

# Protection Bilateral Investment Treaty as Treaty of International Discussion Resolution Supporting Indonesia Reform

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## ABSTRACT

*The implementation of the Bilateral Investment Treaty in Indonesia with foreign investors must still pay attention to the existence of Indonesian state sovereignty. State sovereignty must be maintained by the host state to maintain the existence of the country in the international world. BIT has the main function as an international legal instrument that is useful in foreign investment activities with reciprocal relations in obtaining benefits between the guarantee of legal protection of the home state of foreign investors and the economic growth of the host state. BIT signatories are theoretically balanced and reciprocal, but they are often detrimental to host states, most of which come from developing countries. This research aims to find out the extent of Indonesia's implementation of BIT and still protect the existence of state sovereignty. The method used in this research uses normative and comparative juridical and this research has an analytical descriptive nature. Normative legal research is obtained by studying the Churchill Mining case approach and collecting data from articles, web, books, and websites and then comparing the implementation of BITs in Indonesia as a developing country and the United States as a developed country and comparing the implementation of BITs in fellow developing countries between Indonesia and Brazil. The first victory achieved by Indonesia against Churchill Mining in the resolution of the international investment dispute at the ICSID forum proved the BIT reform in Indonesia that continues to develop. This study showed that: first, The Bilateral Investment Agreement provides legal protection guarantees for foreign investors and settlement of settlement disputes through ICSID, an international investment settlement arbitration agency between the two countries that signed the BIT so that the BIT is a protection guarantee for investors. Second, Indonesia's victory against Churchill Mining proves that it has reformed the BIT that applies to Indonesia in a balanced manner to provide legal protection (host state) and the existence of state sovereignty (home state).*

**Keywords:** Investment Treaties; Investment Reform; Dispute Resolution;

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## INTRODUCTION

The development of the flow of globalization makes various countries require investment activities to develop the country's economy because it is one of the driving factors for the addition of state income that is in line with the mandate of the constitution (Roshana Putri, 2019). The activities of foreign investors in Indonesia are contained in Law No.25 of 2007 concerning Investment which expresses regulations on domestic investors and foreign investors so that there is no difference in provisions to provide legal certainty. Investments are made based on knowledge and the ability to assess the returns and risks of investing in the form of assets (Ningsih, 2021). One of them is investment in the form of reciprocal Bilateral cooperation or commonly known as Bilateral Investment Treaty. One of the principles in the BIT is that the Host State must provide fair and equitable treatment to each investor as an effort to protect investment for foreign investors and guarantee the entry of investors.

Bilateral investment treaties began to develop around the 1970s listed in the International Investment Guarantee Agreement (IGA) arrangement with two countries cooperating in the field of investment. This is done between two countries and both countries are required to sign a Bilateral Investment Treaty (BIT). Foreign investors who invest in the host state certainly need legal certainty from the country, where profit is the main goal of all economies carried out by both parties so that the BIT regulates the guarantee and protection of host state and home state investments in terms of security, legal and business certainty, as well as mechanisms for resolving investment conflicts from the two countries concerned.

Bilateralism forms the foundation for building multilateral agreements because of the very binding norms and simplifying the international economic system, which facilitates and provides guarantees to foreign investors. Generally, bilateral agreements are the first step towards solving very complicated problems related to foreign direct investment because they involve two parties with different interests.

Bilateral agreements are the foundation for building multilateral agreements because they are highly binding norms and simplify the international economic system, making it easier and more secure for foreign investors. Generally, bilateral agreements are the first step to solve very complicated problems related to foreign direct investment because they involve two parties with different interests. One of the cases in the BIT in Indonesia due to overlapping regulations resulted in the Churchill Mining case with Indonesia.

Indonesia's implementation of bilateral investment agreements certainly has obstacles and resulted in disputes between Indonesia and foreign investor countries. In some cases, the Indonesian government was sued by other investors because it was considered a policy made by the Indonesian government to harm them. The urgency of the BIT reshuffle in Indonesia is based on the Indonesian case sued by Churchill Mining company from the United Kingdom. Indonesia was sued for compensation of USD 2,000,000.00 to Churchill Mining with the basic argument of

violation of overlapping regulations on the part of the Indonesian Government in the bilateral investment agreement with the UK.

In addition to the Churchill case, there are also other cases in the mining sector due to mining concessions in several regions and the new policy of the Indonesian government. According to the Indonesian Minister of Forestry's statement, there is a limit to the exploitation of the mining sector because the mining concession has reached the national park area. Caltex, Caltex Wirabuana Petrolindo, Coparex, and Jambi Merang were among the affected companies. These foreign investors raised their objections because they had spent huge amounts of money on research and development and exploitation. This proves that as a host state, there is no guarantee of the state in the right to sovereignty over its territory. The sovereignty of the host state is lost because the state's authority over its own territorial rights is not guaranteed. In this case, the Indonesian government only wants to protect the area that has been deemed to be preserved and the investor has been given an announcement in advance.

Cases regarding BITs that occurred in Indonesia caused Indonesia to want to stop several BITs that were carried out by the deadline already stated in the bilateral treatment. This action is based on the sovereign right of the state based on nationalistic properties. The strong reaction from international academics and businessmen to Indonesia's actions is because, without bilateral investment treatment, foreign investors do not receive guarantees of protection and legal certainty in carrying out their business activities. Investment settlements between foreign investors and a country are generally settled through ICSID.

The International Centre for Investment Dispute (ICSID) is seen by some as eroding host state sovereignty, according to Susan D Franck as saying that 90% of defendants in international investment settlement are from developing or backward countries, and based on statistics on a total of 65 investment disputes based on agreements, around 60% of these cases were won by investors, while the majority of the defendants were developing countries (Sefriani, 2013). Indonesia has more than 74 BITs based on International Investment Treaties data from several foreign countries whose form and content have resulted in the Indonesian government making standardization agreements. It is recommended that the Indonesian government update the BIT regulations to the consistency and changes of the world to benefit both parties and minimize domestic losses. Therefore, the researcher summarizes the problems that will be studied in this research, namely: First, how can Bilateral Investment Treaties be used as a guarantee of international dispute resolution? and Second, how from all cases in BITs that occur in Indonesia, can make Indonesia reform BITs in accordance with an investment climate that remains sustainable and still maintains state sovereignty? The purpose of this research is to find out: First, to know the Bilateral Investment Treaty can be used as a guarantee of international dispute resolution and Second, to know the transformation of BIT in Indonesia after several cases that have been experienced by Indonesia while maintaining state sovereignty.

## **METHOD**

This study uses a normative juridical approach and a comparative approach. In this study, the mechanism for resolving investment in the BIT model (Indonesia and Brazil) and the implementation of BIT in Advanced Countries (United States) and Developing Countries (Indonesia) were analyzed and then compared. Normative juridical research is a study based on cases and provisions based on positive laws. The notion of a comparative approach is a comparative law. Method of data conducted by collecting the sources required in the study using a library study.

## **ANALYSIS AND DISCUSSION**

### **A. Bilateral Investment Agreement as Securing International Dispute Resolution**

The principle of economic rights of each country and nation is the existence of state sovereignty that serves as the main basis for international relations. One of them is included in the Bilateral Investment Treatment (BIT). BIT functions as a means of international law used to create foreign investment management in reciprocity agreements that benefit the two parties concerned in securing investment law protection for home states and increasing the economic and welfare growth index (host states). For the sake of investment certainty that drives economic growth, a country needs to give the same treatment to investors, so that they feel confident and secure in developing the country's economy.

Indonesia has great potential in entering into bilateral investment treaties due to its abundant resources so that it guarantees legal protection and attractive promotions for foreign investors. The rules of the BIT consist of substantive and procedural rules. Substantive rules include the rights and responsibilities of both parties relating to the promotion and protection of investment laws, while procedural rules include providing liability guarantees for investors in resolving issues. If either party violates the specified substantive provisions, it will implicate the opportunity for the implementation of the BIT dispute resolution clause (Kabir, 2021). The implementation of rights and responsibilities cannot be balanced by considering that each party's rights and responsibilities are different, and thus the proper fulfillment of rights and obligations is an option that describes a win-win solution (Rahayu et al., 2023).

Provisions in the BIT often has a uniformity of regulations and protection that govern four substances: (1) Requirements for the entry of foreign investors; (2) similar standards for treating investors; (3) protection of indemnity against expropriation; and (4) methods for resolving investment disputes" (Rihwanto, 2016). This provision has the main purpose of BITs to reduce non-economic risks by opening up investment opportunities to apply the same treatment to all foreign investors who do not violate the law. Investors who violate the law do

not deserve the guarantee of legal protection that applies because they have harmed the existing rules and mechanisms. Apart from BIT factors, host state stability factors in developing countries include: economic policy framework, industry, administration, economic benefits of investment, direct investment, and new investment arrangement options. The host state stability factor is useful for investors to get protection, because if there is no host state regulatory stability, it will cause losses to foreign investors. In fact, if the host state only relies on bilateral investment agreements, it will not attract investors, but it needs to provide profit-making capital and safe legal certainty for investors.

BITs are now one of the cornerstones of international law and need to be implemented to serve as a guarantee to protect foreign investors investing in developing countries. Inversely, investors can believe that the host state of developed countries must have a structured domestic law and regulations that do not change easily and are anti-discrimination (Handoko & Prihadiati, 2023). Indonesia as part of the development has signed around 74 BITs in October 2023 based on data from UNCTAD and update BITs to enhance promotion and protection in investment to avoid disputes. (Wang et al., 2023).

Mechanisms to resolve investment disputes that have been recognized by modern international law include negotiations, mediation, investigations, goodwill, conciliation, arbitration, national courts, international courts, regional bodies, or ways of peace that have been determined and come to an agreement. In addition, the dispute resolution mechanism regulated in the BIT is related to the 1965 Convention of the International Centre for Settlement of Investment Dispute (ICSID), which became a pioneer in boosting world investment. The 1950s saw economic situations in various developing countries implementing the nationalization of foreign companies in the host country. This resulted in foreign investors as investors in economic disputes and created conflicts between host states and home states (Bhagwat et al., 2021). To resolve this issue, the World Bank created a legal entity to resolve the conflict commonly known as The International Centre for Settlement of Investment Disputes (ICSID) in Washington. The following are some dispute resolution mechanisms used in the BIT.

#### **1. Investor-to-State Dispute Settlement Mechanism**

Investor-to-State Dispute Settlement (ISDS) is a dispute resolution clause formulated based on contracts, bilateral investment agreements, and national laws. which gives foreign investors the right to file a lawsuit against the host country through international mechanisms.

#### **2. State-to-State Dispute Settlement Mechanism**

The State-to-State Dispute Settlement (SSDS) is a mechanism used in resolving foreign investment, which occurred before the Investor-to-State Dispute Settlement (ISDS). The SSDS clause in the Bilateral Investment Agreement (BIT)

gives the home country the right to initiate dispute resolution by filing a lawsuit against the host country through international mechanisms, or simply to request an interpretation of the provisions of the treaty.

### 3. Exhaustion Mechanism of Local Remedies

In modern international law, the ELR principle falls into the category of international law of habit. The central premise of the ELR principle is fundamental: to respect the sovereignty of the state and to improve the rule of law principles. Home countries that have suffered violations of their rights by the host country are required to go through domestic legal proceedings first before applying for diplomatic protection or holding the country accountable through international mechanisms. This ELR principle provides an opportunity to make self-improvement based on the national legal system, and if found guilty, provide recovery efforts to foreigners, either in the form of reparations or compensation.

ICSID is a legal institution that specifically resolves issues regarding investment, this institution was formed because investment is an expected future profit. An investment is a commitment to several funds or other sources to achieve double profits in the future. In Indonesia, there is a positive sentiment regarding the development of the investment climate because it is rich in natural resources and can debate economic welfare. In addition, the investment climate is fluctuating and therefore less conducive (Ningsih, 2020). The problem in Indonesia's unfavorable investment climate is minimized by the formation of BIT and the strategic BIT framework in creating international friendly relations. Unfortunately, Indonesia has not been able to fully manage the benefits of BIT to achieve economic profit with its capacity for international investment. The settlement system in BIT gives foreign investors all their rights to submit investment disputes between themselves) and contracting state to the investor's choice of forum. Host governments can easily change their domestic law after a foreign investment is made, and host state officials may not always act fairly or impartially to foreign investors and their companies. Therefore, investors' objections to the host state's domestic legal system can be bridged.

Direct protection of non-economic risks and cooperation with other regulations aimed at reducing risks should be considered as the main objectives of the Bilateral Investment Agreement (BIT). The increase in investment is ultimately only the result of BIT objectives and becomes more effective when combined with other mechanisms. The BIT may provide direction for other legal institutions and agreements, such as tax treaties, political risk guarantees, investment guarantee agreements (IGAs), local laws of the host country and country of origin, investment contracts between foreign investors and host countries, and intellectual property rights protection agreements.



## **B. Reform of International Dispute Resolution in the Bilateral Investment Agreement in the Investment Climate of Indonesia**

Bilateral investment agreements in its formation go through several stages in trade. Beginning in the early 19th century, the formation of the BIT was a treaty of friendship, commerce, and navigation. Several BITs always ensure the existence of investment security guarantees to investors, namely: equal and fair treatment, protection from ownership takeover, full guarantee and protection, and free transfer from transfer rights facilities.

Under the BIT agreement, investors certainly have the right to filling a claim based on the contract for some of the mutual rights and obligations listed in the contract. One of them is a treatment claim that is one-way traffic which is investors' right to country hosts and will certainly create state obligations. Treaty claims can be abused in BIT by investors for personal gain by submitting a treatment claim that should be based on contract claims. In addition, there are also bad behavior investors in using investment cooperation agreements as shopping/treaty shopping forums and considering Indonesia as a developing country to be a treatment heaven due to its weak bargaining position. Forum shopping/treaty shopping is a desire to construe the treatment of forums because they are unfavorable clauses in contractual clauses and future enablement. According to Henry Campbell Black, treatment shopping arises if a party files a lawsuit in a special state court in the relevant place and will receive a pleasant punishment. Under these conditions, the parties' autonomous principles in contracts and the primacy of contracts that form the basis for arbitrators for other forums play a major role in dispute resolution and limit their role to conduct checks for sovereignty interference in forums based on contracts.

The International Center for Investment Dispute (ICSID) as an arbitrator in resolving disputes must first be agreed by both parties concerned, unless there is an umbrella clause in the contract (Ardiansya S. et al., 2023). In Indonesia, it holds a form of a Result Sharing Contract or a Work Contract based on a contract claim rather than a treaty claims. This is based on a form of cooperation with a special regulatory basis and is not included in the understanding of foreign capital contained in Law No. 1. 25/2007 on investment. The Act regulates the implementation of investment in Indonesia in ensuring that every investment implementation must be based on environmental principles and sustainable principles and environmental sustainability is considered by the state in determining the open and closed areas of business that can be conducted in Indonesia (Rahayu & Kusumaningtyas, 2022). Indonesia. Of course, the implementation of BIT for each country uses various dispute resolution mechanisms. The following is a comparison of dispute resolution and the BIT Indonesia and Brazil approach.

**Table 1. Dispute Resolution Mechanisms and Approaches in the BIT between Indonesia and Brazil**

<b>BIT Model</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Approaches</b>
<b>Indonesia</b>	1 year of consultation and negotiation	1. Mediation, goodwill, and conciliation The Court 2. Investor-to-state arbitration	Diplomatic Protection applies only if the loser does not comply with the arbitration decision	1. Legislative Approach with BIT Revision and ISDS Clause 2. Barrier Building approach by creating ISDS prerequisites
<b>Brazil</b>	6 months of negotiation and consultation by the Joint Committee	State-to-state arbitration	-	1. Legislative Approach with BIT Revision and ISDS Clause 2. Barrier Building approach by creating ISDS prerequisites 3. Judicial forum approaches by taking



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the APS,  
 SSDS, or  
 judicial  
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*Source: Author's Analysis*

Based on the table of dispute settlement mechanisms and approaches in the BIT between Indonesia and Brazil, it can be concluded that Indonesia's settlement mechanism is based on the provisions of Article 32 of Law No. 25 of 2007 concerning Investment where the mechanism is resolved through deliberation and consensus first for about 1 year. If in this negotiation process there is no agreement, it can be done through mediation and conciliation through the court provided that both parties agree or use Investor-to-state arbitration. Specifically for dispute resolution between foreign investors and the government can resolve disputes through international arbitration and must be agreed by all parties. Furthermore, if the foreign investor loses and harasses its diplomats in Indonesia, then Diplomatic Protection occurs, applicable only if the losing party does not comply with the arbitration award. In Brazil, the first stage, like Indonesia, is carried out first using negotiations for 6 months and at the next stage State-to-state arbitration is carried out. The mechanism for resolving investment disputes in each country is almost the same, which is first done through negotiations and at a later stage will be carried out to the litigation or arbitration process.

Indonesia has certainly implemented an investment dispute resolution mechanism by ratifying several international regulations. As one of the developing countries, of course, Indonesia has been sued several times in ICSID in international investment cases, including Pertamina vs Karaha Bodas Company (KBC) companies in Cayman Island by United States investors and the Regent of East Kutai vs Churchill Mining.

In the case one of Pertamina vs. Karaha Bodas Company (KBC), it occurred around 2000. On 18 December 2000, the Indonesian government lost an international arbitration against the KBC conducted in Switzerland and had to compensate US\$270 million. This started when Pertamina and Karaha Bodas Company (KBC) signed an investment agreement worth US\$ 264 million in 1994, but due to the crisis and pressure from IMF, the agreement was canceled by Pertamina so KBC sued Pertamina in an international arbitration court in Switzerland. Furthermore, the case of the Regent of East Kutai vs Churchill Mining in dispute No. 1 ARB/12/14 and ARB/12/40 started from foreign investors, considered by the Regent of East Kutai to have violated the bilateral investment agreement (BIT) of RI-UK and RI-Australia. The basis of this allegation is the revocation of the mining authority/Exploitation business license (KP/IUP Exploitation) of subsidiaries covering an area of approximately 350 square kilometers in

Kecamatan Busang He was succeeded by the Regent of East Kutai on 4 May 2010. In this case two, the Indonesian Government managed to win a lawsuit filed by Churchill Mining at ICSID regarding a lawsuit of USD 1.3 billion. The ICSID Tribunal rejected the lawsuit filed by the Plaintiffs and granted the Indonesian Government's claim to get a compensation of USD 9.4 million in litigation costs. This decision is based on the arguments, evidence, and information of forensic experts submitted by the Government of Indonesia. In the trial, there was evidence of falsification of around 34 fake documents submitted by the Plaintiffs, including mining permits for the general survey and exploration stages, which were made as if they were from Indonesian government institutions. Nevertheless, on 31 March 2017, the Plaintiffs filed an annulment of the award under Article 52 of the Convention on the Settlement of Investment Disputes between States and Other Citizens (ICSID Convention). The Plaintiffs argued that the ICSID Tribunal violated its authority, committed serious deviations from the fundamental procedural rules, and the resulting judgment did not meet the basis on which the judgment was based. In addition, the Plaintiffs also requested a temporary suspension of the ICSID Tribunal decision handed down by the Indonesian government. The Indonesian government took this seriously to maintain state sovereignty and insisted that the guarantees proposed by the Plaintiffs were unreasonable in general. After a long wait, on 18 March 2019, the ICSID issued a decision declaring the victory of the Indonesian Government with a final decision and permanent legal force (Pasaribu, 2022). This extraordinary condition is an achievement for the Indonesian Government that has been achieved with coordination, support, and cooperation from the relevant agencies. In contrast to the case of Pertamina vs. Karaha Bodas Company (KBC), which lacks the coordination of Pertamina and the Indonesian government well. In addition, around 2000 there was a BIT that contained provisions that strongly sided with the country of origin of foreign investors (home states). The provisions in the BIT used to have multi-interpreted agreement contents so that it was widely interpreted by arbitrators in the investment arbitration forum in the interests of developed countries as capital exporter countries (Rahmadania, 2021). The action needed to minimize the losses of the Government of Indonesia needs a solution to this right consciously and carefully in negotiations in the preparation of BIT. In the case of the Regent of East Kutai, the Government of Indonesia has developed and has independence in various fields of economy, politics, defense, and security to firmly oppose foreign investor countries.

The Indonesian government's first victory in an international investment dispute led to a reform of Indonesia's progress as a developing country. This condition provides advantages for Indonesia to avoid claims of USD 1.3 billion and proves to the international community that the importance of transparency and fairness in the Indonesian State Administrative Court is internationally recognized. because previously the Plaintiffs had gone through legal proceedings through the State Administrative Court (PTUN) until the cassation decision by the Supreme Court. This action proves that the Indonesian Government treats all foreign investors equally and fairly.

The most important thing in this case proves that the Indonesian Government has legitimate rights and authority in managing the mining sector by its sovereignty. Unfortunately, the plaintiffs did not accept the ICSID decision and negatively propagated the investment climate in Indonesia. This action is not to be worried because the facts that have occurred are also known to the international community. The plaintiffs' persistence does not stop here, they always take a continuous approach to the Indonesian Government in carrying out peace. Indonesia firmly and confidently rejected all negotiations conducted by Churchill Mining.

Based on some of these cases, The implementation of BIT in Indonesia has led to debates and criticism in which BIT should have a characteristic relationship with the reciprocal relationship between host states and home states since the BIT agreements have been in place for decades and the need for reform or rearrangement in BIT is implemented in Indonesia. the territory of the United States of Indonesia. This is inversely proportional to the implementation of BIT in Indonesia because most of the BITs signed by Indonesia only have formalities and are not balanced because they benefit home states from developed country investors. BIT is not only related to the economic field but also related to the aspect of host sovereignty. The Indonesian government in implementing the termination policy of several BITs must pay attention to the causative factors of the termination of BIT because it will have an impact on the regulative, judicial, and administrative sovereignty of the host country. Based on this, researchers compare BIT policies in developed countries (United States) with developing countries (Indonesia) to find out how far in the context of the Bilateral Investment Agreement (BIT), the principle of investor protection and state sovereignty remains to be observed. One of these principles is the principle of the Right to Determine the Fate of the Economy (RESO).

**Table 2. Comparison of Developing and Developing Countries' BIT Principles**

No.	BIT Principles	Developed Countries (United States)	Developing Countries (Indonesia)
1.	<b>National Treatment and Most Favoured Treatment</b>	Investors provide every investment from foreign countries and companies that are within the U.S. territory treated coolly on a national basis and the most preferred treatment for all investment life cycle treatments, management acquisition, operations, and expansion.	Indonesia provides investors in national treatment and most favored treatment by providing legal protection to investors to gain comfort and profit in Indonesia but there are still limits in certain sectors as the right of country hosts to maintain their

		sovereignty.
<b>2. Expropriation and Compensation</b>	The U.S. sets clear limits on taking over investment ownership and making quick, decent, and effective compensation payments when expropriation occurs.	Indonesia stipulates indirect expropriation in carrying out several governments implementing policies that indirectly regulate the transfer of ownership of foreign companies that invest in Indonesia and compensate investors in the compensation given, shall also include payment of interest at a commercially appropriate exchange rate for the currency.
<b>3. Guarantee for market value</b>	America provides for the transition of funds into or out of a host state in the absence of delays based on market price levels for exchanges, which cover all investment-related transfers that are protected and create an environment controlled by market forces.	Market assessment is based on the value of foreign investment, while interest is determined based on the market index.
<b>4. Full Protection and security</b>	America provides BITs with limited performance requirements for special situations requiring protected investments to adopt non-destructive and efficient trade practices.	The presence of Law No.25 of 2007 on Investment to provide protection and equal limitations of domestic and foreign investors.
<b>5. Specific Protection and Standard</b>	The American BIT provides a house state and host state to file an investment dispute with	The Indonesian government provides for the settlement of disputes

	<p><b>Obligation</b></p> <p>the host state in international arbitration and there is no requirement to apply or use local courts.</p>	<p>through local courts, especially ICSID, in the provisions of the BIT and gives foreign investors the freedom to file a lawsuit related to Indonesian wrongdoings.</p>
<p>6. <b>Additional safeguard, Fair and equitable protection</b></p>	<p>BIT provides investments that are of course protected to relate to the choice of top manager personnel related to citizenship.</p>	<p>Indonesia will negotiate in making bilateral investment agreement and still benefit both parties.</p>

*Source: Author's Analysis*

Based on a comparative table on the implementation of BIT based on these principles between the United States and Indonesia, it can be concluded that BIT policies of developed countries are more often beneficial to developed countries because of their provisions that prioritize the interests of developed countries and where developed countries do not need investors very much in contrast, developed countries are often foreign investors of developing countries. Here is a comparison of the United States BIT and Indonesia's implementation more favorable to the United States. Whereas a developing country Indonesia implemented, still depends on the existence of a home state and is not fully prepared without foreign investors. Indonesia's actions in bargaining positions with foreign investors are not balanced and Indonesia as a capital recipient country should facilitate and ensure investors' legal certainty by providing ease for foreign investors who want to invest in Indonesia (Tegarmas G., 2019).

Indonesia currently plans to end some BITs to reform some BIT frameworks and complaints by some foreign investors by cutting off state courts and seeking compensation in international forums (Husnul et al., 2017). As one of the developing countries, Indonesia does not want multinational companies to suppress the internal economy. The Indonesian government has no intention of weakening investor protection but to ensure consistency between national and international regulations. Several BITs in Indonesia have been signed many years ago so many new legal regulations need to be published related to investment (Dewi, Y. K., & Afriansyah, A. 2019). The Indonesian government should have drafted investment agreements with more feasibility and detail to minimize foreign investors playing with weak government loopholes. This is certainly not desirable for Indonesia as an independent and sovereign country to regulate its internal affairs, especially in protecting natural resources that are used as objects of foreign investors.

The main actions of the Government of Indonesia to protect the existence of its sovereignty in negotiating and formulating BITs with other countries should be based on the principle of RESD. The Right to Economic Self Determination principle is the principle of self-determination of a country or region in which international law is declared part of dynamically evolving human rights. Indonesia's RESD claims in the BIT are due to Indonesia's willingness and ability to enforce three main principles in state sovereignty, namely responsibility, good governance, and international civilization standards. These three principles can be realized with the will and ability of the Indonesian Government to ensure political good in implementing bilateral or multilateral investment relations with foreign investors. If Indonesia is in a bargaining position based on the relevance of the RESD principle and the balanced BIT policy, it will ensure the protection of Indonesian sovereignty and protect the interests of foreign investors in Indonesia.

In addition, of course, it is also necessary to examine the nationality of individual investors or companies by their principal permits and business permits. At the time of application for an investor's license and business license, the investor displays that the company of a particular country must be equipped with its own identity and basic budget, the household budget listed in the certificate of establishment so that it is appropriate for the country to be generally the basis of investor eligibility in contract claims and claim agreements in consideration of Indonesia in bargaining positions with prospective foreign investors.

## **CONCLUSION**

Bilateral Investment Treaties (BITs) provide legal protection to foreign investors and offer dispute resolution through arbitration institutions such as ICSID. An unfavorable investment climate can be addressed by BITs, which are very important instruments in building international relations. The implementation of rights and obligations is not balanced because each party has different rights and obligations. Therefore, proportional fulfillment of rights and obligations is an option that reflects a mutually beneficial solution through the guarantees contained in the BIT. Indonesia's victory against Churchill Mining proves that there has been a reform of the BIT applicable in Indonesia in a balanced manner to provide legal protection (home state) and the existence of state sovereignty (host state). It is recommended that the Government of Indonesia in implementing the termination policy of several BITs must pay attention to one of the factors causing BIT termination because it will have an impact on the regulative, judicial and administrative sovereignty of the host state. Where in implementing BITs, the host state must also pay attention to the sovereignty of its country in making agreements. The Indonesian government should also design investment agreements more properly and in detail to minimize foreign investors in playing the weak government loopholes. Decisive and courageous action was taken by the Government of Indonesia by terminating several Bilateral Investment Treaties.

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