




Involvement of Indigenous People In The Utilization of Natural Resources For Investment Activities

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Article Info	Abstract	
<p>Keywords: Involvement; Indigenous People; Investment.</p>	<p>Introduction: Constitutionally, Indigenous Peoples are 'subjects' of natural resources which are the rights of Indigenous Peoples that have been managed and maintained for generations based on their local wisdom. Indigenous Peoples must be involved in investment activities through the involvement of Indigenous Peoples from the beginning of the planning stage to provide input and other involvement in share ownership of investment or business activities.</p> <p>Purposes of the Research: This research was conducted with the aim of knowing and analyzing the form of fulfillment of the involvement of Indigenous Peoples in the implementation of investment activities.</p> <p>Methods of the Research: The research conducted is normative. For this reason, the problem approaches used are: a statutory approach, a conceptual approach, and a human rights-based approach. The sources of legal materials used consist of primary legal materials and secondary legal materials. And then the legal materials are collected for inventory and used in the analysis of the problems raised.</p> <p>Results of the Research: The fulfillment of the rights of Indigenous Peoples to customary territories and rights to manage natural resources in investment activities has not been fully realized. The government must ensure that the fulfillment of the rights of Indigenous Peoples in investment activities is accommodated and not violated in the preparation of laws and regulations. So that the legal certainty of the involvement of Indigenous Peoples in investment can be fulfilled, in the form of involvement from the planning stage to the implementation of the investment.</p>	

1. INTRODUCTION

Indigenous peoples can be defined as community associations that have inhabited a certain area for generations. Within the Indigenous Peoples alliance, a political entity such as a kingdom or a state has been formed. In the history of their development, Indigenous Peoples have public rights and authority in managing society in the fields of law (custom), social, culture, and economy which, if viewed carefully, they are part of the Unitary State of the Republic of Indonesia, even with the existence and with the support of Indigenous Peoples, the Republic of Indonesia can declare independence.

Recognition of the existence of Indigenous Peoples and their rights within the Unitary State of the Republic of Indonesia has been confirmed in Article 18B paragraph (2) and Article 28I paragraph (3) and paragraph (4) of the Constitution of the Republic of Indonesia in 1945. Article 18B paragraph (2) Constitution of the Republic of Indonesia in 1945: "The

state recognizes and respects customary law community units and their traditional rights throughout their lives and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law"

It is stated in Article 28I paragraph (3) and paragraph (4) that:

- 1) The cultural identity and rights of traditional communities must be respected in line with the development of times and civilizations;
- 2) The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government.

The above arrangement is the constitutional basis for recognizing the existence of Indigenous Peoples in Indonesia. The regulation implies that at the national level the recognition, respect, and protection of Indigenous Peoples and the Rights of Indigenous Peoples is clearly stated in the 1945 Constitution of the Republic of Indonesia. The formulation of Article 28I paragraph (4) shows the existence of a constitutional obligation of the Republic of Indonesia in the protection, promotion, enforcement, and fulfillment of human rights, including the rights of Indigenous Peoples because the rights of Indigenous Peoples are also human rights.

Then at the international level, it needs to be explained that since September 13, 2007, at the General Assembly of the United Nations, the United Nations Declaration on the Rights of the Indigenous Peoples has been ratified. This document is a breakthrough at the international level and is an achievement in the struggle to protect, recognize, respect, and fulfill the rights of Indigenous Peoples.¹

According to the Article 71 and Article 72 of Law Number 39 of 1999 concerning Human Rights, recognition of human rights in the constitution implies that the Unitary State of the Republic of Indonesia through its government has the mandate to respect, protect, fulfill, and advance its people. Effective implementation steps need to be implemented in the legal, social, economic, political, defense, and security fields and other fields. This reflects that in setting policies and actions in any field, it must be based on a human rights approach, no longer a needs approach.

This must be understood by the Government of the Republic of Indonesia (both at the central and regional levels) because in determining the direction of policies and regulations, the government often uses a needs approach, for example determining policies in the investment or investment sector. In this case, the government uses a needs approach, namely the need for capital to carry out national development. Through this approach, sometimes the protection and fulfillment of human rights, including the protection and fulfillment of Indigenous Peoples and the rights of Indigenous Peoples, is neglected.

Government policies in the investment sector often cause problems due to violations of rights to customary areas (land/land) owned by Indigenous Peoples, rights to natural resource management which includes forestry, mining, agriculture, plantations, and marine affairs, and the right to a clean and healthy environment. This is because the areas and management of natural resources that were previously owned and managed by the

¹ PBB, *United Nations Declaration On The Rights of Indigenous Peoples (Deklarasi Perserikatan Bangsa-Bangsa Tentang Hak-Hak Masyarakat Adat)*, trans. Sem Karoba (Jakarta: Ndugu-Ndugu Research & Publishing Foundation, Galangpress, 2007), p. 12.

Indigenous Peoples for generations, were transferred to areas of state power whose arrangements are determined based on the positive law of the Republic of Indonesia.²

Many cases arise due to the formation of legal products that weaken the existence of Indigenous Peoples because the Government of the Republic of Indonesia takes over the rights owned by Indigenous Peoples and turns them into state property. Furthermore, on behalf of the state, these rights are granted and/or handed over to the owners of capital (investors) through various licensing schemes to be explored/exploited without paying attention to the fulfillment of the rights of Indigenous Peoples and the local wisdom of Indigenous Peoples in their customary territories.

The rights of Indigenous Peoples over their territories (land, land, and sea) which are above or below which natural resources are located will be used as objects of investment activities on the grounds of national development in the public interest for the welfare of the people at large. The government without Indigenous Peoples approval grants investment permits to investors to explore and exploit the rights to customary areas (land, land, and sea) owned by Indigenous Peoples. This problem is a trigger and a source of conflict that causes prolonged human rights violations against Indigenous Peoples by the Government and entrepreneurs/investors.

The problems above are often motivated by various conflicts between laws, government regulations, and various policies of the Minister and the Director-General of Departments, Governors, Regents, and Mayors that regulate the existence of Indigenous Peoples and their rights of Indigenous Peoples. This is contradictory to the 1945 Constitution of the Republic of Indonesia which constitutionally recognizes the existence, cultural identity, and traditional rights of Indigenous Peoples. Indigenous Peoples are not involved in planning investment activities, either by the government or by investors.

The constitution has mandated those responsible for the fulfillment and protection of human rights, including the right of Indigenous Peoples to be on the shoulders of the State/Government, as formulated in Article 28I paragraph (4). The government is obliged and responsible for respecting, protecting, and fulfilling human rights as regulated in the 1945 Constitution of the Republic of Indonesia, the Human Rights Law, other sectoral laws and regulations, and international law that has been accepted by the Indonesian state.

Based on the description above, this research raises the following problems to be analyzed: 1) Should Indigenous Peoples be involved as parties in investment activities? 2) What type of involvement of Indigenous Peoples in investment activities?

2. METHOD

This research is normative and takes a statutory approach, a conceptual approach, and a human rights-based approach. The sources of legal materials used consist of primary legal materials (in the form of statutory regulations), and secondary legal materials.³ Primary legal materials were collected using the method of inventory and categorization and carried out through a literature study. The legal materials that have been classified and systematized are studied, reviewed and compared, and analyzed normatively. The results of the analysis are in the form of arguments against the problems raised and from these arguments will be born a prescription for solving the problems being analyzed.

² Cornelius van Vollenhoven, *De Indonesier En Zijn Ground*, trans. Sekolah Tinggi Pertanahan Nasional, HuMa, and Sayogo Institut (STPN, HuMa, Sayogo Institut, 1919), p. 14-15.

³ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), p. 181-184.

3. RESULTS AND DISCUSSION

3.1 Regulation of Involvement of Indigenous People in Investment Activities

The meaning of the word "involvement" as a process of involving Indigenous People as parties in investment or investment activities, elicits questions. This question can be explained as follows: Involvement of Indigenous People as parties in investment activities, because Indigenous Societies are the Owners of Customary Areas (ground, land, and sea) above or below there are natural resources which are objects of investment activities, as well as Indigenous Societies are Rightsholders in this case traditional rights (innate rights) which they have inherited from generation to generation, rights to natural resources management (on land, rivers, seas, and coasts), and Indigenous People as Legal Society.

Existence of Indigenous People in the Constitution of the Republic of Indonesia, was originally formulated in Article 18 of the 1945 Constitution (before the amendment), as described in Article 18 this is explained that: "the territory of the State of Indonesia there are approximately 250 *zelfbestuurende landschappen* and *volksgemeen schappen*. Such as: 'Village' in Java and Bali, 'Nagari' in West Sumatra, 'Banua' in West Kalimantan, 'Lembaga' in Toraja, 'dusun' dan 'marga' in Palembang, and 'Negeri', 'Ohoi', and 'Leke' in the Moluccas, as well as other forms in other areas in Indonesia". Then after the 1945 Constitution was amended, the recognition and respect for the unity of Indigenous People and their traditional rights they are formulated in Article 18B Paragraph (2) Constitution of the Republic of Indonesia in 1945 and the Rights of Indigenous People as the human rights recognized in Chapter X Constitution of the Republic of Indonesia in 1945, Article 28, first paragraph (3) and Article 28H Paragraph (4).

The involvement of Indigenous Society as parties in investment activities is also due to the fact that so far, the investment activities carried out by the Government of Indonesia jointly with investors (both foreign and domestic) have never involved Indigenous Society. Most of the investment activity areas in Indonesia are located in customary areas owned by Indigenous People.

The regulation of Indigenous People in human rights instruments can be seen in human rights instruments at the international and national levels. International Instruments in the form of:

- a) Universal Declaration of Human Rights of 1948;
- b) International Labor Organization, Convention 109 1989 concerning Indigenous People and Tribal People;
- c) United Nations on The Rights of Indigenous Peoples (UNRIP), 2007.

Besides the international instruments above, human rights instruments are also regulated in the National, including:

- a) the Constitution of the Republic of Indonesia in 1945;
- b) Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX of 2001 concerning Agrarian Reform and Management of Natural Resources;
- c) Law Number 5 of 1960 concerning Principal Basic Regulations Of Agrarian;
- d) Law Number 39 of 1999 concerning Human Rights;
- e) Law Number 6 of 2014 concerning Villages;
- f) Law Number 23 of 2014 concerning Regional Government and its amendments;
- g) Law Number 17 of 2019 concerning Water Resources; and

- h) Law Number 11 of 2020 concerning Job Creation which unites several sectoral laws governing investment, Indigenous Peoples and Indigenous Peoples' rights to customary areas (land, land, and sea), and Indigenous Peoples' rights to natural resource management which are objects of investment (investment), which is in an area owned by Indigenous Peoples.

The above instruments indicate that at the international and national levels, the existence of the Human Rights of Indigenous Peoples is highly respected and protected. Constitutionally, if there is a violation of the Human Rights of Indigenous Peoples in the implementation of investment activities, then the formulation of Article 18B paragraph (2) and Article 28I becomes the basis for the settlement of the violation that is intended.

Despite the change in the direction of legal politics towards the recognition, respect, protection, fulfillment of the rights of indigenous peoples, the fate of indigenous peoples and the rights of indigenous peoples has not changed significantly. First, the recognition and respect for customary law communities as regulated in Article 18B paragraph (2) and 28I paragraph (3) of the 1945 Constitution has not yet been implemented, and therefore indigenous peoples have not received real benefits. The position of indigenous peoples who are not legal subjects, not only does not have the authority to control a property right, but also has not optimally been able to litigate in court. In fact, Law Number 24 of 2003 provides an opportunity for indigenous peoples to be able to litigate at the Constitutional Court of the Republic of Indonesia.

Recognition of the existence of Indigenous Peoples shows that Indigenous Peoples are recognized as entities that have rights to natural resources that have been managed for generations. The recognition of their 'traditional rights' shows that the rights that have been owned by the Indigenous Peoples have been recognized constitutionally. With the constitutional recognition based on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the existence of Indigenous Peoples should also be recognized as 'subject' who has rights to Indigenous Peoples' natural resources which are used as investment areas, and not only as 'objects' in investment activities.

Indigenous Peoples in the position as subjects in the use of natural resources on land, land, and sea which are the property of Indigenous Peoples, become very important. MHA has a bargaining position in the use of natural resources, to minimize conflicts that lead to the violation of constitutional rights and human rights violations against Indigenous Peoples by the Government and by investors.

Furthermore, in the face of globalization and information disclosure, the strengthening of economic rights needs to be balanced with the principles that protect the economic rights of Indigenous Peoples, as well as the rules governing the obligation of the State to facilitate relationships or relationships that may occur between Indigenous Peoples and Indigenous Peoples and other units of modern society such as investors or other outside parties. The Government of the Republic of Indonesia must ensure that the fulfillment of the rights of Indigenous Peoples over customary areas (land, land, and sea) and the rights to natural resource management in investment activities are accommodated and not violated in the preparation of implementing regulations of Law Number 11 of 2020. Thus legal certainty in investing, while at the same time providing fulfillment of the rights of Indigenous Peoples to customary areas (land, land, and sea) and the rights to natural resource management in investment activities can be fulfilled.

3.2 The Involvement of Indigenous Peoples in Investment Activities

The government, as the holder of the right to control the state, is obliged to fulfill the needs of all the people for the availability of land, water and natural resources, as clearly regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that: "The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people".

Relating to the process of implementing investment activities in Indonesia has been carried out through the submission of applications by investors to the Government, in this case, the investor submits an application to the Ministry of Investment (previously the Ministry of Investment used the nomenclature of the Investment Coordinating Board) in Jakarta, if all the necessary administrative requirements have been met, then Investment Coordinating Board grants permission to investors. Furthermore, based on the permission from Investment Coordinating Board, investors go to the Provincial Government where the investment activity area is located, then the Provincial Government through the Provincial Investment Coordinating Board (now the One-Stop Investment and Service Office) provides recommendations to investors. With the recommendation from the Provincial Government, investors will bring and provide it to the Regency/City Regional Government through the Regency/City Investment Coordinating Board. Then, the Regency/City Investment Coordinating Board issues recommendations to the Camat where the investment activities are implemented. Based on the recommendation from the Regency/City Investment Coordinating Board, the Camat immediately gave an operational permit, without approaching or consulting with the Indigenous Community as the owner of the customary area where the investment activities were carried out. Based on the recommendations and operational permits, investors will immediately carry out exploration activities followed by exploitation activities, without notifying MHA. If there are questions or objections from Indigenous Peoples, investors without coordinating with the local Indigenous Peoples and immediately ask for assistance from the Indonesian Police or Indonesian Army.

Philosophically, the rights to customary territories and the rights to manage natural resources by the Indigenous Peoples are the rights of the Indigenous Peoples and are the constitutional obligations of the State to provide fulfillment of these rights. It is seen from the situation that everyone has the same opportunity to enjoy their rights, it is an issue of justice. Justice demands that injustice be eliminated and that everyone is treated according to their rights, and there should be no arbitrary differences in treating members of society. A good law is a law that can at least minimize the danger of injustice.⁴

Regarding justice, John Rawls stated that: "justice must be able to provide fair opportunities and equal rights for all members of society to participate in every political and economic decision-making process".⁵ Rawls theory is in line with the ideals of the Unitary State of the Republic of Indonesia in the Precepts V of Pancasila which states "Social Justice for All Indonesian People". It is this spirit that must animate the recognition and fulfillment of the rights of Indigenous Peoples in controlling customary territories and managing natural resources, including protecting Indigenous Peoples from threats to the freedom of Indigenous Peoples to implement these rights.

The existence of the right to control the State does not mean that the State has the right to regulate customary areas and manage natural resources according to their wishes without involving the Indigenous Peoples in the area. The right to control the State above is

⁴ Munir Fuady, *Dinamika Teori Hukum* (Bogor: Ghalia Indonesia, 2010), p. 43.

⁵ John Rawls, *Theory of Justice: Teori Keadilan*, trans. Uzair Fausan and Heru Prasetyo (Jakarta: Pustaka Pelajar, 2011), p. 228.

intended to achieve the greatest prosperity of the people in the sense of realizing happiness and prosperity for all Indonesian people.⁶ This means that the Republic of Indonesia on the one hand as an agent of development requires a lot of capital and territory (land, land, and sea) as well as natural resources which are the main capital to be used by the Unitary Republic of Indonesia. But on the other hand, the Unitary State of the Republic of Indonesia has the responsibility to protect the rights of indigenous peoples in the management of natural resources in the customs territory of the Indigenous Peoples, so that if these two responsibilities are brought together, then the Unitary State of the Republic of Indonesia must carry out these two responsibilities simultaneously, it cannot be just one of them, namely carrying out development. for the welfare of the community by utilizing existing customary areas and natural resources wisely and involving the Indigenous Peoples in the area, so that in the future there will be no rights violations. The State must develop and implement policies that ensure meaningful and effective participation of Indigenous Peoples in enjoying the benefits derived from their customary territories and natural resources.

The Republic of Indonesia should embody a government that respects and recognizes and accommodates the interests and rights of Indigenous Peoples, the government must provide space for the application of the principles of justice, the principles of democracy, the principle of participation, the principle of transparency, the principle of respect and the principle of recognition of local wisdom as reflected in the system, knowledge, institutions, and traditions that live and develop in Indigenous People's communities.⁷

The Unitary State of the Republic of Indonesia must provide portions that are following the current needs of Indigenous Peoples and also take into account the future for the sustainability of the existence of Indigenous Peoples. The Unitary State of the Republic of Indonesia must provide facilities or mechanisms that provide access to the community (Indigenous Peoples) to sue if these rights are not fulfilled.⁸ It is not an easy thing to bridge between two interests, namely the interests of the Republic of Indonesia in carrying out development and the interests of Indigenous Peoples over the ownership of customary territories and the management of natural resources. However, the government must continue to carry out its obligations wisely and fairly so that welfare can be realized for all Indonesian people, not only for a few people.

Cases faced by Indigenous Peoples related to the rights of Indigenous Peoples to the customary territory (land/land), rights to natural resources management concerning Government policies in the investment sector, it is very important for the Government to pay attention to and apply the Rights to Free, Priority Principle and Informed Consent as the right of Indigenous Peoples to state whether or not they agree with the planned implementation of investment activities that will enter the customary territories of Indigenous Peoples because the principle of FPIC can be a means for conflict resolution on the problems faced by Indigenous Peoples if dealing with development policies in the investment sector.

Internationally, it is this right to Free, Prior, and Informed Consent that is most widely fought for and demanded by international Indigenous Peoples, who demand that this right

⁶ Sri Harini, "Hukum Agraria" (Fakultas Hukum Universitas Kristen Satya Wacana, 2005), p. 46-47.

⁷ I Nyoman Nurjaya, *Pengelolaan Sumber Daya Alam Dalam Perspektif Antropologi Hukum* (Jakarta: Prestasi Pustaka, 2008), p. 45.

⁸ Majda El Muhtaj, *Dimensi-Dimensi HAM Mengurai Hak Ekonomi Sosial Budaya* (Jakarta: Raja Grafindo Persada, 2008), p. xxx.

be recognized in international law, and this demand is sponsored by several countries. The demands of these countries are submitted to the general assembly of the United Nations and following the provisions of the United Nations that a resolution can be accepted if submitted by nation-states representing the five continents.⁹ As a result of this demand, in 2007 through UN resolution session 61 agenda item 68 they accepted the proposal from the countries mentioned above and included it in The United Nations on the Rights of Indigenous Peoples (UNRIP) and included this right in Articles 10, 11 paragraph (2), 19, 28 paragraph (1), 29 paragraph (2), and 32 paragraph (2). The right to Free, Prior, and Informed Consent emphasizes that Indigenous Peoples has the right to freely state "accept" or "reject" a development plan within the customs territory of the Indigenous Peoples upon complete information submitted or obtained by the Indigenous Peoples since the plan was initiated. This means that every party who will carry out an investment or development project in the territory of the Indigenous Peoples is obliged to provide clear information about all aspects of the development project, including the good and bad impacts on the Indigenous Peoples. This is important considering the differences in value systems and ways of thinking and way of life between Indigenous Peoples and those outside their communities.

Regarding the right to Free, Prior, and Informed Consent, according to Ronald Z. Titahelu, the principles of exploitation by the State or third parties who receive rights from the State should pay attention to the principles of Social Justice, Just and Civilized Humanity, and Indonesian Unity. Therefore, to make customary law have a significant meaning, it is necessary to formulate rules regarding:¹⁰

- 1) Free, Prior, and Informed Consent needs to be obtained from Indigenous Peoples units before natural resources are managed by the State or third parties.
- 2) State's priority in managing natural resources outside the Indigenous Peoples unitary area, and also
- 3) Real benefits that will be directly enjoyed by the Indigenous Peoples concerned, which is determined through an agreement between the Indigenous Peoples unit and the management (State or third party). It is in this sense that the economic rights of the Indigenous Peoples units are gradually being restored or empowered.

Then Ronald Z. Titahelu¹¹, asserts that those things above are the way for the Indigenous Peoples unit to have natural ownership of the surrounding areas to manage them and at the same time serve as a financial source for the State Budget, Revenue, and Expenditures of the state, nagari, village or what is called by another name. If a country or what is referred to by another name cannot exploit one or several natural resources in its vicinity, then the country, nagari, village, or referred to by another name can transfer these rights within a certain period to the State, Province, or Regency/City. On the other hand, the State, Province, Regency/City as well as Private Parties who wish to control and exploit the said land or natural resource are required to obtain prior, Inform, Concentrated permits from the state, nagari, village, or what is called by another name.

Thus, in carrying out investment development in the territory of the Indigenous Peoples, efforts must be undertaken to improve the quality of the Indigenous Peoples who live around the areas where the investments are made so that the Indigenous Peoples can

⁹ PBB, *United Nations Declaration On The Rights of Indigenous Peoples (Deklarasi Perserikatan Bangsa-Bangsa Tentang Hak-Hak Masyarakat Adat)*. Op. Cit. p. 7.

¹⁰ R Z Titahelu, *Aneka Masalah Masyarakat Hukum Adat Dalam Pembangunan* (Yogyakarta: Deepublish, 2014), p. 30.

¹¹ Titahelu. *Ibid.*

catch up in various fields of life. Normatively, the obligation to develop Indigenous Peoples only covers the development of quality human resources in the fields of education, health, economic growth, and the environment.

It should also be noted that in the implementation of investment activities, business relations between Indigenous Peoples and investors, if in equity participation, the ownership of Indigenous Peoples over customary areas (land, land, and sea) and natural resources is collective, not private, so that in carrying out capital participation agreements the rights Indigenous peoples over their customary territory cannot be included as capital but the results obtained from the investment business are used as capital, because if the customary area (which is above or below it contains natural resources in the form of mining goods) if the business or company becomes bankrupt or bankrupt, then the customary area and natural resources located on it cannot be used as a guarantee.

The government issued Law Number 11 of 2020 in order to open up great opportunities for the growth of investment activities in Indonesia. The merging of cross-sectoral rules in Law Number 1 of 2020, is grouped based on the following clusters:

- 1) Business Licensing Simplification Cluster;
- 2) Investment Ecosystem Improvement Cluster;
- 3) Employment Cluster;
- 4) MSME and Cooperative Clusters;
- 5) Research and Innovation Cluster and Ease of Doing Business;
- 6) Taxation Cluster;
- 7) Economic Zone and Land Acquisition Cluster;
- 8) Government Administration Cluster; and
- 9) Government Investment Clusters and Ease of National Strategic Projects.

Based on the cluster grouping above, it can be seen that the ease of licensing is a priority in the clustering concerned, with the existence of the Investment Ecosystem Improvement Cluster and the Government Investment and Ease of National Strategic Projects Cluster (points 2 and 9). Ease in managing investment permits compared to before the issuance of Law Number 11 of 2020, through the transfer of most of the authority to grant investment permits from the Regional Government to the Central Government. The transfer of authority to grant permits for licensing activities to the Central Government can increase the space for conflicts of interest between the government and indigenous peoples. The transfer of authority to grant investment activity permits from the Regional Government to the Postal Government, is actually not the only right solution to reduce the space for conflict of interest. The government should involve the customary law community from the start of planning an investment activity. This is because both investment activities and the existence of indigenous peoples are regulated in laws and regulations. For this reason, legal certainty is needed as a solution to conflicts.

Legal certainty emphasizes that laws or regulations are enforced as desired by the sound of the law/regulation. *Fiat Justitia et pereat mundus* (even though the world is collapsing the law must be upheld). The sociological value emphasizes the benefits for the community¹². In this regard, it is necessary to develop noble actions that reflect the attitude and atmosphere of harmony and mutual cooperation in the spirit of kinship. In order to maintain a balance between rights and obligations as well as respecting the rights of others, the Government must

¹² Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis* (Jakarta: Genta Publishing, 2009), p. 128.

initiate consultations with indigenous peoples, as legal subjects who hold rights to the area (land/land/sea) that is the object of the implementation of investment activities.

The Unitary State of the Republic of Indonesia must be able to realize the involvement of Indigenous Peoples in investment activities considering that the essential elements or nature of Indigenous Peoples are ownership, legal subjects, and holders of rights to customary areas (land, land, and sea) as well as rights to manage natural resources. In other words, every investment policy determination that deals with Indigenous Peoples and the rights of Indigenous Peoples must involve Indigenous Peoples, even the government must obtain approval from the local Indigenous Peoples.

4. CONCLUSION

Referring to the description of the discussion above, it is concluded that: 1. Constitutionally, Indigenous Peoples are the 'subjects' of natural resources which are the rights of Indigenous Peoples, which have been managed and maintained for generations based on their local wisdom. As subjects of rights holders to their natural resources, Indigenous Peoples should be involved in investment activities; and 2. The rights of Indigenous Peoples to customary areas (land, land, and sea) and rights to natural resource management in investment activities can be manifested in the form of their involvement starting from the planning stage to providing input and other involvement, such as in the ongoing stages of investment or business activities. The fulfillment of the rights of Indigenous Peoples over customary areas (land, land, and sea) and rights to natural resource management in investment activities have not been fully realized in Law Number 11 of 2020.

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