Jurnal Impresi Indonesia (JII)
p-ISSN: 2828-1284 e-ISSN: 2810-062x
website: https: //rivierapublishing.id/JII/ index.php / jii /index

INDONESIA'*S GOOD FAITH* PRINCIPLES IN INTERNATIONAL ARBITRATION AND *GOOD GOVERNANCE* IN NATIONAL INVESTMENT

Ary Simanjaya
Fakultas Hukum Universitas Indonesia
Email: arysimanjaya@gmail.com

Keywords
Indonesia foreign investment, capital investment, international arbitration forum, BIT, ICSID

Abstract
The Republic of Indonesia is a country open to investors who wish to invest, as shown through Indonesia's willingness to be bound by *Bilateral Investment Treaty* (BIT) agreements with relevant countries, as well as agreements that require investment in Indonesia. The Indonesian Government's approach towards the presence of foreign investors is intentional, ensuring that there is no discrimination against domestic investors through investment law, other laws related to investor business, and agreements between countries that serve as the basis for investment in Indonesia. Despite Indonesia's welcoming attitude and openness to foreign investment, the Republic of Indonesia has faced the *Internationale Centre for Settlement of Investment Disputes* (ICSID) trial seven times, with varying results in each case. Therefore, this study aims to evaluate and analyze the attitude of the Republic of Indonesia in ICSID arbitration trials through all the cases Indonesia has experienced, by examining the proceedings. This study uses a normative juridical research method with a qualitative approach for analysis. The results of the study show Indonesia's progressive attitude in responding to and providing input to the ICSID board, as the Indonesian Government plays a real role in the presence of foreign investment and is adaptive to the principles of the ICSID trial. Further evaluation is needed regarding the validity of ICSID membership, both in terms of the system and its implementation, so that Indonesia can obtain real benefits as an ICSID member in future arbitration proceedings.

INTRODUCTION

Foreign investment in the Republic of Indonesia has been carried out since 1511 in the international trade market carried out by Portuguese traders by trading spice commodities and over time trade continues to grow (Scott, 2014). Furthermore, through the course of history in Indonesia in every era from colonialism to reform where there are many lessons for Indonesia in interpreting the process of investment development directly or indirectly through the scheme of international events that occur between countries in the global trade market (Scott, 2014). Indonesia accepts and recognizes Foreign Investment to build a better economic climate and bring a positive impact to the state, the private sector, and society in Indonesia and besides that builds trust and comfort for investors who want to flow their funds to Indonesia. In 1990 this activity on Investment or Investment formed a speculation on the regulation of the law and its implementation, this affected the motivation of international investors regarding trust in the influence of the government so that Law Number 8 of 1995 concerning the Capital Market was formed on November 10, 1995.Irsan Nasarudin et al., Legal Aspects of the Indonesian Capital Market (Jakarta: Kencana, 2014), p. 44. Until now, Law No. 25 of 2007 concerning Investment has been established to provide provisions regarding Investment and Investment in Indonesia, in this law it defines foreign investment as the activity of investing capital to conduct business in the territory of Indonesia by foreign investors with full capital or joint venture with domestic investment (*Law on Investment, Law No. 25 of 2007 LN of 2007 No. 67 TLN No. 4724*, 2007).

Investment according to *the Black Law Dictionary* is *an expenditure to acquire property or assets to produce revenue; a capital outlayMas Rahmah, Investment Law (Jakarta: Prenada media Group, 2020), p. 1·*, from this definition describes the expenditure of a capital either in the form of property or assets with the aim of obtaining results or profits. The definition of investment in *the Black Law Dictionary* when juxtaposed with the definition of Foreign Investment defined by M. Sornarajah as the action of tangible and intangible assets from one country to another with the aim of generating profits that are fully or partially controlled.M. Sornarajah, The International Law Foreign Investment (New York: Cambridge University Press, 2010), p. 8. M. Sornaraja's definition produces the concept of exchange between countries with assets as objects to become profits, where this transaction triggers a causal relationship between the state and the state can affect each other from one thing to another. These two definitions are related to the existence of assets that are transacted to get profits where these transactions can be carried out between the state and the state. Defined definitions can evolve along with evolving conceptual changes, including the interests to be achieved in order to develop investment from one country to another, but behind it must be based on real and definite protection (Bernardini, 2001a).

In realizing the implementation of investment between countries and countries based on real and definite protection for investment actors, an agreement is formed that regulates the conditions, conditions, and settlement of disputes regarding investment between countries and other countries in the form of an international agreement called *the Bilateral Investment Treaty* (BIT) Juajir Sumardi, International Investment Law (Yogyakarta: Deepublish, 2024), p. 140. This bilateral agreement between countries has an impact on actions and anticipatory actions based on the agreement of the two parties that agree on a bilateral agreement in carrying out investments. In addition to being based on the *Bilateral Investment Treaty* (BIT), foreign investment can be carried out not only by the state but can be carried out between private companies in one country and private companies in other countries which are carried out based on contracts or agreements between related private companies.Sornarajah, The International..., page 286· Investment relationships based on contracts or agreements between private companies do not release the role of the state in which the company is located which plays a role as a guide to risks that may occur in the future, this is related to the negotiation of interests to protection through the bargaining power of the parties to reach an agreement (Bernardini, 2001b). In a transactional causal relationship with interests that have a massive and inclusive impact on the process, it does not always go well until there is a possibility of a case dispute between the parties due to the realization of an agreement that does not go perfectly, especially in relation to the monetary of a country and the parties in the country.

Differences in intentions and objectives that do not achieve the same result between one party and the other parties can form problems in the running of sustainable transactional processes which include the running of investment relationships in a country where it is related to other countries. Foreign investment problems between countries can occur in various forms related to reuse, discrimination, contract disputes, regulatory adjustments, environmental and social issues, jurisdictional determination, tax provisions, and political instability of a country (Sandra Ann & Sebastian, 2024). Although the headline is a foreign investment that is directly related to the country's fiscal and monetary affairs, because the terms and conditions apply that are loaded with certain country regulations, they are related again to matters related to the national laws of each country. Investment regulations between each country that invest in each other can be a degradation in the ongoing investment cooperation, although besides that the existence of *a Bilateral Investment Treaty* (BIT) is not a certainty that the agreement fulfills all the interests of the parties, including in resolving dispute understanding. The settlement of problems related to the interests of countries between countries and other countries is largely related to international arbitration institutions, this is formed because several *Bilateral Investment Treaties* (BITs) provide directions for the settlement of foreign investment disputes through neutral institutions as a way out of dispute resolution.

The settlement of foreign investment problems between countries and other countries through neutral institutions in which there is no relationship with one party and a systemic mechanism is the main solution chosen to get definite results based on the facts and conditions of the related problems. The *International Centre for Settlement of Investment Disputes* (ICSID) is the choice of parties facing investment arbitration disputes, besides that there are still other international arbitration institutions such as *the International Chamber of Commerce* (ICC) and *The United Nations Commission on International Trade Law* (UNCITRAL) (Sandra Ann & Sebastian, 2024). Settlement through an arbitration institution constitutes a positive mitigation for the parties through a system that maintains certain confidential privacy, an efficient process, litigants can participate in real terms, and an arbitrator who upholds professionalism with the right to opt out of a previous award (*legal precedent*) and to provide his or her own considerations.Susanti Nugroho Adi, Arbitration Dispute Resolution and Its Application (Jakarta: Kencana, 2017), p. 86. However, behind that there is a shortcoming in the arbitration process, regarding the unanimity of the votes of the litigants against the arbitration rules that underlie the case process (Nugroho, 2017). The participation of these parties is an important part of the implementation of the problem solving process through arbitration, the evidentiary mechanism based on the regulations of each country is both the key in obtaining both the perspective as an investing country and the perspective of the country as a *host state*.

The Republic of Indonesia, as a country that is open to economic development as well as foreign direct and indirect investment. This transactional relationship through foreign investment is not closed to other countries or foreign companies that want to invest and carry out their business activities in Indonesia if they follow the terms and conditions of the regulations that have been determined. In the transactional process of Indonesia's foreign investment with other countries and investors of other countries who carry out their business activities in Indonesia through cooperation agreements with domestic companies (*Joint Venture Aggrement*) do not always run smoothly. As far as the journey of the Republic of Indonesia as a member of ICSID for approximately 50 years, Indonesia has been sued 7 (seven) times through this institution consisting of AMCO, CEMEX, Rafat Ali Rizvi, Churchill Mining, Planet Mining, Newmont, and Oleovest (Sihombing, 2019). One of the cases that took a long time was the case between Churchill Mining PLC-Planet Mining Pty Ltd which filed a lawsuit with the Republic of Indonesia in May 2012.

This case attracted a lot of attention because the origin of this problem was the attitude of the Regent of East Kutai to revoke mining permits from Churchill Mining Plc, This decision of the Regent of East Kutai caused a domino effect where legal problems were related to Churchill's mining business activities domiciled in Indonesia. Churchill Mining PLC is a British coal mining company listed on *the Alternative Investment Market* (AIM) on the London Stock Exchange. Churchill Mining Plc established PT Indonesia Coal Development (PT ICD) together with Planet Mining Pty Ltd, an Australian company with a capital ownership scheme of 95% Churchill and 5% Planet Mining. In addition to PT ICD, Churchill also formed PT Techno Coal Utama Prima (PT TCUP) with a capital ownership scheme of 99% owned by PT ICD and 1% owned by Churchill. PT ICD and PT TCUP have a cooperation agreement with a national entrepreneur group, namely the Ridlatama Group and through this group they obtained permits and power of attorney for mining in East Kutai Regency.

On May 22, 2012, Churchill Mining PLC-Planet Mining Pty Ltd officially sued the Republic of Indonesia at ICSID in the form of *an International Investment Agreement* (IIA) case. The case went through a fairly long process and took up to 4 years until the first decision by ICSID on December 6, 2016. In this decision, ICSID rejected Churchill Mining PLC-Planet Mining Pty Ltd's lawsuit against Indonesia based on the data and documents of the ICSID board members who saw doubts in the documents of Churchill Mining PLC-Planet Mining Pty Ltd. Churchill Mining PLC-Planet Mining Pty Ltd did not immediately accept the ICSID decision and submitted an application for the annulment of the decision to ICSID on March 31, 2017. The *claimants* considered that ICSID had overstepped its authority (*ultra vires*) and that the established procedures did not run as they should (of the Cabinet Secretariat of the Republic of Indonesia, 2019). On March 18, 2019, the Republic of Indonesia won and rejected all lawsuits against *claimants* Churchill Mining PLC-Planet Mining Pty Ltd.

This research article is carried out with a normative juridical research method that examines secondary data, and literature studies and follows a structured procedure consisting of five parts, each part has the aim of providing a comprehensive understanding of the subject of discussion. This article begins with an introduction, followed by a literature review that covers 3 (three) aspects, namely (1) investment in Indonesia and the definition of foreign investment, (2) an overview of the realization of foreign investment and the settlement of foreign investment cases through an arbitration forum, and (3) international arbitration cases faced by Indonesia in the case of ICSID Churchill Mining PLC-Planet Mining Pty Ltd against Indonesia. Furthermore, examining the attitude of the Government of Indonesia towards foreign investment issues that ended in international arbitration forums, focusing on the case of Churchill Mining PLC-Planet Mining Pty Ltd suing the Republic of Indonesia followed by other cases faced by Indonesia at ICSID which is seen through the government's *Good Faith* principle as the party that responds to the lawsuit, the basis of action in deciding, and the principle of Good Governance to the Government of the Republic of Indonesia. The last part briefly evaluates the government's attitude towards international arbitration forum cases and their implementation. Furthermore, it is seen how the international arbitration forum can accommodate the settlement of cases well on the attitude of the Government of Indonesia in responding to lawsuits. Recommendations are given to consider how Indonesia's participation as part of the international arbitration forum with the conclusions presented at the end of the study.

Previous studies on Indonesia's foreign investment disputes, particularly in the context of the ICSID, have focused on specific case studies but often lacked a comprehensive analysis of the government's strategic attitude and its implications for future investment policies. For instance, Leksyutina (2019) discussed the legal challenges Indonesia faced in arbitration, focusing mainly on procedural issues and legal principles, without delving deeply into the government's evolving response or broader investment strategies. Similarly, Sornara (2020) explored Indonesia's historical engagement in investment arbitration but did not integrate the analysis of ICSID cases with the principles of good governance and government response as key factors.

The study aims to offer recommendations for improving Indonesia's participation in international arbitration forums, ensuring that its approach to foreign investment disputes aligns with both international standards and national interests. The theoretical benefit of this research lies in enriching the literature on international investment law and arbitration, while the practical benefit is to provide insights for policymakers on how to navigate foreign investment disputes more effectively, ensuring that Indonesia can attract and protect foreign investments while adhering to the principles of good governance.

METHOD

This study uses a normative juridical research method with a qualitative approach to analyze the principles of *Good Faith* in international arbitration and *Good Governance* in national investment, specifically in the case of Churchill Mining PLC–Planet Mining Pty Ltd against the Republic of Indonesia in the *ICSID* forum. The research data is sourced from primary legal materials such as Indonesian laws and regulations, *ICSID* arbitration documents, and international agreements, as well as secondary legal materials in the form of academic literature and expert analysis. Data collection techniques are conducted through literature studies, document analysis, and online source searches, while data analysis employs a qualitative approach using content, comparative, and critical analysis methods to evaluate Indonesia's attitude in handling arbitration lawsuits.

RESULTS AND DISCUSSION

The Government's Position in the ICSID Case: Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40

Based on the timeline of the case of Churchill Mining PLC-Planet Mining Pty Ltd against the Republic of Indonesia in the ICSID trial procedure available on the *Investor State Law Guide* (ISLG) website, Churchill Mining PLC submitted a Protection Application Letter with Number 028/CHL-RI1/IV/2012 dated April 20, 2012 to Indonesia through the President in that year, Mr. Susilo Bambang Yudhoyono (*The timeline of the ICSID Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, 2025). The letter contains an introduction to the Churchill Mining company, business activities in Indonesia, a chronology of events experienced by Churchill Mining, and a request for assistance in solving the problems being faced. The Government of Indonesia did not respond to the Letter of Request for Protection from Churchill Mining because it was considered that the action taken was in accordance with what should have been and subsequently on May 22, 2012, Churchill Mining PLC-Planet Mining Pty Ltd sued the Republic of Indonesia in the ICSID arbitration court. In response to the lawsuit, President Susilo Bambang Yudhoyono stipulated the Presidential Decree of the Republic of Indonesia Number 30 of 2012 dated September 22 concerning the appointment of the Government of East Kutai to come forward as a party to the trial (*Decree of the President of the Republic of Indonesia on the Appointment of East Kutai Regency to be a party to the arbitration process of the International Centre for Settlement of Investment Disputes related to the Churchill Mining lawsuit*, 2012) and also stipulated the Presidential Regulation of the Republic of Indonesia Number 78 of 2012 dated September 27, 2012 which instructed the Minister of Law and Human Rights, the Minister of Home Affairs, the Attorney General, and Head of the Investment Coordinating Board (BKPM) to handle the lawsuit of Churchill Mining PLC-Planet Mining Pty Ltd at ICSID. These two presidential decisions are to appoint government organs to carry out necessary actions such as:

1. Appointed the Minister of Law and Human Rights as the coordinator of the Legal Counsel Team. (Article 1 number 2 of Presidential Decree No. 78 of 2012)
2. Appointing Indonesian Arbitrators, legal consultants, support teams in the ICSID Arbitration process. (Article 2 number 1 letters c, d, and e of Presidential Decree No. 78 of 2012)
3. The Arbitration process carried out by the Indonesian legal team must be carried out with the principles of prudence, transparency, efficiency, effectiveness, and accountability. (Article 2 number 2 of Presidential Decree No. 78 of 2012)
4. The Indonesian legal team coordinated with the Coordinating Minister for Politics, Law and Security, the Minister of Foreign Affairs, the Minister of Finance, and the Regent of East Kutai. (Article 3 of Presidential Decree No. 78 of 2012)
5. The Vice President can direct and supervise Indonesia's legal team. (Article 4 of Presidential Decree No. 78 of 2012)
6. The Indonesian legal team is obliged to report the arbitration trial process to the President and Vice President. (Article 5 of Presidential Decree No. 78 of 2012)

President Susilo Bambang Yudhoyono's action is a form of fulfillment of the principle of *good faith* in investment arbitration which has the function of upholding the integrity and systematic goals of international investment lawGustavo Minervini, "Good Faith in International Investment Arbitration," Leiden Journal of International Law 33, no. 4 (2020), pages 1053–1056., this action can show a commitment and good competence for Indonesia in the international arena in good conditions and bad conditions. In this condition, Indonesia shows its existence in each ICSID *Procedural*, Indonesia fulfills every document considered by the *claimants* Churchill Mining PLC-Planet Mining Pty Ltd and provides causal information on the decisions made on the business activities of Churchill Mining PLC-Planet Mining Pty Ltd. as the *host state*) It is important to have a focus on maintaining its influence in order to limit actions related to foreign investment, government policies have control to maintain and ensure the localization of foreign inventions in accordance with the business activities carried out.Sornarajah, The International..., Page 93· The Government of Indonesia adheres to the decision that has been decided and explains and conveys in detail the chronology of cause and effect that is the basis of Indonesia's decisions on the Churchill Mining PLC-Planet Mining Pty Ltd consortium in Indonesia. Indonesia's commitment to resolving foreign investment cases has also been accommodated in stages starting from consensus deliberation to the arbitration stage, if the deliberation does not succeed in producing a solution in resolving the case at each stage, it is determined to go through international arbitration as determined in Article 32 of Law No. 25 of 2007 (UUPM).

The Indonesian legal team as the *Respondent* in the ICSID Arbitration Forum process against the Churchill Mining lawsuit did not remain silent even though it was in a position as a party facing the lawsuit. Indonesia launched a reverse protection of its rights by asking Churchill Mining not to give inappropriate statements to the media in order to maintain the ongoing process and not damage Indonesia's image in the global investment arena (*International Centre for Settlement of Investment Disputes, Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID case No. ARB/12/14 and 12/40), Procedural Order No. 3-Provisional Measures*, 2013), real separatist actions from the problems that Indonesia is currently facing will indirectly have an impact on non-technical conditions as a defendant because there will be a lot of speculation that can be connotated as a pseudo-conclusion in unexpected forms. Indonesia as *a Respondent* (or defendant) has an obligation to provide and explain its position in the *Bilateral Investment Treaty* (BIT) both between Australia and Indonesia and between the United Kingdom and Indonesia to the *Tribunals* (arbitration board) where the provisions in the BIT are the basis for the implementation of the case settlement process at ICSID (*ICSID case No. ARB/12/14 and 12/40, Decision on Jurisdiction both Churchill Mining Plc v. Republic of Indonesia and Planet Mining Pty Ltd v. Republic of Indonesia*, 2014). The rights and obligations conveyed and carried out by the Indonesian legal team are the initial attitude that needs to be taken because in this position the state must ensure that the strategy prepared is prioritized to safeguard interests with a wider scope and limit actions so as not to cause bad diplomacy against global investment in Indonesia.Robert Volterra, Giorgio Francesco Mandelli, and Maria Fogdestam Agius, "The Investment Arbitration Practitioner," The Journal of World Investment & Trade 17, No. 2 (2016), pages 295–318. Upholding an optimistic attitude that is self-aware to consider the interests of the state and keep repressive actions away from repressive actions is an important attitude as an attitude that convinces the *Tribunals* (arbitration council) of Indonesia's actions is something that can be held accountable.

The Indonesian side also applies vigilance to documents and information requested directly by *the Tribunals* to *the Respondent* as well as to *the Claimants* as well as documents attached by *the Claimants* to the trial proceedings (*ICSID case No. ARB/12/14 and 12/40, Procedural Order No.5-Annex A*, 2013). This vigilant attitude is also part of the enforcement of the principle of *good faith*, because the idea of this principle states *honesty and fairness* (honesty and fairness) is a point of view that is made open to insert interpretation on certain circumstances and conditions.Gustavo Minervini, "Good Faith in International Investment Arbitration," Leiden Journal of International Law 33, no. 4 (2020), 1053–1056. This is important when processing in an international forum where the parties to the arbitration board have different citizenship backgrounds, because of the aspect of language differences and their adjustment to understanding when it is changed to English as an international language used in the international forum process if it cannot be conveyed and adjusted to the understanding of *the Tribunals* So this can be a situation that is detrimental to the defendant. The vigilance of the documents and opinions submitted by the plaintiff at the arbitration trial of Churchill Mining PLC-Planet Mining Pty Ltd against the Republic of Indonesia was conveyed by the proof of the Indonesian Legal Team that the documents attached by Churchill Mining were false documents, the validity of the data was found based on a comparative investigation of documents and data owned by Indonesia with those attached and examined by forensic experts and relevant witnesses Examination Application (*ICSID case No. ARB/12/14 and 12/40, Procedural Order No.12-Procedural Treatment of the Respondent's Application for Dismissal of Claims*, 2014). It is important for the parties to prioritize the obligation to express their opinions on matters in the trial process in order to achieve a result that can convince the board about the ongoing process in order to achieve a well-founded and competent premise.

The decision of the ICSID arbitration board in the case of Churchill Mining PLC-Planet Mining Pty Ltd against the Republic of Indonesia was held on December 6, 2016. The decision of the arbitration board based on the analysis of the facts during the course of the trial procedure and the arbitration board concluded that Churchill Mining PLC-Planet Mining Pty Ltd committed an act of Forgery and Fraud against 34 (thirty-four) mining licensing documents owned and obtained with an indication to the Ridlatama Group, this action of the plaintiff tarnished the principles *of good faith* and abuse of the process to benefit from *the Treaties* (BIT) so that the lawsuit is unacceptable and is obliged to pay a fine of USD 8,646,528 (eight million six hundred and forty-six thousand five hundred and twenty-eight US dollars) to Indonesia. The decision of the arbitration board was not satisfactory to the *Claimants* and on 31 March 2017 again filed an *Application for Annulment* with ICSID on the basis of *Article 52 of the ICSID Convention* because the Claimant concluded that ICSID did not provide a fundamental reason for the award and did not respect its basic procedural (*ultra vires*). The Republic of Indonesia responded through *the Annual Proceeding* and the arbitration board based on its analysis decided that the application for annulment of the Churchill Mining PLC-Planet Mining Pty Ltd decision was rejected in its entirety, with this decision ending the entire case process between the decision of Churchill Mining PLC-Planet Mining Pty Ltd v. the Republic of Indonesia. The principle of *good faith* and attitude in each procedure optimized by Indonesia provides an advantageous position in the case against Churchill Mining PLC-Planet Mining Pty Ltd by fulfilling all the provisions of both documents and statements as the basis for the arbitration board's confidence in concluding its decision.

Indonesia's *Good Governance* Principles for Investment in Indonesia

Indonesia's attitude towards foreign investment is not only seen during the trial phase of the arbitration forum, but firm action against foreign investors who invest in Indonesia can begin to be seen from the moment investors start their business activities. The *host state* guarantees the sustainability of foreign investors who carry out business activities in their country, but behind that this foreign investor company should also estimate the actions of its company and be responsible if there are violations in its business activities related to the fields of the host country against Human Rights and the Environment.Sornarajah, The International..., page 145. It is the responsibility of foreign investors to create a healthy business climate by not carrying out monopolistic practices and actions that are detrimental to the country, every loss caused by the business activities of companies that receive foreign investment must be responsible for the attitude of its business activities. This controlling attitude by the *host state* is shown in the action of the Regional Government of the Regent of East Kutai which firmly revoked the mining permits of Churchill Mining PLC-Planet Mining Pty Ltd which are considered detrimental to Indonesia and cause exploitation of the Indonesian environment with inconsistency with the commitment of foreign investors in Indonesia. This action by the Kutai

Government is the basis for Churchill Mining PLC-Planet Mining Pty Ltd's lawsuit at the ICSID Arbitration Forum against Indonesia.

This revocation was carried out on a clear basis and based on the Investment Law and the provisions of the alliance that underlie the actions of Churchill Mining PLC-Planet Mining Pty Ltd and its consortium that have a direct or indirect impact on the sustainability of the Republic of Indonesia. The reason for the Regent of East Kutai to revoke the mining licenses of Churchill Mining PLC-Planet Mining Pty Ltd in Indonesia is because:

1. Churchill Mining PLC-Planet Mining Pty Ltd conducts indirect expropriation
2. Mining Exploration by a subsidiary of Churchill Mining PLC-Planet Mining Pty Ltd covering an area of ± 350 KM^2 in Busan District, East Kutai (of the Cabinet Secretariat of the Republic of Indonesia, 2019).

This Government's attitude carries the principle of fair *and equitable treatment* to ensure the sustainability of the investment climate so that it is comfortable to invest for domestic investors and foreign investors who invest in Indonesia, the government also shows an attitude of *Good Governance principles*. The Good *Governance Principle* aims to realize the values of democracy, the rule of law, human rights, and social justice by the government and non-governmental organs that have an impact on citizens in the formation and implementation of legal norms.(Harpe et al., 2008) This principle focuses on the role of the government through a direct attitude towards the transactional investment climate in Indonesia through strict provisions and rules on investment through legal rules formed by the government to maintain a positive economic circulation in the Indonesian market in order to become a comfortable country for the global market for global investment to invest in Indonesia. Fair treatment for investors is also regulated in the Investment Law, investment is carried out with the same treatment for domestic investors and foreign investors regardless of country of origin.

Review of the Attitude of the Republic of Indonesia in the ICSID Case

Throughout the investment and investment process, investment activities in Indonesia do not always run in accordance with the agreements and provisions between foreign investors and domestic capital recipients, all run smoothly and smoothly. Often when there is an investment process that does not run smoothly, the initial stage of case settlement is prioritized to go through consensus deliberation in an alternative process of resolving disputes outside of court with consultation, negotiation, mediation, consolidation, or expert assessment (*Law on Arbitration and Alternative Dispute Resolution No. 30 of 1999, Law No. 30 of 1999 LN of 1999 No. 138 TLN No. 3872*, 1999). However, if during the process of alternative solutions with consensus deliberation is not achieved, then the next step is to resolve the case through the courts. The International Arbitration Forum is the choice for foreign investment cases with *host countries*, ICSID is the forum that is mostly chosen and determined both in *the Bilateral Investment Treaty* (BIT) and in agreements between the parties to the dispute in the implementation of investment and investment. Indonesia's attitude in looking at the ICSID arbitration forum case, more or less in the ICSID arbitration forum including the Churchill Mining Case in this study it is recorded that the Republic of Indonesia has processed ICSID 7 times, others include:

Table 1. The Case of the Republic of Indonesia International Centre for Settlement of Investment Disputes (ICSID) and Its Process.

No.	ICSID Case	Process
1	Oleovest Pte. Ltd. (ICSID Case No. ARB/16/26) Subject Matter: ***Food Product enterprise by BIT Indonesia-Singapore 2005***	• August 10, 2016 Registration of the case in the arbitration process. • 29 November 2017 The *Claimant* (Oleovest Pte. Ltd.) filed a stay of proceedings under *Article 44 of the ICSID Arbitration Rule*. • 08 December 2017 The *Respondents* (Republic of Indonesia) did not dispute the termination of the process by the *claimant.*
2	Nusa Tenggara Copyright © 2019 PT Newmont Nusa Tenggara. All Rights Reserved. (ICSID Case No. ARB/14/15) Subject Matter: ***Coal Mining by Contract***	• July 15, 2014 Registration of the case in the arbitration process. • August 25, 2014 The *Claimants* (Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara) filed a termination of the ICSID Arbitration Rule (*Article 44 ICSID Arbitration Rule*) • August 29, 2014 The *Respondent* (Republic of Indonesia) did not provide a rebuttal to the discontinuation of the case process filed by the *claimants.*
3	Rafat Ali Rizvi (ICSID Case No. ARB/11/13) Subject Matter: ***Banking Enterprise by BIT Indonesia-UK***	• 19 May 2011 Registration of arbitration proceedings. • October 18th, 2011 The *Respondent* (Republic of Indonesia) filed an objection (*Article 41(5) of the ICSID Arbitration Rule*). • June 22nd, 2012 The Arbitration Board considered Indonesia's objections; Consideration, the subject matter can be postponed. • July 16, 2013 Reading of the Judgment; The arbitration board granted Indonesia's objection because the *claimant' s* investment was not in accordance with the Indonesian Investment Law as hinted at in *Article 2(1) of the Indonesia-UK BIT*. • March 13, 2015 The *Claimant* filed for the termination of ICSID (*Articles 53 and 44 of the ICSID Arbitration Rule*). • 03 April 2015 The Indonesian side does not object to the request for termination of the process from the *Claimant.* • 04 May 2015 The *ad hoc committee* is responding to the request for a termination of the ICSID process.
4	Government of the Province of East Kalimantan v. PT Kaltim Prima Coal and others (ICSID Case No. ARB/07/3) Subject Matter: ***Coal Mining by Contract***	• January 18th, 2007 Registration of arbitration proceedings. • April 26th, 2007 The *Respondents* (PT Kaltim Prima Coal) filed an objection to the ICSID trial (*Article 41 (5) Arbitration Rule*). • August 28th, 2007 The Board invited *the Respondents* to respond to the *Claimant'* s request to stop the ICSID process (*Article 44 ICSID Arbitration Rule*) • November 21st, 2008

No.	ICSID Case	Process
		The *Respondents* submitted an application for the termination of the ICSID process (*Article 44 ICSID Arbitration Rule*) • December 04th, 2009 The Board decided to close the case (*Article 38(1) of the Arbitration Rule*)
5	Cemex Asia Holding Ltd v. Republic of Indonesia (ICSID Case No. ARB/04/03) Subject Matter: ***Cement Production Enterprise by Cotract and Asean Treaty 1987***	February 23rd, 2007 The Parties agree to a settlement under *Article 43 (2) of the Arbitration Rule*.
6	AMCO Asia Corporation and others v. Republic of Indonesia (ICSID Case No. ARB/81/1) Subject Matter: ***Construction and operation of a hotel by Contract***	• 15 January 1981 The *Claimants* (AMCO Asia Corp.) registered the ICSID process. • November 20, 1984 ICSID's First Decision; Indonesia was found guilty and obliged to settle the fine. • March 18, 1985 Indonesia filed a petition to ICSID for annulling the First Judgment. • May 16, 1986 The *ad hoc committee* overturned the First Judgment. • 12 May 1987 AMCO Asia Corp. refiled the lawsuit with ICSID. • 05 June 1990 the Second Decision of ICSID; Indonesia was found guilty and obliged to settle the fine. • October 17, 1990 Indonesia filed a cancellation of the Second Decision with ICSID. • December 03, 1992 The Board rejected the lawsuit and declared the Second Decision dated June 5, 1990 to remain in force as decided.

Based on all the cases that the Republic of Indonesia has gone through in the ICSID arbitration process, Indonesia responded to the process with concrete actions based on conditions and possibilities and based on the ICSID Arbitration Rules which are carried out based on the principle *of Good Faith* as parties to the ICSID trial and the principle of *Good Governance* as the government of the Republic of Indonesia in protecting the country regarding the protection of the interests of the State of Indonesia in the Investment sector, the global capital market, and the positive views of other countries on the investment and economic climate in Indonesia. In fact, in Table 1, the majority of Indonesians are the survivors of the onslaught of negative opinions from other countries against the negative assessment of the Indonesian investment market. Behind these criticisms, Indonesia is still present to provide responses and actions on a validated basis both through *the Bilateral Investment Treaty* (BIT) and the contracts undertaken, this has led to several lawsuits ending with the cancellation of the lawsuit process against Indonesia such as in the case of Oleovest, Ravat Ali Rizvi, and Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara. Indonesia also showed resistance to its lawsuits, Indonesia filed an objection to the Ravat Ali Rizvi case on the basis that the lawsuit did not look at the Indonesia-UK BIT until the plaintiff withdrew the lawsuit. In the AMCO case, Indonesia gave resistance by trying to prove that the lawsuit and verdict were not in accordance with the 11 (eleven) year period, but the outcome of the trial remained AMCO's. In the Churchill Mining case, Indonesia countered by proving that Indonesia's rules on investors were in accordance and providing reverse proof regarding the plaintiff who engineered the legality to continue to be able to operate in Indonesia illegally.

CONCLUSION

The Republic of Indonesia's active participation in the *International Centre for Settlement of Investment Disputes* (ICSID) arbitration forum reflects its commitment to upholding a positive investment climate and adhering to principles such as *Good Faith* and *Good Governance*. By engaging with ICSID's neutral and final dispute resolution system, Indonesia balances the protection of foreign investment with domestic interests, including regulatory, humanitarian, and environmental considerations, which is vital for its development and prosperity. However, as Indonesia continues to play a progressive role in ICSID, it is important to periodically evaluate its long-term membership to ensure that the system supports fair and effective dispute resolution while safeguarding national interests. Future research should focus on how Indonesia can further optimize its ICSID membership to prevent misuse of the arbitration process and enhance its reputation, thereby fostering a more secure and attractive investment environment.

REFERENCES

Adi, S. N. (2017). *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*. Kencana.

Bernardini, P. (2001a). Investment Protection under Bilateral Investment Treaties and Investment Contracts. *Journal of World Investment*, *2*(2), 235–248.

Bernardini, P. (2001b). *Investment Protection under Bilateral Investment Treaties and Investment Contracts*.

Decree of the President of the Republic of Indonesia on the Appointment of East Kutai Regency to be a party to the arbitration process of the International Centre for Settlement of Investment Disputes related to the Churchill Mining lawsuit. (2012).

Dr. Mas Rahmah, S. H. M. H. L. L. M. (2020). *Hukum investasi*. Prenadamedia Group.

Harpe, S. de la, Rijken, C., & Roos, R. (2008). GOOD GOVERNANCE. *Potchefstroom Electronic Law Journal*, *2*.

ICSID case No. ARB/12/14 and 12/40, Decision on Jurisdiction both Churchill Mining Plc v. Republic of Indonesia and Planet Mining Pty Ltd v. Republic of Indonesia. (2014).

ICSID case No. ARB/12/14 and 12/40, Procedural Order No.12-Procedural Treatment of the Respondent's Application for Dismissal of Claims (hal. 5). (2014).

ICSID case No. ARB/12/14 and 12/40, Procedural Order No.5-Annex A. (2013).

International Centre for Settlement of Investment Disputes, Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID case No. ARB/12/14 and 12/40), Procedural Order No. 3-Provisional Measures (hal. 5). (2013).

Irsan, N., Ivan, Y., Arman, N., & Adiwarman. (2014). *Aspek Hukum Pasar Modal Indonesia*. Kencana.

Law on Arbitration and Alternative Dispute Resolution No. 30 of 1999, Law No. 30 of 1999 LN of 1999 No. 138 TLN No. 3872. (1999).

Law on Investment, Law No. 25 of 2007 LN of 2007 No. 67 TLN No. 4724. (2007).
Minervini, G. (2020). Good Faith in International Investment Arbitration. In *Leiden Journal of International Law* (Vol. 33, Nomor 4, hal. 1053–1056).
Nugroho, S. (2017). *Dispute Resolution...*
of the Cabinet Secretariat of the Republic of Indonesia, P. R. (2019). *Government of Indonesia Achieves Multak Victory at the ICSID Arbitration Forum*. https://setkab.go.id/pemerintah-indonesia-raih-kemenangan-mutlak-di-forum-arbitrase-icsid/
Sandra Ann, T. J., & Sebastian, M. (2024). International Investment Arbitration in Foreign Investment Disputes. *International Journal of Law Management \& Humanities*, *7*, 1734–1747.
Scott, D. (2014). *Legal Aspects of Foreign Investment in Indonesia*. Prenada Media.
Sihombing, E. (2019). *Indonesia Advised to Withdraw from ICSID*. https://www.beritasatu.com/ekonomi/569035/indonesia-disarankan-mundur-dari-icsid
Sornarajah, M. (2010). *The International Law Foreign Investment*. Cambridge University Press.
Sumardi, J. (2024). *Hukum Investasi Internasional*. Deepublish.
The timeline of the ICSID Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia. (2025). https://www.italaw.com/cases/1479
Volterra, R., Mandelli, G. F., & Agius, M. F. (2016). The Investment Arbitration Practitioner. *The Journal of World Investment \& Trade*, *17*(2), 295–318.