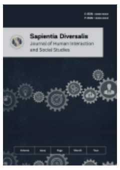

Sapientia Diversalis Journal of Human Interaction and Social Studies
Vol 1 No 2 May 2026, Hal 280-290
ISSN: 3125-1269 (Print) ISSN: 3125-0696 (Electronic)
Open Access: https://researchfrontiers.id/sapientiadiversalis

# Reorienting The Resolution of Foreign Investment Disputes Through Domestic Institutional Arbitration Following Indonesia's Unilateral Termination of The Bilateral Investment Treaty (BIT)

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**Article Info :**
Received:
02-05-2026
Revised:
23-05-2026
Accepted:
27-05-2026

***Abstract***

*Indonesia's gradual termination of numerous Bilateral Investment Treaties since 2014 has generated significant debates concerning the future architecture of foreign investment dispute settlement and the adequacy of domestic legal institutions in replacing conventional Investor State Dispute Settlement mechanisms. This study examines the legal implications of treaty termination for investor protection and evaluates the capacity of domestic institutional arbitration to serve as an alternative forum for resolving foreign investment disputes. Employing a non empirical normative legal research design, the study relies on statutory analysis, conceptual analysis, and comparative legal analysis of Indonesian legislation, investment arbitration jurisprudence, policy documents, and scholarly literature. The findings indicate that the termination of Bilateral Investment Treaties has altered the normative foundation of foreign investment protection by reducing direct access to treaty based arbitration while expanding the importance of domestic legal institutions. Although Indonesia possesses a formal arbitration framework capable of supporting dispute resolution, institutional legitimacy, procedural transparency, arbitrator independence, and international recognition remain critical challenges for the transition from international arbitration to domestic forums. The study further demonstrates that future investment governance requires the establishment of a specialized investment arbitration framework integrating sustainability principles, investor obligations, human rights considerations, and climate justice commitments. A reformed domestic arbitration architecture is essential for balancing regulatory sovereignty, legal certainty, and long term investor confidence within Indonesia's evolving investment regime.*

***Keywords :*** *Bilateral Investment Treaty, Domestic Arbitration, Foreign Investment, Investment Governance, Investor State Dispute Settlement.*



## INTRODUCTION

The contemporary architecture of international investment governance is undergoing a profound transformation driven by increasing contestation over the legitimacy, effectiveness, and distributive consequences of Bilateral Investment Treaties and Investor State Dispute Settlement mechanisms. For several decades, investment treaties were promoted as indispensable legal instruments for enhancing investor confidence through substantive standards of protection and direct access to international arbitration, thereby contributing to the gradual multilateralization of international investment law across diverse jurisdictions (Schill, 2015). Nevertheless, the expanding reach of investment arbitration has generated growing concerns regarding regulatory autonomy, democratic accountability, and the asymmetrical allocation of rights and obligations between foreign investors and host states (Sornarajah, 2010). Recent scholarship demonstrates that contemporary debates no longer focus solely on investment promotion but increasingly emphasize sustainable development, responsible investment conduct, investor obligations, and the preservation of sovereign policy space within domestic legal systems (Segger et al., 2025; Van der Ploeg, 2024). This global recalibration has encouraged numerous developing countries to reconsider the normative foundations of treaty based investment protection, particularly where international arbitration is perceived as constraining developmental priorities and exposing states to costly legal disputes. Within this evolving landscape, Indonesia's unilateral termination of numerous Bilateral Investment Treaties since 2014 represents one of the most consequential examples of state led restructuring of investment governance in the Global South.

Existing scholarship has extensively examined the legal rationales and policy implications underlying the reassessment of investment treaties by developing countries. Research on treaty reform in emerging economies reveals that governments increasingly seek to align investment governance with domestic development objectives rather than maintain traditional treaty frameworks that privilege investor protection above broader socioeconomic interests (Mekonnen & Asmelash, 2025). Comparable debates have emerged in jurisdictions that emphasize the preservation of national sovereignty against expansive interpretations of treaty obligations and arbitral jurisdiction (Shakar et al., 2025). At the doctrinal level, scholars have highlighted how standards such as Fair and Equitable Treatment and Most Favoured Nation clauses have facilitated broad arbitral interpretations that significantly expand investor rights beyond the expectations of host states (Dolzer & Schreuer, 2012; Wang, 2022). Simultaneously, critical analyses of contemporary investment governance indicate that treaty regimes continue to reproduce structural tensions between economic liberalization and public regulatory authority, raising persistent questions regarding legitimacy and institutional accountability (Verbeek, 2022). While these studies collectively demonstrate a growing preference for rebalancing investment protection and state sovereignty, they also reveal a broader trend toward institutional experimentation in dispute resolution mechanisms that seek alternatives to conventional Investor State Dispute Settlement frameworks.

Despite these important contributions, the literature remains fragmented in explaining what institutional arrangements should replace treaty based dispute settlement once Bilateral Investment Treaties are terminated. Existing studies predominantly focus on the causes, legality, and political consequences of treaty withdrawal while devoting considerably less attention to the institutional destination of investment disputes after treaty protections are reduced or eliminated. Even where scholars discuss post treaty governance, the analysis frequently remains centered on substantive standards of protection rather than procedural infrastructures capable of preserving investor confidence while respecting sovereign regulatory authority (Mekonnen & Asmelash, 2025; Segger et al., 2025). The Indonesian experience illustrates this gap with particular clarity. Although legal and policy discussions acknowledge the country's gradual withdrawal from numerous investment treaties, there remains limited examination of whether domestic arbitration institutions possess the normative legitimacy, procedural sophistication, and international credibility necessary to function as alternative venues for investment dispute resolution. Furthermore, the interaction between treaty termination, survival clauses, and the continuing expectations of foreign investors has not been sufficiently integrated into a coherent analytical framework capable of assessing institutional substitution after the decline of treaty based arbitration.

The significance of this unresolved issue extends beyond doctrinal debates because it directly affects investment certainty, economic governance, and the credibility of legal institutions in host states. Indonesia continues to pursue ambitious investment driven development strategies, including infrastructure expansion and downstream industrialization projects that depend substantially on foreign capital participation (UNCTAD, 2019; Saputra et al., 2026). At the same time, the country's experience in international arbitration has intensified concerns regarding the financial and regulatory risks associated with Investor State Dispute Settlement. The proceedings in Planet Mining Pty Ltd v. Republic of Indonesia exposed the extent to which investment disputes can generate substantial legal costs and strategic pressures even when the respondent state ultimately prevails (Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/40). In this context, the absence of a clearly articulated institutional alternative risks creating a dual legitimacy deficit in which international arbitration is viewed as politically problematic while domestic mechanisms remain insufficiently recognized by foreign investors. Such uncertainty carries significant implications for both investment attraction and the broader project of strengthening national dispute resolution capacities.

Against this backdrop, the present study positions itself at the intersection of international investment law, institutional arbitration, and domestic legal reform by examining the reorientation of foreign investment dispute resolution toward domestic institutional arbitration following Indonesia's unilateral termination of Bilateral Investment Treaties. Rather than approaching treaty termination exclusively as a question of sovereignty or investment protection, this research conceptualizes it as a process of institutional transition that requires the reconstruction of procedural legitimacy within domestic legal frameworks. Particular attention is directed toward the capacity of Indonesia's arbitration regime under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution to accommodate disputes that have traditionally been resolved through international investment arbitration

(Republik Indonesia, 1999). This perspective advances existing scholarship by shifting analytical focus from the termination of treaties itself toward the institutional consequences of that decision and the conditions under which domestic arbitration may emerge as a credible forum for resolving investor state disputes.

This study aims to analyze the legal implications of Indonesia's Bilateral Investment Treaty termination policy for the future architecture of foreign investment dispute settlement and to evaluate the readiness of domestic institutional arbitration to assume functions historically performed by international arbitral mechanisms. The research contributes theoretically by developing an institutional transition framework that links investment treaty withdrawal with the reconstruction of dispute settlement legitimacy within national legal systems. It contributes methodologically through the integration of normative legal analysis and comparative institutional assessment to evaluate the feasibility of domestic arbitration as a post treaty dispute resolution model. By examining the relationship between sovereignty, investor protection, and institutional credibility within a single analytical framework, the study seeks to enrich contemporary debates on the future direction of investment governance in developing countries and to offer a more nuanced understanding of how domestic legal institutions may respond to the restructuring of the global investment regime.

## RESEARCH METHODS

This study employs a non empirical normative legal research design aimed at examining the legal implications of Indonesia's unilateral termination of Bilateral Investment Treaties and evaluating the capacity of domestic institutional arbitration to function as an alternative mechanism for resolving foreign investment disputes. The study relies exclusively on documentary and legal sources consisting of primary and secondary materials selected through purposive relevance criteria. Primary legal materials include Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 25 of 2007 on Investment, Law Number 11 of 2020 on Job Creation, official policy documents concerning Indonesia's Bilateral Investment Treaty termination strategy issued by the Investment Coordinating Board, and relevant international investment arbitration decisions including Churchill Mining PLC v. Republic of Indonesia and Planet Mining Pty Ltd v. Republic of Indonesia. Secondary materials comprise leading scholarly works on international investment law, investment treaty governance, and dispute settlement theory, including contributions by Sornarajah, Dolzer and Schreuer, Schill, and reports published by international organizations such as UNCTAD. The analytical framework integrates statutory analysis, conceptual analysis, and comparative legal analysis to investigate the relationship between treaty termination, investor protection, state regulatory sovereignty, and the institutional transformation of dispute settlement mechanisms.

The analytical procedure was conducted through a systematic process of legal interpretation, doctrinal synthesis, and comparative evaluation. Statutory provisions, treaty principles, policy documents, and arbitral decisions were first examined to identify the normative consequences of Bilateral Investment Treaty termination within Indonesia's investment governance framework. The findings were subsequently interpreted through the theoretical lens of international investment law and institutional legitimacy in order to assess whether domestic arbitration possesses the procedural and normative attributes necessary to replace conventional Investor State Dispute Settlement mechanisms. Comparative analysis was then employed to evaluate the compatibility between international investment arbitration standards and the existing Indonesian arbitration framework. Methodological rigor was ensured through source triangulation across legislation, arbitral jurisprudence, official government documents, and authoritative academic literature, combined with consistency testing between legal norms and doctrinal interpretations. This approach enhances analytical transparency, strengthens the reliability of legal reasoning, and supports a comprehensive assessment of the challenges and prospects associated with the reorientation of foreign investment dispute resolution toward domestic institutional arbitration.

## RESULTS AND DISCUSSION

### The Legal Reconfiguration of Investment Protection Following Indonesia's Bilateral Investment Treaty Termination

Indonesia's unilateral termination of numerous Bilateral Investment Treaties represents a significant shift in the normative architecture of foreign investment governance. The policy reflects a broader movement among developing states seeking to recalibrate the balance between investment protection and regulatory sovereignty. Contemporary scholarship argues that traditional investment treaties frequently privilege investor rights while limiting governmental capacity to pursue public policy objectives (Sornarajah, 2010). The Indonesian approach demonstrates an attempt to reposition state authority within an increasingly contested international investment regime.

The doctrinal foundations of this policy shift can be understood through the evolving critique of Investor State Dispute Settlement mechanisms. International investment law initially developed around the assumption that strong investor protections would stimulate capital inflows and economic development (Dolzer & Schreuer, 2012). Subsequent studies have questioned the empirical certainty of this relationship and have highlighted the uneven distribution of benefits generated by treaty based protection regimes (Fyock, 2023). Critical perspectives increasingly emphasize the need to align investment governance with domestic developmental priorities and public interests.

The termination policy also reflects changing perceptions regarding the legitimacy of contemporary investment treaty networks. Schill (2015) explains that the multilateralization of investment law created a dense web of legal obligations that frequently transcended the original intentions of treaty negotiators. Model treaty provisions became widely replicated across jurisdictions through institutional diffusion processes (Alschner et al., 2022). Such developments contributed to concerns that states were gradually surrendering regulatory discretion through cumulative treaty commitments.

Indonesia's experience before international arbitral tribunals contributed significantly to the reassessment of treaty commitments. The disputes initiated in Churchill Mining PLC v. Republic of Indonesia and Planet Mining Pty Ltd v. Republic of Indonesia revealed the magnitude of legal and financial exposure associated with investment arbitration. Although Indonesia successfully defended its position in both proceedings, the cases illustrated the strategic vulnerabilities faced by host states when confronted with complex investor claims (Churchill Mining PLC v. Republic of Indonesia; Planet Mining Pty Ltd v. Republic of Indonesia). These experiences strengthened domestic arguments supporting treaty reform and institutional restructuring.

The rationale behind treaty termination also intersects with broader debates concerning sovereignty and legal autonomy. Recent analyses indicate that many developing countries increasingly challenge investment agreements perceived as constraining policy flexibility in areas such as environmental regulation, industrial development, and social welfare (Shakar et al., 2025). Similar dynamics have emerged in reform processes undertaken in Africa and Latin America where governments seek greater alignment between investment governance and national development strategies (Mekonnen & Asmelash, 2025). Indonesia's policy trajectory reflects comparable concerns regarding the preservation of regulatory authority.

**Table 1. Normative Drivers of Indonesia's Bilateral Investment Treaty Termination Policy**

| Normative Driver | Legal Significance | Main References |
|---|---|---|
| Regulatory sovereignty | Expansion of domestic policy space | Shakar et al. (2025) |
| Arbitration risk management | Reduction of exposure to investor claims | Churchill Mining Case, Planet Mining Case |
| Development policy alignment | Harmonization with national economic objectives | BKPM (2016) |
| Treaty reform trends | Convergence with global reform movements | Mekonnen and Asmelash (2025) |
| Institutional restructuring | Shift toward domestic dispute mechanisms | Mahardhika (2022) |

Source: Compiled by the author from BKPM (2016), Mahardhika (2022), Mekonnen and Asmelash (2025), and relevant arbitral decisions.

The analytical patterns summarized in Table 1 indicate that treaty termination cannot be interpreted as a purely defensive legal strategy. The identified drivers reveal an interconnected relationship between sovereignty concerns, developmental priorities, and institutional reform objectives. These factors collectively suggest that Indonesia sought not merely to withdraw from existing obligations but to redefine the normative foundations of investment governance. Such findings correspond with emerging theories that frame investment treaty reform as a process of institutional recalibration rather than legal disengagement.

The legal consequences of treaty termination extend beyond the immediate withdrawal of consent to international arbitration. Existing investments frequently remain protected through survival clauses that preserve treaty obligations for a specified period after termination. This transitional arrangement creates a dual regulatory environment in which older investments continue to enjoy treaty protections while newer investments depend primarily on domestic legal frameworks (Mahardhika, 2022). The coexistence of these regimes introduces significant interpretive complexities concerning legal certainty and investor expectations.

At the domestic level, investment protection remains anchored in Law Number 25 of 2007 and its subsequent amendments under Law Number 11 of 2020. These legislative instruments provide guarantees regarding investment activities while simultaneously reinforcing the authority of the Indonesian state to regulate economic development priorities (Republik Indonesia, 2007; Republik Indonesia, 2020). The legal orientation differs from classical Bilateral Investment Treaties because protection is embedded within national legislation rather than international obligations. This shift transforms the source of investor rights and alters the institutional pathways available for dispute resolution.

The broader international context further supports the interpretation that Indonesia's policy forms part of a larger restructuring of investment governance. Investment treaty reforms increasingly incorporate sustainability considerations, climate governance objectives, and human rights related obligations that were largely absent from earlier treaty generations (Dotzauer et al., 2024; Segger et al., 2025). Scholars have argued that contemporary investment law must respond to demands for ecological responsibility and social legitimacy rather than prioritize capital protection alone (Aerielisty, 2026; Karamanian, 2025). Such developments reinforce the view that treaty termination should be evaluated within an evolving global legal landscape.

Normative analysis ultimately demonstrates that Indonesia's treaty termination policy represents a transition from externally anchored protection mechanisms toward domestically embedded governance structures. This transformation reflects broader challenges confronting the international investment regime concerning legitimacy, sustainability, and distributive fairness (Verbeek, 2022; Khan, 2025). The resulting legal configuration does not eliminate investment protection but redefines its institutional and normative foundations. The next analytical question concerns whether domestic arbitration institutions possess sufficient capacity and legitimacy to operationalize this reconfigured framework of investment dispute resolution.

## Institutional Legitimacy and Regulatory Capacity of Domestic Arbitration in Investor State Dispute Resolution

The reorientation of foreign investment dispute settlement toward domestic institutional arbitration raises a fundamental question concerning institutional legitimacy. Within institutional legitimacy theory, dispute resolution bodies derive authority not only from legal mandates but also from stakeholder perceptions regarding neutrality, competence, and procedural fairness (Verbeek, 2022). Investor confidence is strongly influenced by whether an institution is regarded as capable of producing impartial outcomes under conditions of legal certainty. The normative assessment conducted in this study indicates that institutional legitimacy constitutes the principal determinant of whether domestic arbitration can function as a credible substitute for conventional investor state arbitration mechanisms.

Arbitration governance theory suggests that dispute settlement institutions operate within broader regulatory ecosystems that shape expectations concerning accountability and procedural consistency (Cutler & Lark, 2022). International investment arbitration has historically developed specialized governance structures that distinguish it from ordinary commercial arbitration. These structures include transparent appointment procedures, internationally diverse arbitrator pools, and established mechanisms for award recognition. The effectiveness of any domestic institution seeking to assume comparable responsibilities depends on its capacity to internalize these governance attributes within its procedural architecture.

BANI occupies a significant position within Indonesia's arbitration framework because it serves as the most established institutional arbitration body operating under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Republic of Indonesia, 1999). The institution possesses substantial experience in resolving commercial disputes involving domestic and international parties. Nevertheless, investor state disputes differ conceptually from private commercial disputes because they involve public regulatory authority and sovereign interests. This distinction requires procedural adaptations that exceed the traditional functions associated with commercial arbitration forums.

Procedural justice theory provides an important analytical lens for evaluating the suitability of domestic arbitration in investor state disputes. The theory emphasizes that parties assess legitimacy through fairness of procedures rather than merely through substantive outcomes (Duggal & Lake, 2024). Foreign investors generally expect equal participation rights, transparent proceedings, and demonstrably independent adjudicators. The absence of these procedural guarantees may undermine confidence even where legal protections formally exist.

The Indonesian Arbitration Law provides a statutory foundation for arbitral independence, party autonomy, and binding dispute resolution. Several provisions are broadly compatible with internationally recognized arbitration principles and support the enforceability of arbitral awards (Republic of Indonesia, 1999). However, the legislation was primarily designed for commercial arbitration rather than specialized investor state proceedings. Comparative legal analysis indicates that additional procedural refinement would be necessary before domestic arbitration could effectively perform functions commonly associated with ICSID tribunals (Dolzer & Schreuer, 2012).

**Table 2. Comparative Assessment of Institutional Attributes between ICSID and BANI**

| Dimension | ICSID | BANI | Implication for ISDS Transition |
|---|---|---|---|
| Legal Basis | ICSID Convention | Arbitration Law 1999 | Different legal authority |
| International Recognition | High | Moderate | Recognition gap |
| Transparency | Stronger | Limited | Investor confidence issue |
| Arbitrator Selection | Global pool | Mostly national and regional pool | Perceived neutrality issue |
| Award Enforcement | ICSID Convention | New York Convention | Different enforcement structure |
| Specialized Investment Rules | Available | Limited | Institutional adaptation required |

Source: Adapted from Dolzer and Schreuer (2012), Republic of Indonesia (1999), Cutler and Lark (2022), and Lin (2024).

The comparative findings presented in Table 2 reveal that the principal challenge facing BANI is not the absence of legal authority but the existence of institutional asymmetries relative to established investment arbitration forums. ICSID benefits from a treaty based framework specifically designed for investor state disputes and supported by extensive international practice (Dolzer & Schreuer, 2012). BANI derives authority from domestic legislation and commercial arbitration traditions that were not originally intended to govern sovereign investment disputes. The comparison illustrates that institutional transformation would require both procedural reform and enhanced international visibility.

Arbitrator independence represents another critical dimension of institutional legitimacy. Investor state arbitration relies heavily on perceptions that adjudicators remain insulated from governmental influence and domestic political interests (Lin, 2024). Although Indonesian arbitration law contains provisions addressing impartiality and conflicts of interest, international investors may continue to evaluate independence through broader reputational indicators. The concentration of arbitrator appointments within predominantly domestic professional networks may create concerns regarding perceived neutrality even when actual bias is absent.

Transparency constitutes a further area requiring institutional development. Contemporary investment arbitration increasingly incorporates public access mechanisms, publication of awards, and opportunities for third party participation in disputes involving public interests (Aerielisty, 2026). These developments reflect growing recognition that investor state disputes often affect regulatory policies extending beyond the immediate parties. Existing domestic arbitration procedures remain comparatively restrictive regarding public accessibility, creating a divergence from emerging international expectations concerning procedural openness.

The enforcement of arbitral awards also affects the practical credibility of domestic arbitration. ICSID awards benefit from a specialized enforcement regime established under the ICSID Convention, whereas BANI awards rely principally upon the framework provided by the New York Convention and domestic judicial cooperation mechanisms (Cutler & Lark, 2022). Although the New York Convention offers extensive international coverage, enforcement may involve additional procedural stages and judicial scrutiny. Differences in enforcement architecture can influence investor perceptions regarding the effectiveness of available remedies.

The findings demonstrate that domestic arbitration possesses important foundational strengths but has not yet achieved full equivalence with specialized investor state arbitration institutions. Experiences from investment governance reforms in several jurisdictions indicate that legitimacy emerges through gradual institutional adaptation rather than formal legal designation alone (Saputra et al., 2026). The jurisprudential lessons reflected in *Churchill Mining PLC v. Republic of Indonesia* and *Planet Mining Pty Ltd v. Republic of Indonesia* highlight the complexity of disputes involving sovereign regulatory authority and transnational investment interests. A credible transition toward domestic investor state dispute resolution therefore depends on strengthening procedural justice, institutional independence, transparency standards, and international recognition within the existing arbitration framework.

**Reconstructing a Sustainable Domestic Investment Arbitration Architecture for Future Investment Governance**

The normative findings indicate that the future effectiveness of domestic investment dispute resolution depends less on institutional substitution and more on institutional reconstruction. Contemporary investment governance increasingly prioritizes regulatory balance, sustainable development objectives, and procedural cooperation rather than exclusive reliance on investor protection mechanisms (Beveridge, 2022). This transformation reflects a broader shift in international investment law toward governance models that integrate public interests into dispute settlement frameworks. Indonesia therefore faces the challenge of designing an arbitration architecture capable of simultaneously supporting investment certainty and national development objectives.

A central component of institutional reconstruction is the establishment of a specialized investment arbitration chamber operating within the domestic arbitration system. Such a chamber would possess jurisdiction specifically tailored to disputes involving foreign investors and public regulatory authorities. Specialized procedural rules could accommodate issues concerning public policy review, regulatory autonomy, and sustainable development obligations that rarely arise in ordinary commercial arbitration. Similar institutional differentiation has emerged in various reform initiatives seeking to modernize investment dispute governance structures (Alschner et al., 2022).

The analytical review further suggests that future investment arbitration frameworks should move beyond the traditional assumption that dispute settlement exists solely to protect investor interests. Contemporary scholarship increasingly emphasizes reciprocal obligations between investors and host states as an essential component of legitimate investment governance (Van der Ploeg, 2024). This approach recognizes that investment activities generate economic benefits while simultaneously creating environmental, social, and governance responsibilities. A specialized domestic arbitration chamber would provide an appropriate institutional venue for integrating these reciprocal obligations into adjudicative practice.

The incorporation of sustainability principles represents another critical element of future institutional design. Recent investment treaty practice demonstrates increasing acceptance of environmental protection clauses, sustainable development commitments, and climate related regulatory exceptions within investment governance frameworks (Dotzauer et al., 2024). These developments indicate that investment law is evolving toward a more integrated relationship with environmental governance. Future domestic arbitration procedures should therefore permit adjudicators to consider sustainability objectives when evaluating disputes involving public regulatory measures.

The relevance of climate justice considerations has become increasingly significant within contemporary debates concerning investment dispute settlement. Emerging scholarship argues that states require sufficient regulatory space to implement environmental policies addressing ecological degradation and climate related risks (Azam, 2026). Climate responsive dispute settlement mechanisms seek to balance investment protection with obligations arising from environmental stewardship and intergenerational equity. The reconstruction of domestic arbitration institutions offers an opportunity to embed these principles directly into procedural and substantive frameworks.

**Table 3. Comparative Reform Models for Post BIT Investment Dispute Governance**

| Jurisdiction or Framework | Reform Orientation | Dispute Settlement Design | Relevance for Indonesia |
|---|---|---|---|
| Brazil | Cooperation based model | State centered mechanism | Alternative to classical ISDS |
| South Africa | Domestic adjudication priority | Domestic courts and mediation | Sovereignty protection |
| Ethiopia | Treaty recalibration | Development oriented protection | Policy alignment |
| RCEP | No ISDS approach | Negotiated flexibility | Regional experimentation |
| Investment Facilitation Agreements | Procedural cooperation | Prevention oriented framework | Investor confidence building |

Source: Adapted from Amorim and Menezes (2022), Mekonnen and Asmelash (2025), Lugg et al. (2024), and Chaisse (2025).

The comparative evidence presented in Table 3 demonstrates that investment governance reform has developed through multiple institutional pathways rather than a single universal model. Brazil has emphasized cooperative mechanisms that prioritize state coordination and dispute prevention over adversarial investor claims (Amorim & Menezes, 2022). Ethiopia has pursued treaty recalibration strategies designed to align foreign investment protection with domestic development objectives (Mekonnen & Asmelash, 2025). These experiences illustrate that institutional innovation may coexist with continued efforts to attract foreign investment.

Regional developments provide additional guidance for future Indonesian reforms. The absence of a conventional investor state dispute settlement mechanism within the Regional Comprehensive Economic Partnership reflects increasing experimentation with alternative governance approaches (Lugg et al., 2024). Such developments suggest growing recognition that investment cooperation can be supported through mechanisms emphasizing consultation, prevention, and regulatory dialogue. A future Indonesian model could incorporate these elements while preserving access to arbitration when disputes cannot be resolved through cooperative procedures.

Investment facilitation agreements offer another relevant framework for institutional redesign. Procedural treaty design increasingly focuses on transparency, administrative efficiency, regulatory predictability, and dispute prevention rather than exclusive dependence on adjudication after conflicts arise (Chaisse, 2025). This orientation recognizes that investor confidence is influenced by the quality of governance throughout the investment cycle. Preventive governance mechanisms may therefore reduce the frequency and intensity of investment disputes requiring formal arbitration.

The normative evolution of investment law also requires greater integration of human rights considerations within dispute settlement institutions. Recent scholarship emphasizes that investment governance should account for community interests, social rights, labor protections, and broader public welfare concerns when evaluating economic activities (Karamanian, 2025). Similar arguments advocate a more inclusive legal framework that empowers affected stakeholders rather than focusing exclusively on investor entitlements (Khan, 2025). A future investment arbitration chamber could institutionalize these considerations through procedural mechanisms allowing broader participation in disputes involving significant public interests.

The findings ultimately support the development of a future Indonesian investment arbitration architecture grounded in sustainability, procedural legitimacy, and regulatory coherence. Contemporary investment governance increasingly connects corporate conduct, development policy, environmental responsibility, and dispute settlement within an integrated normative framework (Choudhury, 2025; Segger et al., 2025). Experiences associated with infrastructure connectivity initiatives and development driven investment policies demonstrate that legal certainty is most effective when combined with institutional adaptability and public legitimacy (Afzaal, 2022; Fyock, 2023; Shakar et al., 2025). The proposed model therefore envisions a specialized domestic investment arbitration chamber operating within a broader governance ecosystem that promotes responsible investment, sustainable development, and long term regulatory stability.

## CONCLUSION

The reorientation of foreign investment dispute resolution following Indonesia's unilateral termination of Bilateral Investment Treaties reflects a broader transformation in the relationship between investment protection, state sovereignty, and institutional governance. The analysis demonstrates that treaty termination has reduced reliance on external investor state arbitration mechanisms while increasing the strategic importance of domestic legal institutions in safeguarding investment relations. Existing arbitration arrangements provide a foundational framework for dispute settlement, yet questions concerning institutional legitimacy, procedural credibility, international recognition, and enforcement capacity continue to influence investor confidence. Comparative assessment further reveals that the effectiveness of domestic arbitration depends not only on legal authority but also on the ability of institutions to satisfy internationally accepted standards of independence, transparency, and procedural justice. Future investment governance in Indonesia requires a specialized investment arbitration architecture supported by institutional reform, sustainability oriented dispute resolution principles, investor responsibility mechanisms, human rights considerations, and climate justice commitments. Such a framework offers a pathway toward a more balanced model of investment governance that strengthens regulatory autonomy while preserving legal certainty and maintaining the attractiveness of Indonesia as a destination for foreign investment.

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