesia's legal system, the principle of freedom of contract is regulated in Article 1338 paragraph (1) of the Civil Code (KUHPerdata), which states that "All legally made agreements shall be binding as law on those who enter into them." This provision affirms the recognition of contractual autonomy as binding law for the parties. However, this recognition is not absolute, as it is limited by Article 1337 of the KUHPerdata, which prohibits agreement content that conflicts with law, morality, and public order. In the context of foreign investment law, these limitations are operationalized through national policies, such as restrictions on foreign ownership and priority investment sectors[17] Thus, Indonesia's legal system places freedom of contract as a fundamental principle governed under regulated freedom, where the parties' autonomy is subject to the principles of social responsibility and national economic interests.

The principle of freedom of contract in investment in Indonesia is also reflected in Law Number 25 of 2007 on Investment, particularly Article 3 paragraph (1) letter a, which affirms the principles of "legal certainty" and "transparency" in investment activities. Additionally, Article 8 paragraph (3) grants investors the right to transfer and repatriate profits, compensation, and capital abroad. This regulation is a concrete form of normatively recognized freedom of contract. However, this right is not absolute, as it is subject to foreign exchange regulations, taxation, and national fiscal interests. Thus, investors' freedom to arrange and execute investment contracts remains controlled through legal instruments that ensure a balance between legal certainty and national interests.

The integration of the principle of freedom of contract is further strengthened in Law Number 6 of 2023 on the Stipulation of the Job Creation Government Regulation in Lieu of Law, which introduces a risk-based licensing system (Risk-Based Approach).[18] Based on Article 6 paragraph (2), the state provides licensing facilities for business activities

[17] Imanuel Koleangan, "The Purpose of Implementing the Negative Investment List Is to Control Foreign Ownership Domination."
[18] Nunik Nurhayati et al., "Legal Certainty of The Positive Fictive Policy In Business Licensing Through The Online Single Submission Risk-Based Approach System In Indonesia," *Jurnal Ius Constituendum* 10, no. 2 (June 8, 2025): 224–41, https://doi.org/10.26623/jic.v10i2.12009.

with a low risk level, while high-risk sectors are subject to state supervision and intervention. This concept implicitly creates a hierarchy of contractual freedom, where investors have extensive autonomy as long as they do not enter strategic or high-risk sectors. This approach represents a model of regulated autonomy — freedom balanced with the state's supervisory function. This policy reflects the adaptation of the principle of freedom of contract to the needs of national development and economic stability.

Restrictions on freedom of contract in Indonesia have a strong constitutional basis in Article 33 paragraphs (2) and (3) of the 1945 Constitution, which state that branches of production that are vital to the state and dominate the people's basic needs shall be controlled by the state for the greatest prosperity of the people. This norm implies the state's obligation not to fully hand over the management of strategic sectors to foreign investors through contractual mechanisms. In practice, this principle is realized in the Priority Investment List (DPI) policy, which regulates restrictions on foreign capital ownership in certain sectors, such as energy, defense, and natural resources. Thus, freedom of contract in Indonesia operates within the framework of conditional certainty legal certainty subject to constitutional limitations and national development policies.

Unlike Indonesia, Sudan's legal system combines elements of civil law and Islamic law (Sharia), resulting in a concept of value-based contractual freedom.[19] In the Investment Promotion Act 2021, Article 5 paragraph (1) affirms that foreign investors have the right to manage investment projects and arrange contractual relations without unlawful administrative intervention. Article 7 paragraph (2) of the Investment Promotion Act 2021 grants the parties the freedom to choose the applicable law (choice of law), provided it does not conflict with Sharia principles. Thus, Sudan recognizes the principle of freedom of contract within a national legal framework that places justice and public morality as its boundaries. This system emphasizes that a contract is not merely a legal relationship, but also a representation of social ethics and economic justice.

State intervention in investment contracts in Sudan is also strong in strategic sectors such as oil, gas, and mining. Article 12 of the Investment Promotion Act 2021 empowers the government to reject or terminate investment contracts that conflict with national

[19] A. H. M. Ershad Uddin, "Regional Development of Islamic Finance in South Asia," in *The Regulation of Islamic Financial Institutions (IFIs) and Ethical Oversight in South Asia* (Cham: Palgrave Macmillan, 2025), 39–119, https://doi.org/10.1007/978-3-032-09828-3_2.

interests or are deemed detrimental to social welfare. This shows that the state is not passive in contractual relations, but actively safeguards economic sovereignty. While these restrictions may be considered a form of intervention, normatively they are aligned with the objectives of Islamic law to achieve maslahah (public good). Thus, state intervention in Sudan is a form of protection for national economic integrity as well as the implementation of the principle of substantive justice in investment.

The administrative-pragmatic approach in Indonesia implies the emergence of a system of conditional legality, where investment contracts are only valid insofar as they do not conflict with national regulations and development objectives. Conversely, the theological-juridical approach in Sudan results in a system of ethical legality, which assesses the validity of a contract not only based on positive law but also on Islamic moral principles. The evolution of the concept of freedom of contract in Global South countries such as Indonesia and Sudan leads to a model of socially responsible freedom freedom accompanied by social and economic responsibility. This paradigm marks a shift from an individualistic liberal model to a just and sustainable investment law model. Therefore, the balance between legal certainty and national interests is the main foundation for the sustainability of ethical and competitive foreign investment.

2. State Intervention in Foreign Investment Agreements in Indonesia and Sudan

State intervention in the context of foreign investment is a manifestation of the state's sovereign right to regulate economic activities within its jurisdiction. This principle has gained international legitimacy through United Nations General Assembly Resolution 1803 (XVII) of 1962 on Permanent Sovereignty over Natural Resources, which affirms that every state has the right to manage and supervise its natural resources for the sake of national interests.[20] Therefore, every investment contract must be subject to public law limitations, where investors' autonomy is restricted by the state's regulatory authority.

In international investment law, a conceptual tension has emerged between "Investor-State Dispute Settlement (ISDS)" and the "Right to Regulate". ISDS grants foreign

[20] Alesia Koush, "Illicit Trafficking in Cultural Property as a Human Rights Issue: Sovereignty over Cultural Resources and the Right to Self-Determination. Case Study of Iraq," *International Journal of Cultural Property* 32, no. 1 (February 27, 2025): 31–57, https://doi.org/10.1017/S0940739125000025.

investors the right to sue the host state on the basis of breach of contract or discriminatory treatment.[21] However, as a counterbalance, the Right to Regulate doctrine emerged, namely the inherent right of states to determine public, environmental and social policies without being deemed to be violating international contractual obligations.[22] This principle affirms that state sovereignty cannot be overlooked for the sake of global economic interests. Thus, the relationship between freedom of contract and state intervention must be understood within the framework of distributive justice that safeguards the people's interests while providing legal certainty for investors.

Article 33 of the 1945 Constitution contains the concept of "State-Owned Authority" (Hak Menguasai Negara/HMN), which encompasses four functions: regulating (regulatory), administering (administrative), protecting (protective), and supervising (supervisory) over branches of production that are vital to the state and dominate the people's basic needs.[23] Through this HMN principle, the state has a constitutional basis to intervene in investment activities, especially in strategic sectors such as energy, mining, and basic industry. Such intervention is not considered a violation of contractual freedom, as it constitutes a constitutional mandate for the prosperity of the people. Thus, every investment contract in Indonesia is subject to the supremacy of the constitution as the highest source of legitimacy.

Article 15 letter b of Law Number 25 of 2007 on Investment regulates the obligation of corporate social responsibility (CSR), which is a form of state intervention through moral-economic means in investors' freedom.[24] The state also regulates dispute resolution mechanisms through Article 32 of Law Number 25 of 2007 on Investment, which allows for international arbitration forums but still affirms the supremacy of national law. This normative configuration shows that Indonesia implements a model of

---

[21] Brian J. Preston and Kate Butler, "Appropriate Dispute Resolution of Investor–State Disputes in Natural Resources, Energy and Environmental Cases," *Journal of Energy & Natural Resources Law* 43, no. 1 (January 2, 2025): 67–101, https://doi.org/10.1080/02646811.2024.2385851.
[22] Julia Lemke, "Conditions for International State Responsibility: A Rational Choice Analysis of Responsibility Standards," in *The Protection of Community Interests in the International Law of State Responsibility. International Law and Economics* (Cham: Springer, 2025), 129–72, https://doi.org/10.1007/978-3-031-87927-2_4.
[23] Totok Dwi Diantoro, "A Critical Review of the Actualization of the Right to Control by the State Doctrine in the Policy on Revocation of Forest Area Permits/Concessions," *Jurnal Pembangunan Hukum Indonesia* 7, no. 2 (June 30, 2025): 250–72, https://doi.org/10.14710/jphi.v7i2.71-93.
[24] Ni Ketut Supasti Dharmawan et al., "The Guiding Principles on Business and Human Rights: National Action Plans Toward Corporation Responsibility," *Hasanuddin Law Review* 4, no. 2 (August 25, 2018): 123, https://doi.org/10.20956/halrev.v4i2.1480.

regulated freedom, where contractual freedom is maintained within the bounds of state interests.

One of the most current forms of state intervention is the "Industrial Downstreaming" policy. This policy restricts foreign investors' freedom to export raw materials to ensure economic value addition within the country, in line with Article 33 of the 1945 Constitution and the spirit of national industrialization. Through this policy, the state acts not only as a regulator but also as an economic architect that directs the course of national development. Downstreaming is positioned as a legal-economic strategy to ensure that investment outcomes provide direct benefits to the domestic economy. Thus, such intervention reflects the progressive use of the Right to Regulate for the people's prosperity, not arbitrary restriction on investors.

Unlike Indonesia, the basis for state intervention in Sudan is rooted in two main foundations: Islamic Sharia principles and post-conflict constitutionalism. Article 11 paragraph (2) of the Investment Promotion Act 2021 states that the government has the authority to review or terminate investment contracts that conflict with the public interest or Islamic principles. The legitimacy of this intervention also stems from the concept of Hisbah the state's obligation to ensure that economic activities are carried out in line with social justice and free from exploitation.[25] The Hisbah function is often carried out by the Sharia Supervisory Board, an institution that ensures compliance with contracts with the prohibitions on riba (usury), gharar (uncertainty), and maysir (speculation).[26] Therefore, every investment contract in Sudan is subject not only to positive law but also to religious ethical norms.

State intervention in Sudan also has a post-conflict reconstruction dimension. After a long period of political instability and internal conflict, the state requires strong control over natural resources to prevent exploitation by foreign parties without benefits for national stability. Therefore, intervention in foreign investment particularly in the oil and mineral sectors is seen as a strategic step to safeguard economic sovereignty and strengthen the state's fiscal structure. This shows that the legitimacy of intervention in

[25] Mukarromatul Isnaini, Munir Is'adi, and Ahmadiono Ahmadiono, "Economic Justice in the Perspective of Sharia: Solutions to Facing Social Inequality," *Journal of Islamic Economy* 2, no. 1 (March 27, 2025): 63–73, https://doi.org/10.62872/7fxc1851.
[26] Alhejaili, "Harmonising Derivatives with Shari'ah: Ethical Practices and Regulatory Insights."

Sudan is not solely ideological-religious, but also pragmatic in the context of state rebuilding. Thus, Sudan places contractual freedom within the framework of social responsibility and national security.

Forms of state intervention in Sudan are evident through restrictions on foreign investment in strategic sectors and the implementation of profit-sharing based contracts that ensure distributive justice. The government also implements policies to redistribute economic outcomes for local communities, in line with the principle of maqashid al-syari'ah (objectives of Sharia) which emphasizes the public good (maslahah 'ammah). On the other hand, Sudan selectively recognizes international arbitration mechanisms, on the condition that dispute resolution does not conflict with Islamic law or national interests. This policy reflects the existence of ethical sovereignty, where state intervention is construed as moral oversight of foreign investment activities. Thus, Sudan's legal system integrates ethical values and public law into the regulation of foreign investment.

Both Indonesia and Sudan place state intervention as an integral element in their investment law systems. Both reject the concept of absolute freedom of contract, emphasizing that every contract must be subject to public interests and national legal norms. The fundamental difference between the two countries lies in the paradigm of intervention legitimacy. Indonesia adopts an administrative-pragmatic sovereignty approach, where economic policies are directed at creating market efficiency and stability. Conversely, Sudan embraces a theological-ethical sovereignty paradigm, where investment law is framed by Islamic moral values and distributive justice. This difference actually enriches the understanding that the concept of the Right to Regulate is contextual, adapted to each country's legal system and local values.

CONCLUSION

Indonesia and Sudan pursue a model of balance between contractual freedom and the protection of national interests. Indonesia implements the principle of freedom of contract through a system of regulated freedom, where investment contracts are guaranteed as long as they do not conflict with Article 33 of the 1945 Constitution and national development directions with state intervention realized through policies such as industrial downstreaming and the Priority Investment List. Conversely, Sudan adopts an approach of value-based freedom rooted in Islamic law, with contractual limitations based on the principle of Hisbah and the prohibition of riba, gharar, and maysir along with the need for post-conflict economic reconstruction to safeguard natural resource sovereignty. Both legal systems show that legal certainty for investors is not solely determined by contractual autonomy, but by the state's ability to exercise the Right to Regulate in a proportional, transparent, and just manner. Thus, state intervention in the context of foreign investment in both countries is not a form of restricting economic freedom, but a constitutional and moral instrument to ensure social justice, economic sovereignty, and sustainable development.

There is a need to strengthen legal mechanisms that bridge the Right to Regulate with legal certainty for investors, through adaptive and transparent investment law instruments. Indonesia needs to enhance inter-sectoral coordination in the implementation of downstreaming policies and the protection of investment contracts, to avoid regulatory overlaps that reduce investment attractiveness. Meanwhile, Sudan needs to continue post-conflict legal reforms by clarifying the role of Sharia supervisory bodies in ensuring a balance between Islamic moral principles and commercial legal certainty. At the global level, both countries can serve as examples for other developing countries in formulating an investment law paradigm that balances international economic interests with the values of sovereignty and social justice.

BIBLIOGRAPHY

Al-Maskery, Al-Hussein Yusuf. "Force Majeure and Its Application to Supervening Events in International Petroleum Contracts." *Arab Law Quarterly*, October 22, 2025, 1–22. https://doi.org/10.1163/15730255-bja10191.

Alami, Ilias. "Foreign Investment Screening Mechanisms and Emergent Geographies of (Post)Globalization." *Dialogues in Human Geography*, October 7, 2024, 1–24. https://doi.org/10.1177/20438206241278733.

Alhejaili, Mohammad. "Harmonising Derivatives with Shari'ah: Ethical Practices and Regulatory Insights." *International Journal of Islamic and Middle Eastern Finance and Management* 18, no. 5 (August 12, 2025): 1132–49. https://doi.org/10.1108/IMEFM-03-2024-0163.

Ariayuda, Andhika, Sarwono Hardjomuldjadi, Sami'an Sami'an, and Dwi Edi Wibowo. "The Binding Force of Goods/Services Procurement Contracts from the Perspective of Article 1338 of the Indonesian Civil Code." *Interdisciplinary Social Studies* 5, no. 1 (December 23, 2025): 359–68. https://doi.org/10.55324/iss.v5i1.988.

Dharmawan, Ni Ketut Supasti, Desak Putu Dewi Kasih, I Gede Agus Kurniawan, and Putu Aras Samsithawrati. "The Guiding Principles on Business and Human Rights: National Action Plans Toward Corporation Responsibility." *Hasanuddin Law Review* 4, no. 2 (August 25, 2018): 123. https://doi.org/10.20956/halrev.v4i2.1480.

Diantoro, Totok Dwi. "A Critical Review of the Actualization of the Right to Control by the State Doctrine in the Policy on Revocation of Forest Area Permits/Concessions." *Jurnal Pembangunan Hukum Indonesia* 7, no. 2 (June 30, 2025): 250–72. https://doi.org/10.14710/jphi.v7i2.71-93.

Dursun, Erdal, Mohammad Ekram Yawar, and Anwarulhaq Amani. "The Role and Importance of National Economic Law in The International Legal Order." *EuroGlobal Journal of Linguistics and Language Education* 2, no. 2 (February 26, 2025): 46–74. https://doi.org/10.69760/egjlle.2500082.

Haspada, Deny. "Legal Analysis of Abuse of Conditions in Banking Credit Agreements in Indonesia: Implications for International Consumer Protection." *Cogent Social Sciences* 11, no. 1 (December 31, 2025): 1–15. https://doi.org/10.1080/23311886.2025.2492837.

Hutahayan, Benny, Mohamad Fadli, Satria Amiputra Amimakmur, and Reka Dewantara. "Investment Decision, Legal Certainty and Its Determinant Factors: Evidence from the Indonesia Stock Exchange." *Cogent Business & Management* 11, no. 1 (December 31, 2024): 1–17. https://doi.org/10.1080/23311975.2024.2332950.

Imanuel Koleangan, Garth. "The Purpose of Implementing the Negative Investment List Is to Control Foreign Ownership Domination." *Journal of Law, Politic and Humanities* 5, no. 4 (May 11, 2025): 3094–3105. https://doi.org/10.38035/jlph.v5i4.1734.

Isnaini, Mukarromatul, Munir Is'adi, and Ahmadiono Ahmadiono. "Economic Justice in the Perspective of Sharia: Solutions to Facing Social Inequality." *Journal of Islamic Economy* 2, no. 1 (March 27, 2025): 63–73. https://doi.org/10.62872/7fxc1851.

Jamalifar, Mehrdad, Seyyed Mehdi Allame, and Mojtaba Nikdoosti. "The Impact of Fundamental Rights on the Adjustment of Private Contracts." *Legal Studies in Digital Age* 4, no. 2 (2025): 1–10. https://doi.org/10.61838/kman.lsda.143.

Koush, Alesia. "Illicit Trafficking in Cultural Property as a Human Rights Issue: Sovereignty over Cultural Resources and the Right to Self-Determination. Case Study of Iraq." *International Journal of Cultural Property* 32, no. 1 (February 27, 2025): 31–57. https://doi.org/10.1017/S0940739125000025.

Kurniawan, I Gede Agus, Putu Aras Samsithawrati, and Princess Alyssa D. Tee-anastacio. "Justice and Ethics in Business Law: A Legal Philosophy Perspective."

Batulis Civil Law Review 6, no. 3 (December 7, 2025): 151. https://doi.org/10.47268/ballrev.v6i3.3357.

Lemke, Julia. "Conditions for International State Responsibility: A Rational Choice Analysis of Responsibility Standards." In *The Protection of Community Interests in the International Law of State Responsibility. International Law and Economics*, 129–72. Cham: Springer, 2025. https://doi.org/10.1007/978-3-031-87927-2_4.

Mohamed Hamad Satti, Abdelaziz. "The Fiduciary Obligation: A Proposal for the Sudanese Courts and Legislature." *Journal of Afro-Asian Studies*, no. 27 (November 30, 2025): 56–80. https://doi.org/10.63939/JAAS.2025.N27.56-80.

Muhammad Azam, Anis Mashdurohatun, Angga Nugraha Firmansyah, Muhammad Dias Saktiawan, and King On Putra Jaya. "Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia." *MILRev: Metro Islamic Law Review* 4, no. 2 (September 1, 2025): 1074–96. https://doi.org/10.32332/milrev.v4i2.11334.

Narwadi, N Agus Adyatma, I Nyoman Budiana, and I Gede Agus Kurniawan. "Reconstruction of Business Legal Ethics from the Perspective of the Principles of Good Faith and Contractual Fairness." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 30, 2025): 7788–7804. https://doi.org/10.31941/pj.v24i2.6888.

Nurhayati, Nunik, Giftian Fajri Rustyono, Achmad Miftah Farid, and Rohmad Suryadi. "Legal Certainty of The Positive Fictive Policy In Business Licensing Through The Online Single Submission Risk-Based Approach System In Indonesia." *Jurnal Ius Constituendum* 10, no. 2 (June 8, 2025): 224–41. https://doi.org/10.26623/jic.v10i2.12009.

Preston, Brian J., and Kate Butler. "Appropriate Dispute Resolution of Investor–State Disputes in Natural Resources, Energy and Environmental Cases." *Journal of Energy & Natural Resources Law* 43, no. 1 (January 2, 2025): 67–101. https://doi.org/10.1080/02646811.2024.2385851.

Rismarini, Kornelia, Bella Nadhillah Rachmania, and Verly Arizal. "Measuring The Validity of Unilateral Non-Competition Clauses in Employment Agreements: A Civil and Employment Law Perspective." *Advances In Social Humanities Research* 3, no. 5 (June 7, 2025): 390–400. https://doi.org/10.46799/adv.v3i5.436.

Stone, Rebecca. "Putting Freedom of Contract in Its Place." *Journal of Legal Analysis* 16, no. 1 (January 1, 2024): 94–119. https://doi.org/10.1093/jla/laae004.

Török, Éva. "Applied Analysis of the Legal and Economic Context of Freedom of Contract – A Case Study." *International Review of Applied Sciences and*

Engineering 16, no. 3 (October 13, 2025): 428–36. https://doi.org/10.1556/1848.2025.00968.

Uddin, A. H. M. Ershad. "Regional Development of Islamic Finance in South Asia." In *The Regulation of Islamic Financial Institutions (IFIs) and Ethical Oversight in South Asia*, 39–119. Cham: Palgrave Macmillan, 2025. https://doi.org/10.1007/978-3-032-09828-3_2.