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Equitable Policy Reform through an Interest-Balancing Approach as a Solution for the Development of Solar and Wind Energy in Indonesia

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Abstract: The dominance of fossil fuels in Indonesia's energy sector has led to environmental degradation and growing energy subsidies. Amid escalating global demands for sustainable energy, Indonesia possesses vast potential in solar and wind resources, yet remains underutilized due to high capital costs, policy inconsistencies, and regulatory uncertainties.
Purpose: This study aims to explore how equitable policy reform, through an interest-balancing approach, can facilitate the acceleration of solar and wind energy development in Indonesia.
Design/Methodology/Approach: Employing normative legal research with statute and conceptual approaches, the study critically analyzes legal frameworks, government regulations, and doctrinal views on renewable energy investment.
Findings: The findings reveal that the Risk-Based Online Single Submission (OSS RBA) system, while intended to streamline licensing, often exacerbates environmental risks and excludes community participation. Moreover, sudden regulatory shifts, lack of legal enforcement, and weak post-licensing supervision undermine investor

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confidence. Drawing from international practices such as New Zealand's Treaty of Waitangi-based model and Canada's implementation of Free, Prior, and Informed Consent (FPIC), the paper argues for a balanced policy model integrating investor certainty, environmental protection, and community rights.
Originality/value: This article contributes original insights into the shortcomings of Indonesia's current regulatory ecosystem and proposes the adoption of an interest-balancing approach informed by the Economic Analysis of Law and the Triple Bottom Line framework (Profit, People, Planet). It provides a novel prescriptive legal solution for enabling a more inclusive, sustainable, and investment-friendly environment for renewable energy development.
Keywords: energy, interest balancing, investment
Paper Type: Article-Research

Introduction

The extensive use of fossil energy, which requires a long formation process, stands in contrast to the increasing human demand for energy. This condition raises the risk of rising energy subsidies, ultimately making energy more expensive. Moreover, the large-scale exploitation of fossil fuels may lead to their eventual depletion in the future. Consequently, there has been a growing initiative to explore and develop new and renewable energy sources to avoid a potential energy crisis in Indonesia. According to available data, energy consumption in Indonesia is still predominantly reliant on fossil energy sources, including petroleum, coal, and natural gas (Datanesia 2022).

The exploitation of natural resources solely for human benefit, which reflects an anthropocentric view, is gradually shifting toward a more ecocentric understanding. This new perspective not only considers the economic benefits to humans but also takes into account the sustainability of the environment. Goal number seven of the Sustainable Development Goals emphasizes the provision of renewable energy that is

environmentally friendly and accessible to all segments of society. By the year 2030, all developing countries are expected to possess and expand infrastructure that enables the provision of clean and sustainable energy. The advancement of technology is expected to promote ecological progress in the social, environmental, and economic sectors (Puspita 2024).

According to the Indonesian Clean Energy Status Report, solar power has a potential capacity of more than 200 gigawatts, based on the efficiency of currently available photovoltaic technology. However, the actual utilization of solar energy as a fuel source for electricity generation remains below 100 megawatts(Puspita 2024). One of the main considerations in solar energy development is the cost of energy storage, which relies on battery systems and requires substantial investment. Moreover, the use of solar panels also demands large areas of land for operational purposes. Indonesia's energy transition requires considerable capital, which makes it essential to attract global investors to support the development of renewable energy sources. The high investment costs tend to reduce the attractiveness of this sector, particularly because the technology is relatively new and does not provide immediate financial returns, making it less appealing for short term investors. Therefore, investment in renewable energy must be stable and long term in nature to overcome the burden of high initial capital expenditure. In addition, there is a pressing need to modernize and upgrade existing infrastructure so that it can be integrated with renewable energy technologies. This infrastructure enhancement can also serve as a form of transitional capital support in Indonesia's shift toward clean energy (Kementerian Energi dan Sumber Daya Mineral 2023).

Elena Doval and Oriana Negulescu, in their work *A Model of Green Investment Approach*, identify five key factors that drive green investment. These include market competition, the scarcity

of material resources, government regulations, smart technologies, and knowledge and innovation (Doval and Negulescu 2014). The Indonesian government has attempted to accelerate investment by simplifying the business licensing process through Government Regulation Number 5 of 2021, also known as the Risk-Based Online Single Submission system.

However, this simplification has generated new challenges. Among them is the marginalization of community interests, which ideally should be harmonized with environmental concerns, without disregarding the role of investors. Therefore, the current licensing system must be reviewed and evaluated to ensure a more balanced framework. Market competition is also a major factor in attracting investors. For example, Thailand has eliminated import duties and provided direct incentives to consumers, a step that was followed by Malaysia in February 2023. Although Indonesia possesses significant geographical potential for solar and wind energy, the country still lacks a clear and structured regulatory framework for renewable energy investment. A more comprehensive analysis is needed to develop solutions based on balancing the interests of investors, local communities, and environmental sustainability, including alternative approaches beyond licensing simplification alone.

Methods

The method in a legal research project is a procedure used by the researcher to collect and analyze legal materials. According to Peter Mahmud Marzuki, legal research methodology refers to the approach adopted by legal scholars to discover answers to proposed legal issues, or the "know-how" of legal inquiry (Marzuki 2019). The method employed in this study is normative legal research. Marzuki emphasizes that legal research serves as a primary pathway to identifying legal norms that provide answers to legal problems or issues faced during the research process. This study employs two types of approaches: the statute approach and

the conceptual approach. The statute approach is applied by examining relevant laws and regulations as a means to further resolve the legal issues under investigation. This approach involves a careful analysis of existing legislation to identify applicable legal provisions. The conceptual approach, on the other hand, is grounded in the views and doctrines developed within the field of legal scholarship. This approach is intended to generate legal arguments based on theoretical perspectives and doctrinal understandings that enrich the analysis of the issues discussed. The result of this research is to provide a prescriptive answer to the legal problems formulated in the study.

Discussion and Findings

Critique of Investment Policy under Authoritarian Capitalism

Dani Rodrik, in his book *The New Global Economy and Developing Countries* (1999), argues that investment decisions are influenced by political stability and the quality of regulation. The regulatory aspect of investment is not merely about deregulation, but rather about the presence of high-quality licensing procedures. Licensing is an administrative process that grants business actors access to implement certain business activities through formal approval from the government (Halog and Anieke 2021). Licensing serves as a preventive control mechanism to ensure that business activities comply with both regulatory and technical standards before they are carried out. The ease of doing business must be supported by the government's capacity to enforce the law (Doshi, Kelley, and Simmons 2019). In this context, the simplification of licensing procedures has been pursued through the Risk Based Assessment Online Single Submission system, hereinafter referred to as OSS RBA.

Government Regulation Number 5 of 2021 (OSS RBA) and the Draft Bill on New and Renewable Energy (RUU EBT) are both facilitated by the government as part of its administrative efforts to promote deregulation and attract investment. These

instruments are intended to enhance investor confidence and stimulate investment growth. However, the OSS RBA system faces several critical issues, including technical inefficiencies that frequently result in system errors. Moreover, the platform lacks a real-time monitoring and tracking feature for license application progress, offering only limited functionality to trace permits that have already been issued.

According to Friedman, in the context of the modern economy, the primary functions of the state include providing social services, managing the use of natural resources for development, acting as an entrepreneur, and serving as a regulator to protect public interests (Brandes 2020). In practice, however, the manifestation of this theory remains largely aspirational. The OSS RBA system illustrates this gap, as it fails to deliver efficient business licensing services and lacks a clear focus on public service quality and inclusivity.

Additionally, the risk-based approach within the system allows low-risk businesses to be processed more quickly. Nevertheless, post-licensing supervision remains weak, particularly in sectors such as mining. High-impact industries, including large-scale plantations and manufacturing, are frequently misclassified as low to medium risk, which enables them to bypass critical environmental impact assessment requirements. Post-licensing enforcement is also inadequate, and the OSS RBA framework is not supported by effective monitoring or legal enforcement mechanisms. As a result, many companies disregard post-licensing obligations once their permits are granted (Dayantri 2022).

The OSS RBA system is not merely an effort to simplify bureaucracy, but also reflects a weakening of environmental regulations that allows uncontrolled exploitation of natural resources. If this policy continues without proper reform, it may result in long-term environmental degradation, particularly in

high-risk projects (Listiyani, Hayat, and Mandala 2018). One example is the case of abandoned coal mining pits in Kalimantan, which were left uncovered after permits were issued, leading to severe flooding and water pollution. In addition, there have been social conflicts involving local communities in Papua and Sumatra, where plantation permits were granted without prior consultation or participation of indigenous landowners.

Environmental degradation, such as soil and water contamination, biodiversity loss, and climate change, poses a long-term economic burden because the cost of environmental restoration far exceeds the short-term profits from investment (Efendi, n.d.). The state should ensure the sustainable use of natural resources, not only by facilitating licensing processes, but also by strengthening public participation and supervision to protect the interests of the people (Keman 2007).

This phenomenon illustrates the practice of authoritarian capitalism, in which the government promotes a digital platform for licensing while ignoring its technical deficiencies and lack of environmental sensitivity. Authoritarian capitalism refers to the state's dominant control over economic activity through authoritarian and undemocratic means (Dinda Silviana Putri et al. 2024). A critical assessment of the OSS RBA policy from the perspective of environmental justice reveals three fundamental weaknesses. First, there is no fair and equal treatment between corporate interests and environmental protection. Second, the principle of risk-based assessment is often misused as a justification for relaxing rules. Third, there is no clear penalty mechanism for business actors who violate environmental obligations.

Investment and the Balance of Interests

Indonesia's economic system is firmly rooted in the basic principles set forth in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution),

particularly Article 33 paragraph (4), which mandates that the national economy shall be organized democratically and based on the principles of togetherness, equitable efficiency, sustainability, environmental awareness, independence, and the balance of progress and unity in the national economy (Santosa 2001).

Law Number 11 of 2020 on Job Creation, which was later replaced by Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022, represents a significant step taken by the Indonesian government to facilitate investment in renewable energy sectors, particularly solar and geothermal energy (Indonesian Centre for Environmental Law (ICEL) 2020).

As the sovereign holder of authority over natural resources, the state must ensure that resource utilization aligns with economic growth, energy sovereignty, and environmental protection in a manner that is both optimal and balanced for the benefit of all citizens. At the same time, investors seek legal certainty, a competitive return on investment, and effective mitigation of exploration risks (Krlev, Münscher, and Mülbert 2002).

To evaluate these policies objectively and efficiently, an Economic Analysis of Law (hereinafter referred to as EAL) approach is necessary. EAL emphasizes the importance of assessing cost and benefit, designing appropriate incentives and disincentives to influence behavior, and analyzing long-term impacts on the economy, environment, and society.

First, from an economic standpoint, solar energy projects should not only benefit investors but also generate employment opportunities. Moreover, tax incentives for solar power plants are more economically viable in the long term than subsidies for fossil fuels. Examples of such tax incentives include a tax exemption for five to ten years during the geothermal exploration phase and a zero percent value-added tax for the importation of renewable

energy equipment. As a point of comparison, the Philippines has implemented a seven-year tax exemption for geothermal energy, which has successfully attracted major investors such as the Energy Development Corporation (Timorria 2025).

Second, the risk-sharing scheme adopted by the government involves partial assumption of exploration risks. The Government Drilling Fund is a financial mechanism established by the government to cover approximately thirty to fifty percent of the total cost of geothermal well exploration. Its primary goal is to reduce the financial burden on foreign investors and to accelerate the development of geothermal projects that have been delayed due to high upfront costs (Timorria 2025). The Philippines has successfully implemented a similar mechanism through the Philippine National Oil Company, which has added five hundred megawatts of geothermal capacity in five years. This was followed by Kenya through its Geothermal Development Company, which covers fifty percent of exploration costs and successfully attracted investment from Ormat Technologies.

Third, regarding the environment and local communities, policies within the framework of Economic Analysis of Law must not result in ecosystem degradation and must ensure community participation. Green credit and green bonds are examples of financial incentives that can shift economic behavior without increasing the burden on the state budget. Green credit refers to loans dedicated to funding environmentally responsible and sustainable projects such as renewable energy development. According to the United Nations Environment Programme Finance Initiative, green credit should comply with sustainable finance principles, whereby banks and financial institutions are required to integrate environmental, social, and governance criteria in their credit decision processes.

Through green credit schemes, banks may offer loans with lower interest rates for renewable energy projects. For example,

PT Sarana Multi Infrastruktur provides green credit for geothermal power generation projects at interest rates that are five percent lower than those of commercial lending. This lowers capital costs and facilitates investor participation. In addition, green bonds, which are debt securities issued to finance environmentally beneficial projects, such as those in renewable energy, also serve as a positive signal of corporate commitment to sustainability.

The classical theory proposed by Benjamin Graham aims to preserve capital while generating satisfactory returns with minimum risk (Eugene 1970), suggests that profit is a fundamental goal of investment. However, risk management associated with the social and environmental impacts of investment is equally essential. Such risk management must align with the principle of balancing competing interests. Renewable energy stands as a strategic priority in green investment, particularly in supporting the transition toward a sustainable economy. A sustainable approach to green investment must ensure that economic profit is not achieved at the expense of environmental protection and community rights (Stewart, Kaminker, and Inderst 2012). Therefore, to safeguard the balance of investment interests, green investment in the renewable energy sector should adhere to the Triple Bottom Line concept introduced by John Elkington in 1990—namely, profit, planet, and people—which later evolved into the Environmental, Social, and Governance framework (John and Ian 1999).

The implementation of green investment principles, which balance profit, planet, and people, is also supported by the theory of circular economy initiated by the Ellen MacArthur Foundation. This framework was designed to eliminate waste and reduce the continuous use of natural resources through a regenerative system, instead of the conventional "take, make, dispose" model of development (Zink and Geyer 2017). For example, investments

in solar rooftop systems for households not only reduce dependence on fossil fuels and lower carbon emissions (planet), but also create employment in installation, maintenance, and solar panel manufacturing sectors (people), while simultaneously reducing long term electricity costs for households and businesses and easing the burden of fossil based energy subsidies (profit).

New Zealand provides a concrete example of balanced policy by incorporating the principles of the Treaty of Waitangi (1840) in the development of renewable energy. This treaty ensures the rights of the Māori people over land and natural resources. Projects such as the Waipapa Wind Farm and the Ngāwhā Geothermal Power Station have been developed in partnership with Māori iwi, who serve as shareholders and co-managers (100% Pure New Zealand n.d.). Revenues generated from these renewable energy projects are distributed to Māori communities through trust funds aimed at improving welfare and reducing inequality. The participation of Māori communities in project governance ensures that cultural and environmental considerations are adequately addressed. Additionally, inclusive regulations such as the Resource Management Act (RMA), which governs natural resource management in New Zealand, require formal consultation with Māori communities before any energy project can be approved. This ensures a system of checks and balances between economic and social interests involving the government, investors, and local communities.

Similarly, Canada has adopted a principle of interest balancing through its ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2016. Articles 19 and 32 of the declaration globally bind the principle of Free, Prior, and Informed Consent (FPIC). In the Burchill Wind Farm energy project, FPIC was applied by including criteria assessment, consultation procedures, and impact evaluations. "Free" means without coercion, "prior"

requires consultation well before the start of any project, "informed" ensures that indigenous communities are fully briefed in a language they understand regarding potential impacts, risks, and benefits, and "consent" refers to the community's right to withhold approval if their fundamental rights are threatened (UPI Archives 1985). Section 35 of the Canadian Constitution Act (1982) affirms the rights of indigenous peoples, including aboriginal title, cultural rights, and hunting and fishing rights.

In Canada, the implementation of FPIC involves formal procedures, starting with early notification. For example, the government is required to provide project documents in indigenous languages such as Mi'kmaq (UPI Archives 1985). The consultation process is carried out in three stages: the first involves dialogue with tribal councils, the second consists of broader community deliberations, and the third focuses on benefit-sharing negotiations. The Burchill Wind Farm in New Brunswick is co-owned by the Neqotkuk First Nation (a Wolastoqiyik indigenous group in Canada), holding a fifty percent share, with the remaining share held by a renewable energy company (Natural Forces Energy). Compensation mechanisms may include shares, royalties, or community development funds if project violations occur, as well as indigenous monitoring rights over project operations.

Despite the Indonesian government's efforts to simplify licensing through the OSS RBA system, this has not increased the volume of foreign investment. Data show that investment levels in Indonesia have remained stagnant, suggesting that the problem is no longer procedural complexity (Hill and Aswicahyono 2021). While the OSS RBA was intended to improve investor confidence, its effectiveness is limited by regulatory inconsistencies and a complex implementation system. Therefore, a comprehensive reform of Indonesia's investment ecosystem is necessary,

particularly in ensuring regulatory certainty and consistency in implementation.

The core issue investors face is no longer limited to the ease of obtaining permits but extends to how those regulations are applied in the field—consistently, transparently, and without overlap across sectors. Other critical factors include political stability, legal certainty, effective law enforcement, and transparent bureaucracy. Nontechnical factors such as dispute resolution mechanisms, legal protection for investors, and better coordination between licensing and oversight institutions must also be addressed. Licensing reform through the OSS RBA must therefore be accompanied by regulatory reforms and institutional improvements that ensure Indonesia is not only attractive in administrative terms but also legally secure and reliable for all stakeholders.

Investment, as a primary driver of economic growth, requires a careful balance between the interests of the investor and those of the state. On one side, investors seek profit, legal certainty, and long-term stability to ensure optimal returns on capital. On the other side, the state has a responsibility to preserve its sovereignty, enforce regulations, and ensure that investments contribute meaningfully to national development. This balance is vital because legal uncertainty or risks of unilateral asset seizure can discourage investment and ultimately hinder development progress.

Another recurring challenge, in addition to licensing, involves tariff policies (Panturu and Rahardja 2020). Sudden changes in policy—such as taxes, import duties, or electricity pricing—can create uncertainty for investors, particularly in long-term sectors such as energy and infrastructure. Large-scale infrastructure projects typically require financial projections over a ten to twenty-year period. Frequent regulatory changes may render these projects economically unviable, prompting investor

withdrawal or even legal disputes against the government. In contrast, countries such as Singapore and Vietnam have successfully attracted investors by offering stable incentive frameworks, including tax holidays for five to ten years, supported by transparent and predictable regulatory systems (Singapore EDB 2023).

Another form of risk that frequently draws investor attention is expropriation, whether direct or indirect. Direct expropriation refers to the state's takeover of assets, such as the nationalization of mining operations observed in several Latin American countries. In contrast, indirect expropriation may occur through regulatory changes that create operational difficulties for investors. These may include restrictions on the repatriation of profits, mandatory divestment of shares to local entities, or deliberate delays in the issuance of operational permits. Such actions are often perceived as disguised expropriation, ultimately undermining investor confidence.

On the other hand, overly protectionist regulations that favor domestic interests without regard to business feasibility can also be problematic. For instance, excessive corporate social responsibility obligations imposed on foreign investors or mandatory employment of local labor without adequate training may be perceived as burdensome and detrimental to investment outcomes. In response to these challenges, countries such as China and the United Arab Emirates have adopted a middle-ground approach by establishing special economic zones with more flexible regulatory frameworks, including exemptions from import tariffs and provisions for full foreign ownership (Zeng 2022).

Over the past five to ten years, countries with stable regulatory environments, such as Singapore and Vietnam, have experienced annual increases in foreign direct investment (FDI) ranging from five to ten percent. In contrast, countries with

inconsistent policies, such as Argentina and South Africa, have seen declining FDI inflows and have even faced investor-state disputes before international arbitration bodies such as the International Centre for Settlement of Investment Disputes (ICSID). For example, Vietnam implemented a zero percent tax policy for ten years on high-technology manufacturing sectors, a measure that successfully attracted global investors (McKinsey & Company 2023). Meanwhile, Indonesia has faced complaints from investors due to sudden policy changes in nickel export regulations, which created legal uncertainty. Therefore, maintaining a balance between the interests of the state and those of investors is not merely a matter of compromise but constitutes a strategic imperative in fostering a healthy and sustainable investment climate.

Conclusion

The utilization of new and renewable energy sources must be optimized to prevent a potential energy crisis in Indonesia. However, there are three major challenges in this effort. These include high costs, inadequate technological support, and weak implementation of relevant policies. These barriers highlight the urgent need for investment to enhance the development of renewable energy in the country. To streamline investment procedures, the government introduced the Risk-Based Online Single Submission system, known as OSS RBA. Nevertheless, this system still faces various shortcomings. Despite its purpose to simplify licensing, it has not resulted in a significant increase in investor participation. Furthermore, sudden changes in regulations, particularly those related to tariffs such as taxes, import duties, and electricity pricing, have created uncertainty for investors. This is especially problematic in sectors that require long-term planning, such as energy and infrastructure. Given these issues, regulatory reform is essential to attract investors. However, such reforms must also take into account other

important considerations, including community engagement and natural resource preservation. These elements are critical to fully realizing the potential of solar and wind energy as practical and sustainable renewable energy solutions.

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