


Grandfather Clause as Investor Protection in Bilateral Investment Treaties (Case Study: Oleovest PTE LTD Vs Indonesia)

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Article Info	ABSTRACT
<p>Keywords: Grandfather Clause, Bilateral Investment Treaty, PT. Oleovest LTD vs Indonesia</p>	<p>Bilateral Investment Treaties (BITs) aim to provide protection for investments made abroad, encourage policies that support free markets, and create transparent and non-discriminatory investment practices between countries and investors. This study aims to examine several important aspects related to BITs: first, to examine how the Grandfather Clause is applied in foreign investment. Second, to examine how BIT agreements are used to increase foreign investment. Third, to explore how the Grandfather Clause is applied as protection for foreign investors in BIT agreements, using the case study of Oleovest Pte Ltd vs Indonesia as a concrete example. The research method used is a normative approach based on an analysis of relevant laws and regulations. The results of the study show that: first, the application of the Grandfather Clause is important to ensure legal certainty and protection for foreign investors so that changes in policies related to investment in Indonesia do not affect approved investments. Second, BIT agreements focus on two main objectives, namely providing direct protection against risks and cooperating with other instruments to minimise risks in order to achieve the ultimate goal of increasing foreign investment. Third, the application of the Grandfather Clause in BIT agreements in this case can guarantee the rights and provide protection for foreign investors, as evidenced by the ICSID's acceptance of the claim in the Oleovest Pte Ltd vs Indonesia case.</p>
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INTRODUCTION

Investment based on Law Number 25 of 2007 concerning Investment (PM Law) is defined as "all investment activities, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia" (Undang-Undang Tentang Penanaman Modal, 2007). Then "Investment as one of the activities of national economic implementation is the State's effort to increase national economic growth, employment, sustainable economic development, national technological capacity and capability, people's economic development, and to realize the welfare of the community in a competitive economic system" (Undang-Undang Tentang Penanaman Modal, 2007).

Indonesia is opening up opportunities for foreign investors to invest in Indonesia. This is because Indonesia needs capital and foreign exchange to support national economic development. Although Indonesia wants to solve its problems independently, limited capital

remains an obstacle. Therefore, foreign direct investment (FDI) is a solution to help Indonesia meet its capital and foreign exchange needs for economic development. (Sunarjati Hartono, 1972).

Law Number 25 of 2007 concerning Investment (UUPM) was enacted to address Indonesia's significant need for foreign capital. The UUPM is expected to create more adequate foreign investment regulations that are mutually beneficial for both foreign investors and the Indonesian government.

Law No. 25 of 2007 concerning Investment (the Investment Law) does provide adequate legal guarantees for foreign investors. However, investors from capital-owning countries still feel the need for special agreements to protect their capital in developing countries (Sunarjati Hartono, 1972). This is because national regulations, including the Investment Law, can be changed at any time by the government. Meanwhile, international agreements, both bilateral and multilateral, are binding and oblige developing countries to comply (Sunarjati Hartono, 1972).

International law fundamentally recognizes state sovereignty (*acts of states*) over their territories, so actions taken by governments within their own territories are generally considered legitimate and do not violate international law. This principle serves as the justification for the Indonesian government's actions in amending legislation, particularly those related to foreign investment (PMA).

Changes in government policy can raise concerns among foreign investors about the sustainability of their businesses in the host country, *necessitating* legal protection. One solution to these concerns is to establish a bilateral investment treaty (BIT) between the two countries.

In practice, a BIT is an investment agreement between two countries that aims to provide legal certainty and protection for foreign investors investing in the other country. A BIT also serves as a basis for both countries to formulate policies that support investment, such as protection from nationalization, expropriation, and regulatory restrictions. Furthermore, a Grandfather Clause is necessary *in* a BIT to protect foreign investors upon the expiration of the BIT agreement.

The decision to terminate a BIT with a foreign investor country must be carefully considered. If the BIT is terminated and the *host government subsequently* implements policies detrimental to the foreign investor, this could negatively impact the investment climate in the host country. A guarantee of legal certainty in BITs is necessary to protect the interests of investors who have invested, especially in Indonesia.

For example, Oleovest Pte Ltd, a Singapore-based company, invested in Indonesia's natural resources sector, which is protected by a BIT between Indonesia and Singapore. However, after the investment was made, the Indonesian government changed several regulations that significantly impacted Oleovest's operations and investment profits. Therefore, Oleovest filed a lawsuit against the Indonesian government through *the International Centre for Settlement of Investment Disputes* (ICSID). This lawsuit is based on an alleged violation of the Bilateral Investment Treaty (BIT) between Indonesia and Singapore, due to *the Grandfather Clause* in the BIT.

Research by Gabriel M. Sianturi (2024) emphasizes the importance of *legal certainty* for foreign investment, particularly regarding the update of the Negative Investment List (DNI) and the applicability of *the Grandfather Clause*, where new regulations do not automatically apply to previously approved investments (Gabriel M. Sianturi, 2024). Furthermore, Kathrine Audrey DQ Tobing (2023) highlights how the 2018 Indonesia–Singapore BIT provides protection through dispute resolution mechanisms, such as ISDS, and emphasizes that legal certainty in bilateral investment treaties is a key element in maintaining foreign investor confidence (Kathrine Audrey Delila Quinones Tobing, 2023). Meanwhile, Ervira Nurul Hidayat (2025) demonstrates the dynamics between *host state control* and *investment protection* through a case study of the Oleovest Pte. Ltd. dispute, and assesses that the changes in the Indonesia–Singapore BIT from 2005 to 2018 illustrate a shift towards a model that balances investor protection with the state's right to regulate (Ervira Nurul Hidayat, 2025). All three studies emphasize the importance of investor protection in the ever-changing investment regulatory landscape.

From the three previous studies, it is clear that the main focus is still on general investor protection, dispute mechanisms, and the changing paradigm of BITs. However, none has specifically examined *the Grandfather Clause* as an instrument of legal certainty that operates across regimes—whether through the DNI, UUPM, or BIT—with an integrated approach that connects domestic regulations and international agreements simultaneously. Previous studies also have not positioned *the Grandfather Clause* as a central variable to explain how investment protection persists when countries change rules, including in the context of *regulatory risk-taking* and investment policy updates. Therefore, the novelty of your research lies in a comprehensive explanation of the role of *the Grandfather Clause* as a layered protection mechanism that maintains the continuity of investor rights, especially with the case study of Oleovest as a concrete illustration of how the clause functions in practice when there is a change in host country policy.

Based on the background presented by the author, the following can be formulated as problems in the discussion:

1. *the Grandfather Clause* apply to foreign investment?
2. How does BIT work to increase foreign investment?
3. *the Grandfather Clause* applied as protection for foreign investors in the BIT agreement in the case of Oleovest Pte Ltd vs Indonesia?

RESEARCH METHODS

Research plays a vital role in the development of science and technology. In the context of legal research, research is conducted to explore legal rules, legal principles, and legal doctrines to address the legal issues faced (Marzuki, 2011).

In analyzing and answering the problems formulated above, this research will be conducted using normative legal research methods. This type of research is conducted by examining various written legal regulations such as laws or agreements which are then connected to a legal problem to be studied (Johny, 2007). The case used is the ICSID Case No. ARB/16/26. Then secondary legal materials are based on literature such as books,

journals, papers, and other references related to *the Grandfather Clause*, *Bilateral Investment Treaty (BIT)*, and the *Oleovest Pte Ltd vs Indonesia* case. Qualitative methods are used in this research with descriptive descriptions containing explanations regarding the research to be able to understand and reveal something behind the phenomenon.

RESULTS AND DISCUSSION

Sub Application of *Grandfather Clause* in Foreign Investment

A *Grandfather Clause* is an exception clause in a contract or statute. This clause allows old rules to remain in effect in a specific situation, even if new rules have been created for that situation and the future in general (Jesse Russel & Ronald Cohn, 2012). Simply put, a *Grandfather Clause* is a clause that exempts certain people or things from the requirements of new statutory regulations, which may affect their previous rights, privileges, or practices.

The Grandfather Clause originated as a policy that discriminated against certain groups. Emerging in America between 1890 and 1910 as part of Jim Crow laws, the clause aimed to disenfranchise African Americans, certain whites, and Native Americans in the Southeastern United States.

In Mississippi in 1890, various requirements were imposed to prevent Black people from voting, such as literacy tests or land ownership. In other states, voters were required to pay a poll tax one month before the election. Furthermore, voters had to have an ancestor who qualified as a voter, as Black people generally did not have ancestors with the right to vote. The term "*Grandfather Clause*" arose because the voting rights of the current generation were based on what their ancestors inherited. Since then, this term has been adopted in legal science and practice in various countries.

A *Grandfather Clause* is an exception clause in a contract or regulation that allows the old rules to continue to apply to certain ongoing situations, even if new rules have been created for all future situations. The term "Grandfather" in this clause refers to the exception granted by the legal bond that binds the predecessors (Christopher Leman, 1980).

The concept of the "*Grandfather Clause*" also applies to investment law in Indonesia. This is contained in the Negative Investment List (DNI) as stated in Presidential Regulation Number 44 of 2016 concerning the "List of Business Fields Closed and Business Fields Open with Conditions in the Investment Sector" (Perpres DNI 2016). Perpres DNI 2016 ensures that approved investments or "*existing investments*" remain subject to the old rules through transitional provisions in Article 13. This article explains that investors who have obtained investment permits based on regulations before Perpres DNI 2016 was issued will not be bound by the new rules in Perpres DNI 2016, unless the new rules are deemed more beneficial to investors (Yuliana Tjhai, 2010).

the Grandfather Clause concept is expected to increase the effectiveness of the Negative Investment List (DNI) policy. This is because it provides certainty for business actors that their investments in approved business sectors will continue, even if the DNI changes. Periodic changes to the DNI are unavoidable, because economic conditions in Indonesia and internationally are always changing. Therefore, provisions regarding business sectors for investment also need to be adjusted. Essentially, economic law is always evolving in line with

the emergence of new business opportunities, the supply of new commodities in the form of technology, demand for new commodities, market trends, new needs in the market, economic and political changes, and various other driving factors, such as shifts in political regimes and changes in market share (Sri Redjeki & Hartono, 2007).

Grandfather Clause " is required . This ensures that changes in investment policies in Indonesia do not impact investments that have met all requirements upon approval. This concept is also crucial for protecting foreign investors from potential indirect takeovers of ownership rights by the state. Indirect takeovers are takeovers that are not carried out physically, but rather through rules, requirements, or policies that significantly reduce the control, management, utilization, or value of foreign investments (United Nations Conference On Trade and Development, 2000).

One way a state can carry out indirect takeovers is through regulatory taking. In this case, the host country requests its government or legislative body to enact laws and regulations that could reduce the profits investors receive from their investments. The enactment of these regulations does not alter or revoke investors' ownership rights to their assets, but they can significantly reduce the benefits and profits investors receive.

If there is no *Grandfather Clause* , if there is a change in the rules regarding the limits on foreign capital ownership in a business sector, then these companies are still required to reduce their foreign capital ownership to comply with the new limits which will have implications for reducing profits for investors, especially foreign investors.

This situation can be seen as an example of the indirect takeover of foreign ownership rights by the state through " *regulatory taking* ." This is highly detrimental to foreign-invested companies, which must continually adjust their foreign ownership to new regulations, and to foreign investors who are forced to divest their holdings in those companies. Therefore, a *Grandfather Clause* is essential for foreign investors as a form of protection for their existing investments from the dynamic regulatory changes in Indonesia's Negative List.

***Bilateral Investment Treaties* in the context of Increasing Foreign Investment**

A Bilateral Investment Treaty (BIT) is an international agreement binding two countries. In this agreement, both countries promise to treat each other's investments equally, according to agreed (Muchlinski, 1999) standards and conditions .

Several factors underlie the formation of Bilateral Investment Treaties (BITs). The primary reason countries enter into BITs is to increase foreign investment flows. Furthermore, BITs also serve as indicators of a country's ideological shift. Countries that previously adhered to anti-foreign investment policies, by signing BITs, demonstrate their openness to investment protection standards and investment dispute resolution through international arbitration. Examples include countries like China and Vietnam, as well as Eastern European countries that previously adhered to communist ideologies with the concept of public ownership, which have since actively entered into numerous BITs (M. Sornarajah, 2010).

Developing countries generally believe that increased foreign investment will generate benefits such as greater capital flows and the transfer of new technologies to their countries. The rationale behind this belief is the assumption that bilateral agreements with clear and

enforceable provisions to protect and support foreign investment will minimize risks. This reduction in risk for foreign investors is expected to encourage increased investment (Jeswald W. Salacuse & Nicholas P. Sullivan, 2005). The proliferation of BITs is a direct result of the shift toward a market economy, where foreign investment in developing countries is a crucial element encouraging them to participate in profitable global economic relations. (Raul Emilio Vinuesa, 2002).

For developed countries, investment risk is a major factor driving them to enter into numerous BITs. BITs are a reaction by developed countries to developing countries' efforts to create a New International Economic Order. Developed countries believe this movement creates legal uncertainty, particularly regarding investment. BITs are designed to establish investment law principles that developed countries want to adopt as international standards. These principles are enforced through BITs. The rules agreed upon in BITs aim to safeguard their investments in countries with significant political risks (M. Sornarajah, 2010).

There are at least five reasons underlying the formation and signing of the BIT, namely (Jeswald W. Salacuse, 2010):

1. to encourage foreign investment in developing countries;
2. to establish a relationship;
3. in the context of economic liberalization;
4. to encourage domestic investment; And
5. to improve governance and uphold *the rule of law*.

In the past, before Bilateral Investment Treaties (BITs), protection for foreign investors in other countries was relatively weak. This was because international law governing foreign investment at the time was still inadequate. At that time, foreign investor protection was only covered by general law on state responsibility for injuries to *aliens*. (Ryan J. Bubb & Susan Rose-Ackerman, 2007)

In cases of confiscation of a foreign investor's assets, only the investor's home country is entitled to file a claim for damages, not the investor. It should be noted that a breach of a normal contract between a host country and a foreign investor does not trigger a liability for damages under state liability. The host country is only liable to the investor's home country under the principle of breach of the "minimum standard" of treatment of foreigners.

Bilateral Investment Treaties (BITs) play a crucial role in protecting foreign investment in developing countries, making them the most dominant source of international law. Conversely, BITs are rarely signed between developed countries, likely because investors in developed countries trust that their host countries have adequate domestic legal systems and will not discriminate (Ryan J. Bubb & Susan Rose-Ackerman, 2007).

The principle contained in the BIT is *most favored nations* (MFN), namely "to guarantee equal treatment to countries collaborating with a country, prohibition of takeover, nationalization, revocation of laws, currency transfer guarantees and subrogation guarantees to overcome non-commercial risks."

Although there are more than 2,600 BITs in force across countries, many of them share commonalities in investment regulation and protection (Kenneth J. Vandeveld, 2000). This is reflected in the similarity in structure and content of BITs, which generally address four main

issues:

1. requirements for foreign investors to enter the host country;
2. standards of treatment of foreign investors;
3. protection against forced takeover; And
4. investment dispute resolution methods (Jarrod Wong, 2006).

These key points address state responsibilities regarding internal economic and political aspects, determining the restrictions imposed on foreign investment. These restrictions are outlined in the BIT. Furthermore, the standard of treatment for foreign investors is a legal guarantee provided by the destination country, as stated in the BIT, that investors will be treated fairly and equally.

The destination country for investment will not act arbitrarily. This provision in a BIT requires the country to treat investors fairly and equally under the law. This provision serves as a form of investor protection. *National treatment* means that the country will provide the same treatment to foreign investors as it does to domestic investors. MFN treatment means the country provides equal treatment to all foreign investors (UNCTAD, 2004).

The takeover of a foreign company or investor's assets by a state without their consent is called expropriation (Surya P. Subedi, 2008). In this situation, the state is obliged to provide compensation (redress) to affected investors. BITs also regulate the transfer of funds. This provision guarantees the right of investors in the destination country to move their capital or profits abroad. In other words, investors are free to transfer profits earned from their investments to their home country or another country (UNCTAD, 2004). Finally, BITs also regulate dispute settlement *related* to investment. This provision requires disputing parties to resolve them through international arbitration.

The primary objective of BITs should be to minimize non-economic risks and open up investment opportunities. BITs can achieve this by establishing legally binding standards for the treatment of foreign investment. BITs should prioritize and protect investment, complemented by other mechanisms. Whether BITs actually increase FDI remains questionable, as bilateral agreements are only one of many factors that can influence potential investors' decisions to invest in developing countries.

Other factors to consider are “the political stability of the host country; the economic, industrial, and administrative policy framework; the economic benefits of initial investment or increased ongoing investment; and incentive packages or new investment arrangement options.” In practice, unless the *host country* can offer favorable investment opportunities to foreign investors, bilateral agreements alone will not attract investors (Michael R. Reading, 1992).

Dispute resolution under BITs is primarily through negotiation. If negotiations fail, disputes can be submitted to international arbitration, either through *the International Centre for Settlement of Investment Disputes* (ICSID) or *the United Nations Commission on International Trade Law* (UNCITRAL). Thus, BITs can, in principle, resolve the problem of an unfavorable investment climate. Although BITs are important instruments for building international relations, Indonesia has not been able to utilize them optimally to increase its capacity in the international economic arena (Johnny W. Situmorang, 2011).

BITs offer dispute resolution mechanisms that allow investors to directly assert their rights under the BIT (Jarrod Wong, 2006). Dispute resolution regulations generally permit an investor to “ *submit an investment dispute between itself and a Contracting State to the investor's choice of forum ...*” (Jarrod Wong, 2006).

The driving factor for providing protection by granting investors the right to file dispute resolution claims privately may be based on the fact that “ *host governments can easily change their own domestic law after a foreign investment is made, and host country officials may not always act fairly or impartially toward foreign investors and their enterprises* .” (Jeswald W. Salacuse & Nicholas P. Sullivan, 2005) Thus, investor objections to *the host country's domestic legal system* can be mitigated (Dr. Efraim Chalamish, 2009).

Therefore, BITs should focus on two primary objectives: providing direct protection against non-economic risks (risk reduction) and working with other instruments to minimize risks. Increasing investment is the ultimate outcome of these objectives, and BITs are more effective when used in conjunction with other mechanisms. BITs can serve as a guide for other legal institutions and agreements, such as tax treaties, political risk insurance, *Investment Guarantee Agreements* (IGAs), local laws of host and host countries, investment contracts between foreign investors and host countries, and agreements on the protection of intellectual property rights.

***Grandfather Clause* as Investor Protection in Bilateral Investment Treaties (Case Study of Oleovest Pte. Ltd. vs Indonesia)**

In August 2016, Oleovest Pte Ltd, a subsidiary of Singapore-based Mission New Energy, filed its first ICSID lawsuit against Indonesia under Singapore's Bilateral Investment Treaty (BIT). The lawsuit arose following a 2013 domestic arbitration award by the Indonesian National Arbitration Board (BANI) between Oleovest and its local partner, PT Perkebunan Nusantara III, an Indonesian state-owned palm oil plantation. Oleovest sought USD 85 million in compensation for alleged breaches of *the Joint Venture Agreement (JVA)* related to the valuation of Oleovest's shares, which it deemed inadequate to market prices.

This case involves Singapore (Plaintiff) and Indonesia (Defendant) in relation to the 2005 Indonesia-Singapore Bilateral Investment Treaty (BIT). The lawsuit was filed on 10 August 2016 and the hearing took place on 22 November 2017. However, on 29 November 2017, the Plaintiff filed a request to stay the proceedings pursuant to ICSID Arbitration Rule 44. Indonesia acceded to the request on 8 December 2017. On 19 March 2018, the Court issued a procedural order for the stay of proceedings pursuant to Article 44 of the ICSID Arbitration Rules.

This case is an example of investor-state dispute *settlement* . ISDS clauses are created by the host country and the host country, not directly between the investor and the host country. Typically, disputes are filed by companies or investors over policies taken by the host country, such as “changes in investment incentives, cancellation or breach of contracts by the state, nationalization or direct takeover, revocation of permits, changes in tariffs, changes in land zoning, taxation, cancellation of patents, and others.” The purpose of ISDS is to provide an efficient and fair dispute resolution mechanism, in order to prevent conflicts between

countries (Martina A. Weiss, 2015).

Information regarding the investment dispute between Oleovest and Indonesia is minimal and not easily accessible to the public. The official ICSID website also does not contain documents related to Oleovest's lawsuit as Plaintiff against Indonesia in ICSID Case No. ARB/16/26. However, it should be noted that the basis of the Oleovest vs. Indonesia lawsuit was filed based on the 2005 Singapore-Indonesia BIT, even though the BIT agreement actually expired in June 2016. The BIT was not extended due to Indonesia's investment policy, but previously in the BIT there was a *Grandfather Clause* that protected existing investments. Investors may view the 2005 Singapore-Indonesia BIT, which has been terminated by Indonesia but has a *Grandfather Clause* for existing investments, as a more pro-investor policy/agreement.

The plaintiffs filed a lawsuit with the ICSID despite knowing that the BIT was no longer in effect. As previously explained, a *grandfather clause* exempts certain persons or entities from the requirements of new legislation, which may affect their prior rights, privileges, or practices. By including this clause in a treaty, the treaty can be applied retroactively, meaning it applies to investments both before and after the treaty.

A *Grandfather Clause* is a special clause in a BIT that allows the BIT to continue to have legal force after termination, for a certain period of time. This clause is found in Article XIII of the Investment Promotion and Protection Agreement between the Republic of Indonesia and the Republic of Singapore, specifically in the third paragraph, which states: "*With Respect to Investment made prior to the date of termination of this Agreement, the Provisions of this Agreement shall continue to be effective for a further period of ten (years) from the date of termination.*"

Therefore, even though the Indonesia-Singapore BIT was terminated by the Indonesian Government in 2016, Oleovest still filed a lawsuit with ICSID. ICSID accepted the lawsuit, but the case was not pursued because Oleovest withdrew its lawsuit and was approved by the Indonesian Government. Article 44 of ICSID states that:

" *Any arbitration proceedings shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed to by the parties, the Tribunal shall decide the question.*"

Based on this article, based on an agreement between Oleovest as the Plaintiff and the Indonesian Government as the Defendant, this case was dismissed.

In the case of Oleovest, the *Grandfather Clause* plays a crucial role as a form of protection for foreign investors. It ensures that investors who have invested under the previous regulatory framework remain protected despite any policy or regulatory changes. In other words, the rights and protections guaranteed by the BIT at the time the investment was made remain in effect and are not affected by subsequent policy changes.

The ICSID's decision to accept Oleovest's lawsuit demonstrates that the *Grandfather Clause* can be a strong legal basis in investment disputes. It provides legal certainty for foreign investors that their investments will be protected according to the provisions in force at the

time of the investment, even if changes occur in the future. This is important because it provides investors with a sense of security in the face of potential policy changes in the *host state*.

For host countries, the implementation of *the Grandfather Clause* signifies a commitment to creating a stable and predictable investment climate. While this may reduce the country's flexibility in implementing policy changes, it is necessary to build investor confidence and attract more foreign investment. *Host countries* need to consider the balance between investor protection and their ability to change policies in the national interest.

The Oleovest case serves as an example of how *the Grandfather Clause* works in practice. For example, if a host country decides to change its tax policies or environmental regulations that impact investors, investors protected by *the Grandfather Clause* can sue the host country if they believe the changes violate their rights under the BIT.

Although in this case Oleovest ultimately withdrew its lawsuit, it should be noted that the acceptance of Oleovest Pte Ltd's lawsuit by ICSID due to *the Grandfather Clause* shows that the application of *the Grandfather Clause* in BIT agreements can be a form of legal certainty regarding the protection of foreign investors in *Bilateral Investment Treaties*.

CONCLUSION

The application of *the Grandfather Clause* in foreign investment has proven to be a crucial element in ensuring legal certainty and long-term protection for investors, particularly when the government changes policies related to capital ownership restrictions or business sector regulations. Without this clause, any policy revision has the potential to create *regulatory risk*, which can be detrimental to foreign investors and reduce investment interest. More broadly, Bilateral Investment Treaties (BITs) play a crucial role as international legal instruments in creating a stable investment environment by guaranteeing non-discriminatory treatment, protection from expropriation, and access to dispute resolution through international arbitration. BITs not only prioritize investor protection but also affirm the state's right to regulate in the public interest, thus creating a balance of interests between *the host state* and foreign investors. The case study of Oleovest Pte. Ltd. vs. Indonesia illustrates how *the Grandfather Clause* in a BIT works as a concrete protection instrument when investors face changes in host state policy. The acceptance of the lawsuit by ICSID demonstrates that *the Grandfather Clause* has a strong legal basis and is recognized as an effective protection mechanism in international practice. Future research could expand the analysis by comparing the implementation of *the Grandfather Clause* across countries or across different BITs to identify the most effective implementation patterns. Furthermore, examining the relationship between *the Grandfather Clause* and sustainable investment policy is also relevant, given the growing global demand for countries to implement regulations that support environmental, social, and governance (ESG) without compromising legal certainty for investors.

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