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A Socio-Legal Analysis of the Conflict Between Indigenous Peoples' Customary Land Rights and Investment Interests in National Development

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ABSTRACT

This study examines the legal conflicts between indigenous peoples' customary land rights and investment interests in Indonesia, focusing on constitutional protection, regulatory inconsistencies, and sustainable national development. Employing a normative juridical method supported by a socio-legal perspective, the research analyzes constitutional provisions, agrarian legislation, investment regulations, and relevant judicial decisions through statutory, conceptual, and case-based approaches. The findings reveal that despite constitutional recognition, customary land rights remain vulnerable to administrative barriers, overlapping territorial claims, regulatory fragmentation, and unequal power relations between indigenous communities and investment actors. Constitutional Court Decision Number 35/PUU-X/2012 and Ministerial Regulation Number 14 of 2024 provide important legal foundations for strengthening indigenous territorial recognition; however, their effectiveness depends on institutional coordination and accessible administrative procedures. The study proposes an integrated rights-based governance framework emphasizing customary land recognition, participatory territorial mapping, preventive legal protection, meaningful community consultation, and equitable benefit distribution. It contributes to the literature by integrating constitutional justice, legal pluralism, and investment governance into a coherent normative framework. The study concludes that sustainable national development requires balancing investment certainty with indigenous land tenure security through transparent, inclusive, and constitutionally accountable legal mechanisms.

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1. INTRODUCTION

Land plays a fundamental role in national development, functioning not only as an economic resource but also as a foundation for social identity, cultural continuity, and the collective existence of indigenous peoples. In Indonesia, increasing demands for land to support infrastructure, industrial expansion, plantations, and natural resource exploitation have intensified conflicts between investment

interests and customary land rights. Although investment contributes to economic growth, employment, and national competitiveness, its implementation frequently overlaps with territories traditionally occupied and governed by indigenous communities. These conflicts present complex legal challenges because customary land represents collective rights rooted in historical occupation, traditional institutions, and intergenerational relationships. The Indonesian Constitution establishes a legal foundation for protecting these rights through Article 18B(2), which recognizes customary law communities and their traditional rights, Article 28I(3), which protects traditional cultural identities, and Article 33(3), which requires natural resources to be managed for the greatest prosperity of the people. Furthermore, Article 3 of [1] concerning Basic Agrarian Principles recognizes customary rights (hak ulayat), although their exercise remains conditional upon continued existence and consistency with national interests. These conditions create a fundamental tension between constitutional recognition and administrative enforceability, particularly when customary territories have not been formally documented within the national land administration system.

The relationship between customary land protection and national investment policies becomes increasingly complicated when development activities require extensive land acquisition or changes in land utilization. [2] concerning Investment, as amended, establishes a regulatory framework for promoting investment and ensuring business certainty, while [3] concerning Job Creation introduces regulatory reforms affecting licensing, land governance, and investment facilitation. Despite their economic objectives, these regulations must operate consistently with constitutional protections for indigenous communities. Conflicts frequently arise when government-issued investment licenses or land-use authorizations overlap with customary territories that have not obtained formal administrative recognition. From a sociological-legal perspective, these disputes reflect the coexistence of state law and customary legal systems, as well as inequalities in institutional authority, economic resources, and access to justice. [4] demonstrate that the effectiveness of customary land recognition in Indonesia is influenced by legal fragmentation, institutional support, local political relationships, and power disparities between indigenous communities and governing authorities. Their findings indicate that formal recognition does not necessarily guarantee effective protection when administrative procedures and political conditions restrict the enforcement of collective rights. Consequently, addressing customary land conflicts requires an integrated understanding of legal pluralism, institutional practices, and the social consequences of investment-oriented development.

The complexity of customary land governance is further demonstrated by developments in Indonesian constitutional jurisprudence and administrative regulation. Constitutional Court Decision Number 35/PUU-X/2012, pronounced on May 16, 2013, established that customary forests are not classified as state forests, thereby reinforcing the constitutional distinction between state authority over natural resources and indigenous communities' territorial rights [5], [6]. [7] emphasizes that this decision strengthened constitutional protection for indigenous peoples while revealing inconsistencies between constitutional guarantees and sectoral forestry regulations. Nevertheless, judicial recognition alone does not automatically resolve disputes involving territorial boundaries, administrative recognition, and competing land allocations. Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 14 of 2024 subsequently introduced procedures for administering and registering customary land rights, providing an additional mechanism for strengthening legal certainty. However, practical challenges remain concerning accessibility, overlapping claims, and institutional implementation. These issues are closely associated with the

interpretation of the state's right to control natural resources (hak menguasai negara), which must serve public prosperity rather than justify unrestricted land allocation. [8] identify the insufficient integration of customary norms into investment-related natural resource governance as a contributing factor to land tenure disputes and unequal bargaining positions. Their analysis highlights the importance of recognizing collective rights, ensuring meaningful community participation, and distributing development benefits equitably.

Previous studies have examined the relationship between indigenous land rights and development policies through constitutional, institutional, and regulatory perspectives. [7] investigates constitutional protection following Constitutional Court Decision Number 35/PUU-X/2012, while [4] analyze institutional and political factors affecting customary land recognition across Indonesian communities. Meanwhile, [8] explore the harmonization of customary law and investment policy through approaches emphasizing legal pluralism and inclusive natural resource governance. Although these studies provide important insights into customary land protection, further analysis is necessary to explain how constitutional guarantees, agrarian legislation, administrative recognition mechanisms, and investment regulations can be interpreted collectively to establish a coherent framework for resolving competing territorial interests. In particular, the relationship between formal legal certainty and substantive justice remains insufficiently integrated within investment-oriented land governance. This study addresses that gap by examining customary land protection and investment interests through constitutional justice, legal pluralism, and distributive justice. Rather than positioning indigenous rights and investment promotion as inherently incompatible, the analysis considers how procedural fairness, institutional accountability, collective rights recognition, and equitable benefit distribution can support sustainable national development without compromising constitutional obligations.

Based on these considerations, this study aims to analyze the legal protection of indigenous peoples' customary land rights within Indonesia's constitutional and agrarian frameworks, identify normative tensions between customary land recognition and investment-oriented national development policies, and formulate principles for harmonizing investment interests with indigenous peoples' rights. The research employs a normative juridical method supported by a sociological-legal analytical perspective, examining constitutional provisions, statutory regulations, judicial decisions, legal doctrines, and relevant scholarly literature without undertaking primary empirical fieldwork. The study's principal contribution lies in developing an integrated normative framework connecting the state's constitutional authority over natural resources, the recognition of customary legal systems, investment governance, and substantive justice. Through this approach, the research seeks to clarify the legal conditions necessary for strengthening indigenous land tenure security, improving institutional coordination, ensuring meaningful community participation, and preventing conflicts arising from overlapping territorial claims. Ultimately, the proposed framework is intended to support national development policies that provide legal certainty for investors and indigenous communities while upholding constitutional principles of justice, human dignity, and public welfare.

2. METHODS

This study employs a normative juridical method supported by a socio-legal perspective to examine conflicts between indigenous peoples' customary land rights and investment interests in Indonesia. The research integrates statutory, conceptual, case-based, and analytical approaches. The statutory analysis examines the 1945 Constitution, [1] concerning Basic Agrarian Principles, [2] concerning Investment, [3] concerning Job Creation, and [9] concerning customary land registration. The conceptual

approach draws on legal pluralism, legal certainty, and substantive justice, while the case approach focuses on Constitutional Court Decision [7] concerning customary forests.

Legal materials are collected through library research and documentary analysis, encompassing primary sources such as legislation, regulations, and judicial decisions, as well as secondary sources including scholarly articles, academic books, and legal commentaries. Official legal databases are consulted to verify regulatory provisions and judicial interpretations. The materials are classified into three themes: legal recognition of customary land rights, regulatory conflicts involving investment activities, and mechanisms for harmonizing competing interests. The socio-legal perspective incorporates findings from existing literature without conducting primary empirical fieldwork.

The analysis applies qualitative doctrinal methods using grammatical, systematic, and teleological legal interpretation. First, constitutional and statutory protections for customary land rights are examined. Second, inconsistencies between indigenous rights and investment regulations are identified. Third, normative recommendations are formulated based on constitutional justice, legal pluralism, and equitable development. Analytical rigor is maintained through source verification, cross-comparison of legal provisions, and consistency in judicial interpretation. The study distinguishes binding legal obligations from proposed reforms to establish a coherent framework for rights-based investment governance and sustainable national development.

3. RESULT AND DISCUSSION

3.1 Constitutional Regognition and legal Protection of Indigenous Peoples' Customary Land Rights

The normative legal analysis demonstrates that indigenous peoples' customary land rights in Indonesia are constitutionally protected under Articles 18B(2), 28I(3), and 33(3) of the 1945 Constitution and Article 3 of [1] concerning Basic Agrarian Principles. These provisions recognize indigenous communities and their collective territorial rights while establishing the state's responsibility to ensure equitable land governance. Constitutional Court Decision Number 35/PUU-X/2012 further strengthens this protection by distinguishing customary forests from state forests. Nevertheless, the effectiveness of these legal guarantees remains limited by administrative recognition requirements, inconsistent implementation, and competing investment interests. [10] highlight the persistent challenges in implementing customary land protections, particularly where formal legal recognition does not adequately reflect traditional land tenure systems.

Regulatory developments, particularly [9], provide mechanisms for administering and registering customary land rights to strengthen legal certainty. However, implementation continues to face institutional and procedural obstacles. [11] reports that only 30% of customary (ulayat) land has been registered, indicating substantial limitations in administrative recognition. Furthermore, overlapping territorial claims, regulatory fragmentation, and inconsistencies between customary governance and formal land administration contribute to persistent legal uncertainty [12]. These challenges become particularly significant when investment permits and development projects intersect with indigenous territories, potentially weakening the practical enforceability of constitutionally recognized collective rights.

Addressing these challenges requires harmonizing constitutional protections, agrarian regulations, and investment policies through transparent and inclusive land governance. [13] emphasizes the importance of regulatory harmonization, territorial transparency, and stronger institutional coordination in protecting indigenous land rights. Participatory territorial mapping and standardized land registration procedures can further improve administrative accountability and reduce overlapping claims

[14]. Accordingly, effective legal protection should integrate customary institutions into formal land governance, simplify recognition procedures, and establish accessible dispute resolution mechanisms. Such measures are essential to strengthening legal certainty, safeguarding indigenous communities' collective rights, and ensuring that national development and investment activities remain consistent with constitutional justice and equitable resource governance.

3.2 Normative Conflicts Between Customary Land Rights and Investment Interests in National Development

The analysis of Indonesia's investment and agrarian regulatory frameworks reveals significant normative tensions between economic development priorities and indigenous peoples' customary land rights. [2] concerning Job Creation promote investment efficiency, economic growth, and regulatory certainty. However, their implementation may conflict with constitutional protections when investment activities overlap with customary territories. [15] highlights the potential marginalization and displacement of indigenous communities arising from investment-oriented land policies. Moreover, [16] concerning Land Acquisition for Development in the Public Interest and Government Regulation Number 18 of 2021 concerning Land Rights and Registration establish formal land governance mechanisms that may inadequately accommodate collective customary ownership [17]. These tensions demonstrate that investment authorization does not automatically establish legitimate ownership or extinguish existing customary land rights.

The implementation of customary land protection remains constrained by administrative inconsistencies, overlapping territorial claims, and regulatory fragmentation. Although indigenous rights receive constitutional recognition, their enforcement frequently depends on formal administrative procedures that may not adequately reflect traditional land tenure systems [10]. [12] further identifies regulatory fragmentation as a significant factor contributing to legal uncertainty and weakening customary land protection. These challenges are intensified by unequal bargaining positions between investors, government institutions, and indigenous communities, particularly regarding access to legal documentation, institutional representation, and dispute resolution mechanisms. Consequently, prioritizing investment certainty without recognizing collective territorial rights may undermine substantive justice and generate prolonged agrarian conflicts.

Harmonizing investment policies with customary land protection requires an integrated legal framework that balances economic development with constitutional justice. The application of Free, Prior, and Informed Consent (FPIC) principles can strengthen meaningful indigenous participation in decisions affecting customary territories [17]. Furthermore, [18] emphasize the importance of regulatory reform that integrates customary law into national land governance to ensure effective legal recognition and protection. Transparent land administration, comprehensive territorial assessments, institutional coordination, and accessible dispute resolution mechanisms are therefore essential to preventing overlapping claims and ensuring equitable resource governance. Ultimately, sustainable national development requires comprehensive legal certainty that protects investment interests while safeguarding indigenous communities' collective rights, cultural continuity, and access to justice.

3.3 Sociological-Legal Dimensions of Customary Land Conflicts: Legal Pluralism, Power Relations, and Substantive Justice

The socio-legal analysis reveals that conflicts between indigenous customary land rights and investment interests extend beyond regulatory disputes, reflecting legal pluralism, unequal power relations, and differing perceptions of land ownership. [19] explains that multiple legal systems may

coexist within the same social context, creating tensions between customary norms and state regulations. In Indonesia, these tensions are particularly evident among indigenous communities, including the Dayak, whose collective territorial rights frequently intersect with formal investment policies [20]. Furthermore, centralized regulatory mechanisms under the Job Creation Law may weaken indigenous communities' authority over customary territories despite existing constitutional protections [17]. Constitutional Court Decision Number 35/PUU-X/2012 reinforces the distinction between customary forests and state forests, although administrative barriers and unequal access to legal institutions continue to constrain effective protection.

The protection of customary land rights also depends on meaningful indigenous participation in development-related decision-making. The principle of Free, Prior, and Informed Consent (FPIC) provides an important international normative framework for ensuring that indigenous communities are consulted before projects affecting their territories are approved [17], [21]. However, insufficient institutional mechanisms for implementing FPIC may increase indigenous communities' vulnerability to land disputes and investment-related displacement [14]. Article 32(2) of the United Nations Declaration on the Rights of Indigenous Peoples emphasizes consultation and cooperation through indigenous representative institutions, while Article 28I(3) of the 1945 Constitution recognizes traditional communities' cultural identities and rights. Nevertheless, FPIC should be understood as an international normative standard rather than an automatically enforceable domestic legal requirement in every investment context. Strengthening participatory procedures, recognizing customary evidence, and improving institutional accountability are therefore essential to bridging the gap between formal legal recognition and substantive protection.

Distributive and procedural justice provide complementary foundations for reconciling customary land protection with national development objectives. [22] emphasizes fairness in the distribution of rights, opportunities, and social advantages, offering a conceptual basis for evaluating how investment benefits and burdens are allocated among affected communities. [17] similarly highlights the importance of equitable participation and distributive fairness in indigenous land governance, while [21] underscores the relevance of international standards for protecting indigenous rights. Investment activities may generate economic opportunities and infrastructure development, but these benefits must be assessed alongside potential losses of livelihoods, cultural identity, and ancestral territories. Consequently, sustainable investment governance requires integrating customary legal systems into formal administrative processes, strengthening meaningful community participation, ensuring accessible dispute resolution, and promoting equitable benefit distribution within a framework of constitutional justice.

3.4 Harmonization of Customary Land Rights and Investment Policies Through Constitutional Justice and Legal Pluralism

The harmonization of customary land rights and investment interests in Indonesia requires an integrated legal framework grounded in constitutional justice, legal pluralism, and equitable development. Article 33(3) of the 1945 Constitution mandates natural resource management for public prosperity, while [9] provides mechanisms for customary land administration and registration. Strengthening the legal recognition of indigenous territories is essential to ensuring collective land tenure security and preventing conflicts arising from investment activities [23]. Furthermore, participatory territorial mapping can improve transparency, clarify customary land boundaries, and reduce overlapping claims [24]. Meaningful consultation with indigenous communities is equally important to ensure that development decisions

accommodate customary rights and collective interests [25].

Effective harmonization also depends on institutional coordination, comprehensive legal due diligence, and accessible dispute resolution mechanisms. Government authorities must examine existing customary claims before issuing investment-related land authorizations to prevent regulatory inconsistencies and competing territorial allocations. [23] emphasize the importance of strengthening institutional mechanisms for recognizing and registering customary territories to improve legal certainty. Similarly, [24] highlight the relevance of accessible dispute resolution procedures in addressing conflicts between indigenous communities and investment actors. Administrative review, mediation, and judicial remedies should therefore accommodate both customary evidence and formal legal documentation. These measures must be accompanied by transparent governance, meaningful community participation, and procedural safeguards that protect collective rights without unnecessarily restricting legitimate investment activities.

Balancing investment interests with indigenous land protection further requires equitable benefit distribution and a rights-based approach to national development. [26] underscores the importance of fair benefit-sharing arrangements in safeguarding collective interests and promoting equitable resource governance. However, financial compensation alone may not adequately address the cultural, social, and intergenerational significance of customary territories. [27] emphasize the need for a governance framework that reconciles investment certainty with indigenous land tenure security to support sustainable development. Accordingly, harmonization should integrate constitutional obligations, customary legal institutions, institutional accountability, and equitable development principles. Such an approach strengthens legal certainty for investors while ensuring that indigenous communities retain meaningful participation, access to justice, and effective protection of their customary land rights.

3.5 Toward a Rights-Based Model of Sustainable National Development

The findings highlight the importance of establishing a rights-based development model that integrates investment promotion with the constitutional protection of indigenous peoples' customary land rights. Integrating customary law into national legal frameworks is essential to strengthening legal certainty and safeguarding collective territorial rights [23]. Furthermore, formal recognition of customary territories can reduce overlapping land claims and prevent conflicts associated with large-scale development projects [14]. Strengthening preventive legal protection is equally important, particularly when foreign investment activities risk prioritizing commercial interests over indigenous rights [15]. Effective governance therefore requires transparent land administration, comprehensive legal due diligence, and institutional accountability to ensure that indigenous communities are adequately represented in development decisions [28].

A sustainable rights-based framework must also emphasize meaningful community participation, equitable benefit distribution, and accessible dispute resolution mechanisms. [28] underline the importance of strengthening the implementation of Free, Prior, and Informed Consent (FPIC) principles to protect indigenous participation in decisions affecting customary territories. Similarly, [14] emphasize participatory dispute resolution as a mechanism for addressing land conflicts and promoting equitable resource governance. Accordingly, the proposed framework integrates substantive recognition, procedural safeguards, and intergenerational justice to reconcile investment certainty with indigenous land tenure security. However, because this study relies on normative legal analysis, further empirical research is necessary to assess the practical effectiveness

of these mechanisms in supporting inclusive and sustainable national development.

4. CONCLUSION

This study concludes that conflicts between indigenous peoples' customary land rights and investment interests in Indonesia arise from inconsistencies between constitutional recognition, administrative implementation, and investment-oriented development policies. Although the 1945 Constitution, [1], Constitutional Court Decision Number 35/PUU-X/2012, and Ministerial Regulation Number 14 of 2024 establish legal foundations for protecting customary territories, their effectiveness remains constrained by regulatory fragmentation, overlapping land claims, and unequal institutional power. The findings emphasize that legal certainty must encompass both investment interests and indigenous communities' collective territorial rights. Accordingly, this study proposes a rights-based investment governance framework integrating customary land recognition, participatory territorial mapping, comprehensive legal due diligence, meaningful community consultation, institutional accountability, and accessible dispute resolution mechanisms. Theoretically, the study contributes to integrating constitutional justice, legal pluralism, and distributive justice within sustainable land governance, while practically providing recommendations for regulatory harmonization and institutional coordination. However, its normative legal approach limits the assessment of actual implementation outcomes. Future research should employ empirical socio-legal methods to evaluate the effectiveness of customary land protection, community participation, and dispute resolution mechanisms in supporting equitable and sustainable national development.

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