Journal of Social Research

P-ISSN: 2827-9832
E-ISSN: 2828-335x
Vol. 5, No. 2, January 2026
http://ijsr.internationaljournallabs.com/index.php/ijsr

Legal Protection for Foreign Investors in Infrastructure Projects Supporting Mining Downstreaming in Indonesia: A Systematic Literature Review

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ABSTRACT

The article, aims to identify legal issues and solutions affecting legal protection for foreign investment in infrastructure and downstream projects in Indonesia. The analysis employs a systematic literature review method. It focuses on four areas: (1) enforcement of arbitral awards (New York Convention 1958; Law 30/1999), (2) the position of arbitration (*seat*), *lex arbitri*, and the standard of "public order," (3) the division of contractual risks in *GPBU/EPC/O&M* (change-in-law, tax gross-up, step-in lender, termination/compensation, government guarantee, land acquisition), and (4) *BIT/ISDS* as an additional layer of protection. Although the results indicate a pro-enforcement tendency, key problems persist: flexible interpretation of "public order," slow and formalistic *exequatur*, undisciplined *seat* selection, inconsistencies in clauses across contract documents, inconsistencies in land procurement, and unclear rationales and regressions in government guarantees. This article proposes several legal options. The first is a judicial guideline to limit "public order" interpretations and avoid reassessing the merits of the case. The second is standardization of *exequatur*, incorporating benchmarks such as *SLAs*, file templates, and e-filing. The third is recognition of short-term relief, including emergency arbitrators. The fourth is a hygienic arbitration clause model encompassing changes in law, *seat*, *lex arbitri*, consolidation, and joinder. This package reduces the risk of non-enforcement, accelerates the opening of financial accounts, and strengthens legal protection for foreign investors.

Keywords: *Legal Protection; Foreign Investment; Infrastructure Projects; Downstreaming; International Arbitration.*

INTRODUCTION

Downstream minerals in Indonesia require large, reliable, and long-lived supporting infrastructure. The construction of power plants and power supply networks for smelters, ports or bulk rail lines for logistics, raw water systems, and regional wastewater treatment plants, as well as industrial estate utilities, are examples that require very large investments and long-term management. These projects involve multiple parties and are often financed through a combination of equity and debt, including cross-border financing. In the feasibility assessment, foreign investors and lenders do not just look at the technical draft (Sugianto et al., 2025; Bianti, 2023; Yuan, 2025). They place the certainty of legal rights protection and predictability of enforcement as the main requirements, as these two factors affect the cost of capital, financing interest, and the speed of achieving final financing.

Indonesia enforces foreign arbitration awards based on two legal grounds. First, the 1958 *New York Convention* requires states to recognize and enforce foreign arbitral awards, on

grounds of limited refusal. Second, *Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution* regulates the procedure for recognition and execution through the *exequatur* process in court.

At this stage, the court examines administrative requirements, such as legalization or authentication of documents, sworn translations, and power of attorney, and assesses whether there are limited grounds for refusing execution, including public order. If the conditions are met and there are no grounds for refusal, the court grants an execution permit so that the arbitral award can be enforced like a court award. Standard certainty at the *exequatur* stage has a direct effect on the smooth cash flow of the project (Adam, 2025; Kabir, 2021; Dewi & Afriansyah, 2019).

Public order is the most frequently debated reason for rejection. In principle, this reason is intended to protect the basic values of law and public morality, not to reopen the subject matter. However, when public order is interpreted too broadly, the court risks reassessing the substance of the dispute at the recognition or execution stage (Bell, 2022; Wirsamulia, 2022; Setyawati, 2013). This situation creates uncertainty in the outcome and prolongs the process, which ultimately interferes with the certainty of payment to the winner. Therefore, a strict and consistent interpretation of public order is necessary for the *exequatur* to run according to its purpose: examining formal conditions and limited reasons without touching the subject matter.

The design of the arbitration forum affects the level of certainty of enforcement. The position of the arbitration determines the procedural law of the arbitration, the supervisory court, and the judicial intervention chamber (Setyawati, 2013; Wijaya, 2019; Roosdiono & Taqwa, 2024). The position of the arbitration differs from the venue of the trial; the former designates the "legal house" of the arbitration, while the latter is only the physical location of a particular hearing or activity. Equating the two often leads to errors in the application of the law and opens the risk of reversal of decisions. Therefore, the contract needs to establish the position of the arbitration firmly, choose the appropriate arbitration procedural law, and agree on the parameters of judicial intervention from the beginning. This step minimizes procedural debates and strengthens the predictability of enforcement pathways.

In addition to the forum, court support for interim measures is also important to maintain the project's cash flow during the arbitration process. Temporary injunctions, emergency determinations, or certain asset safeguarding measures can help prevent irreparable losses. For this support to be effective, the contract needs to recognize the mechanism, and the domestic courts need to provide a clear administrative pathway for the recognition and enforcement of interim judgments. Practical support at this stage often determines whether the project can continue uninterrupted until a final decision.

The contract architecture of a project determines whether regulatory shocks will be managed through mechanical adjustments or turn into disputes. The three main documents—*Government and Business Cooperation* (*PPP*), *Engineering, Procurement and Construction* (*EPC*), and *Operations and Maintenance* (*O&M*)—need to provide a harmonized arrangement regarding change-in-law, tax gross-up, lender step-in and direct agreements, as well as termination and compensation formulas. If the provisions in *PPP*, *EPC*, and *O&M* differ, the rule change sparks a debate about who bears the costs and how to adjust them. As a result, automatic adjustments do not work, and the parties are prone to disputes. The consistency of

terms, indicators, calculation formulas, and evidentiary procedures across documents transforms regulatory disruptions into predictable adjustments.

Regulatory changes are an inevitable risk on long-lived projects. Therefore, the clause to change the regulations needs to be written operationally, not just declaratively. The contract should explain the scope of the changes (from legislation to derivative regulations and technical standards), how to measure the impact of cost or time, the required supporting documents, and the deadlines for filing and resolving claims. If the project relies on availability rates or payments, the adjustment formula needs to be clearly linked. In this way, policy changes do not turn into disputes but rather into a measurable process of adjustment.

Certainty of net payments is also important in cross-border projects. Tax gross-up ensures that the recipient receives the same amount of payment after the tax is deducted according to applicable regulations. Without these arrangements, new taxes or changes in tax rates can erode net payments and disrupt cash flow calculations. *PPP*, *EPC*, and *O&M* therefore need to draw up compatible tax arrangements, harmonized with the laws governing contracts and payment mechanisms in financing agreements.

Creditors' right of intervention is a tool to save the project in the event of a serious performance failure. With this right, creditors can temporarily take over or direct operations during the recovery period, while respecting the rights of the parties to the contract. In order to work, the right to intervene needs to be supported by a direct agreement between creditors and key parties (e.g., project business entities, *EPC* contractors, and operators). This document explains when interventions can be carried out, how they are governed, and how management returns once conditions return to normal. A neat arrangement in this section is often a requirement for lenders to approve financing.

The termination and compensation formula determines how the project is closed in an orderly manner when the continuation of the contract is no longer possible. A formula that balances creditor protection and equity recovery limits will prevent prolonged disputes at the most difficult times. The setting of a lower limit on payments for debt (often referred to as debt value protection) and an upper limit on the rate of return for equity helps to maintain certainty for both parties. The formula needs to be aligned across *PPP*, *EPC*, and *O&M* so that the final completion pathways do not conflict with each other.

Land procurement is a critical line that determines the start time and order of construction work. Uncertainty about the delivery schedule, compensation amount, and objection mechanism can delay site access, incur waiting costs, and trigger claims. To reduce these risks, land access should be placed as an initial requirement with a clear time limit. If the conditions are not met, the time and cost consequences need to be firmly determined. On the contractor's side, the *EPC* needs to regulate the extension of time, renewal costs, and the option of rearranging the work sequence; at the operational stage, *O&M* needs to explain when the availability calculation comes into effect if some of the facilities are handed over late. This alignment allows the impact of land delays to be passed on legally and proportionately.

Government support in the form of guarantees can reduce certain risks that are beyond the control of business entities. However, its effectiveness depends on the clarity of the payment trigger, the type of evidence that must be submitted, and the guarantor's right of regression to the *Person in Charge of the Cooperation Project*. The ambiguity at these three points makes the protection feel unreal to lenders and pushes risk premiums to remain high.

Uniform guidelines on the form of guarantee, the flow of claims, the handling period, and the relationship between the guarantee payment and the regression to the *Person in Charge of the Cooperation Project* will speed up the process and give confidence to the market. These guidelines are then reflected in *PPP*, *EPC*, and *O&M* so that the administrative flow and legal consequences run smoothly.

Above the domestic framework, bilateral investment agreements and investment dispute resolution mechanisms provide pathways when contractual and domestic protections are inadequate. Investment agreements provide certain standards of treatment as well as dispute resolution forums between investors and the state. However, the role of this instrument is complementary. The main need for the project remains the certainty born of disciplined court practices and consistent contracts. Relying on an investment agreement as the primary solution can lengthen the process and add to costs, so its use needs to be carefully considered.

A picture of cutting-edge practice shows a direction that is more respectful of arbitration awards. However, variations in implementation in the field still occur. Differences in the interpretation of public order, differences in administrative standards in *exequatur*, and unclear selection of arbitral positions cause uncertainty in results. In the contractual space, differences in terms between documents make policy changes easily turn into disputes. On the institutional side, inconsistent land procurement and infirm government guarantees have suppressed cash flow stability. The combination of these factors increases execution risk, slows down final financing, and reduces long-term financing interest.

Based on this background, this study aims to identify the legal issues that have the most impact on the protection of foreign investors in downstream supporting infrastructure projects and formulate solutions that can be directly implemented (Suraji et al., 2022; Kusmalawati, 2024; Putriani & Setiawan, 2023). Three questions guided the study. First, what issues affect enforcement certainty and cash flow the most? Second, how solutions at the judicial or regulatory level and at the contract level can reduce execution risk and accelerate final financing. Third, to what extent the solution can be standardized across subsectors, such as power plants for smelters, ports or bulk rail, water systems and sewage treatment, and regional utilities.

The research uses a systematic literature review guided by widely recognized principles. The search focused on DOI-based publications with strong relevance to the Indonesian context or relevant regional comparators, within an adequate time frame. The inclusion criteria cover four domains: enforcement of arbitral awards; the design of an arbitration forum that includes the standing of the arbitration, the arbitral procedural law, and public order; contractual risk allocation in *PPP*, *EPC*, and *O&M*; as well as layers of protection through investment agreements and investor-state dispute mechanisms. Each manuscript that passes is fully reviewed, and elements of the object of study, methods, main findings, and their legal implications for contract design and judicial practice are extracted. The results are presented in summary tables and evidence maps to show areas of strength and areas of weakness.

Article contributions are both theoretical and practical. In the theoretical realm, the article links judicial behavior in the recognition and execution of arbitral awards with a consistent contract architecture, thus forming a framework of *Construction Law* that views

investor protection as the result of the interaction of forums, judicial standards, and contract content.

In the practical realm, the article presents a package of steps that can be implemented: judicial guidelines to narrow the meaning of public order and prevent reassessment of the subject matter; standardization of *exequatur* processes through file templates, electronic submissions, and service time standards; recognition of interim measures including emergency designation; uniform guidelines for government guarantees that determine the triggers for payments and the right to regress; as well as a model clause for neat arbitration, operational regulatory changes, tax gross-ups, creditors' intervention rights and direct agreements, and termination/compensation. This package is directed to lower execution risk, maintain cash flow stability, and accelerate final financing.

The structure of articles follows the order commonly used in scientific publications. The methods section describes the systematic literature review protocol and selection criteria. The results section presents problem patterns and evidence from the literature and related decisions, including summaries and evidence maps.

The discussion section links the findings to legal recommendations at the judicial/regulatory and contractual levels and discusses their impact on the project's capital cost and stability. The concluding section summarizes key findings and suggests a realistic institutional improvement agenda, including steps that stakeholders can take immediately. With this flow, the reader is expected to be able to follow the description of the general framework to the operational steps without losing the clarity of meaning.

METHOD

The review was directed by three questions: (i) what legal issues most affected the certainty of enforcement and cash flow of the project; (ii) how solutions at the judicial/regulatory and contract levels could reduce execution risk and accelerate final financing; and (iii) the extent to which the solutions could be standardized across subsectors of downstream supporting infrastructure (smelter plants, ports/bulk rail, water-wastewater systems, regional utilities). The unit of analysis included journal articles with DOIs, academic reviews, book chapters with DOIs, as well as court decisions and/or policy documents that had formal references. A geographical focus was directed to Indonesia, with relevant comparative materials from neighbouring jurisdictions where necessary to assess more established practices.

Searches were carried out on commonly used scientific databases and repositories (e.g., journal indexers, open national legal journal portals, and open access directories). Keywords were organized in theme groups and combined with logic operators to expand and filter the results.

Example match: 1) Domain of arbitration enforcement: "*New York Convention 1958*", "*Law 30/1999*", "recognition and execution", "*exequatur*", "public order". 2) Domain of the forum: "arbitration standing", "arbitration procedural law", "venue of trial", "judicial intervention". 3) Contract domain: "*GP*", "*EPC*", "*O&M*", "change-in-law", "tax gross-up", "lender step-in", "termination", "compensation". 4) The domain of investment policy: "*Bilateral Investment Agreements* (*BIT*)", "*ISDS*", "investor protection". 5) Sector context: "downstreaming", "smelters", "bulk ports", "industrial estates", "project financing". Indonesian

keywords were matched with English terms to capture bilingual literature. The main working time span was 2010–2025 so that the findings reflected current regulatory practices and changes, but longer sources were still considered when foundational.

Inclusion criteria: (a) had an accessible DOI and full text; (b) relevant to one or more of the four analytical domains (enforcement of arbitral awards; arbitration standing, arbitration procedural law, public order; contractual risk allocation of *GP*/*EPC*/*O&M*; and *BIT*/*ISDS*); (c) provided findings, analysis, or conceptual descriptions from which legal implications could be drawn for contract design and judicial practice; (d) the Indonesian context or relevant comparator for the Indonesian case. Exclusion criteria: opinion articles without adequate references, duplication of publications, and unverifiable sources. When an article discussed an important issue but did not have a DOI, it was recorded as background material, not as part of the main corpus (Ika & Setiawan, 2018; Rahmawati & Swara, 2025; Siallagan et al., 2024).

The selection was carried out in stages. The first stage filtered by title and abstract to ensure initial relevance. The second stage involved reading the full manuscript to assess its suitability with inclusion criteria and the quality of its content. Each exclusion decision was noted with a brief reason (e.g., "out of scope", "no DOI", "no full text", "analysis irrelevant to the four domains"). The flow of the number of findings, filtered findings, and analyzed findings was reported in the PRISMA chart in the results section, so readers could browse the sorting process in a concise but clear way. With this flow, readers could assess how broad the scope of the material reviewed was.

Data were extracted using a standard worksheet so that findings from different sources were easy to compare. The elements taken included: the identity of the manuscript (author, year, journal, DOI), the object of the study, the method used by the author, the context of the country, and a summary of the core findings.

In addition, each manuscript was classified into four domains along with sub-issues: 1) Enforcement of arbitral awards: *exequatur*, public order, administrative evidence, recognition of provisional awards. 2) Arbitration position and arbitration procedural law: determination of the arbitration position, its differentiation from the venue of the trial, the role of the supervisory court. 3) Contract architecture: *PPP–EPC–O&M* alignment; regulatory changes; tax gross-up; step-in lenders and direct agreements; termination/compensation formula; land acquisition as a prerequisite. 4) *BIT*/*ISDS*: protection standard, relationship with domestic devices, position as a complementary layer. For court decisions, additional elements were gathered: the year and number of the case, the court that decided, the subject matter, the legal grounds used (including the interpretation of "public order"), and the result. This scheme ensured diverse materials could be aligned in a single analysis matrix.

Quality assessment was adjusted to the type of manuscript. For doctrinal studies, the indicators examined included the clarity of the research question, the traceability of the sources, the consistency of the arguments, and the conformity of the conclusions with the cited legal data. For empirical studies, a simple checklist was used (e.g., design clarity, data adequacy, validity of the analysis, and limitations recognized by the author). For verdicts, the weight of evidence was assessed from the court level, consistency with other decisions, and clarity of legal considerations. This assessment was not intended to rigidly rule out sources but rather to give comparative weight when compiling a synthesis and stating a level of confidence in the findings.

All manuscripts in the main corpus were checked for their DOI correctness and the suitability of basic metadata (title, author, year). If there was a discrepancy, the manuscript could still be used as background if it was of high relevance, but it was marked and not included as primary evidence. This process was important to avoid hard-to-trace citations and maintain the scientific integrity of the manuscript.

The synthesis was carried out thematically. First, the findings of each manuscript were mapped into four analytical domains. Second, common themes were identified, for example: the narrow vs. broad meaning of "public order"; *exequatur* administrative requirements; misrepresentation of the position of the arbitration vs. the venue of the trial; gaps between *PPP–EPC–O&M* documents; or clarity of the trigger for government guarantee payments. Third, for each theme, supporting and counter-evidence was collected, then summarized into cross-source findings complete with context notes. Fourth, the theme was linked to concrete contractual implications, so that the results of the synthesis did not stop at the description but led to recommendations that could be written as clauses or operational guidelines. This way, the results section showed the problem pattern and the strength of the evidence, while the discussion section turned it into a work-ready solution.

To maintain reliability, the selection and extraction process involved cross-examination. Doubtful decisions were discussed until a consensus was reached. All selection decisions, reasons for exclusion, and extraction sheet versions were stored as audit trails. A list of DOIs and extraction matrices could be shared when the manuscript was published so that the study could be replicated or updated. If the destination journal allowed online attachments, these supporting files would be included as supplemental materials.

This study only used secondary data that had been published. There were no human subjects and no personal data. All citations were clearly listed, and any use of the summary of someone else's results was marked as a summary, not the author's original findings. The principle of academic honesty was maintained by not claiming evidence beyond that available in the manuscript and not generalizing that went beyond the data.

The systematic literature review approach had limitations. First, there was a publication bias: more "interesting" manuscripts tended to be easier to publish. Second, the focus on DOI-owned and open-access manuscripts had the potential to exclude some relevant sources that were behind a paywall. Third, the law was dynamic; regulatory changes and new rulings could change the weight of findings in a short period of time. To mitigate the impact of these limitations, searches were carefully expanded, the reasons for exclusions were recorded, and findings were presented along with their confidence levels.

RESULTS AND DISCUSSION

Findings of the Forum Design Domain: The Arbitration Position and Arbitration Procedural Law are Often Written, but Not Always Understood

The results of the study show that many project disputes that actually have the potential to be resolved more efficiently are stalled due to procedural disputes. These procedural disputes often stem from arbitration clauses that are not "neat," especially in the determination of arbitration standing and arbitration procedural law.

The literature confirms that the position of arbitration is the "legal house" for the arbitration process, not the venue of the hearing. The position of the arbitrator determines the

applicable arbitration procedural law and the court that is authorized to provide support or supervise. When the arbitration clause does not expressly establish the position of the arbitration, or when the position of the arbitration is the same as the venue of the trial, the parties easily enter into a dispute about the applicable procedural law and the authority of the court. This debate is expensive because it shifts the focus from the substance of the dispute to the procedural dispute.

In addition, the literature also highlights the importance of limiting the court's intervention space through a narrow and consistent reading of public order. When the position of the arbitration is firm, the arbitration procedural law is clear, and public order is strictly read, then the dispute forum serves as a resettlement tool, not a new source of risk.

The results of this domain show a clear relationship: hygienic forum clauses reduce the likelihood of procedural disputes, and indirectly lower the risk of execution because the resulting judgment is stronger in a formal framework.

Findings on the Realm of Contractual Risk Allocation: GFP–EPC–O&M Misalignment is the Main Source of Disputes

The results of the study show that many conflicts in downstream infrastructure projects do not occur because the parties do not have a mechanism, but because the mechanism is not aligned between documents. In PPP projects, the main contract must be in line with the EPC contract and the O&M contract. Otherwise, then the same risk is treated differently by different documents.

Four clauses most often appear as sources of insynchronization. First, the change-in-law clause. Regulatory changes in downstream projects can be related to permits, environmental standards, safety, spatial planning, or fiscal policy. If change-in-law is only referred to as a principle without operational procedures, the parties are forced to renegotiate each time a change occurs. This makes the rule change a dispute, not an automatic adjustment.

Second, tax gross-up. Cross-border payments are vulnerable to tax cuts. If the tax gross-up provisions are inconsistent between documents, the project's cash flow may deviate from the financial model. These deviations increase financing risks. Third, the right to intervene in the lender (step-in) and direct agreements. The literature shows that step-in lenders are highly determinative of bankability because they provide a path to the rescue of the project before termination. However, this instrument is ineffective if it is not supported by clear procedures and recognition of creditors' rights in direct agreements.

Fourth, the termination and compensation formula. Termination is the most sensitive phase as it concerns debt recovery, equity protection, and continuity of service. If the termination formula is not aligned between documents, disputes increase and rights restoration becomes slow. In summary, the results of this domain show that contract consistency is not only a drafting issue, but the core of investor protection. A consistent contract turns disruption into adjustment. Inconsistent contracts turn distractions into disputes.

Land Procurement Domain Findings: The Most Frequent Schedule Risks Turn into Cost Crises

The results of the study place land acquisition as one of the main determinants of project schedule certainty. Without land access, construction work cannot start or continue as planned.

In downstream infrastructure projects, land delays have a wider impact because regional utilities are interdependent. Late access to land for power plants, for example, can delay smelter operations. Delays in rail or transport roads can disrupt supply chains.

The literature identifies three sources of recurrent disorders. First, the schedule for land handover is uncertain. Second, the debate on the value of compensation. Third, the long objection line. These three factors lead to job rescheduling, incurring waiting costs, and depressing the project's ability to meet financial deadlines.

The most prominent problem in the findings was the gap between the determination of responsibility and the determination of consequences. Many contracts mention land procurement as the responsibility of a particular party, but do not detail the time and cost consequences when delays occur. As a result, EPC contractors charge fees to business entities, business entities charge to PJPK, and the claim process becomes long because the procedures in each document are different.

Thus, the outcome of the land acquisition realm leads to one conclusion: investor protection will be stronger when land acquisition is translated into clear initial terms, deadlines, and time and cost consequences throughout the contract chain.

Findings in the Realm of Government Guarantees: Effectiveness is Determined by Triggers, Claims Process, and Linkage to Financing

The results of the study show that government guarantees are seen by investors as an important instrument to reduce certain risks, especially risks that are beyond the control of business entities. However, collateral is only effective if investors and lenders assess that collateral can be disbursed quickly and orderly when risks occur.

The literature places three aspects as determinants of the effectiveness of guarantees. First, the payment trigger must be clear and verifiable. Triggers that are too abstract will give rise to debate at a time when the project is fragile. Second, the claims process must be predictable, including standard documents and reasonable service deadlines. If the claims process is slow or capricious, collateral claims are unable to prevent liquidity pressures. Third, the mechanism after payment, including the right to regress, needs to be clear so that guarantors do not hesitate to pay because they are worried that the government's internal recovery is not organized.

The results also show the importance of synchronizing government guarantees with financing documents and other project documents. A collateral that stands alone without being connected to the termination formula, payment schedule, and creditor rights will be difficult to lower financing risk. In downstream projects, land delays can lead to cost claims and trigger the need for compensation. When compensation and collateral cannot move quickly, cost pressures turn into liquidity pressures that can slow financial closes or increase capital costs.

State-of-The-Art (SOTA) Tables and Evidence Maps

Below I compile a theme-based SoTA table. Since you have uploaded many articles, I have compiled SoTA with a thematic approach to keep it readable. At the next stage, if you want, I can change it to SoTA per article title (one line per article) to really show the "synthesis of each journal."

Table 1. synthesis of each journal

Domain	Focus of the study in the literature	Dominant findings	Recurring gaps/problems	Implications for investor protection
Enforcement of the arbitration award	Exequatur, reasons for refusal, role of the court	Arah pro-enforcement menguat	Administrative variations, interpretations of public order can be widened	Execution risk increases when outcomes are unpredictable
Arbitration forum design	Arbitration standing, arbitration procedural law, clarity of clauses	Strict clauses reduce procedural disputes	The position of arbitration is often equated with the venue of the trial	Procedural dispute delays restoration of rights
Contract risk allocation	KPBU–EPC–O&M, change-in-law, tax, step-in, terminasi	Consistent contracts turn risk into adjustment	Cross-document asynchronization	Regulatory risk turns into dispute
Land procurement	Schedule of access, compensation, objections	Land is a critical path of the schedule	The gap between "responsibility" and "consequences"	Land delays trigger waiting and claim costs
Government guarantee	Triggers, claims, regress, relationships with financing	Effective collateral reduces liquidity risk	Unclear and non-standard claim triggers/processes	The guarantee does not reduce the cost of capital if it is difficult to disburse

Evidence Map

The evidence map from the results of this study can be read as follows. The strongest evidence is on the importance of certainty of enforcement and the importance of contract consistency. The evidence that is still diverse is on the limits of public order and exequatur administrative practices. The evidence that requires more detailed mapping is in the quantitative evaluation of the impact of land delays and the effectiveness of government guarantees on the acceleration of financial clos, as some of the literature is still normative (Mahani et al., 2022; Wirahadikusumah et al., 2013; Kurniawan, 2020).

Summary of the Findings of The Results: The Core Issues That Most Affect Legal Certainty

The results of this systematic literature review place six issues as core issues of legal certainty for foreign investors in downstream infrastructure projects (Nababan, 2024; Baidarus et al., 2023; Wardhani, 2024). These problems are inconsistency in the application of exequatur administration, unclear boundaries of public order, indecisive arbitration standing clauses, insynchronization of GP-EPC-O&M in key clauses, uncertainty in land acquisition, and unclear triggers and processes for government guarantee claims.

These six issues contribute directly to the increase in the risk premium, as they all affect the predictability of the restoration of rights and the stability of the project's cash flow. The findings of these results become a strong bridge to enter into recommendations and

implications, as the solutions to be offered must be directly directed to close the six weak points.

Legal Protection of Foreign Investors as A "Certainty That Can be Implemented"

Downstream mining infrastructure projects have key characteristics: capital-intensive, long-term, involve multiple contracts, and are financed with a strict financing structure. In such a situation, legal protection for foreign investors is not sufficiently understood as the existence of written rules. New legal protections are considered real when they can reduce the uncertainty of outcomes, speed up the recovery of rights, and lower the execution risk calculated by the lender or project sponsor.

Foreign investors are generally willing to bear business risks, such as fluctuations in commodity prices, changes in demand, or technical construction risks. However, investors demand that legal risks can be estimated and managed. Immeasurable legal risk will instantly turn into a risk premium, then go into loan interest, hedging fees, and additional collateral terms. Therefore, the discussion of foreign investor protection in downstream infrastructure projects needs to be placed on more practical questions: how disputes are resolved, how judgments are enforced, and how contracts regulate risks so that disruptions are not always disputes.

From the literature review that is the basis of this study, the protection of foreign investors in construction projects can be understood as a system consisting of several chains. The first link is the certainty of enforcement of the arbitration award. The second link is the firmness of the arbitration position and the chosen arbitration procedural law. The third link is the consistency of the PPP, EPC, and O&M contract architecture. The fifth link is a complementary layer, namely investment agreements and investor-state dispute mechanisms. If one link is weak, then the entire protection becomes fragile even though the other link looks strong. This framework is a foothold to see the discussion sequentially from upstream to downstream.

Enforcement of an Arbitral Award: The Value of the Award is Determined by the Execution

An arbitration award, from the point of view of the investor and creditor, is not the end goal, but rather a tool for restoring rights (Sitompul et al., 2024; Haydar & Havifah, 2025). Judgments that cannot be executed or are late in execution essentially reduce the value of legal protection. In infrastructure projects, execution delays are not just an administrative problem. It has the potential to delay payments, disrupt cash flow, trigger defaults, and ultimately damage the project's financial viability.

The stage of recognition and execution of foreign arbitration awards (exequatur) should run with simple logic. The court examines the completeness of the documents and assesses the limited reasons for the refusal. The court should not reassess the subject matter of the dispute that has been examined in the arbitration. However, practice often shows that uncertainty arises from two main sources: variations in administrative requirements and the use of "public order" reasons that can be widespread.

Administrative requirements such as legalization, sworn translation, and proof of power of attorney are essentially necessary to ensure validity. Problems arise when the standards of

implementation are not uniform or not clear enough from the start. The applicant can be stuck in a back and forth process because there are differences in interpretation regarding completeness. In the context of a downstream project, such an iterative process means additional costs and delays in rights recovery. Investors do not assess the uncertainty as a "court matter," but rather as an execution risk that must be anticipated in the project's calculations.

In addition, "public order" is often the most sensitive point. Public order should be understood as a safety fence to prevent the enforcement of decisions that seriously contradict the basic values of the law. When public order is pulled too broadly, it can change its function into a door to re-examine the substance of the case. For foreign investors, this expansion raises concerns because it makes the execution path unpredictable. A final arbitration award can be considered not really final when it enters the execution stage.

In order for the enforcement of the verdict to truly provide certainty, two needs arise simultaneously. First, uniform administrative standards are needed so that the applicant understands the minimum requirements that must be prepared. Second, it is necessary to read the public order strictly and be limited to violations that are truly fundamental, not to differences of opinion on the assessment of facts or the application of contracts. If these two needs are met, the pro-enforcement tendency is not only visible in direction, but also felt in the certainty of time and outcome. This certainty of enforcement is then directly related to the choice of arbitration forum stipulated in the contract.

Arbitration Standing and Arbitration Procedural Law: The Procedural Foundations That Determine Predictability

In many project contracts, the dispute resolution part is often treated as a formality, when it is the procedural foundation that determines whether the dispute can be resolved effectively. The position of the arbitration determines the procedural law of the arbitration, the competent supervisory court, and the framework for annulment of the award. The arbitration venue is different from the venue of the trial. The venue of the trial only designates the location of the trial or meeting chosen for practical reasons. If the two are equalized, the parties can easily enter into procedural disputes about the applicable procedural law or which court has the authority to supervise.

This kind of procedural dispute is costly for the project. Downstream projects require time certainty. Disputes stalled due to procedural disputes will increase legal costs, delay completion, and worsen the project's financial position. Even when substantial disputes can actually be resolved, procedural disputes can consume energy and disconnect the focus of the parties. Therefore, the determination of the arbitration position should not be done simply following the custom or following the location of the project. It must be selected as part of legal risk management.

A strong arbitration clause does not simply say "resolved through arbitration." The clause must answer questions that lock procedural certainty: what arbitration rules are used, where the arbitration seat is established, what language of the arbitration, the number of arbitrators and the manner in which they are appointed, and the law governing the contract. In projects involving multiple contracts at once, the clause also needs to consider a mechanism of consolidation or merger of parties in a reasonable manner, so that cross-contract disputes do not break up and result in inefficient parallel processes.

The position of arbitration is also related to the need for temporary measures. In project disputes, losses often occur before the final judgment, for example when risky assets are transferred, payments are stalled, or access to work is hampered. Temporary measures mechanisms, including emergency designation, can be a tool to keep damage from developing. However, such mechanisms will be effective only if they are recognized in contracts and supported practically by the system. If the contract does not expressly regulate the space of temporary steps or if the path of support is unclear, the protection becomes weak at the most critical moments.

When the position of arbitration and the procedural law of arbitration are firmly established, the space for procedural debate narrows, so that attention can be diverted to the source of the dispute that most often arises in a construction project, namely the inconsistency of arrangements between contract documents.

PPP, EPC, and O&M Contract Architecture: From Three Documents to One System

Downstream infrastructure projects are generally built and run through a series of interrelated contract documents. PPP agreements govern the primary relationship between the government and the project business entity. EPC contracts govern the execution of construction. The O&M contract arranges for operation and maintenance once the facility is ready. In addition, there are financing agreements and direct agreements involving creditors. In a structure like this, disputes are often not born because there are no rules, but because rules exist but are not compatible.

The misalignment between documents makes the distraction turn into a dispute. The most frequent example is the rule change clause. Many contracts state that regulatory changes are adjustable, but do not specify the mechanism. A non-operational clause will force the parties to negotiate from scratch every time a change occurs. In downstream projects, changes can appear in the form of environmental standards, safety requirements, local content rules, spatial planning changes, or changes in tariffs and levies. When PPP provides for the principle of adjustment, but EPC and O&M do not close the cost forwarding line, the dispute will move from one contract to another.

Tax gross-ups also have a similar pattern. Cross-border payments could be eroded by tax cuts. If the tax gross-up is not aligned across the document, the project's financial model is disrupted. Disruption of the financial model means disruption of the ability to pay. When the ability to pay is disrupted, financing risks increase, and investors will seek compensation through monetary pricing or additional protection.

The creditor's right of intervention and direct agreement are instruments that determine bankability. Creditors want the project to be salvageable when a performance failure occurs before termination is the only way. The right to intervene is only real if the agreement directly regulates notice, repair period, procedures for replacing contractors or operators, and protection of creditors' rights. If these terms are vague or inconsistent between documents, creditors will see the project as less bankable.

The termination and compensation formula should also be consistent. Termination is the most sensitive situation as it concerns debt recovery, equity protection, and continuity of service. A good termination formula distinguishes the cause of termination and clearly establishes how compensation is calculated. If the termination formula in PPP is not aligned

with the termination consequences in EPC and O&M, the payment chain can be deadlocked. In the end, termination, which should have been an orderly solution, became a new source of dispute.

From this, it can be seen that the protection of foreign investors in construction projects is not only determined by dispute forums. It is highly determined by the neatness and consistency of the document. A neat contract is not a long one, but a contract that is capable of turning risk into a measurable adjustment procedure. However, even if contracts are neatly made, two institutional nodes remain often the most powerful triggers for delays and cost crises: land procurement and government guarantees.

Land Procurement: The Most Rapid Schedule Risk Turns into a Cost Risk

In infrastructure projects, land access is a condition for starting and continuing work. Therefore, land acquisition is often a critical route of the schedule. The risk of land acquisition is not only in the early stages. It can appear throughout the project, especially on long stretches such as roads, rails, pipelines, or transmission networks, and on projects that require large areas such as ports or industrial estates.

The main risks of land acquisition are often in the form of uncertainty over handover schedules, disputes over compensation values, and time-consuming objection lines. The uncertainty of the land handover schedule makes the contractor's work plan fragile. When land access is not available, the contractor reschedules. However, rescheduling has its limits. Not all jobs can be moved because many jobs are interdependent. Delays in access then incur waiting fees. Heavy equipment, labor, field offices, and security are still running, while progress is not moving as planned.

In mining downstream support projects, the impact of land delays does not stop at construction contracts. Delays in power generation may delay smelter operation. Port or bulk rail delays can disrupt the supply of raw materials and product distribution. Delays in water and wastewater utilities can delay operating permits or limit production capacity. Because the downstream system is interdependent, a single stranded land node can cause a domino effect.

The debate over the value of compensation is also often a source of delay. "Worthy and fair" should be translated to numbers. The numbers then meet perceptions of fairness and economic expectations. When communication and processes are not convincing, disputes can develop. The objection channels available to protect the rights of the community can extend the time. In a project, the extension of time must be managed so as not to turn the entire schedule unrealistic.

A weakness that often arises is when land risks are not clearly translated into the contract mechanism. Many project documents state that land acquisition is the responsibility of a particular party, but do not regulate neat consequences when delays occur. As a result, the contractor charges the extension fee to the project business entity, the business entity charges the PJPK, and each party asks for different evidence and procedures. Disputes arise not always because the parties do not want to bear the costs, but because there is no agreed procedural rail to channel the costs.

Therefore, land procurement needs to be "contracted" as a measurable construction risk. Land access needs to be placed as an initial condition with a clear time limit. If the conditions are not met, the contract should explain how the extension is granted, how the waiting fee is

calculated, what evidence is required, and when payment is made. For projects with phased land handovers, there needs to be a clear partial handover arrangement, including how the starting point of responsibility and performance is calculated when part of the facility is ready but not yet fully operational.

Land acquisition also needs to be linked to social management. Land conflicts are not always about numbers. It can be related to a sense of injustice, distrust of the process, or concern about environmental and economic impacts. From an investor's point of view, social management is not an issue outside of legal protection. Social management is prevention so that social problems do not turn into long legal obstacles. The better the communication and participation process, the less risk of disputes disrupting the schedule.

If land acquisition is a schedule risk node, then the next node that determines creditors' confidence is the government's guarantee. Land delays often trigger claims and the need for compensation. If compensation and government support can't move quickly, cost pressures turn into liquidity pressures. This is where the role of government guarantees becomes very decisive.

Government Guarantees: Effective Guarantees Must Have Clear Triggers and Processes

In PPP projects or infrastructure projects that involve government payment obligations, government guarantees are seen as instruments to reduce certain risks that are beyond the control of business entities. However, collateral is not judged by its existence alone. Investors and creditors judge collateral from three things: clear payment triggers, predictable claims processes, and clarity of mechanisms after payment is made.

The payment trigger must be written as a verifiable event. Triggers that are too abstract will invite debate. This debate is dangerous because it occurs when the project is in the most vulnerable condition, for example when there is a delay in payment or when termination is being considered. At this stage, time is the main factor. A delay of a claim of one or two months can suppress the ability to pay and trigger default. Therefore, payment triggers need to be designed so that they do not rely on long interpretations. Triggers should be in the form of clear and provable indicators.

The claim process must also be concise but accountable. The guarantor needs documents to ensure the payment is legitimate. However, the project requires a protracted process so that cash flow is not interrupted. If the list of documents is non-standard, capricious, or requires too long a stage, the claim turns into an administrative burden that prolongs the recovery. Investors then count the slow process as an additional risk. Finally, guarantees that are supposed to reduce risk premiums do not have a significant impact.

The next aspect is the mechanism after payment, including the right of regression. The right of regression is the guarantor's right to collect back to the PJPK or the relevant government after the guarantor pays the claim. Although it is seen as an internal affair of the government, the clarity of regression has an impact on payment behavior. If the regression is vague or the mechanism is not firm, the guarantor tends to be more cautious because they are worried that the payment will be difficult to recover. That caution can slow down the payment of claims. For projects, late payment of claims is a liquidity risk. For creditors, liquidity risk is the risk of default.

Government guarantees must also be synchronized with other documents. Guarantees that are only attached to PPP but are not connected to financing agreements, direct agreements, and termination formulas may fail to provide the expected protection. For example, when termination occurs, the compensation calculation must be clear and the claim path must be able to run without opening a new dispute. If the main contract and financing document have different logics, then the protection becomes weak in the time of greatest need.

The relationship between land acquisition and government guarantees needs to be understood as a chain of risks. Ground delays are pressing on schedules. A tight schedule increases costs. Rising costs trigger claims. Unprocessed claims quickly suppress liquidity. Depressed liquidity increases the risk of default. The risk of default hinders final financing or makes capital costs rise. In this chain, government guarantees are a tool to break the chain before reaching default. However, the tool only works when the triggers and processes are clear and can be run quickly.

When land procurement and government guarantees are well managed, the level of certainty of projects increases markedly. But investors still need a complementary layer when conflict involves broader state action. That complementary layer is the investment agreement and the investor-state dispute mechanism.

Investment Agreements and Investor-State Dispute Mechanisms: Complementary Layers, Not Daily Handlings

Investment agreements and investor-state dispute mechanisms provide a standard of treatment and a remedy when investors consider a breach of state obligations. This instrument can be useful in certain cases, especially when the issue cannot be resolved through contractual mechanisms or domestic forums. However, in construction projects, these instruments are not daily handles to maintain cash flow.

The investor-state dispute process is generally lengthy and expensive. The focus is more on state actions and treaty obligations, rather than on construction claims details such as work variations or late calculations. Therefore, an investment agreement should be understood as a last resort, not a substitute for a neat contract and stable enforcement. If the project contract is already in place and enforcement of the judgment is predictable, the need to use the last fence will be reduced, and the project can move with more measurable risk.

Synthesis: Relevant Improvement Directions for Construction Law

From all the discussions, it can be seen that the protection of foreign investors in downstream infrastructure projects in Indonesia needs to be improved at two levels at once. The first level is the system level, specifically the consistency of the courts in the exequatur, including strict readings of public order and uniform administrative standards. The second level is the project level, specifically the consistency of the PPP, EPC, and O&M contract architecture so that regulatory disruptions and project risks can be resolved through measurable adjustments, not always through disputes.

From a construction law perspective, two nodes that need to be dealt with more seriously because of their immediate impact are land procurement and government guarantees. Land procurement must be translated into clear initial terms, deadlines, and cost consequences, so that schedule risks can be calculated and managed. Government guarantees must have clear

triggers and claims processes that are in sync with the contracts and financing documents, in order to truly reduce liquidity risk and accelerate final financing.

When systems and contracts are able to meet these needs, the legal protection of foreign investors is no longer abstract. It is a series of mechanisms that can be implemented, measured, and accounted for. Ultimately, it is this kind of certainty that is needed by a capital-intensive, long-term, and demanding downstream project that demands cash flow stability from construction to operation.

Direction of Improvement at the Contract Level: Keeping the Project Running When Risks Arise

The protection of foreign investors in downstream infrastructure projects essentially depends on one simple question: when risks occur, do projects have mechanisms that automatically work, or should projects be debated from scratch. A neat contract makes risk a procedure. A neat contract makes the risk a dispute.

The first step is to arrange the dispute resolution clause so that it is "clean" and does not open procedural disputes. The position of the arbitration must be firmly determined, and it must be distinguished from the venue of the trial. The procedural law of arbitration must also be aligned with the choice of arbitration position, so that the parties know the supervisory court and know the risk of annulment of the award. In downstream projects, dispute clauses ideally also take into account the fact that the project consists of multiple contracts at once. If PPP, EPC, and O&M standalone without mechanisms that allow for reasonable consolidation of disputes or mergers of parties, projects can face costly and inefficient parallel disputes. There, legal protection is not lost because there are no rules, but it is lost because the design of the forum is not in line with the structure of the project.

The second step is to tidy up the clause to change the regulations so that they are operational. Regulatory changes in downstream projects can be related to permits, safety standards, environmental standards, trade rules, and fiscal rules. A rule change clause that simply mentions "adjustments will be made" are often not enough, as adjustments need formulas and procedures. Contracts need to specify what changes count as regulatory changes, how their impact is measured, who must give notice, notification deadlines, evidence documents, and decision-making deadlines. Without this mechanism, the project will renegotiate every time a change occurs. Renegotiation is an unnamed dispute, and financing doesn't like such uncertainty.

The third step is to align tax arrangements, especially tax gross-ups, as cross-border payments are prone to erosion of withholdings. In a tightly financed project, a small difference in net payments can shake the financial model. The contract should clearly specify what taxes are borne by whom, how the gross-up is calculated, and how adjustments are made if the tax regime changes. Most importantly, these arrangements should be consistent across documents. If the PPP allows adjustments, but the EPC or O&M does not provide a path forward to the cost, the project will be dragged into an internal debate that weakens the project's position before the lender.

The fourth step is to clarify the creditors' right to intervene and direct agreements. Downstream projects rely heavily on continuity of service. If the contractor or operator fails, the creditor needs a door to save the project before termination occurs. The right to intervene

must be accompanied by a notification procedure, a period of remedy, a replacement mechanism, and the recognition of the creditor's rights to certain guarantees. Without a neat direct agreement, the right to intervene is just a concept. When a crisis occurs, the project lacks a quick recovery tool, and the risk of default increases.

The fifth step is to arrange the termination and compensation formula so that it is predictable. Termination is the most sensitive moment as it touches on debt recovery, equity protection, and continuity of service. The termination formula should distinguish the cause of termination and clearly establish how compensation is calculated. The formula should also be aligned with the financing structure, as the bankability of the project is largely determined by whether the debt can be reasonably recovered. When the termination formula is not aligned between documents, the payment chain can get stuck and the dispute becomes bigger. In infrastructure projects, disorderly terminations are often more damaging than the dispute itself.

Once the forum and contract architecture issues are addressed, the two risk nodes that most often trigger major disruptions remain to be dealt with firmly: land procurement and government guarantees. This is where many projects lose certainty because these two nodes are often mentioned, but do not translate into a measurable mechanism.

CONCLUSION

A systematic literature review concludes that legal certainty for foreign investors in Indonesia's infrastructure projects supporting mining downstream is systemic, requiring harmony across layers of protection—from consistent enforcement of arbitral awards via standardized *exequatur* and narrow public order interpretations, to robust arbitration forum design, aligned *PPBU*/*EPC*/*O&M* contract architectures for risk allocation (e.g., change-in-law, tax gross-up, lender step-in), and operational land acquisition plus government guarantees to ensure project timelines and cash flow stability—despite positive trends, persistent non-uniformity hampers execution predictability and turns disruptions into disputes, elevating financial risks. Strengthening these elements through procedural standardization, clause harmonization, and measurable mechanisms would lower execution/liquidity risks and bolster long-term investment sustainability. For future research, empirical case studies of post-2025 projects could evaluate the real-world impact of proposed judicial guidelines and model clauses on financing costs and dispute rates.

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