

Investment Law in Papua: Between Regulatory Certainty and Protection of Indigenous Peoples' Rights

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Abstract

Introduction: Investment in Papua is a strategic instrument for promoting regional development and improving community welfare. However, in practice, it often causes tension between regulatory certainty for investors and the protection of indigenous peoples' rights to land and natural resources.

Purposes of the Research: This study aims to analyze the legal framework for investment in Papua, identify normative conflicts that arise between national regulations and the recognition of indigenous peoples' customary rights, and evaluate the effectiveness of existing legal instruments in ensuring legal certainty and social justice.

Methods of the Research: The method used is normative legal research with legislative, conceptual, and case-based approaches.

Results Main Findings of the Research: The results show that although national investment regulations have guaranteed legal certainty, their implementation in Papua still faces obstacles in the form of overlapping norms and weak implementation of indigenous peoples' rights protection. Therefore, harmonization of investment regulations with customary law is needed through an inclusive and justice-based approach, so that the interests of development and the protection of indigenous peoples can be balanced.

Keywords: Investment; Customary Law; Legal Certainty; Indigenous Peoples.

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INTRODUCTION

Investment is a key instrument in driving national economic development. Through investment, the flow of capital, technology, and skills is expected to increase productivity, create jobs, and strengthen economic competitiveness.¹ Papua, as one of the regions with the greatest natural resource potential in Indonesia, has a strategic position in attracting investment, particularly in the mining, plantation, fisheries, and infrastructure sectors.² This potential is attractive to both domestic and foreign investors. However, investment in Papua does not merely bring economic benefits; it also raises complex legal issues.³ The main issue that arises is the conflict between investment interests and indigenous peoples' rights to

¹ A. Suryanto, "Foreign Direct Investment and Economic Growth in Indonesia: The Role of Institutional Quality," *Journal of Asian Finance, Economics and Business* 7, no. 11 (2020): 997-1007, <https://doi.org/10.13106/jafeb.2020.vol7.no11.997>

² Purwadi, MA, Hafizrianda, Y., & Riani, IAP. "Investment Growth Target and Investment Development Strategy Plan for Papua Province". *Journal of Regional Economic and Financial Studies*, 3, no. 2 (2018), <https://doi.org/10.52062/keuda.v3i2.706>

³ D. Rahmat, "Protection of Indigenous Peoples' Rights in Investment in Coastal and Inland Areas of Papua," *Jurnal Media Hukum* 28, no. 2 (2021): 231-245, <https://doi.org/10.18196/jmh.v28i2.11506>.

customary land and natural resources. For indigenous Papuans, land is not merely an economic asset, but an integral part of their identity, spirituality, and the sustainability of their socio-cultural life. Therefore, when investments are made without regard for customary rights, horizontal and vertical conflicts are often unavoidable.⁴ This phenomenon demonstrates the fundamental tension between the legal certainty promised by investment regulations for investors and the state's obligation to provide protection for the traditional rights of indigenous peoples that have been guaranteed in the constitution and other legal instruments.

Normatively, Law Number 25 of 2007 concerning Investment provides legal certainty and protection for investors, including certainty in terms of licensing, ownership, non-discriminatory treatment, and dispute resolution mechanisms.⁵ This regulation emphasizes the state's orientation toward creating a conducive investment climate. However, on the other hand, the 1945 Constitution, through Article 18B paragraph (2) and Article 28I paragraph (3), emphasizes that the state recognizes and respects the existence of indigenous legal communities and their traditional rights as long as they remain alive and adapt to current developments. This normative dualism presents a legal dilemma: investment regulations that emphasize legal certainty often align with norms that recognize and protect the customary rights of indigenous communities.

This situation is increasingly evident in practice. Numerous land conflicts between indigenous Papuan communities and investment companies demonstrate the weak implementation of indigenous rights protections. Business permits are often granted without adequate consultation with customary landowners, and in some cases, without a fair compensation mechanism.⁶ This creates a disparity in justice, where positive law tends to favor capital interests over the sustainability of indigenous communities. However, from a human rights perspective, indigenous communities have a special status that must be legally protected. In academic literature, studies on investment in Papua are still dominated by economic, political, and development approaches, while the legal dimension has received relatively less in-depth attention.⁷ Focusing on legal aspects is crucial, considering that investment is not only about economic gain but also about legal certainty, justice, and regulatory legitimacy. The fundamental question is how the law can function to ensure certainty for investors while simultaneously protecting the rights of indigenous peoples, which are deeply rooted in the constitution and customary law.

Based on these issues, this study aims to analyze the investment legal framework in Papua, identify normative conflicts that arise between national regulations and customary law, and propose a more inclusive concept of investment law harmonization. Therefore, this research is expected to contribute academically to the development of legal science, particularly investment law and customary law, and provide practical recommendations for policymakers in formulating regulations that emphasize social justice. Harmonizing

⁴ Daniel F. Sihombing, "Investment and Customary Rights of Papuan Customary Law Communities: Between Legal Certainty and Justice," *Ius Quia Iustum Law Journal* 27, no. 3 (2020): 482–502, <https://doi.org/10.20885/iustum.vol27.iss3.art5>.

⁵ Yance Arizona, "Legal Pluralism and the Protection of Indigenous Peoples' Land Rights," *Jurnal Rechtsvinding* 9, no. 1 (2020): 23–39, <https://doi.org/10.33331/rechtsvinding.v9i1.389>

⁶ H. Tambunan, *The Indonesian Economy: Theory and Empirical Findings* (Jakarta: LP3ES, 2020), pp. 220–225; Bappenas, *National Medium-Term Development Plan (RPJMN) 2020–2024* (Jakarta: Bappenas, 2020), p. 245.

⁷ Ilmiyah, Mahfudzotul, and Naila Shofi. "Human Rights of Papuan Indigenous Peoples To Common Land And The Environment Under The Pressure Of Mining Investment And State Infrastructure." *Causa: Journal of Law and Citizenship* 14, no. 12 (2025): 51–60. <https://doi.org/10.6679/t5x1tm79>.

legal certainty for investors and protecting the rights of indigenous peoples is an absolute requirement for realizing sustainable and equitable economic development in Papua.

METHODS OF THE RESEARCH

This research employs a normative legal research method with a qualitative approach, focusing on the analysis of legal norms related to investment in Papua and the protection of indigenous peoples' rights. The approaches used include a statute approach to examine laws and regulations, a conceptual approach to examine legal theories such as legal certainty, justice, and legal pluralism, and a case approach to examine court decisions and investment conflicts in Papua. The legal materials consist of primary (statutory regulations, the constitution, court decisions), secondary (academic literature, journals, expert opinions), and tertiary (legal dictionaries/encyclopedias). Data collection was conducted through library research, while analysis was conducted descriptively and qualitatively to describe legal norms, identify normative conflicts, and formulate harmonization of investment regulations with the protection of indigenous peoples' rights. This research is expected to provide a comprehensive overview of the dynamics of investment law in Papua as well as conceptual solutions for legal harmonization.

RESULTS AND DISCUSSION

A. Normative Conflict between National Investment Regulations and Recognition of Indigenous Peoples' Rights

The investment legal framework in Indonesia is essentially built to provide legal certainty for investors, both domestic and foreign.⁸ This is reflected in Law No. 25 of 2007 concerning Investment, which emphasizes that the state guarantees equal treatment for investors, provides certainty over ownership rights, and provides dispute resolution mechanisms through litigation and arbitration. This regulation emphasizes the creation of a conducive, competitive, and growth-oriented investment climate.⁹ Legal certainty is a key aspect, because without certainty, investors will face high risks which in turn can reduce interest in investing.¹⁰ However, the orientation of legal certainty for investors often clashes with the constitutional mandate stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. Article 18B paragraph (2) states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with societal developments. Meanwhile, Article 28I paragraph (3) emphasizes that the cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilization. This constitutional norm places indigenous communities in a fundamentally guaranteed position, so that every development policy, including investment, should pay attention to and respect the customary rights of indigenous communities. Normative conflicts arise because the 2007 Investment Law places more emphasis on investors' interests in obtaining legal certainty over land, while the constitution demands protection of customary rights.¹¹ In practice, this

⁸ Purba, TMH. "Challenges in Investment Legal Regulation in Indonesia to Drive Economic Growth". *Innovative: Journal of Social Science Research*, 4, no. 6 (2024): 5327-5333. <https://doi.org/10.31004/innovative.v4i6.17118>

⁹ Fahrurrahman, "Legal Protection for Foreign Investors in Investment in Indonesia: Analysis of Law No. 25 of 2007 concerning Investment," *Journal Scientific of Mandalika* 5, no. 7 (2024): 291-305, <https://doi.org/10.36312/10.36312/vol5iss7pp293-305>

¹⁰ B. Hutahayan, "Investment Decision, Legal Certainty and Its Determinants: Evidence from Indonesia," *Journal of Economics and Business* 8, no. 1 (2024): 45-60, <https://doi.org/10.1080/23311975.2024.2332950>

¹¹ Gina Nurthika, "Legal Certainty in Investment: A Case Study of Foreign Investment in Indonesia," *Journal of Law and Development* 40, no. 2 (2010): 115-130, <https://lib.ui.ac.id/file/digital/2016-8/20325595-S24912-Gina+Nurthika.pdf>

creates a dualism of norms that is difficult to implement in a balanced manner. On the one hand, central and regional governments feel obligated to grant business permits to support economic development. On the other hand, indigenous communities demand recognition of their customary rights, which have been passed down through generations and form the basis of their social, economic, and spiritual lives.

This normative conflict then creates legal uncertainty in the implementation of investment in Papua. For example, investment permits issued by the government are often not accompanied by meaningful consultation with indigenous communities holding customary land rights.¹² As a result, indigenous communities feel neglected and resist, triggering protracted disputes between companies and local communities. This type of legal uncertainty actually backfires on investors, creating social and legal risks that impact the viability of investment projects. From the perspective of legal pluralism, Papua is a clear example of the overlap between state law and customary law.¹³ John Griffiths emphasized that legal pluralism occurs when various legal systems coexist and interact with each other. In the Papuan context, although state law legitimizes investors, indigenous communities still adhere to customary law, which recognizes customary rights. Without a harmonization mechanism, this overlap creates uncertainty and normative conflict. Furthermore, this conflict demonstrates the dilemma between legal certainty and substantive justice. Investment regulations guarantee formal certainty for investors, but do not always provide substantive justice for indigenous communities. In Gustav Radbruch's theory, the law is required to provide not only certainty but also justice and benefit. When the law emphasizes only certainty for investors without considering social justice for indigenous communities, the law loses its substantial legitimacy.¹⁴

Thus, the normative conflict between the Investment Law and the Constitution is not merely a technical difference, but rather a reflection of the tension between the interests of economic development and the protection of indigenous peoples' rights. This situation underscores the need for a clearer and more inclusive legal harmonization mechanism, so that legal certainty for investors can go hand in hand with the recognition and protection of indigenous peoples' rights, as mandated by the constitution. To better understand the dynamics of normative conflict between investment regulations and the recognition of indigenous peoples' rights, consider a number of land conflict cases in Papua. These cases demonstrate that even though investments have received formal legitimacy from the state through permits, indigenous communities continue to resist when their customary rights are not respected. One prominent example is the conflict between the Amungme and Kamoro indigenous peoples and PT Freeport Indonesia.¹⁵ This mining company obtained official permission from the central government in 1967 through a Contract of Work. However, the permitting process did not involve the indigenous people who hold customary land rights. For the Amungme and Kamoro people, the land used for mining is sacred territory with high spiritual value. The absence of a consultation mechanism with the indigenous people has given rise to dissatisfaction, social protests, and even ongoing

¹² Hasim Sukamto, "Legal Protection for Foreign Investors at Normative and Implementation Levels in Indonesia," *International Journal of Law, Crime and Justice* 8, no. 1 (2025): 1–15, <https://international.appihi.or.id/index.php/IJLCJ/article/download/567/517/2496>.

¹³ Petrus Tekege, "Customary Rights of Papuan Customary Law Communities: Between Recognition and Reality," *Journal of Law and Public Policy* 7, no. 2 (2025): 200–215, <https://journalversa.com/s/index.php/jhkp/article/download/3882/4389/13129>

¹⁴ Ahmad Hariri, "Legal Pluralism Conceptualization and Its Implications in Indonesia," *Walisongo Law Review* 5, no. 1 (2024): 146–160, <https://journal.walisongo.ac.id/index.php/walrev/article/view/25566/6797>.

¹⁵ Sanna T. Panggabean, "Freeport and Land Conflicts with Indigenous Communities in Papua," *Journal of Legal Studies* 12, no. 2 (2021): 87–102, <https://doi.org/10.33331/kajianhukum.v12i2.1123>.

conflict.¹⁶ This case reflects how the orientation of legal certainty for investors actually creates social uncertainty due to the neglect of customary rights. Another case can be found in the palm oil plantation sector in Papua, for example, the conflict between PT Nabire Baru and the Yerisiam Gwa indigenous community in Nabire Regency. The palm oil company obtained a plantation permit from the local government, but the indigenous community objected because their customary land was taken over without their consent. The compensation offered was disproportionate to the land's cultural and ecological value to the indigenous community.¹⁷ As a result, there have been various acts of rejection, lawsuits, and the involvement of civil society organizations to fight for the rights of indigenous peoples.

These two cases demonstrate that formal permission from the government based on the Investment Law does not necessarily remove the legitimacy of customary law.¹⁸ Indigenous communities continue to hold claims to their customary lands, so without a harmonization mechanism, conflicts will continue. These conflicts not only cause social harm to indigenous communities but also create legal uncertainty for investors, as projects are hampered by protests, disputes, and even potential criminalization. From a legal perspective, this situation demonstrates a gap in constitutional implementation. On the one hand, Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution explicitly guarantee the rights of indigenous peoples. However, in practice, investment regulations are predominantly implemented without regard to these constitutional norms. This demonstrates a gap between the law on the books and the law in action. Thus, the normative conflict between investment regulations and the recognition of indigenous peoples' rights in Papua is not merely a theoretical issue but is also clearly reflected in practice. The Freeport and palm oil plantation cases demonstrate the urgency of regulatory harmonization. Without synchronization, investments intended to improve welfare could potentially create structural injustice and reinforce the marginalization of indigenous peoples in their own lands.

B. Implementation of Investment Law and Conflict Cases in Papua

1. Investment Implementation Practices and Licensing Mechanisms

The implementation of investment law in Papua is normatively based on Law Number 25 of 2007 concerning Investment, Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (OSS), and sectoral regulations in the mining, plantation, and forestry sectors. Formally, these regulations emphasize legal certainty for investors by providing a centralized and integrated licensing mechanism. However, in the Papuan context, problems arise because customary lands of indigenous communities are the primary target of investment, whether for mining, plantations, or infrastructure. Licensing procedures generally involve only local and central governments, with no substantive obligation to involve indigenous communities.¹⁹ This creates tension because, under customary law, customary land cannot be transferred without deliberation and the consent of the customary community. As a result, formal legal mechanisms often

¹⁶ Yanuarti, S. "Poverty and Conflict in Papua Amid Abundant Resources". *Journal of Political Research* 9, no. 1 (2012): 14-33. <https://doi.org/10.14203/jpp.v9i1.446>

¹⁷ JF McCarthy, "Sacred Sites, Land, and Mining in Papua," *Indonesia and the Malay World* 47, no. 138 (2019): 150-171, <https://doi.org/10.1080/13639811.2019.1580202>

¹⁸ Safitri, N. "Social Problems and Conflict Between Papuan Indigenous Communities and Pt Freeport Indonesia (An Anthropological Review)." *Perspektif* 1, no. 1 (2016), 79. <https://doi.org/10.31289/perspektif.v1i1.79>

¹⁹ Mahfudzotul Ilmiyah & Naila Shofi. "Human Rights of Papuan Indigenous Peoples to Common Land and The Environment Under the Pressure of Mining Investment and State Infrastructure." *Causa Justitia* 5, no. 1 (2025). <https://doi.org/10.6679/t5x1tm79>

conflict with customary legal norms that exist within the community. This condition has two consequences: For investors, projects have the potential to be hampered by resistance from indigenous communities. For indigenous communities, there is a dispossession of living space and a loss of control over land that has social, cultural and spiritual value.

2. Disputes between Companies and Indigenous Communities

Land disputes in investment in Papua arise as a direct result of legal disharmony. For example: The Case of PT Freeport Indonesia and the Amungme-Kamoro Tribe: Since 1967, Freeport has obtained an exploitation permit through a Contract of Work. However, this permit was granted without the consent of the indigenous landowners. This conflict has continued for decades, taking various forms, from social protests and lawsuits to intervention by international human rights organizations. The Freeport case is the most prominent example of investment conflict in Papua. The granting of Contracts of Work (CoW) since 1967 demonstrates a development paradigm that places the state in full authority over natural resources, while ignoring the customary rights of indigenous communities.

From an investment law perspective, the Freeport contract is legitimate because it has the legitimacy of the central government. However, from a constitutional perspective (Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution), the contract lacks social legitimacy because it ignores the traditional rights of indigenous communities.²⁰ As a result, for decades there has been alienation of indigenous peoples from their ancestral lands, followed by environmental damage that has worsened their quality of life. This case demonstrates that legal certainty for investors does not automatically mean certainty of justice. The absence of free, prior, and informed consent (FPIC) mechanisms creates unequal bargaining power for indigenous communities, giving rise to structural conflicts that are difficult to resolve through conventional litigation mechanisms. The case of PT Nabire Baru with the Yerisiam Gwa Indigenous Community (Nabire Regency) The granting of a palm oil plantation permit by the local government sparked a dispute because customary land was taken over without a customary deliberation process. Efforts to resolve the dispute through financial compensation were deemed disproportionate to the land's cultural value. This conflict even involved the support of civil society organizations, which highlighted the weak protection of indigenous peoples' rights within the investment legal framework. The PT Nabire Baru conflict highlights another dimension of investment law's problematic nature: unequal compensation. Cash compensation cannot replace the spiritual, social, and cultural value of customary land. Under Papuan customary law, customary land is not simply a commodity but a symbol of community identity and continuity.²¹ From a formal regulatory perspective, the company is deemed to have fulfilled its legal obligations by obtaining permits from the local government. However, substantively, it violates the principles of fairness and participation.²² This situation highlights the gap between formal legality and social legitimacy. This gap has fueled ongoing conflicts between companies and indigenous communities.

²⁰ Arizona, Y. "Legal Pluralism and the Protection of Indigenous Peoples' Land Rights". *Jurnal Rechtsvinding* 9, no. 1 (2020): 23-39. <https://doi.org/10.33331/rechtsvinding.v9i1.389>

²¹ Ilmiyah, M., & Shofi, N. "The Human Rights of Papuan Indigenous Peoples to Customary Land and the Environment Under Pressure from Mining Investment and State Infrastructure". *Causa Justitia*, 5, no. 1 (2025). <https://ejournal.cahayailmubangsa.institute/index.php/causa/article/view/4063>

²² Wamafma, F. *Investment Policy Regulations to Protect Indigenous Peoples' Rights in West Papua Province*. STIH Mankwari Press, 2020.

The case of the Palm Oil Plantation in Merauke Regency (Merauke Integrated Food and Energy Estate – MIFEE). The MIFEE project is supported by national regulations as a strategic project, but in practice, the Marind indigenous people are experiencing loss of access to their customary lands and forests. This conflict confirms that a legally valid investment project actually threatens the existence of indigenous communities, which is guaranteed by the constitution. The MIFEE case is a concrete example of how a national strategic project can conflict with the rights of indigenous peoples. Although the project is supported by national regulations and viewed as a solution to food security, its implementation compromises the customary rights of the Marind people. Legally, this project creates a conflict of norms between the Investment Law, which guarantees legal certainty for investors, and the constitution, which recognizes customary rights. The Marind community loses access to their customary lands and forests, impacting not only their economy but also the continuity of their culture and collective identity. The MIFEE case shows that development oriented towards national interests is not always in line with protecting the rights of local communities.²³ This demonstrates the need for a multi-layered governance approach that is capable of bridging national development interests with the protection of local communities.

3. Weak Legal Harmonization

The cases above show that the implementation of investment law in Papua faces structural problems in the form of disharmony between national law and customary law.²⁴ Investment regulations emphasize legal certainty for investors, while the constitution, through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution, guarantees the existence and rights of indigenous communities. This disharmony has given rise to exclusionary practices, where indigenous communities have no room to participate in the licensing process or dispute resolution. Furthermore, dispute resolution mechanisms often involve formal legal channels or litigation, which do not fully reflect the cultural values of indigenous communities. Consequently, substantive justice is difficult to achieve, and disputes tend to drag on. Thus, the implementation of investment law in Papua is a clear illustration of the weak legal harmonization. The legal certainty promised to investors has instead created social and political uncertainty due to the marginalization of indigenous communities. Therefore, a regulatory harmonization approach is needed that integrates investment interests with the protection of indigenous peoples' rights, including through the application of the principle of free, prior, and informed consent (FPIC), strengthening public consultation obligations, and formal recognition of customary law in investment licensing schemes.

From the analysis of the three investment cases in Papua, it can be concluded that the main problem lies in the normative conflict between national investment regulations and the recognition of indigenous peoples' rights as guaranteed by the constitution. This disharmony not only creates legal tensions but also has a direct impact on social, economic, and environmental conflicts in the Papua region. The formal legality attached to business permits often does not equate to social legitimacy in the eyes of indigenous communities. Therefore, even though permits are legally valid, their implementation still triggers

²³ Ratna, D. (2020). "Investment and Expropriation of Customary Land in Papua: A Case Study of MIFEE," *Journal of Law and Society* 4, no. 1 (2020): 49–63. <https://doi.org/10.33331/jhm.v4i1.2020>.

²⁴ Maryam, R. "Land Acquisition of Customary Land of Papuan Customary Law Communities in the MIFEE (Merauke Integrated Food and Energy Estate) Program Reviewed from an Agrarian Law Perspective." *J-LEE - Journal of Law, English, and Economics* 5, no. 1 (2023). <https://doi.org/10.35960/j-lee.v5i1.1117>

resistance due to perceived moral and cultural flaws. The absence of the principle of free, prior, and informed consent (FPIC) further exacerbates the situation, as indigenous communities are positioned merely as objects of development without meaningful involvement in the decision-making process.²⁵ As a result, substantive justice, which should be the spirit of law enforcement, is neglected, and the legal certainty promised by the Investment Law actually creates uncertainty in its implementation on the ground. This situation underscores the need for reformulation of investment legal policy that better supports the principles of justice, participation, and social sustainability.

C. The Idea of Regulatory Harmonization: Legal Certainty and Social Justice

Harmonizing investment regulations in Papua is a necessity when faced with the reality of clashes between economic development interests and the protection of indigenous peoples' rights. Normatively, Law Number 25 of 2007 concerning Investment emphasizes the importance of legal certainty for investors to ensure a stable and conducive business climate. However, the constitution, through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution, emphasizes that the state is obliged to recognize and protect indigenous peoples and their traditional rights. This normative tension demonstrates the need for regulatory design that can bridge these two interests: legal certainty for investors and social justice for indigenous peoples. One relevant approach is the integration of customary law into the national investment legal framework. Papuan customary law plays a fundamental role in regulating communities' relationships with land and natural resources. Customary land is not viewed merely as an economic asset, but as a symbol of the identity, spirituality, and survival of indigenous communities. Therefore, investment licensing mechanisms must not only comply with state administrative procedures but also institutionalize the principle of free, prior, and informed consent (FPIC). This principle requires the free, prior, and informed consent of indigenous communities, undertaken before permits are granted, and based on complete and transparent information regarding the impacts of investment projects.

Implementing FPIC within the context of national law can be achieved through mandatory substantive public consultation in the licensing process. Consultation should not be viewed as an administrative formality, but rather as an equal deliberative forum between the government, investors, and indigenous communities.²⁶ This is where customary law can serve as an instrument of social legitimacy, ensuring that any investment undertaken has a strong basis for acceptance by local communities. This way, recurring social conflicts resulting from the exclusion of indigenous peoples can be minimized. Furthermore, strengthening the role of local governments is a crucial aspect of regulatory harmonization. As the entities closest to the community, local governments have the capacity to accommodate local aspirations while bridging national interests. Regional regulations (Perda) can function as instruments for recognizing customary law and as operational guidelines for equitable investment licensing. For example, Perda can regulate customary deliberation mechanisms as a prerequisite for permit issuance, or establish compensation procedures that align with the cultural values of customary land. Thus, local governments

²⁵ Purwadi, MA, Hafizrianda, Y., & Riani, IAP. "Investment Growth Target and Investment Development Strategy Plan for Papua Province". *Journal of Regional Economic and Financial Studies* 3, no. 2 (2018). <https://doi.org/10.52062/keuda.v3i2.706>

²⁶ Salsabila, AR, Nugroho, AA, & Gusthom, MI. "Analysis of State Administrative Decisions: Protection of the Wadas Community's Rights to the Bener Dam Mining Project Licensing Based on the Principle of Free and Prior Informed Consent (FPIC). ISO" *Journal: Journal of Social, Political and Humanitarian Sciences* 4, no. 2 (2024): 1-10. <https://doi.org/10.36563/iso.v4i2.1897>

act not only as an extension of the state but also as guardians of the balance between legal certainty and social justice.

Regulatory harmonization also requires adopting a progressive legal approach that positions the law not merely as an instrument of formal certainty, but as a means of realizing substantive justice. This aligns with Satjipto Rahardjo's notion that the law must side with people and humanity.²⁷ In the Papuan context, investment law must not only serve the interests of capital and economic growth, but also ensure the social and cultural sustainability of indigenous communities. Thus, law becomes an instrument of inclusive social transformation. This harmonization initiative can be practically realized through three main pillars: first, integrating customary law into the national investment licensing system by recognizing the legality of indigenous peoples' consent. Second, consistently implementing the principle of Free, Prior, and Informed Consent (FPIC) as the minimum standard before granting investment permits. Third, strengthening the role of local governments in developing derivative regulations that align with local wisdom and the interests of sustainable development. This harmonization model ensures legal certainty for investors, as regulations become more transparent and have strong social legitimacy. Furthermore, indigenous communities enjoy social justice because their traditional rights are respected and they are actively involved in the development process. This means that investment in Papua can proceed not only legally, but also fairly and sustainably.

CONCLUSION

National investment regulations, as stipulated in Law concerning Investment, have provided legal certainty for investors. However, in the Papuan context, this legal certainty often clashes with constitutional norms that recognize and protect indigenous peoples' rights to customary land. This normative clash creates a legal dilemma between the orientation toward economic development and the state's obligation to protect the traditional rights of indigenous peoples. The implementation of investment law in Papua still faces challenges in the form of overlapping regulations, weak inter-agency coordination, and minimal participation of indigenous communities in the licensing and decision-making process. This is evident in the numerous land conflict cases between indigenous communities and companies, demonstrating the suboptimal function of the law in providing substantive justice. Harmonization of investment regulations with the protection of indigenous peoples' rights is an urgent need. Investment laws must not only guarantee certainty for investors but also ensure social justice for indigenous peoples. This harmonization can be achieved through the integration of the principle of legal pluralism, meaningful public consultation, and a mechanism for obtaining indigenous peoples' consent before permits are issued.

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²⁷ Aulia, MZ. "Progressive Law from Satjipto Rahardjo". *Undang: Jurnal Hukum* 1, no. 1 (2018): 159–185. <https://doi.org/10.22437/ujh.1.1.159-185>.

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