



PRESIDEN
REPUBLIK INDONESIA

**KEPUTUSAN PRESIDEN REPUBLIK INDONESIA
NOMOR 58 TAHUN 1994
TENTANG
PENGESAHAN AGREEMENT BETWEEN THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT
OF THE KINGDOM OF THE NETHERLANDS ON PROMOTION AND
PROTECTION OF INVESTMENT, BESERTA PROTOCOL**

PRESIDEN REPUBLIK INDONESIA,

Menimbang : a. bahwa di Jakarta pada tanggal 6 April 1994 Pemerintah Indonesia telah menandatangani Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands on Promotion and Protection of Investment, beserta Protocol, sebagai hasil perundingan antara Delegasi-delegasi Pemerintah Republik Indonesia dan Pemerintah Kerajaan Belanda;

b. bahwa sehubungan dengan itu, dan sesuai dengan Amanat Presiden Republik Indonesia kepada Ketua Dewan Perwakilan Rakyat Nomor 2826/HK/1960 tanggal 22 Agustus 1960 tentang Pembuatan Perjanjian-perjanjian dengan Negara Lain, dipandang perlu untuk mengesahkan Agreement tersebut dengan Keputusan Presiden;

Mengingat : 1. Pasal 4 ayat (1) dan Pasal 11 Undang-undang Dasar 1945;

2. Keputusan Presiden Nomor 303 Tahun 1968;



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MEMUTUSKAN :...

MEMUTUSKAN :

Menetapkan : KEPUTUSAN PRESIDEN REPUBLIK INDONESIA TENTANG PENGESAHAN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS PROMOTION AND PROTECTION OF INVESTMENT, BESERTA PROTOCOL.

Pasal 1

Mengesahkan Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands on Promotion and Protection of Investment, beserta Protocol yang telah ditandatangani Pemerintah Republik Indonesia di Jakarta pada tanggal 6 April 1994, sebagai hasil perundingan antara Delegasi-delegasi Pemerintah Republik Indonesia dan Pemerintah Kerajaan Belanda yang salinan naskah aslinya dalam bahasa Inggris sebagaimana terlampir pada Keputusan Presiden ini.

Pasal 2

Keputusan Presiden ini mulai berlaku pada tanggal ditetapkan.



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Agar...

Agar setiap orang mengetahuinya, memerintahkan pengundangan Keputusan Presiden ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 2 Agustus 1994
PRESIDEN REPUBLIK INDONESIA,

ttd.

SOEHARTO

Diundangkan di Jakarta
pada tanggal 2 Agustus 1994

MENTERI NEGARA SEKRETARIS
NEGARA
REPUBLIK INDONESIA,

ttd.

MOERDIONO



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AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

AND

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

ON PROMOTION AND PROTECTION OF INVESTMENT

The Government of the Republic of Indonesia and the Government of the Kingdom of Netherlands (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by nationals of one Contracting Party on the basis of sovereign equality and mutual benefit; and

Recognizing that the Agreement on the promotion and protection of such investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows :

ARTICLE I

Definitions

For the purpose of this Agreement :

1. The term "investment" shall mean every kind of asset invested by nationals of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:
 - a. movable and immovable property as well as rights such as mortgages, privileges and guarantees and any other rights in rem in respect of every kind of asset;



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- b. right...
- b. right derived from shares, bonds or any other form on interest in companies or joint-ventures of the other Contracting Party;
 - c. claims to money or to any performance having a financial value;
 - d. rights in the field of intellectual property, technical processes, goodwill and know-how ;
 - e. business concessions and other right conferred by law or under contract including concessions to natural resources such as concessions to prospect, explore, extract and win natural resources.
2. The term "nationals" shall comprise with regard to either Contracting Party :
- (i) natural persons having the nationality of that Contracting Party;
 - (ii) legal persons constituted under the law of that Contracting Party.
3. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial custom.
4. "Territory" shall mean :
- a. In respect of the Republic of Indonesia :

The territory of the Republic of Indonesia as defined in its law and in accordance with international law and parts of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the 1982 United Nations Convention on the Law of the Sea;
 - b. In respect of the Kingdom of the Netherlands :

The territory of the Kingdom of the Netherlands including the maritime areas adjacent to the coast of the Kingdom of the Netherlands, to the extend to which sovereign rights or jurisdiction in those areas are exercised by the



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Kingdom of the Netherlands according to international law.

ARTICLE II...

ARTICLE II

Promotion and Protection of Investment

Either Contracting Party shall, within the framework of its law and regulations, maintain and promote favourable conditions for nationals of the other Contracting Party to invest in its territory inter alia through protection in its territory of investment of nationals of the other Contracting Party and Shall, within that framework , admit such investment.

ARTICLE III

Treatment and Most Favoured Nation Provisions

1. Each Contracting Party shall be ensure fair and equitable treatment of the investment of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal there of by those nationals. Each Contracting Party shall accord to such investments adequate physical security and protection.
2. More Particulary, each Contracting Party shall accord to such investment treatment which in any case shall not be less favourable than that accorded to investment of nationals of any third State.
3. If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similiar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.
4. Each Contracting Party shall observe any obligation it may have entered into with regard to investment of nationals of the other Contracting Party.



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ARTICLE IV...

ARTICLE IV

Taxation

With respect to taxes, fees and charges connected therewith and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State that are in the same circumstances, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party :

- a. under an agreement for the avoidance of double taxation; or
- b. by virtue of its participation in a customs unions, economic unions or similiar institution; or
- c. on the basis of reciprocity with a third State.

ARTICLE V

Expropriation

Nationals of either Contracting Party shall not be deprived, directly or indirectly, of their investment, nor shall their investment be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation in the territory of the other Contracting Party except by measures taken for a public purpose related to the internal needs of the expropriation Contracting Party, which shall be taken under due process of law and shall not be discriminatory or contrary to any undertaking which the Contracting Party which takes such measure may have given. The measures shall be taken againts full , prompt and effective compensation. Such compensation shall amount to the market value of the investment expropriate is announced or becomes known and shall include interest at a normal commercial rate until the date of payment. Such amount shall



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be calculated according to internationally acknowledge evaluation methods. Compensation shall be made without delay, be effectively realizable and freely transferable in any freely convertible currency.

ARTICLE VI...

ARTICLE VI

Compensation for Losses

Nationals of one Contracting Party, whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory or the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitutions, indemnification, compensation or the other settlement, which shall not be less favourable than that which the latter Contracting Party accords to its own nationals or nationals of any third State, whichever is more favourable to the nationals concerned.

ARTICLE VII

Transfer

The Contracting Party shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfer include in particular though not exclusively.

- a. profits, interest, dividends and other current income;
- b. funds necessary
 - (i) for the acquisitions of raw or auxiliary materials, semifabricated or finished products, or
 - (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c. additional funds necessary for the development of an investment;



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- d. funds in repayment of loans;
- e. royalties of fees;
- f. earnings...
- f. earnings of natural persons;
- g. the proceeds of sale or liquidation of the investment;
- h. compensation for losses;
- i. compensation for expropriation.

ARTICLE VIII

Subrogation

If the investment of a national of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the national would have been entitled to exercised.

ARTICLE IX

Settlement of disputes between Nationals and a Contracting Party

1. Any legal disputes between one Contracting Party and a national of the other Contracting Party concerning an investment of the latter in the territory of the former shall, if possible, be settled amicably.
2. If such a dispute cannot be settled according to the provisions of paragraph 1 above within a period of three months from the date either party requested amicable



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settlement, the dispute shall, at the request of the national concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. Submission of a dispute to domestic judicial procedures under paragraph 2 above shall not in any way affect the right of the national concerned to submit the dispute to international arbitration or conciliation.

4. Each...

4. Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for Settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.
5. A legal person which had the nationality of the Contracting Party, party to the dispute, on the date on which the parties consented to submit such dispute to conciliation or arbitration but which was controlled by nationals of the other Contracting Party shall, for the purpose of said Convention be treated as a national of the other Contracting Party.

ARTICLE X

Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.
2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such



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appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4. If,...

4. If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.
5. The tribunal shall decide on the basis or respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.
6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

ARTICLE XI

Applicability of this Agreement

This Agreement shall, from its entry into force, apply to investment made after 10 January 1967 by nationals of the Kingdom of the Netherlands in the territory of the Republik of Indonesia and to investment by nationals of the Republic of Indonesia in the territory of the Kingdom of the Netherlands.

ARTICLE XII



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Application of other Provisions

If the Provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investment by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

ARTICLE XIII...

ARTICLE XIII

Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.
2. This Agreement may be amended at any time, if deemed necessary, by mutual consent.

ARTICLE XIV

Territorial Application

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in Article XV, paragraph 1 provides otherwise.

ARTICLE XV

Entry into Force, Duration and Termination

1. The present Agreement shall enter into force on the first day of the third month after



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the date of the latest notification by any Contracting Party of the accomplishment of the procedures constitutionally required in their respective countries. It shall remain in force for a period of ten years and shall continue to be in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

2. In respect of investments made prior to the date of termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.
3. Upon entry into force of this Agreement, chapter II and Article 25 of the Agreement on economic cooperation between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands, signed on 7 July 1968, shall be terminated and replaced by this Agreement.

This...

This Agreement will only terminate and replace the Agreement of 1968 in relations between the Republic of Indonesia and those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with Article XIV of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized there to by their respective Governments, have signed this Agreement.

Done at Jakarta on Wednesday, April 6, 1994 in duplicate, in the English language.

For the Government of
the Republic of Indonesia

For the Government of the
Kingdom of the Netherlands



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PROTOKOL

To the Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands on promotion and protection of investment.

On the signing of the Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands on promotion and protection of investment, the undersigned representative have agreed on the following provisions which constitute an integral part of the Agreement :

With reference to Article III :

1. The Government of the Republic of Indonesia, while recognizing the principle of national treatment of investment made by nationals of the Kingdom of the Netherlands, reserves its right to maintain limited exceptions to national treatment of such investments in view of the fact that there are separate laws governing investments in Indonesia, i.e :
 1. Law No.1 of 1967 concerning Foreign Investment.
 2. Law No.6 of 1968 concerning Domestic Investment.

Notwithstanding the above statement, the Government of the Republic of Indonesia shall endeavour to the best of its ability to assure national treatment of investment of nationals of the Netherlands. In no case shall treatment of such investments be less favourable than law no. 1 of 1967, as amended in 1970, permits.

When, pursuant to present or subsequent legislation, the Indonesian Government, extends additional advantages to Indonesian nationals, the Indonesian Government shall, in order to ensure fair and equitable treatment, grant identical or compensating facilities to Netherlands nationals engaged in similiar economic activities.

2. With regard to the employment of foreign managerial, commercial or technical staff-personel in an enterprise, in case such employment is subject to a licence according to the national legislation of the Contracting Party in the territory of which such enterprises will be established or is run, that Contracting Party will adopt a lenient attitude when deciding on applications for such licences, taking into account the importance of a just personel-policy in the framework of the



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general management of an enterprise.

With reference to Article VII

Contracting Parties may maintain laws and regulations requiring reports of currency transfer which do not restrict or delay the payments guaranteed under this Article.

Done at Jakarta on Wednesday, April 6, 1994 in duplicate, in the English language.

For the Government of
the Republic of Indonesia

For the Government of the
Kingdom of the Netherlands