

Implications of Investment Policy on Legal Certainty of Community Land Rights

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Abstract

This study aims to analyze the implications of investment policy on the legal certainty of people's land rights in Indonesia. Although investment is seen as a strategic instrument to encourage economic growth, government policies such as the Investment Law Number 25 of 2007 and the Job Creation Law often cause disharmony with the Basic Agrarian Law Number 5 of 1960. Through a normative juridical approach, this study examines the relationship between investment regulation and land rights protection, particularly in the context of agrarian conflicts that arise from overlapping authority, weak recognition of customary rights, and the unclear status of land law. The findings indicate that investment policy implementation often prioritizes the interests of investors over those of local communities, thereby increasing the potential for evictions, land disputes, and legal uncertainty. The case of Rempang Island and plantations in West Kalimantan confirms that inconsistent regulations contribute to the marginalization of society. This study recommends harmonizing regulations, strengthening conflict resolution mechanisms, and reforming land law to ensure a balance between economic interests and the protection of people's rights.

Keywords

Rempang; legal certainty; land rights; agrarian conflicts; customary rights

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1. INTRODUCTION

Investment serves as a vital tool for strengthening a nation's economic foundation. The presence of investors, whether domestic or foreign, is expected to increase capital inflows, supporting economic expansion, infrastructure improvement, and employment opportunities. Beyond its function as an economic engine, investment also plays a crucial role in enhancing labor market absorption, which in turn helps lower unemployment rates. (Anis Retno Triana et al., 2024)

Investment plays a crucial role in maintaining long-term economic development. To attract investors, it is essential to maintain a stable business environment, streamline administrative processes, and have a skilled workforce. Various elements, including economic, political, legal, institutional, and socio-cultural conditions, shape the overall attractiveness of an investment destination. Enhancing investment is necessary to transform economic potential into tangible national strength by utilizing both



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domestic and foreign capital, thereby accelerating economic progress and supporting Indonesia's economic and political independence. Nevertheless, the presence of investment may also give rise to complex issues, particularly those associated with the legal certainty of community land rights. (Isnainul et al., 2020)

Article 33 of the 1945 Constitution sets the foundation for Indonesia's investment governance, emphasizing that the national economy must be organized as a collective effort grounded in the spirit of cooperation. The state is mandated to oversee key sectors of production that significantly influence public welfare. Moreover, the Constitution stipulates that land, water, and natural resources are under state control and must be utilized to promote the prosperity of the people. Economic management in Indonesia adheres to the principles of economic democracy, which include shared prosperity, efficiency, sustainability, independence, and the pursuit of advancement while maintaining national economic unity. Further implementation of this constitutional mandate is elaborated in statutory regulations. (NKRI, 2004)

Additionally, the constitutional framework is reinforced by Investment Law No. 25 of 2007, which aims to foster economic expansion, stimulate employment opportunities, support sustainable development, enhance business competitiveness, strengthen technological capacity, and promote community-based economic progress. Investment activities in Indonesia are governed by several legal instruments, including Law No. 25 of 2007 on Investment and Law No. 11 of 2020, later revised by Law No. 6 of 2023 on Job Creation. Specifically, the Job Creation Law aims to enhance the investment climate by streamlining licensing procedures and reducing regulatory requirements. (Darmawan, 2024)

The introduction of government policy through the Investment Law, specifically Law No. 25 of 2007, aims to increase investor interest and accelerate national economic growth while upholding Indonesia's political and economic sovereignty. One of the key efforts includes simplifying the procedures for obtaining land-related rights, such as Rights to Cultivate (HGU), Rights to Build (HGB), and Rights to Use (HP). This is reinforced in Article 21 of Law No. 25 of 2007, which stipulates that the government must provide investment companies with easier access to services and permits, including facilities related to land rights, immigration, and import licensing. (Sari, 2020)

In reality, the Investment Law tends to prioritize the interests of investors over the rights and needs of local communities. A closer examination shows that Article 22 of Law No. 25 of 2007 conflicts with the principles embedded in the Basic Agrarian Law No. 5 of 1960—particularly Article 29 regarding the duration of Rights to Cultivate (HGU), Article 35 concerning the duration of Rights to Build (HGB), and Article 42 concerning the duration of Rights to Use (HP). In addition, the 1945 Constitution of the Republic of Indonesia, specifically Article 18B(2), affirms that customary law communities and their traditional rights must be recognized and protected by the state as long as they remain in existence,

align with societal development, and do not contradict the principles of the Indonesian state, as further regulated by law. (NKRI, 2004)

Investment is viewed as a key driver capable of boosting economic growth, generating employment opportunities, and enhancing public welfare, making it one of the crucial foundations of Indonesia's economy. To encourage greater capital inflows, the government has introduced several regulatory frameworks, including Investment Law No. 25 of 2007 and the Job Creation Law No. 11 of 2020 (also known as the Omnibus Law). Nevertheless, enforcing these policies often presents challenges, particularly in ensuring legal protection for community land rights. (Gorby et al., 2023)

Land is a vital asset for local communities, serving not only as a source of livelihood but also as a cornerstone of their cultural identity. When investment policies fail to consider people's rights to land, it can lead to conflicts between communities and investors, ultimately hindering the investment climate and damaging social relations. Therefore, it is important to analyze how investment policies affect people's land rights. (Isnaini & Lubis, 2022)

Government policies sometimes contradict existing principles, as seen in the case of the Coordinating Minister for Economic Affairs Regulation Number 7/2023, which designates the Rempang Environmentally Friendly City Project in the Riau Islands as a National Strategic Project (PSN), despite the current community needs. However, other goals besides investment include creating jobs and promoting economic development among people.

Capital acquisition, both from within and outside the country, is often viewed as the primary engine for encouraging economic development. However, this capital release can also have a significant impact on the legal certainty of community land rights. (Ploeg & Fitzpatrick, 2023) Emphasizing that legal certainty is an important element in protecting individual rights, including land rights. Without legal certainty, communities are vulnerable to eviction and loss of their land rights.

According to Noer (2021), Land has significant social and cultural value in addition to its economic assets. Therefore, to prevent land conflicts, any policy related to land use must consider the interests of the community. However, along with increased investment in industries such as plantations and mining, Sitorus & others (2021) stated the possibility of increased land conflicts in Indonesia. This highlights legal uncertainty that poses a threat to people's rights to land. This was also conveyed by Stool (Dabela, 2023) and Talleh Nkobou et al. (Talleh Nkobou et al., 2022). It is said that large-scale investments often undermine local rights and livelihoods.

As in the case of the development of an industrial estate on Rempang Island, Riau Islands Province, which caused a land conflict between the community and the Government and Investors, namely PT. Makmur Elok Graha (PT. MEG). In fact, this development program aims to increase the competitiveness of the State with regional countries, which actually triggers conflicts due to the uncertainty surrounding

people's land rights. The community claims that the land is part of their ancestral heritage, which existed before independence. Meanwhile, on the other hand, a Business Use Rights (HGU) is granted to companies, so that the rights to community land are considered never to exist, and according to Setiawan et al. (2023) stated that the conflict between the people of Rempang Island and the government was related to the industrial estate investment project.

According to this study, local communities feel excluded from the decision-making process. Despite noting the social and economic impact of the evictions in Rempang, the compensation mechanism is still far from fair. This was also conveyed by Afif Mahfud & Chin (2024). It said that inconsistent regulations create legal uncertainty and affect people's rights.

Another example involves PT RKA, a foreign investment company in which 95% of the shares are controlled by overseas investors, operating a 2,560-hectare oil palm plantation in West Kalimantan Province. The continuous expansion of oil palm estates in regions such as Kalimantan and Sumatra frequently leads to land disputes with indigenous communities. In many instances, corporations rely on formal legal documentation to justify their control over lands that have been utilized and governed under customary practices for a long time. (Setiawan et al., 2023)

This is corroborated by research results, among others, which discuss conflicts between indigenous peoples and palm oil companies in Indonesia (Colchester et al., 2023). They highlighted how the lack of recognition of customary rights led to prolonged land conflicts, (Yustika, 2020) examine the social and economic impact of agrarian conflicts in Indonesia, especially in the context of land acquisition for infrastructure projects, and (Kurniawan et al., 2022) Identify that legal harmonization between investment policies and the protection of people's rights has not been optimal, especially in the context of the recognition of customary rights.

Based on the above study, the investment policy that occurred has major implications for the legal certainty of community land rights. Although these policies aim to encourage economic development, their impact on local communities must be carefully considered. By filling in the existing research gaps, the focus of this research is to examine the cumulative impact of investment policies on community land rights that are still limited, so that, with the cases that occur, it is necessary to examine "how the implications of government policies related to investment on the legal certainty of community rights.

2. METHOD

This research employs a normative juridical approach, a legal research method that focuses on the study of positive legal norms, legal principles, and applicable legal doctrines. This approach aims to analyze the extent to which the laws and regulations governing investment policies in Indonesia protect people's land rights and ensure legal certainty in practice. (Zainuddin & Karina, 2023)

The normative juridical method is employed because the problem studied primarily focuses on the relationship between written laws (*Das Sollen*) and their application in the context of public policy, particularly in the fields of investment and agrarian affairs. This approach examines law in the sense that '*Law in Books*,' which refers to the regulations written in law, is compared to '*Law in Action*,' which encompasses implementation practices in the field. (Anggraini, 2022)

This research is based on *library research*, which includes the study of primary, secondary, and tertiary legal materials:

1. Primary legal materials consist of laws and regulations, such as Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), Law Number 25 of 2007 concerning Investment, Law Number 11 of 2020 concerning Job Creation, as amended by Law Number 6 of 2023, as well as other implementing regulations related to land rights and investment policies.
2. Secondary legal materials include legal literature, textbooks, scientific journals, previous research results, and the opinions of legal experts who discuss the relationship between investment law and agrarian law.
3. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting documents that help clarify the meaning of legal terms or concepts. A normative approach is used to review relevant regulations, such as Law Number 25 of 2007 concerning Investment, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), as well as Government Regulations and other implementing regulations. The study of this document aims to assess the suitability of investment regulations in relation to the protection of community land rights.

3. FINDINGS AND DISCUSSION

3.1. Investment Policy in Indonesia

Investment, both foreign and domestic, plays an important role in Indonesia's economic development. Investment policies are designed to attract investment, promote economic growth, create jobs, and enhance infrastructure. However, the policy also faces several challenges, including issues of legal certainty and its impact on local communities.

Investment policy in Indonesia has undergone several changes since the New Order era to the present day. During the New Order period, the government implemented protectionist policies to protect domestic industries (Aswicahyono & Feridhanusetyawan, 2004). This was done through restrictions on foreign ownership, providing incentives for domestic investment, and controlling imports. (Pangestu, 1996). Indonesia's investment policy framework was initially established through Law No. 1 of 1967 on Foreign Investment (PMA) and Law No. 6 of 1968 on Domestic Investment

(PMDN). These regulations established the legal framework for facilitating both international and domestic investment activities within the country. (Spar, 1998)

Entering the reform era, Indonesia's investment policy has undergone significant changes. The government has begun to open up wider access to foreign investment, accompanied by efforts to increase competitiveness and transparency (Chandra & Hill, 1996). This is evident from the issuance of Law Number 25 of 2007 concerning Investment, which provides guarantees and protection for foreign investment. Under Investment Law No. 25 of 2007, the Indonesian government offers several incentives to attract investors, such as simplified licensing procedures and access to land-use rights. Despite these benefits, the practical application of such policies frequently overlooks the land rights and interests of local communities. (Isnaini & Lubis, 2022)

Law No. 25 of 2007 offers various incentives to investors, including tax exemptions or reductions, land use rights, and simplified licensing procedures. Additionally, the government has implemented various economic policy packages to enhance the investment climate, including easing licensing requirements, streamlining regulations, and offering incentives. This initiative aims to attract foreign investors, promoting economic growth and creating employment opportunities.

3.2. Legal Certainty of Land Rights

Hans Kelsen considered law to be a standard system. Norms are statements that emphasize the "should" or "das sollen" aspect by including rules for actions that must be taken. Norms are the result of consciously decided human actions and actions. In society, laws that contain general rules are guidelines for how a person behaves, both with others and with society as a whole. These rules serve as a restriction for the community to take action against or burden individuals. Legal certainty results from the existence of rules and their implementation. (Kurniawan et al., 2022)

One of the important elements of the Indonesian agrarian legal system is the legal certainty of land rights. This security not only provides legal protection to landowners but also improves the investment climate and reduces the likelihood of agrarian conflicts. (Putrisasmita, 2023) Legal certainty of land rights refers to the legal assurance that the landowner has recognized legal rights, protected by the state, and is immune from all violations and abuses. Various laws in Indonesia, including Government Regulation No. 24 of 1997 concerning Land Registration and Law No. 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA), regulate land rights to ensure that landowners have legal certainty, prevent conflicts, and promote the nation's progress. (Kumara et al., 2021)

In Indonesia, land regulations began with the ratification of the Agrarian Constitution (UUPA) in 1960. The UUPA aims to abolish the colonial legal system and replace it with a more equitable and

equitable national legal system. The UUPA provides a legal basis for the recognition of land rights, including property rights, business use rights, building use rights, and use rights.

Based on Law No. 5 of 1960 concerning the Basic Agrarian Regulations (UUPA), land used by the community for agricultural, residential, or other economic purposes is essentially protected by property rights under law. However, in reality, the legal status of such land is often questioned in the context of investment policy, where companies or investors investing in development projects require large tracts of land. In some cases, land that an indigenous community or group has controlled is considered illegal because it is not officially registered or recorded, making it easy to take over or compensate without considering the rights of existing communities. (Wangi et al., 2023)

Indonesia is a country characterized by complex legal pluralism, where state law, customary law, and religious law intersect and sometimes overlap or conflict with one another. Legal pluralism in Indonesia has found that the diversity of this legal system often leads to legal uncertainty, especially in the context of land rights. Legal certainty of land rights refers to the certainty provided by law regarding the legal status of a land right owned by an individual or group. This legal certainty is crucial for ensuring that people's rights to the land they own and use are protected. However, the lack of clarity in determining the status of land and weak law enforcement often pose problems.

According to Rika (2022), "the many land disputes in Indonesia are caused by overlapping regulations and a lack of coordination between authorized agencies." This indicates that legal certainty in land rights remains a significant challenge, particularly when confronted with investment policies that frequently disregard the rights of local communities. One of the primary challenges in implementing investment policies is achieving legal certainty. Many investors complain about the uncertainty of laws and regulations that change frequently. This can hinder investment entry and reduce Indonesia's attractiveness as an investment destination. (Anis Retno Triana et al., 2024)

3.3. Investment Policy Implications

Investment plays a very important role in a country's economic development. Investment, both domestic and foreign, is a key factor that drives economic growth, job creation, and infrastructure development. However, along with the increase in investment activities, the issue of land rights has become increasingly relevant, particularly in relation to the legal certainty of community land rights. (Muh. Nadzir & Kenda, 2023)

In the Indonesian context, government investment policies often intersect with people's rights to land, which has the potential to cause conflicts and legal uncertainty. These conflicts typically arise when investment- or policy-driven development projects necessitate the use of land previously owned by local communities. Investment policies often lead to changes in land use that impact local

communities. For example, investment projects in the plantation and mining sectors often result in the expropriation of land previously used by indigenous peoples. (Fathori, 2023)

Capital acquisition or investment is a crucial element in a country's economic development. Investment, both from within and outside the country, is expected to increase economic growth, create jobs, and accelerate infrastructure development. According to Todaro & Smith (2021), Investment is one of the key factors in achieving sustainable economic development, as it can increase productivity and accelerate the transfer of technology.

Capital immersion or investment, both from within and outside the country, is often seen as the main driver to encourage economic development. However, this capital release can also have a significant impact on the legal certainty of community land rights. Emphasizing that legal certainty is an important element in protecting individual rights, including land rights. Without legal certainty, communities are vulnerable to eviction and loss of their land rights.(Deddy Ibrahim Rauf, 2024)

According to Afiff (2021), land law regulations in Indonesia are often inconsistent and overlap between the central and local governments, which exacerbates legal uncertainty. This highlights the need for regulatory reform to safeguard people's rights to land amid increasing investment flows. One of the important aspects of legal certainty is the clarity and consistency of regulations.

In many developing countries, including Indonesia, regulations governing land rights and investments often overlap and are inconsistent. According to Sitorus & others (2021), it is demonstrated that unclear regulations can lead to legal uncertainty, resulting in communities lacking clear guarantees of ownership and use of their land. When regulations are inconsistent, communities can lose their land rights due to a lack of strong legal protections.

Because land law certainty is a crucial factor that influences investment interest and success, the relationship between investment certainty and land law is closely intertwined. If a country or region wants to increase investment growth and sustainable development, its land legal system must be transparent, consistent, and reliable. Legal security of land will attract investors and encourage sustainable economic growth.(Ras & Suroso, 2020)

Capital capture often leads to the forced displacement of communities from their land, especially in large projects such as infrastructure development, plantations, and mining. According to Noer (2021), many people are forcibly displaced without receiving fair compensation. This not only causes economic losses for the community but also creates social instability and land conflicts. Land conflicts are one of the direct consequences of the legal uncertainty surrounding land rights resulting from capital grabbing. Peluso & Lund (2022) stated that land conflicts are often triggered by land-grabbing and investment policies that fail to consider the rights of local communities. When investors obtain permission to use land without consulting and obtaining consent from the affected communities, conflict is inevitable.

The lack of effective mechanisms for conflict resolution often exacerbates legal uncertainty and land conflicts. (Borras et al., 2021) It reveals that in many countries, agrarian conflict resolution mechanisms are not transparent and tend to favor investors over local communities. This prolongs the conflict and makes the public increasingly distrustful of the existing legal system. To overcome the negative impact of capital acquisition on the legal certainty of land rights, comprehensive agrarian reform is needed. (Cahaya & Nusantara, 2024) Emphasizing the need for consistent and transparent regulations to protect people's rights to land. Additionally, a fair and effective conflict resolution mechanism is necessary to ensure that investment projects do not harm the community.

Legal certainty is a principle that ensures the law is clear, consistent, and predictable. Legal certainty is crucial for protecting individual rights, including land rights. According to Hasibuan (2024), Legal certainty includes several elements, including:

1. Clarity: The law must be clearly written so that all parties can understand it.
2. Consistency: Laws should be consistent and not contradictory.
3. Predictability: The law must be predictable so that individuals can plan their actions in accordance with the applicable law.

In the context of land rights, legal certainty means that people must have security over their ownership and use of their land. When capital gains occur, there is often a risk that those rights will be threatened. Foreign direct investment (FDI) presents significant opportunities for economic growth, but its inherent risks cannot be ignored either. Some of the main risks associated with FDI investment are, first, according to Buckley & Casson (2022), which highlight political and regulatory risks. He stated that foreign investment is particularly vulnerable to changes in government policies, including changes in tax regulations, investor protection, or nationalization of assets. In Indonesia, for example, there are often revisions of laws that can change investment conditions. Sudden regulatory changes often deter foreign investors from making long-term investments.

Second, economic risks. He stated that macroeconomic conditions such as inflation, exchange rate fluctuations, or the global economic crisis can affect the profitability of foreign investment. In the Indonesian context, the unstable rupiah exchange rate is a significant challenge for foreign investors. Third, according to Setiawan et al. (2023), foreign investment often faces social risks, including resistance from local communities, especially when the project involves land acquisition or community relocation. The Rempang case is a clear example where the rejection of investment projects by local communities creates significant legal uncertainty and social risks. Fourth (Kolk & Pinkse, 2021). The existence of environmental risks, such as foreign investment projects that overlook environmental sustainability, can lead to rejection from civil society and environmental institutions.

Additionally, environmental damage can lead to increased operational costs and a reduction in the project's long-term economic value. Moreover, fifth, the risk of local culture and law, i.e., cultural and legal differences, is often an obstacle for foreign investors in understanding and complying with local regulations. In Indonesia, a complex legal system and cultural diversity can pose obstacles to the implementation of investment projects.

Legal certainty regarding community land rights refers to a guarantee that such rights are acknowledged, safeguarded, and cannot be removed without a lawful and fair procedure. These rights include ownership rights, cultivation rights, building rights, and customary land rights recognized under the Basic Agrarian Law and its implementing regulations. However, in reality, disputes frequently occur due to competing claims among residents, government authorities, and private investors.

The limited recognition of customary land tenure further complicates the situation. First, many lands traditionally controlled by indigenous groups remain uncertified because the formal legal framework has not fully integrated customary law. Second, land acquisition for public purposes is often viewed as harmful to affected communities due to inadequate compensation and a lack of transparency in the process. Consequently, the absence of strong legal protection leaves communities exposed to displacement and the risk of losing their land rights.

In the context of capital harvesting, agrarian conflicts often occur due to:

1. Forced displacement occurs when people are forced to leave their land without fair compensation.
2. Investment Policy is a policy that prioritizes the interests of investors over the rights of local communities.
3. Overlapping regulations refer to ambiguities and inconsistencies in the regulations governing land rights and investments.

Meanwhile, Halim et al. (2024) emphasize the importance of legal certainty in protecting people's land rights. Without legal certainty, communities are vulnerable to eviction and loss of their land rights, especially when there is a conflict of interest with investors or development projects. (Widjaja, 2025) added that in Indonesia, overlapping regulations between the central and local governments often lead to legal uncertainty, which negatively impacts the protection of people's land rights.

4. CONCLUSION

Investment policies in Indonesia have a significant impact on the legal certainty of people's land rights. Although these policies are designed to attract investment and support economic growth, their implementation often conflicts with the rights of local communities. Land conflicts, forced displacement, and regulatory uncertainty are the primary issues that threaten legal certainty regarding

land ownership. The overlap of policies between central and local governments further exacerbates the situation, ultimately creating social injustice and discouraging investment.

To address this problem, comprehensive land law reform is necessary, including the harmonization of regulations between central and regional governments, as well as the recognition of people's customary rights. In addition, fair, transparent, and effective conflict resolution mechanisms should be immediately strengthened to ensure better legal protection for affected communities. These measures are necessary to strike a balance between investment interests and the protection of people's land rights, ensuring that economic development can occur sustainably without compromising the rights of local communities.

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