

Establishing Potential Bilateral Investment Treaty Between Indonesia and Japan to Bridge IJEPA

Muhammad Syabil Baykhaqi¹, Siti Anisah²

Abstract

The bilateral investment relationship between Indonesia and Japan has been crucial in fostering economic cooperation, particularly under the Indonesia-Japan Economic Partnership Agreement (IJEPA). However, IJEPA which has been enforced since 2008 has encountered implementation challenges, such as specificity in addressing modern investment challenges, regulatory changes, environmental concerns, and labor mobility, particularly in the caregiving sector. This research explores the possibility of establishing a Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge the gaps within IJEPA and strengthen bilateral investment relations. The research employs a normative legal approach, to analyze legal documents, treaties, and secondary sources to assess the feasibility of a potential BIT in bridging IJEPA. The study identifies key principles that should be included in the proposed BIT, such as clear definitions of Fair and Equitable Treatment (FET), Most-Favored-Nation (MFN) clauses, and dispute resolution mechanisms that balance investor protection with state sovereignty. Additionally, the thesis highlights the importance of sector-specific provisions tailored to the automotive industry, labor mobility (especially for caregivers), and green energy projects, which align with the strategic interests of both nations. The findings suggest that a new BIT between Indonesia and Japan is both feasible and necessary to enhance bilateral investment relations. The proposed treaty would provide greater legal certainty, encourage long-term investment, and address the shortcomings of IJEPA. By incorporating updated provisions on investor protection, labor rights, and sustainable development, the BIT would foster a more stable and predictable investment environment, benefiting both countries economically and socially.

Keywords: Bilateral Investment Treaty (BIT), Indonesia-Japan Economic Partnership Agreement (IJEPA)

Introduction

The increasing Indonesian interest in Japanese products and services presents vast opportunities for bilateral investment, as strong consumer affinity toward Japanese brands continues to grow across sectors. Japan's advanced technology in automobiles, electronics, and machinery aligns with Indonesia's development needs, forming a solid foundation for deeper economic collaboration, which could be reinforced through a more specific Bilateral Investment Treaty (BIT). Since 1958, Indonesia-Japan diplomatic ties have expanded into economic, political, and cultural collaborations, supported by the Indonesia-Japan Economic Partnership Agreement (IJEPA) under Presidential Regulation No. 36 of 2008. As the primary bilateral framework, IJEPA governs key areas such as Trade in Services (TIS), Movement of Natural Persons (MNP), Cooperation, Government Procurement, and Investment.³ However, operational challenges persists where disparities in immigration policies and labor regulations create barriers. This is evident in the low success rate of Indonesian nurses in Japan's national exam, under IJEPA with only 87 out of 481 candidates (18%) passing between 2010 and 2014⁴. In contrast, caregivers demonstrated a relatively higher success rate, with 62.4% passing in 2017 and 38.5% in 2018, largely due to their prior nursing experience⁵. In addition, there are gaps in dispute resolution mechanisms, and outdated provisions on

¹ Muhammad Syabil Baykhaqi Student at International Program, Undergraduate Study Program, Faculty of Law, Universitas Islam Indonesia 2021, muhammadsyabilbaykhaqi@students.uui.ac.id

² Siti Anisah, Lecturer at Faculty of Law, Universitas Islam Indonesia E-mail: siti.anisah@uui.ac.id

³ Indonesia-Japan Economic Partnership Agreement (IJEPA), Ministry of Trade of the Republic of Indonesia, signed August 20, 2007, entered into force July 1, 2008,

⁴ Efendi, F., T. K. Mackey, M.-C. Huang, and C.-M. Chen. 2017. "IJEPA: Gray Area for Health Policy and International Nurse Migration." *Nursing Ethics* 24, no. 3: 318

⁵ Nugraha, S., T. W. Raharjo, and Y. Hirano. "Migration of the Indonesian Care Workforce in Response to the Ageing Population, and Future Challenges." In *Coping with Rapid Population Ageing in Asia*, edited by O. Komazawa and Y. Saito, Jakarta: ERIA, 2021: 78.

automotive cooperation that struggle to keep pace with electric and hybrid vehicle advancements which are set to define the future of trade relation.

Similarly, while there are references to environmental cooperation in IJEPA⁶, it lacks provisions addressing the growing importance of green technology and renewable energy, areas where stronger investment and partnerships could benefit both nations. This limitation highlights the need to update IJEPA, originally crafted over a decade ago, to reflect evolving global and bilateral trade dynamics by incorporating clearer investor protections, simplified labor mobility, and incentives for high-tech and green industries. Beyond IJEPA, Indonesia and Japan participate in regional agreements like AJCEP and RCEP, which, while facilitating broader economic cooperation, lack the specificity and tailored protections that a dedicated Bilateral Investment Treaty (BIT) could provide. Without a BIT, both nations continue to rely on IJEPA and multilateral frameworks that, despite their economic value, do not fully address foreign direct investment complexities, investment protection, or dispute resolution mechanisms. Establishing a BIT would enhance legal certainty, strengthen investor protections, and create a more predictable regulatory environment, ultimately boosting investor confidence and fostering long-term economic growth.

Indonesia and Japan have recently committed to eliminating trade barriers, strengthening economic ties, and promoting bilateral investment.⁷ Furthermore, Japan's strategic investments in Indonesia reached \$4.63 billion in 2023, making it the fourth-largest foreign investor.⁸ Key projects like the Jakarta MRT and initiatives such as the ASEAN-Japan Next Generation Automotive Industry Collaboration highlight Japan's role in Indonesia's infrastructure and technological advancement, while collaborations in renewable energy and biofuel technologies support shared sustainability goals in pursuit of carbon neutrality.⁹ . Meanwhile, Indonesia's investment in Japan, though smaller, is expanding, particularly in renewable energy, as both nations work towards Net Zero Emissions by 2060 through initiatives like the Asia Zero Emission Community (AZEC)¹⁰ outlined in the newly signed Memorandum of Cooperation¹¹. In this case, a Bilateral Investment Treaty (BIT) is crucial to fostering and protecting investments, ensuring stability through clear expropriation guidelines and fair compensation. Additionally, a BIT would not only create a favorable investment climate and encourage technology exchange but also address Japan's aging population by facilitating Indonesian caregiver mobility¹² while ensuring that Japanese capital and technology flow into Indonesia, fostering job creation and economic growth for both nations.

⁶ Such as Article 74 related to the environment measure

⁷ Reuter. "Indonesia and Japan Agree on Removing More Trade Barriers." December 16, 2023. <https://www.reuters.com/world/asia-pacific/indonesia-japan-agree-removing-more-trade-barriers-2023-12-16/>.

⁸ "Investment in Indonesia: Unlocking Opportunities." Law.asia. Accessed December 5, 2024. <https://law.asia/japan-investment-in-indonesia/>.

⁹ "Indonesia, Japan Intensify Cooperation in Automotive Sector." *Antara News*. Accessed December 5, 2024. <https://en.antaranews.com/news/317172/indonesia-japan-intensify-cooperation-in-automotive-sector/>.

¹⁰ "Indonesia, Japan Ink Deal on Energy Transition," Setkab.go.id, accessed December 5, 2024, <https://setkab.go.id/en/indonesia-japan-ink-deal-on-energy-transition/>.

¹¹ "Indonesia, Japan Ink Deal on Energy Transition," Setkab.go.id, accessed December 5, 2024, <https://setkab.go.id/en/indonesia-japan-ink-deal-on-energy-transition/>.

¹² Yamada, Minoru, and Hidenori Arai. "Long-term care system in Japan." *Annals of Geriatric Medicine and Research* 24, no. 3 (2020): 174.

Problem Formulation

Regarding the elaborations presented above, my research intends to address two issues:

1. How to establish a new Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA?
2. What specific provisions should be included in the new BIT to strengthen investment relations between Indonesia and Japan?

Research Method

This study employs normative legal research with to analyze legal materials, offer policy recommendations, and critically evaluate legal documents based on normative standards and principles. Focusing on “Establishing a Potential Bilateral Investment Treaty between Indonesia and Japan to Bridge IJEPA”, the research, though hypothetical, is grounded in logical analysis of current legal frameworks and trends to explore the potential for a BIT that could bridge IJEPA, particularly in investment and economic cooperation. The study adopts a statutory approach to examine international investment laws and treaties, including IJEPA, alongside a historical approach to analyze investment policy development in both countries, while also considering Indonesia’s BIT terminations and Japan’s investment strategies. A conceptual approach further explores legal doctrines shaping international investment law, providing a theoretical foundation for understanding BIT regulations and their implications. The research evaluates the legal framework regulating international investment, assessing the feasibility of a BIT to enhance legal certainty, strengthen economic cooperation, and address regulatory gaps. Primary legal materials include IJEPA.¹³, Law No. 25 of 2007¹⁴ on Investment, the Job Creation Law¹⁵, and Japan’s Foreign Exchange and Foreign Trade Act ¹⁶, forming the legal basis for investment regulations. Secondary materials, such as academic journals, books, and legal commentaries, provide further interpretation, while tertiary sources like legal dictionaries offer additional context. Data collection relies on a literature review of secondary data, ensuring a systematic assessment of legal frameworks and investment policies. The study applies descriptive and normative legal analysis to identify key legal issues, challenges, and opportunities related to establishing a BIT between Indonesia and Japan, aiming to provide a structured evaluation of legal and policy considerations essential for developing an agreement aligned with both nations' economic interests and regulatory needs.

¹³ Indonesia-Japan Economic Partnership Agreement (IJEPA), Ministry of Trade of the Republic of Indonesia, signed August 20, 2007, entered into force July 1, 2008.

¹⁴ Republic of Indonesia. *Law No. 25 of 2007 on Investment*. Jakarta: State Secretariat of the Republic of Indonesia, 2007.

¹⁵ Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. State Gazette of the Republic of Indonesia, No. 100 of 2003, Supplement to the State Gazette of the Republic of Indonesia No. 6888

¹⁶ Japan. *Foreign Exchange and Foreign Trade Act* (外国為替及び外国貿易法). Law No. 228 of 1949, as amended. Tokyo: Ministry of Finance, Japan.

Discussion

1. Establishing a Potential Bilateral Investment Treaty Between Indonesia and Japan to bridge IJEPA

As a new investment framework to bridge the IJEPA, establishing a new BIT between Indonesia and Japan appears to be feasible, and considered to be a reasonable move. Even though Indonesia terminated some of its former BITs, Indonesia has also concluded new BITs such as the Indonesia-Switzerland BIT¹⁷ to accelerate investment. This reflects a continued commitment to international investment law. The new BIT provides more detailed investor protections, including conditions that can be deemed as violations of the fair and equitable treatment (FET) principle, such as fundamental breach of due process or targeted discrimination.¹⁸

In determining this new BIT however, there are several things to address which include the important principle in laying the BIT, volumes and trends in trade that underpin the strong economic relationship between the two countries, the alignment of their legal landscape, as well as strategic justification on why they should make a dedicated BIT in enhancing investment protection.

a. Important principle of proposed BIT

Foremost, the most important thing to be considered in establishing a new BIT is related to making a clear definition of the Fair and Equitable Treatment (FET) principle to prevent the ambiguity contained in the norm. Despite being the standard of treatment under international law, in practice, this principle is ambiguous and lacks of precise definition. Many investment treaties include a FET standard that applies to investors and their investments, alongside the international minimum standard and full protection and security.¹⁹ However, the exact meaning of the FET standard is unclear and has sparked a lot of debate, especially in cases under the NAFTA agreement.²⁰ There are two main views on determining the FET standard in investment treaties.²¹ The first view holds that the FET standard does not introduce anything new but merely reaffirms the international minimum standard already required by customary international law²² which means that the FET standard essentially reiterates existing obligations. The second view argues that the FET standard expands upon the international minimum standard which gives tribunals the authority to create new standards as needed, ensuring that foreign investors are treated fairly, even in situations where traditional international rules might not fully

¹⁷ Agreement between the Republic of Indonesia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments. Signed in Davos, May 24, 2022.

¹⁸ "Indonesia and Switzerland Seeks to Accelerate Investments under New Bilateral Investment Treaty." Accessed, January 6, 2025. <https://www.ahp.id/indonesia-and-switzerland-seeks-to-accelerate-investments-under-new-bilateral-investment-treaty>

¹⁹ OECD. "Fair and Equitable Treatment Standard in International Investment Law." OECD Working Papers on International Investment, no. 2004/03. Paris: OECD Publishing, (2004): 3

²⁰ Sornarajah, M. The International Law on Foreign Investment. 5th ed. Cambridge: Cambridge University Press, (2021): 970

²¹ Ibid.

²² Ibid.

apply. The lack of a clear definition of FET has therefore led to very broad interpretation by arbitral tribunals, creating uncertainty for both investors and states.

Some tribunals have attempted to identify specific elements of FET, such as due process, transparency, and non-discrimination. However, even these elements are not universally accepted, and their application can vary significantly from case to case. For instance in the case of *Tecmed v. Mexico*²³, it emphasizes the **due process** of the FET's element which requires fair and impartial legal and administrative procedures without ambiguity to foreign investors; in the case of *Metalclad v. Mexico*²⁴, it emphasizes the FET's element of **transparency** which obligates states to provide clear and accessible information about their law and regulations; in the case of *Pope & Talbot v. Canada*²⁵, the tribunal further emphasizes the FET's element of **non-discrimination** which prohibits states from treating foreign investors less favorably than domestic investors or investors from other countries. In this case, the second arbitration awards that Canada acts accordingly and doesn't discriminate²⁶

Hence, considering the importance of a clear definition of FET in maintaining a stable and predictable investment climate that protects both the rights of investors and the sovereign authority of states to govern in the public interest, to clarify the definition, it could be learned from the attempts where states have included more specific language in their recent investment treaties to define FET by reference to customary international law or by listing specific elements of the standard. For example, the 2004 US Model BIT clarifies that FET includes the obligation not to deny justice in legal or administrative proceedings and requires the host state to provide the level of police protection required under customary international law. By doing this obligation, states align FET with customary international law and explicitly identify its elements to provide greater clarity to investors and tribunals to avoid inconsistent interpretations. Another example, for instance, linking FET to established precepts such as due process and the prohibition against denial of justice ensures that the standard is anchored in widely accepted norms while, at the same time, allowing for context-specific application. A notable example of this application can be seen in the *Waste Management II case*,²⁷ where the tribunal interpreted FET in the NAFTA framework to include protection against acts that are arbitrary, grossly unfair, or involve a manifest failure of due process. This interpretation highlighted how FET can be contextualized within customary international law principles to address specific investor concerns.

Second, an equally important principle of the proposed BIT shall consist of the Most Favoured Nation (MFN) in safeguarding foreign investors from discriminatory treatment and the state's sovereignty. Practically, MFN treatment can be effective either in two

²³ Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003. See para. 154-156

²⁴ Metalclad Corporation v. United Mexican States, ICSID Case No. ARB(AF)/97/1, Award, August 30, 2000. See para. 76; para. 88

²⁵ *Pope & Talbot Inc. v. Canada*, NAFTA/UNCITRAL, Award on the Merits, April 10, 2001.

²⁶ M. Sornarajah, loc.cit, p.974

²⁷ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, (30 April 2004), para. 98

different ways based on its use together with National Treatment (NT). It can either provide foreign investors with the right of establishment and entry and fair conditions in the pre-establishment phase or guarantee non-discrimination for investments that are already operational according to the host state's laws and regulations.²⁸ A good illustration of MFN's sophisticated application is evident in the 2005 Germany-Egypt BIT²⁹, where parties clearly define less favorable treatment according to the language of treaty clauses. The application covers non-equal access to essential inputs such as raw materials, energy, or production equipment, restriction of selling locally or in foreign markets, and other requirements of equivalent effect.³⁰ Furthermore, the treaty clarifies that measures taken for public security, order, health, or morality do not constitute less favorable treatment under the MFN provision, striking a balance between investor protection and state prerogatives.³¹ Therefore, provisions about MFN are critical and are consistently incorporated in BITs to ensure a promise that investors are not discriminated against relative to investors of other countries. Given its critical role, MFN clauses are consistently embedded in BITs, operating under the *ejusdem generis* principle to limit their application to matters of the same category as the clause itself, thereby preventing overly broad interpretations and ensuring alignment with the treaty's overall objectives.³²

Third, the reason for the recent termination of the BIT³³ dispute settlement clause shall be taken into account when establishing a new BIT. Indonesia's experience with ISDS, particularly in cases like Churchill Mining and Planet Mining, has led to the perception that such provisions can be used by foreign companies to pressure the government into concessions. Therefore, more recent BITs with Indonesia, such as in Article 17 of the Indonesia-Singapore BIT, introduced more conservative dispute settlement methods, like longer cooling-off periods for consultations and mandatory conciliation before arbitration.³⁴ Japan on the other hand, generally includes limitations on the scope of MFN treatment, which excludes procedural rights such as ISDS. New BITs, such as the Japan-Angola BIT³⁵, have introduced innovative features such as extending the arbitration clause to cover obligations in separately concluded investment agreements.³⁶

In considering the investment environment, legal systems, and bilateral experience between Japan and Indonesia, the dispute settlement provision in a potential BIT must adhere to key principles to ensure fairness and stability. Foremost is the need for a balanced approach that safeguards Japanese investors' rights while preserving Indonesia's

²⁸ United Nations Conference on Trade and Development. Most-Favoured-Nation Treatment. UNCTAD Series on Issues in International Investment Agreements II. New York: United Nations, (2010): 14

²⁹ Agreement between the Arab Republic of Egypt and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments. Signed June 3, 2005.

³⁰ See Article 3 Paragraph (2) of the Egypt-Germany BIT

³¹ Ibid.

³² United Nations Conference on Trade and Development. Most-Favoured-Nation Treatment. UNCTAD Series on Issues in International Investment Agreements II. New York: United Nations, (2010): 25

³³ Wong, Lucas Jun Hao. "Indonesia's Termination of Bilateral Investment Treaties." SMU ASEAN Perspectives 1 (2022): 1.

³⁴ Wong, op.cit. p. 2

³⁵ Agreement between Japan and the Republic of Angola for the Liberalisation, Promotion and Protection of Investment. Signed August 9, 2023.

³⁶ Clifford Chance. "The Japan-Angola Bilateral Investment Treaty." Clifford Chance Briefing, January 2024. Accessed January 26, 2025. <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/01/the-japan-angola-bilateral-investment-treaty.pdf>

regulatory autonomy, achieved through protective measures that deter frivolous claims without compromising sovereign decision-making in the public interest. Additionally, the dispute resolution mechanism should follow a sequential approach, beginning with mandatory consultations and good-faith negotiations between investors and the host state³⁷, emphasizing amicable settlement options to address Indonesia's concerns regarding the investor-state dispute settlement (ISDS) mechanism. A compelling example is the HK-UAE BIT³⁸, which constructs dispute resolution into multiple stages³⁹: initial consultations, compulsory conciliation upon request, and arbitration as a last resort if such conciliation fails or is not pursued. This framework ensures that disputes are first addressed through dialogue before escalating to formal arbitration, fostering a more cooperative and less adversarial investment climate.

Lastly, the dispute settlement provision in the Indonesia-Japan BIT should ensure flexibility in arbitration forum selection, allowing parties to choose from established institutions such as ICSID, UNCITRAL, or other reputable bodies, thereby accommodating preferences while ensuring neutrality and efficiency. Additionally, the creation of an appellate body should be considered to review arbitral awards and maintain consistency in BIT interpretation, enhancing the legitimacy and credibility of the dispute resolution process. This is particularly relevant for the Indonesia-Japan BIT, as it addresses concerns over potential biases or inconsistencies in arbitral rulings, given that investment awards are typically final and binding, with only limited avenues for review. By incorporating this model of mechanism, the treaty can provide a more robust and reliable framework for resolving investment disputes while reinforcing investor confidence and regulatory integrity.⁴⁰

b. Investment Relations in Trade Volumes and Trends

In considering the possibility of a New BIT, examining trade volumes and trends is essential to highlight the dynamics of the bilateral trade between Indonesia and Japan. In 2022, Indonesia exported \$26.6 billion to Japan, making it one of its largest export markets, with key exports including coal briquettes, copper ore, and petroleum gas, growing at an annualized rate of 7.08% over the previous five years. In the same year, Japan exported \$14.9 billion to Indonesia, primarily consisting of motor vehicles, parts and accessories, hot-rolled iron, and flat-rolled steel, with an annualized growth rate of 2.16%. Additionally, in 2009, Japan's service exports to Indonesia totaled \$3.74 billion, led by unallocated services (\$1.87 billion), construction services (\$639 million), and royalties and license fees (\$612 million).⁴¹ The increase in trade between the two nations can be attributed to several factors, foremost among them being the Indonesia-Japan Economic

³⁷ Basalamah, Ienas. "Use of Conciliation as a Method for International Investment Dispute Settlement in International Investment Agreement." *Transnational Business Law Journal* 4, no. 1 (2023): 71

³⁸ Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Arab Emirates for the Promotion and Reciprocal Protection of Investments. Signed June 16, 2019. Entered into force March 6, 2020.

³⁹ Basalamah, Ienas op.cit. p. 74

⁴⁰ World Health Organization. "How International Investment Dispute Settlement Works." *Framework Convention on Tobacco Control*. Accessed January 26, 2025.

⁴¹ OEC, "Indonesia (IDN) and Japan (JPN) Trade | OEC - The Observatory of Economic Complexity." Accessed, 6 Jan. 2025. <https://oec.world/en/profile/bilateral-country/idn/partner/jpn>

Partnership Agreement (IJEPA), which has been in effect since 2008⁴², which has eliminated tariffs on most traded goods, enhancing competitiveness in both markets. Another contributing factor is Indonesia's growing economy and its large population, which reached over 280 million in 2014, making it an attractive market for Japanese exporters⁴³. Even in the aftermath of the 1997-1998 Asian Financial Crisis, which temporarily slowed Japanese investment in Indonesia, Japan remained one of Indonesia's largest trading partners and export destinations, demonstrating the resilience of their economic ties.⁴⁴

Additionally, Japanese investment in Indonesia plays a crucial role in job creation and economic growth, with Japanese companies employing approximately 7.2 million Indonesian nationals, contributing nearly 8.5% of the country's GDP and about 25% of its exports⁴⁵. Beyond employment, Japanese investment facilitates technology and knowledge transfer⁴⁶, as firms introduce advanced technology and managerial expertise that enhance the competitiveness of Indonesian businesses. Additionally, Japanese investment significantly contributes to Indonesia's infrastructure development, with projects spanning power plants, irrigation, flood control, land reclamation, railways, and roads.⁴⁷ While Japan remains a major investor in Indonesia, Indonesian investment in Japan has been relatively small, though recent developments signal potential growth. In 2023, Indonesia secured a deal with the International Partner Group (IPG), led by the United States and Japan, to implement the Indonesia Just Energy Transition Project, allocating \$20 billion to support the country's energy transition. As a member of the Asia Zero Emission Community (AZEC), Indonesia is also positioned to collaborate on renewable energy initiatives, potentially increasing investment in Japan's clean energy sector.⁴⁸

c. Legal Landscape in Establishing a New BIT

In light of the nature of BIT which mainly aims to promote and protect investment by providing a stable and certain legal framework, assessing the current legal landscape is important for the possibility of establishing a new BIT. Indonesia's regulatory framework has undergone significant reforms to attract foreign direct investment (FDI) while ensuring legal certainty for investors, as reflected in Law No. 25 of 2007 on Investment, which upholds the principles of equal treatment for foreign and domestic investors,

⁴² Indonesia-Japan Economic Partnership Agreement (IJEPA), Ministry of Trade of the Republic of Indonesia, signed August 20, 2007, entered into force July 1, 2008,

⁴³ Indonesia, Badan Pusat Statistik. "Jumlah penduduk pertengahan tahun - tabel statistik." Badan Pusat Statistik Indonesia. Accessed, January 6 2025. <https://www.bps.go.id/id/statistics-table/2/MTk3NSMy/jumlah-penduduk-pertengahan-tahun--ribu-jiwa-.html>.

⁴⁴ Yooji Abimanyu et al., "Japan's Economy and Its Impact on Indonesia's Economy: Capital Market, Foreign Exchange Market, Goods Market.", 1994: 3.

⁴⁵ Press Release - Embassy of Japan in Indonesia "Duta Besar Kanasugi menghadiri acara diskusi di FIB UI (event peringatan 65 tahun Jepang-Indonesia)". Accessed January 5, 2025. https://www.id.emb-japan.go.jp/news23_20.html

⁴⁶ Japan International Cooperation Agency. Indonesia's Development and Japan's Cooperation: Building the Future Based on Trust. Tokyo: JICA, 2017: 10

⁴⁷ Ibid. p. 9

⁴⁸ RE Invest Indonesia "RE Invest Indonesia." Accessed, January 6 2025. <https://reinvest.id/event/japan-2024>.

protection against expropriation, and dispute resolution mechanisms,⁴⁹ reaffirming Indonesia commitment to an investor-friendly environment without undermining its sovereign regulatory rights. Further strengthening this stance, the enactment of the Job Creation Law under Law No. 6 of 2023 has streamlined licensing procedures, reduced bureaucratic barriers, and increased labor market flexibility, complementing the Investment Law to reinforce Indonesia's pro-investment disposition.⁵⁰ These legislative advancements align with the fundamental objectives of a Bilateral Investment Treaty (BIT), which seeks to safeguard investor rights while maintaining the host state's regulatory sovereignty. Consequently, a new BIT with Japan would capitalize on these legal developments, demonstrating Indonesia's commitment to fostering a competitive and transparent investment climate while preserving its sovereign authority to regulate in the public interest, ensuring alignment with its dynamic regulatory landscape.

On the other hand, Japan's history of bilateral investment treaty (BIT) negotiations reflects its commitment to high-standard agreements that promote economic liberalization while safeguarding regulatory sovereignty, as demonstrated in its Free Trade Agreements with key partners, including ASEAN countries like Vietnam⁵¹ and Singapore⁵², which incorporate provisions such as fair and equitable treatment (FET), protections against expropriation, and investor-state dispute settlement (ISDS) mechanisms that could serve as models for a BIT with Indonesia. Through the Foreign Exchange and Foreign Trade Act (FEFTA), Japan ensures investment stability by adhering to liberalization principles that remove unwarranted restrictions on FDI while requiring pre-approval only in strategic sectors such as defense, telecommunications, and energy,⁵³ thereby granting significant freedom in the non-designated business core⁵⁴. This regulatory approach provides a strong foundation for negotiating BIT provisions such as national treatment (NT) and most-favored-nation (MFN) status, ensuring that Indonesian investors in Japan receive equal opportunities and protections. Given Indonesia's status as one of Japan's largest investment destinations within ASEAN⁵⁵, the alignment of FEFTA with BIT negotiations

⁴⁹ See Article 4 Paragraph (2) letter a and b related to equal treatment; Article 6 Paragraph (1) and (2) related to special treatment; Article 7 related to nationalization or expropriation; Article 8 related to asset transfer and repatriation of rights; and Article 33 related to dispute resolution, on Law No. 25 of 2007 concerning Investment Law.

⁵⁰ See Article 6 related to the risk-based business licensing approach; Article 14 related to the procedures for obtaining environmental permits by integrating them into the risk-based licensing framework; Article 81 related to the amendment of Law No.13 of 2003 on Manpower; Also see Law No. 21 of 2021 on Implementation of Risk-Based Business Licensing (OSS).

⁵¹ Agreement between Japan and the Socialist Republic of Vietnam for the Liberalization, Promotion and Protection of Investment. Signed Hanoi, November 12, 2003.

⁵² Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership. Signed Singapore, May 13, 2002. Entered into force November 30, 2002.

⁵³ See Article 27 which outlines the requirement for foreign investors to submit prior notifications when intending to acquire shares or engage in certain activities within designated business sectors; Article 30 which related to the government's authority to review and, if necessary, restrict foreign investments that may adversely affect national security, public order, or public safety. Investments in critical infrastructure sectors, including energy and telecommunications; Article 55 related to Ministry of Economy, Trade and Industry (METI)'s authority to enforce controls on the export of goods and technologies, particularly those related to national security.

⁵⁴ Ministry of Economy, Trade and Industry (METI). *"The Objective of the Amendment to the Foreign Exchange and Foreign Trade Act"*, Tokyo:METI, 2020: 10

⁵⁵ Kementerian Investasi/BKPM. Data Realisasi Investasi Triwulan III dan Periode Januari-September 2024. Jakarta: Kementerian Investasi/BKPM, 2024.

underscores the practicality of formulating an agreement tailored to both countries' bilateral investment priorities.

Furthermore, related to treaty-making, Indonesia's legal framework for international treaty-making is grounded in Law No. 37 of 1999 on Foreign Policy and Law No. 24 of 2000 on International Agreements.⁵⁶ These laws require that any bilateral investment treaty must reflect Indonesia's "free and active" foreign policy and obtain prior consideration from the Ministry of Foreign Affairs to ensure alignment with national interests. From a procedural perspective, treaties involving matters such as investor protection and dispute resolution typically fall under the category that requires ratification by the House of Representatives, thereby underscoring the importance of both substantive coherence and constitutional adherence.

On the other hand, Japan's treaty-making process is governed by its Constitution.⁵⁷ Article 73 authorizes the Cabinet to conduct foreign affairs and conclude treaties, subject to the approval of the National Diet. In addition, Article 98 paragraph 2 adopts the incorporation system, which allows international treaties, once approved and promulgated, to become part of the domestic legal order without the need for separate implementing legislation. This facilitates the direct application of treaty provisions by Japanese courts and administrative bodies. Accordingly, given Indonesia's prominent position as one of Japan's main investment destinations in the region, Japan's constitutional structure and regulatory consistency further reinforce the practicality of formulating a bilateral investment treaty that serves the strategic objectives of both countries.

d. Justification for Establishing a New BIT Amidst an Existing Investment Agreement

Aside from economic benefits, a new BIT would offer substantial mutual benefits, with Japan serving as a key source of FDI in sectors such as automotive manufacturing⁵⁸, infrastructure⁵⁹, and renewable energy⁶⁰, while also offering Indonesia opportunities to export human resources to meet Japan's labor demands. The framework established under Presidential Regulation (PERPRES) No. 49 of 2021⁶¹ supports this effort by designating priority sectors for investment while restricting sensitive industries, as outlined in Article 2, which classifies business fields as fully open, conditionally open, or entirely closed to foreign investors demonstrating Indonesia's commitment to safeguarding national interests while attracting strategic investments. In addition, Indonesia's energy sector,

⁵⁶ Law No. 37 of 1999 concerning Foreign Relations. State Gazette of the Republic of Indonesia, No. 156, 2007; Law No. 24 of 2000 on International Agreements. State Gazette of the Republic of Indonesia, No. 185, 2000.

⁵⁷ Constitution of Japan, 1947. Promulgated November 3, 1946; effective May 3, 1947. Tokyo: Prime Minister's Office, Government of Japan.

⁵⁸ Siwage Dharma Negara and Agus Syarif Hidayat, "Indonesia's Automotive Industry," *Journal of Southeast Asian Economics* 38, no. 2 (2021): 168

⁵⁹ Kei Endo and Nikolay Murashkin, "Japan's Infrastructure Export and Development Cooperation: The Role of ODA Loan Projects in the 2010s," *Australian Journal of International Affairs* 77, no. 2 (2023): 137

⁶⁰ Difa, Putu Indah Savitri Yashinta. "Indonesia Seeks Japanese Funding for Energy Transition Projects." Antara News, August 21, 2024. Accessed January 8, 2025. <https://en.antaranews.com/news/323211/indonesia-seeks-japanese-funding-for-energy-transition-projects>.

⁶¹ Law No. 30 of 2007 on Energy, State Gazette 2007 No. 96, Supplement to State Gazette No. 4746 (Jakarta: Central Government, August 10, 2007).

regulated under Law No. 30 of 2007⁶² on Energy, emphasizes strategic energy management and encourages foreign participation in renewable energy initiatives, with Article 10 paragraph (1) explicitly allowing international cooperation to bolster national economic objectives. While the Renewable Energy Act does not directly govern investment, it underscores the importance of foreign collaboration in advancing Indonesia's energy transition goals, making sector-specific BIT provisions particularly relevant. By incorporating these elements, a new BIT would not only reinforce Indonesia's commitment to attracting foreign investment in renewable energy but also support its broader economic growth and sustainability agenda.

Furthermore, Japan would benefit from greater access to Indonesia's expanding market and its strategic position within the ASEAN region, offering vast opportunities for Japanese companies to penetrate the regional market effectively. As an economic hub and a gateway to ASEAN's 660 million consumers⁶³, Indonesia presents an attractive destination for Japanese investments, and a BIT would formalize investment protection and establish clear legal norms, encouraging businesses to establish or expand their operations with greater confidence. Albeit discussions on amending IJEPA to align with current global demands are ongoing,⁶⁴ a BIT remains crucial for fostering a stable and predictable investment environment, as it provides broad protections covering the pre-investment phase including planning and negotiation throughout the entire investment lifecycle, ensuring long-term legal certainty.⁶⁵ Moreover, many BITs incorporate "survival clauses," ensuring that specific protections remain in force for a set period even after the treaty's termination, thereby maintaining investor confidence by offering extended protection and allowing businesses time to adapt to changes in the investment climate.⁶⁶ This legal certainty strengthens the security of investments, fosters sustained economic cooperation and reaffirms Japan's commitment to deepening its economic ties with Indonesia.

2. Specific Provisions that Shall be Included in the New BIT to Strengthen Investment Relations

Incorporating sector-specific provisions is important to ensure the proposed BIT between Indonesia and Japan aligns with the strategic interests of both nations. These provisions address critical industries and areas of mutual significance, promoting balanced economic growth and fostering long-term collaboration. Through key sectors such as the automotive industry, labor market particularly in the movement of caregivers,

⁶² Law No. 30 of 2007 on Energy, State Gazette 2007 No. 96, Supplement to State Gazette No. 4746 (Jakarta: Central Government, August 10, 2007).

⁶³ ASEAN. "ASEAN High-Level Principles on Consumer Protection". Jakarta: ASEAN Secretariat: 4. Accessed, January 8, 2025. <https://asean.org/wp-content/uploads/2023/07/ASEAN-High-Level-Principles-on-Consumer-Protection.pdf>.

⁶⁴ Biro Hubungan Masyarakat, Kementerian Perdagangan Indonesia, "Indonesia dan Jepang Tandatangani Protokol Perubahan IJEPA, Mendag Zulkifli Hasan: Hari Bersejarah Penyempurnaan IJEPA Lebih Modern,"

⁶⁵ International Trade Administration "Trade Guide: Bilateral Investment Treaties." Accessed, January, 9 2025. <https://www.trade.gov/trade-guide-bilateral-investment-treaties>.

⁶⁶ August Reinisch, Sara Mansour Fallah, "Post-Termination Responsibility of States?—The Impact of Amendment/Modification, Suspension and Termination of Investment Treaties on (Vested) Rights of Investors", ICSID Review - Foreign Investment Law Journal, Volume 37, Issue 1-2, Winter/Spring (2022): 103

and green energy projects, the BIT could augment economic cooperation while responding to the specific requirements and prospects inherent in each field. This type of focused strategy ensures that the agreement not only strengthens investment but also guarantees sustainable development and fair economic benefits for both countries.

a. Automotive Industry

The first important sector that needs to be discussed is the automotive industry. The automotive industry in Indonesia remains a key economic contributor, with car production surging by 31% in 2022 to 1,470,140 units⁶⁷, largely dominated by Japanese manufacturers. Toyota leads with a market share exceeding 30%⁶⁸, and as of November 2024⁶⁹, it holds the highest share at 36.3%, followed by Daihatsu (13.5%), Honda (11.3%), Mitsubishi (8.1%), and Suzuki (7.5%), while brands like BYD, Wuling, Hyundai, and Lexus collectively make up the remainder. However, recent trends indicate a decline in domestic sales, with 2023 figures reaching 1 million units, marking a 4% drop from the previous year which reached 1.05 million units⁷⁰. In contrast, Japan's automotive sector remains a global powerhouse, with Toyota, Honda, and Nissan playing pivotal roles in its economy.⁷¹ Since the mid-1980s, Japanese automakers have expanded production beyond national borders, and today, nearly two-thirds of Japanese vehicle manufacturing occurs overseas.⁷² This global expansion, coupled with the increasing prominence of electric vehicles (EVs), presents both challenges and opportunities for the Japanese automotive industry as it navigates evolving market demands.

While Japanese automakers have been slow to embrace EVs, they have recently begun investing in EV technology and forming strategic partnerships, including with Indonesia, to strengthen their position in the shifting automotive terrain.⁷³ The COVID-19 pandemic further strained Japan's automotive industry, leading to production plant closures and a global chip shortage that disrupted supply chains⁷⁴. However, the sector rebounded in 2023, with new car sales increasing by nearly 11% in September compared to the previous year⁷⁵. Given this context, a BIT between Indonesia and Japan should incorporate sector-specific provisions that build upon their existing automotive collaboration, particularly in

⁶⁷ Business-Indonesia. "Automotive" Accessed, January 12, 2025. <https://business-indonesia.org/automotive>.

⁶⁸ Ibid.

⁶⁹ MarkLines, "Indonesia, Automotive Sales Volumes 2024." Accessed January 12, 2025. https://www.marklines.com/en/statistics/flash_sales/automotive-sales-in-indonesia-by-month.

⁷⁰ Business-Indonesia. "Indonesia's automotive industry still recovering, remains resilient" Accessed, January 12, 2025. <https://business-indonesia.org/news/indonesia-s-automotive-industry-still-recovering-remains-resilient>.

⁷¹ International Trade Administration "Japan-Automotive." Last modified January 2, 2024. Accessed January 12, 2025 <https://www.trade.gov/country-commercial-guides/japan-automotive>.

⁷² Ibid.

⁷³ Ramadhanti, Indah. "Indonesia-Japan Relations to Drive Electric Vehicle Market." InCorp Indonesia. Last modified September 7, 2023. Accessed January 12, 2025 <https://www.ckindo.com/blog/collaboration-in-electric-vehicles>.

⁷⁴ Emma Regan. "The Japanese Automotive Market: Driving Strong Demand in 2021 and beyond - Tokyoesque." Tokyoesque - Globally Aware & Curious, September 15, 2023. Accessed January, 12 2025. <https://tokyoesque.com/japanese-automotive-market/>.

⁷⁵ Leggett, David, and David Leggett. "Japan's Market Rebound Continues." Just Auto, October 6, 2023. Accessed January 12, 2025. <https://www.just-auto.com/features/japans-market-rebound-continues/>.

EV technology. Indonesia with its abundant nickel reserves crucial for EV batteries is an attractive partner for Japanese companies seeking to expand their EV Production.⁷⁶

In the context of the automotive industry, sector-specific provisions in a BIT should align with national interests and benefit both countries by including clauses on market access and technology transfer. Market access clauses are crucial as they aim to reduce or eliminate barriers that restrict foreign automotive companies from entering and operating in the host country, granting foreign investors rights to invest in sectors open to domestic investors.⁷⁷ While most investment treaties do not extend market access privileges or rights of establishment to foreign investors, examples such as Canada, the United States, and Japan demonstrate the practice according to national treatment or most-favored-nation treatment to investors seeking to establish or acquire enterprises.⁷⁸ Equally important, technology transfer provisions within a BIT facilitate the dissemination of advanced technologies and expertise. Under Investment Law⁷⁹, Indonesia already includes a requirement for technology transfer, which could be incorporated into a new BIT, mandating investors to transfer technology in exchange for certain rights granted by the state. In line with Article 10 Paragraph (4), this transfer can be implemented through compulsory training of Indonesian labor to achieve effective technology dissemination. Additionally, technology transfer clauses that enhance capabilities, increase productivity, and strengthen the domestic automotive industry's global competitiveness can be found in agreements such as the China-Peru BIT. Pursuant to Article 2(2)⁸⁰, the China-Peru BIT explicitly encourages investments that promote technology transfer, technical knowledge, and managerial skill dissemination by urging investors to collaborate with local entities.

b. Labor in Caregiving

According to estimates, by 2026 there will be a demand for about 2.4 million caregivers due to Japan's rapidly aging population resulting in a labor shortage⁸¹, with a 2015 survey by the Kaigo Rodo Antei Center indicating that nearly 60% of care facilities felt a shortage of staff⁸²; and research from The Institute of Gerontology, University of Tokyo predicts that the elderly population will reach 32% by 2030 and 41% by 2055⁸³. To address this growing need, Japan has implemented various visa pathways for caregivers, such as the SSW visa and the Nursing visa, and Indonesian workers have the potential to play a significant role in filling this caregiving gap, which could be mutually beneficial by alleviating Japan's labor shortage while providing valuable employment opportunities

⁷⁶ Ramadhanti, Indah. loc.cit

⁷⁷ Luke Eric Peterson, op.cit. p. 32

⁷⁸ Ibid.

⁷⁹ See Article 3 Paragraph (2) point e; Article 10 Paragraph (4); Article 18 of Investment law

⁸⁰ Agreement Between the Government of the People's Republic of China and the Government of the Republic of Peru on the Promotion and Reciprocal Protection of Investments." Signed November 9, 1994. Entered into force February 1, 1995

⁸¹ Japan Care Worker Guide. "The Future of Japan's Care Industry: The Benefits of Acquiring Caregiving Skills" Last modified December 3, 2024. Accessed January 13, 2025. <https://japanecwg.com/13035/>.

⁸² Hirano, Yuko O., and Osuke Komazawa. "Agents of Care Technology Transfer: Trends and Challenges of Migration Care Workers Across Borders." (2022): x

⁸³ Tokyo Daigaku Koreishakai Sogo Kenkyu Kiko [The Institute of Gerontology, The University of Tokyo]. 2030 Nen Cho Korei Mirai [The Year 2030, the Future of the Super-aged]. Tokyo: Toyo Keizai Shinpo-sha, 2010: 15

for Indonesians. Moreover, while talks of amending IJEPA⁸⁴ seek to further facilitate trade and economic cooperation by eliminating trade barriers and expanding access to respective banking sectors, they do not offer concrete measures to counter the growing labor movement flows between the countries, particularly in the caregiving sector. Therefore, although IJEPA primarily focuses on trade and investment liberalization, it leaves a gap in addressing labor migration that a dedicated BIT could effectively bridge. In the context of labor, especially supporting the caregiving fields, there are important areas with potential benefits that could later be improved and incorporated into a clause for establishing a BIT for caregivers, thereby facilitating labor mobility and ensuring that workers' rights are protected.

Related to the provision that shall be proposed for this sake, first in terms of mutual recognition the BIT could include a provision for recognizing caregiver qualifications to ensure that Indonesian caregivers meet Japanese standards⁸⁵ and vice versa, thereby streamlining the employment process and enhancing employability, as laid out in IJEPA's Chapter 9 on the movement of natural persons⁸⁶, which provides a foundation for fair and transparent entry procedures; hence, a new BIT taking reference from IJEPA for this provision is certainly viable. Second, regarding labor rights and protection, the BIT should explicitly guarantee caregivers' rights by emphasizing non-discrimination and the protection of fundamental labor rights, ensuring that Indonesian caregivers working in Japan are treated equitably and respectfully, in line with global labor standards particularly Article 1, Paragraph (1) of the ILO Convention No. 111, which calls for eliminating employment discrimination.⁸⁷ Moreover, protecting fundamental labor rights such as fair wages, freedom from forced labor, and access to safe working conditions is essential for establishing a robust long-term cooperative relationship between Indonesia and Japan in this vital sector. Additionally, research comparing migrant care work skill regimes in Taiwan and Japan reveals that without adequate legal protections, caregivers may face precarious working conditions and limited labor market mobility, underscoring the need to incorporate comprehensive labor rights provisions into international agreements⁸⁸; thus, integrating these protections into the BIT not only aligns with international labor standards but also demonstrates a bilateral commitment to upholding the rights and dignity of caregivers, thereby enhancing care quality and fostering positive diplomatic relations between the two nations.

⁸⁴ ASEAN Briefing, "Japan and Indonesia Commit to Trade Barrier Removal." *ASEAN Business News*. Last modified January 25, 2024. Accessed January 13, 2025. <https://www.aseanbriefing.com/news/japan-and-indonesia-commit-to-trade-barrier-removal-in-updated-agreement/>.

⁸⁵ For Indonesian caregivers to be eligible with Japanese standards they were required to pass the National Board Examination. Dewi, Nazalia Kurnia. "Emotional Experiences of Indonesians who Work as Caregiver at Japanese Nursing Home." 千葉大学大学院人文社会科学科学研究プロジェクト報告書 = Chiba University. Graduate School of Humanities and Social Sciences Research Project Reports 315 (2017): 41

⁸⁶ See Article 92-96 of IJEPA

⁸⁷ International Labour Organization. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁸⁸ Lan, Pei-Chia. "Contested Skills and Constrained Mobilities: Migrant Carework Skill Regimes in Taiwan and Japan." *Comparative Migration Studies* 10, no. 1 (2022): 2

c. Green Energy

Indonesia has set ambitious renewable energy targets, aiming for a 23% share in the national energy mix by 2025, yet progress remains slow, with the current share at 13.1%.⁸⁹ To accelerate the transition, the government has introduced policies such as banning new coal-fired power plants, offering incentives for renewable energy investment,⁹⁰ and initiating the Green Energy Buyers Dialogue to boost industrial demand for green energy.⁹¹ Meanwhile, Japan targets carbon neutrality by 2050 and aims for 36-38% renewable electricity by 2030⁹², supported by policies like feed-in tariffs, offshore wind promotion, and mandates for electricity retailers to source non-carbon power.⁹³ Under its 7th draft strategic energy plan for 2040, renewables are expected to become the dominant electricity source at 40-50%, primarily from solar photovoltaics⁹⁴, while nuclear energy is projected to account for 20%. This transition is set to significantly reduce Japan's dependence on fossil fuels from 70% to 30-40%, leading to a 73% cut in greenhouse gas emissions from FY2013 levels and raising energy self-sufficiency from 15% to 30-40%.⁹⁵

In light of renewable energy as a specific suggested provision in the BIT, the Morocco-Nigeria⁹⁶ BIT may serve as an example of advancing renewable energy investment. Although the BIT does not explicitly address renewable energy, its preamble and several articles encourage sustainable development, aligning with the broader goals of renewable energy utilization. To foster investment in this sector, preferential treatment for green energy investment would be a crucial element in sector-specific provisions. In the present global landscape, the pursuit of Sustainable Development Goals (SDGs), the transition to renewable energy to combat climate change, and growing energy security concerns have reinforced similar pro-investment approaches, necessitating preferential treatment for foreign investments in renewable energy beyond traditional state-centered methods.⁹⁷ Furthermore, scholars like Schefer, through her concept of 'The Strong Responsibility to Protect (R2P*)', highlight the critical role of states in promoting climate-friendly initiatives and low-carbon development by embedding a normative framework within investment

⁸⁹ Yustika, Mutya. "Dark Cloud over Indonesia's Pledge to Achieve Net-Zero Emissions by 2060." Institute for Energy Economics and Financial Analysis (IEEFA), February 13, 2024. Accessed January 15, 2025. <https://ieefa.org/resources/dark-cloud-over-indonesias-pledge-achieve-net-zero-emissions-2060>

⁹⁰ Chambers and Partners. "Indonesia: Trends and Developments." In *Renewable Energy 2024*. Accessed January 15, 2025. <https://practiceguides.chambers.com/practice-guides/renewable-energy-2024/indonesia/trends-and-developments>.

⁹¹ JETP Indonesia. "Indonesia Initiative to Advance Green Energy through Green Energy Buyers Dialogue." JETP Indonesia, November 15, 2024. Accessed January 16, 2025. <https://jetp-id.org/news/indonesia-initiative-to-advance-green-energy-through-green-energy-buyers-dialogue>.

⁹² Matsudaira, Sadayuki, and Nobuaki Mori. "Renewable Energy Laws and Regulations Japan 2025." *International Comparative Legal Guides International Business Reports*. Last modified September 19, 2024. Accessed January 17, 2025 <https://iclg.com/practice-areas/renewable-energy-laws-and-regulations/japan>.

⁹³ Ibid.

⁹⁴ Koyama, Ken. *Japan Drafts 7th Strategic Energy Plan*. Special Bulletin. Tokyo: The Institute of Energy Economics, Japan, December 19, 2024: 2

⁹⁵ Ibid.

⁹⁶ Morocco and Nigeria, *Bilateral Investment Treaty between the Kingdom of Morocco and the Federal Republic of Nigeria*, signed December 3, 2016.

⁹⁷ Qian, X., and M. A. Ghaziani. "Contribution of Fair and Equitable Treatment to the protection of renewable energy investments." *Journal of Infrastructure, Policy and Development* 8.16 (2024): 2

laws.⁹⁸ This includes reshaping obligations to stabilize the climate while ensuring strong protections for renewable energy investments and other environmentally sustainable technologies.

Conclusion

1. Establishing a Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA is pragmatically feasible through a strategic approach rooted in legal compatibility, mutual economic interest, and shared regulatory standards. While IJEPA offers a general framework, it lacks the precision needed to address evolving issues such as regulatory reform, labor mobility, and environmental priorities. A future BIT should reflect each country's domestic legal structure, including Indonesia's Investment and Job Creation Laws and Japan's Foreign Exchange and Foreign Trade Act, ensuring consistency with constitutional and statutory mandates. For Japan, whose investments in Indonesia reached \$4.63 billion in 2023, a dedicated BIT would enhance protection across key sectors like infrastructure, renewable energy, and automotive technology. Japan's experience with high-standard BITs in ASEAN, coupled with strong regulatory alignment with Indonesia, supports the formulation of an agreement based on fair treatment, legal certainty, and balanced investor-state obligations. Such a treaty would not only bridge IJEPA's gaps but also deepen long-term economic cooperation.
2. The new Bilateral Investment Treaty (BIT) should incorporate a collection of specific provisions to address strategic interests and propel investment relations between Japan and Indonesia, including sector-specific measures for critical industries like automotive and caregiving. In the automotive sector, market access and technology transfer provisions—particularly for electric vehicles—could enhance collaboration by leveraging Indonesia's natural resources and Japan's advanced technologies. For caregiving, facilitating labor mobility through mutual recognition of qualifications and robust labor protection measures would address shortages, elevate industry standards, and rigorously safeguard caregivers' rights and welfare. Incorporating provisions for renewable energy and sustainable technologies would align with both nations' carbon neutrality and sustainable development goals. By resolving these issues, the BIT would enhance bilateral relations, raise investor confidence, and encourage balanced economic growth.

Suggestion

1. Indonesia and Japan should establish a dedicated Bilateral Investment Treaty (BIT) to address evolving priorities that existing frameworks like IJEPA do not fully cover. Grounded in mutual economic interests and legal harmonization, the treaty should include a mechanism for regulatory coordination and uphold modern investment protection standards while preserving the host state's

⁹⁸ Krista Nadakavukaren Schefer, "Climate Change, Trade, and Investment Law: What Difference Would a Real Responsibility to Protect Make?" in *Emerging Issues in Sustainable Development: International Trade Law and Policy Relating to Natural Resources, Energy, and the Environment*, ed. Mitsuo Matsushita and Thomas J. Schoenbaum (Japan: Springer, 2016), 392.

regulatory authority. Clearly defined clauses on Fair and Equitable Treatment, expropriation, and investor obligations are essential, along with precise definitions to prevent inconsistent interpretations. A joint committee should oversee implementation and recommend updates. Alternatively, IJEPA could be revised to strengthen dispute resolution, market access, and technology transfer provisions. Whether through a new BIT or reform of IJEPA, legal certainty and policy adaptability are key to sustaining long-term investment confidence.

2. If Indonesia and Japan pursue a new Bilateral Investment Treaty (BIT), it should include sector-specific provisions aligned with their strategic economic interests. In the automotive sector, particularly electric vehicles, the treaty should provide for tariff reductions and the removal of non-tariff barriers on key components such as nickel and cobalt to support sustainable production. Provisions on technology transfer and research collaboration should promote innovation and capacity building. In the caregiving sector, the BIT should facilitate labor mobility through mutual recognition of qualifications and enforce labor protections to address shortages and safeguard caregiver welfare. The treaty should also encourage investment in renewable energy and sustainable technologies, advancing both countries' carbon neutrality targets. Collectively, these provisions would strengthen investor confidence, deepen economic integration, and promote balanced growth.

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