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Research Paper

The Sequence of Legal Development, The Recognition Of Customary Law Communities, And National Strategic Projects In Indonesia

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ABSTRACT

Customary law communities (masyarakat hukum adat or MHA) are communities with ancestral origins passed down from generation to generation within a particular territory, possessing customs and traditions, sovereignty over land and natural resources, and socio-cultural systems governed by customary law, along with customary institutions that sustain the continuity of their communal life. Attention to MHA is at times confined to a merely symbolic meaning, particularly in connection with the national motto Bhinneka Tunggal Ika, which has appeared on the national emblem since 1951. At the same time, Indonesia, as an investment destination with a rapidly growing economy, occupies a strategic position for both domestic and international investors, one manifestation of which is the National Strategic Project (PSN) program. On the other hand, communities located within development sites, including MHA, require recognition and justice from policymakers. The active involvement of MHA in the development process constitutes an implementation of the Sustainable Development Goals (SDGs), under which no one should be left behind in the course of development. The promise of development aimed at improving public welfare can only be meaningfully realized for communities in the affected areas when it is aligned with the purposes of the state as set forth in the Preamble to the 1945 Constitution of the Republic of Indonesia.

Keywords: *legal development, recognition and protection, customary law communities, government, National Strategic Projects.*

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I. INTRODUCTION

State recognition of MHA is constitutionally grounded in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which provides that: "The State recognizes and respects customary law community units along with their traditional rights, insofar as they remain in existence and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law." Article 28I paragraph (3) of the 1945 Constitution further stipulates that cultural identities and the rights of traditional communities shall be respected in accordance with the development of times and civilizations, as part of the protection of human rights. Article 32 paragraphs (1) and (2) of the 1945 Constitution regulate the State's

obligation to advance Indonesia's national culture amid world civilization by guaranteeing the existence of communities in preserving and developing their cultural values.

Attention to MHA is sometimes limited to a merely symbolic meaning, particularly in relation to the national motto Bhinneka Tunggal Ika, which has been inscribed on the national emblem since 1951. The continuing struggle to sustain ethnic existence within this plural society therefore carries a political dimension. Data from the 2020 Population Census Long Form (SP2020) show that Indonesia has more than 1,200 ethnic groups and 694 regional languages.[1]

The recognition of Customary Law Communities (MHA) in Indonesia has a constitutional basis in Article 18B paragraph (2) of the 1945 Constitution,[2] which falls within the regional governance regime, and Article 28I paragraph (3) of the 1945 Constitution, which falls within the human rights regime. At the level of foundational state policy, People's Consultative Assembly Decree No. IX/MPR/2001[3] also affirms the need for the recognition, respect, and protection of the rights of customary law communities over agrarian resources and natural resources. In statutory legislation, the regulation of MHA is dispersed across sectoral laws, particularly in the fields of human rights, agrarian affairs/natural resources, and regional government/customary villages, as reflected, inter alia, in Law No. 39 of 1999 on Human Rights [4], Law No. 5 of 1960 [5] concerning Basic Agrarian Principles, and Law No. 6 of 2014 on Villages[6]. The constitutional interpretation of such recognition was subsequently reinforced by Constitutional Court Decision No. 35/PUU-X/2012, [7] which held that customary forests are forests located within the territories of customary law communities, rather than state forests.

The acceleration of development through National Strategic Projects (PSN) has been designed as a state instrument to pursue economic growth, infrastructure equalization, and competitiveness. In practice, however, the acceleration of PSN frequently intersects with the living spaces of customary law communities, particularly within customary territories that possess distinct social, cultural, and ecological value and are not always compatible with the uniform logic of "development through land acquisition." Research conducted by Indriasari, Darmawan, and Wahyudi shows that, in the implementation of PSN within protected forest areas, resistance from customary communities arises from imbalanced power relations and the weak substantive recognition of communal rights.[8] In this context, the central problem is not merely land conflict, but also a rule-of-law issue: the extent to which development is guided by a fair sequence in norm formation, beginning with the recognition of MHA as legal subjects, the determination of their territories, and the design of protective and remedial mechanisms before projects are implemented.

Constitutionally, the recognition of and respect for MHA and their traditional rights constitute a mandate that must be translated into sectoral policies, including policies concerning development acceleration. However, recent regulatory dynamics reveal a strong tension between the investment agenda and licensing simplification, on the one hand, and the need to guarantee MHA rights, on the other. Previous studies have noted that the orientation toward improving the investment climate under the Job Creation regime has the potential to create risks of dispossession of customary territories if it is not accompanied by certainty regarding the recognition and proof of customary territories.[9] Sharp criticism has also emerged that the design of land rights regulation in the post-Job Creation framework tends to strengthen administrative ease and business certainty, while the protection of communal rights has not yet been fully integrated systematically into sectoral norms.[10]

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[1] Badan Pusat Statistik, Profil Suku dan Keragaman Bahasa Daerah; Hasil *Long Form* Sensus Penduduk 2020, hlm. vii.

[2] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18B ayat (2) dan Pasal 28I ayat (3).

[3] Ketetapan MPR RI No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam.

[4] Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia, khususnya Pasal 6 yang menegaskan bahwa perbedaan dan kebutuhan masyarakat hukum adat harus diperhatikan dan dilindungi.

[5] Undang-Undang No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, khususnya Pasal 3 tentang hak ulayat masyarakat hukum adat.

[6] Undang-Undang No. 6 Tahun 2014 tentang Desa, terutama pengaturan mengenai Desa Adat dalam Bab XIII.

[7] Putusan Mahkamah Konstitusi No. 35/PUU-X/2012, yang menegaskan perubahan frasa hutan adat dari "hutan negara" menjadi "hutan yang berada dalam wilayah masyarakat hukum adat."

[8] Evy Indriasari, Ahmad Arif Darmawan, dan Yandi Wahyudi, "Resistensi Hukum Komunitas Adat terhadap Proyek Strategis Nasional di Kawasan Hutan Lindung," Jurnal Ar Ro'is Mandalika (ARMADA), 5/2 (2025), 1. https://doi.org/10.59613/armada.v5i2.4963.

[9] Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat dalam Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja," Mulawarman Law Review, 6/1 (2021), hlm. 1–14, https://doi.org/10.30872/mulrev.v6i1.506

[10] Gunanegara, "Kebijakan Negara pada Pengaturan Hak Atas Tanah Pasca Undang-Undang Cipta Kerja," Refleksi Hukum: Jurnal Ilmu Hukum, 6/2 (2022), hlm. 161–184, https://doi.org/10.24246/jrh.2022.v6.i2.p161-184

This issue has become increasingly urgent because the intersection between PSN and MHA occurs not only in inland or forest areas, but also in coastal areas and small islands. Earlier research has found inconsistency in the recognition of coastal customary law communities in natural resource governance following the enactment of the Job Creation Law.[11] This has underscored the urgency of protecting the rights of Indigenous and customary communities in coastal areas within the Omnibus Law framework, particularly in light of the unequal bargaining position of communities when confronted with large-scale investment projects.[12] The real test lies in whether state policy is capable of maintaining a balance between the imperatives of the developmental state and those of the constitutional state.

The novelty of this study lies in its examination of the sequencing of state policy concerning investment or economic growth, legal development, and the recognition of customary law communities in Indonesia. This study develops an analysis of the recognition of MHA in Indonesian legislation, as well as state policy on investment or economic growth through the National Strategic Project (PSN) program.

The urgency of this study lies in the legal politics of MHA recognition within Indonesian legislation and in investment certainty as reflected in regulations enacted by the government. It asks whether these indicators influence one another or operate independently, all of which ultimately converge on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

II. DISCUSSION

A. Legal Development

Legal development fundamentally constitutes the State's effort to organize the legal system so that it is capable of directing social change in an orderly manner while at the same time safeguarding justice. In the Indonesian legal tradition, the concept of "law as development" does not merely position law as a guardian of order (its conservative function), but also as a means of social reform (its dynamic function) that provides direction for economic, social, and political transformation. To ensure that law makes a tangible contribution to development, it must be empowered to direct change in an orderly manner, rather than merely serving development interests in an instrumental sense.[13]

Within this framework, legal development requires a grand design for lawmaking that is responsive to the needs of contemporary society. In the environmental and natural resources sectors, legal development cannot be reduced to the mere production of regulations; rather, it must be designed in a manner that is aligned with the legal culture of society, social welfare, and environmental protection, including through public participation in policymaking and environmental documentation.[14] In other words, legal development is a layered process: norm formation → public participation → institutional strengthening → enforcement and evaluation, all of which must move in the same direction as the objectives of a state governed by law.

Furthermore, the post-Reformasi context requires a model of legal development that is no longer purely top-down in character. The reconstruction of development law underscores the importance of a holistic, comprehensive, and interdisciplinary approach to policymaking, particularly in areas prone to conflicts of interest, such as natural resource governance. The proposition that "law serves as a means of social reform" requires order and legal certainty, but it must also function as an instrument that channels conduct toward the goals of just development, rather than merely toward administrative efficiency.[15]

At the conceptual level, legal development is also closely connected with the theory of law as a tool of social engineering. The social engineering function places law as an instrument of change to foster social harmony. However, social engineering that is "bureaucratic" and lacking social sensitivity may reduce law to a mere

[11] Mohammad Zamroni dan Rachman Maulana Kafrawi, "Perlindungan Masyarakat Hukum Adat di Wilayah Pesisir Pasca Berlakunya UU Nomor 11 Tahun 2020 Tentang Cipta Kerja," Perspektif Hukum 21/2 (2021): 235–256, https://doi.org/10.30649/ph.v21i2.99

[12] Dolfries J. Neununy, "Urgensi Omnibus Law (Undang-Undang Cipta Kerja) Terhadap Hak Masyarakat Adat di Wilayah Pesisir," Balobe Law Journal 1/2 (2021): 119–131, https://doi.org/10.47268/balobe.v1i2.653

[13] M. Zulfa Aulia, "Hukum Pembangunan dari Mochtar Kusuma-atmadja: Mengarahkan Pembangunan atau Mengabdi pada Pembangunan?," Undang: Jurnal Hukum (2019), diterbitkan 11 Maret 2019, https://doi.org/10.22437/ujh.1.2.363-392

[14] Wahyu Nugroho, "Rekonstruksi Teori Hukum Pembangunan Kedalam Pembentukan Perundang-Undangan Lingkungan Hidup dan Sumber Daya Alam Pasca Reformasi dalam Bangunan Negara Hukum," Jurnal Legislasi Indonesia (2017). https://doi.org/10.38011/jhli.v4i2.62.

[15] Wahyu Nugroho dan Agus Surono, "Rekonstruksi Hukum Pembangunan Dalam Kebijakan Pengaturan Lingkungan Hidup dan Sumber Daya Alam," Jurnal Hukum Lingkungan Indonesia 4/2 (2018): 77–110, https://doi.org/10.38011/jhli.v4i2.62

administrative device detached from the aspirations of society.[16] This is particularly important because development projects, including investment-based projects, often move rapidly, while their social legitimacy depends on how robustly norms of protection, participation, and procedural justice are designed and implemented.

In contemporary development policy, legal development is also reflected in regulatory simplification strategies aimed at enhancing investment, including through the omnibus law method. The research findings of Prasetyo, Budiono, and Hadiyantina indicate that changes in licensing norms and the investment climate under the Job Creation Law were intended to reduce regulatory duplication and accelerate licensing procedures, but they also generated controversy in academic and public discourse regarding the balance between economic acceleration and the guarantee of legal protection.[17] Thus, legal development must be understood not merely as the "creation of new rules," but also as a matter of legal policy concerning which values are prioritized in regulatory design.

Another implication is that legal development must assess whether a development policy truly positions law as the "umbrella" for measurable change, or instead turns law into an instrument for legitimizing power. A reading of Mochtar Kusumaatmadja's theory of development law in the context of the Capital City Law (IKN Law) emphasizes that development must be understood broadly, not only in economic terms, and that hurried lawmaking without an adequate philosophical foundation and meaningful public participation risks deviating from the purpose of law as a means of development.[18]

Accordingly, in this study, legal development is understood as a process of structuring norms and institutions that: (i) possesses a grand design; (ii) treats participation and social legitimacy as prerequisites; (iii) maintains a balance between rights protection and development; and (iv) ensures that law functions as a guide for just social change, which will subsequently be connected sequentially with economic development and National Strategic Projects.

B. The Sequence of Legal Development and Investment/Economic Growth

The relationship between legal development and economic development in the Indonesian context reveals a pattern that is sequential and mutually determinative. Legal development is not merely a response to economic dynamics; rather, it constitutes the initial foundation that shapes the direction and stability of growth. The principal challenges of investment regulation in Indonesia lie in normative inconsistency, bureaucratic complexity, and weak legal certainty, all of which directly affect investor interest and economic growth.[19] This condition demonstrates that economic growth cannot proceed optimally without prior reform of the regulatory structure and the strengthening of legal certainty.

In the context of law enforcement, it has been emphasized that fair, transparent, and consistent law enforcement makes a significant contribution to improving the investment climate and national economic competitiveness.[20] Without effective law enforcement, even well-drafted regulations are unable to create economic stability. Thus, the sequence of legal development places the strengthening of law enforcement institutions as a crucial stage before encouraging investment expansion.

Legal certainty likewise constitutes an important determinant in the relationship between law and economic growth. With regard to investment law under the Job Creation Law, it has been affirmed that legal certainty is the principal factor in enhancing investor confidence in the national economic system.[21] Regulatory reform through the omnibus law approach seeks to accelerate investment, yet it must still guarantee normative clarity so as not to generate multiple interpretations that may, in turn, produce legal uncertainty.

Furthermore, with respect to regulatory harmonization, it has been emphasized that legal stability in the investment sector can only be achieved through synchronization among regulations and the elimination of

[16] Herdy Mulyana, "Konsep Hukum sebagai Sarana Rekayasa Sosial dalam Pembangunan Nasional," Jurnal Penelitian Hukum Galunggung (2024), terbit 24 Februari 2024, https://doi.org/10.1234/jphgalunggung.v1i1.18

[17] Angga Dwi Prasetyo, Abdul Rachmad Budiono, dan Shinta Hadiyantina, "Politik Hukum Perubahan Norma Perizinan dan Iklim Investasi Dalam Undang-Undang Cipta Kerja Menggunakan Metode Omnibus Law," Media Iuris (2022): 159–188, https://doi.org/10.20473/mi.v5i2.36165

[18] Nor Fadillah, "Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja dalam Undang-Undang Ibu Kota Nusantara," Supremasi Hukum (2022). 13. https://doi.org/10.54629/jli.v14i4.110.

[19] Musmulyadi dkk., "Tantangan Regulasi Hukum Investasi di Indonesia dalam Mendorong Pertumbuhan Ekonomi," Jurnal Pendidikan Tambusai (2023). https://doi.org/10.31004/jptam.v9i2.27355.

[20] Ramadhan, Ariyanti & Sulistiyono, "Peran Penegakan Hukum dalam Meningkatkan Iklim Investasi dan Pertumbuhan Ekonomi Nasional," Lex Jurnalica (2025). 13. https://doi.org/10.33019/progresif.v18i2.5626.

[21] Hernawati & Suroso, "Kepastian Hukum dalam Hukum Investasi di Indonesia melalui UU Cipta Kerja," (2020). https://doi.org/10.32832/yustisi.v12i3.19860.

overlapping sectoral norms.[22] Such harmonization forms part of the sequence of legal development because, without regulatory consolidation, economic policy will face administrative obstacles and jurisdictional conflicts.

From the perspective of national investment law, the protection of investor rights and the availability of effective dispute resolution mechanisms are essential instruments in supporting economic growth.[23] The existence of a clear dispute resolution system enhances security in investment activities, thereby strengthening the contribution of investment to national development. It has also been emphasized that national economic development requires support across branches of law, including investment law, administrative law, and agrarian law, in order to establish a stable and inclusive regulatory ecosystem.[24] This demonstrates that legal development must be integrative in nature and must precede economic acceleration so that the resulting growth does not generate structural inequality.

Based on these six strands of analysis, the ideal sequence of legal development and economic development may be formulated as follows: (1) regulatory harmonization and consolidation; (2) strengthening of law enforcement and institutions; (3) creation of legal certainty and policy transparency; (4) enhancement of investor confidence; and (5) stable and sustainable economic growth. If these stages are reversed—namely, if investment growth is promoted in the absence of legal certainty and regulatory harmonization—economic development risks generating instability, regulatory conflict, and a decline in national competitiveness.

C. Investment Growth and the Need for Regulation

Investment growth in national development cannot be separated from the need for stable, consistent, and adaptive regulation. Investment, whether domestic or foreign, requires guarantees of legal certainty, the protection of rights, and effective dispute resolution mechanisms. In the Indonesian context, increases in investment realization are often accompanied by regulatory reform agendas aimed at accelerating licensing processes and improving the business climate.

The growth of national investment is strongly influenced by regulatory certainty and the consistency of government policy in the licensing and investment sectors.[25] Normative uncertainty or excessively rapid policy changes may in fact hinder investment growth. Therefore, the need for regulation lies not merely in the quantity of rules, but in their quality and stability.

Studies on risk-based licensing reform explain that the risk-based licensing approach within the Online Single Submission (OSS) system is intended to simplify bureaucracy while simultaneously enhancing legal certainty for business actors.[26] Nevertheless, the effectiveness of this system remains dependent on the synchronization of sectoral regulations and the institutional capacity of regional governments.

From the perspective of administrative law, investment regulation must be designed in accordance with the principles of transparency, accountability, and public participation so as not to generate social conflict.[27] Regulations that are oriented solely toward accelerating investment without taking social and environmental considerations into account may trigger public resistance and legal disputes.

The need for investment regulation is also closely related to the legal protection of land rights and natural resources.[28] Investment that is based on land control requires clarity of legal status as well as protection of the rights of affected communities. Without comprehensive regulation, investment growth may trigger agrarian conflicts that, in turn, impede development.

Empirical studies show that the increase in investment realization in Indonesia following regulatory reform has been correlated with improvements in the ease of doing business index, yet it continues to face challenges

[22] "Harmonisasi Regulasi: Kunci Stabilitas Hukum dalam Investasi dan Pembangunan Ekonomi," Siyasah: Jurnal Ilmu Hukum (2024). PDF: https://doi.org/10.318/4639/41083

[23] "Peran Hukum Investasi terhadap Pertumbuhan Ekonomi Nasional," JEBLR Universitas Jember (2023). https://doi.org/10.61104/alz.v4i1.4100.

[24] "Analisis Kontribusi Hukum terhadap Pembangunan Ekonomi Nasional," Jurnal Humaniora Universitas Abulyatama (2022). https://doi.org/10.22225/jph.4.1.6736.97-102.

[25] Hidayat & Santoso, "Kepastian Regulasi dan Peningkatan Investasi Nasional," Jurnal Legislasi Indonesia (2021). https://doi.org/10.30656/ajudikasi.v6i2.4687.

[26] Putra, "Reformasi Perizinan Berbasis Risiko dalam Sistem OSS," Jurnal Rechts Vinding (2022). https://doi.org/10.57141/kompeten.v3i1.133.

[27] Lestari, "Prinsip Transparansi dalam Regulasi Investasi," Jurnal Hukum Ius Quia Iustum Vol. 27 (2020). https://doi.org/10.37680/almanhaj.v5i1.2290.

[28] Siregar, "Perlindungan Hak Atas Tanah dalam Investasi Nasional," Jurnal Konstitusi (2019). https://doi.org/10.55681/seikat.v2i6.1053.

arising from overlapping regional regulations.[29] This demonstrates that investment growth requires vertical harmonization between the central and regional governments.

Sustainable investment regulation must integrate the principles of sustainable development so that economic growth does not lead to social inequality and environmental degradation.[30] Thus, the need for regulation is not only to increase investment, but also to ensure that such investment proceeds within a constitutional framework and with due regard for the protection of the public interest.

Based on the foregoing, it may be asserted that investment growth requires regulation that: (1) provides legal certainty and stability; (2) is harmonized both sectorally and vertically; (3) guarantees the protection of rights over land and resources; (4) strengthens monitoring and dispute resolution mechanisms; and (5) is aligned with the principles of sustainable development. Without adaptive and responsive regulation, investment growth may instead generate legal conflict and social instability that undermine the objectives of national development.

D. State Policy on the Recognition of MHA and Economic/Investment Growth

The State's affirmative stance toward customary law communities (masyarakat hukum adat or MHA) within the framework of development and investment is a constitutional consequence of Article 18B paragraph (2) of the 1945 Constitution, which recognizes and respects customary law community units together with their traditional rights. However, in the practice of investment regulation and land acquisition, such affirmative protection continues to face structural and normative challenges.

Legal protection for the rights of customary law communities when confronted with the public interest, including development and investment projects, is often formalistic in nature. The State tends to place development interests as a priority, while the recognition of communal land rights (hak ulayat) and the participation of customary communities have not been fully integrated into decision-making procedures. This indicates that regulatory commitment has not yet been fully reflected in implementation mechanisms. [31]

Furthermore, it has been emphasized that the constitutional rights of customary communities, including rights over land and natural resources, are frequently marginalized in sectoral policy practice.[32] In the context of agrarian conflict and investment projects, the protection of customary communities often depends on administrative policy rather than on a systematic and consistent legal framework. This condition reveals a gap between constitutional norms and policy realities.

From the perspective of national legal harmonization, it has been highlighted that the recognition of customary communities in various statutes and regulations remains sectoral and has not yet been comprehensively integrated.[33] The lack of clarity in definitions, mechanisms for determining customary territories, and standards of recognition causes legal protection for MHA to be frequently ineffective when confronted with the investment and land acquisition regimes.

In several Constitutional Court decisions, legal reform has taken place in the recognition of MHA whose existence intersects with natural resources, forests, and related matters.[34] Constitutional Court Decision No. 35/PUU-X/2012 concerns proprietary forest rights held and controlled by customary law communities within their customary territories. Constitutional Court Decision No. 85/PUU-XI/2013 invalidated Law No. 7 of 2004 on Water Resources because that law provided opportunities for the management of water resources by private parties or individuals without clear limitations, thereby potentially negating the people's right to water. The Constitutional Court also affirmed the guarantee of the people's right to water and to the fulfillment of agricultural needs.

The existence of customary law communities often does not receive adequate legal recognition of their rights. Although Law No. 5 of 1960 on Basic Agrarian Principles states that the applicable agrarian law is customary law, implementation often fails to reflect this principle. Development that does not involve communities, in which the socialization process carried out by the government and developers is often one-way

[29] Nugraha & Firmansyah, "Deregulasi dan Pertumbuhan Investasi di Indonesia," Jurnal Ekonomi & Kebijakan Publik (2023). https://doi.org/10.37253/jjr.v22i2.1502.

[30] Wulandari, "Regulasi Investasi Berkelanjutan dan Pembangunan Nasional," Jurnal Pembangunan Hukum Indonesia (2024). https://doi.org/10.22219/ljih.v29i2.15216.

[31] Rini Setyawati, "Perlindungan Hukum terhadap Hak Masyarakat Hukum Adat dalam Menghadapi Kepentingan Umum," Jurnal Ilmiah Hukum dan Dinamika Masyarakat (2025). https://doi.org/10.33019/progresif.v18i2.5626.

[32] Yulianti P. Roring, "Perlindungan Hukum terhadap Hak-Hak Konstitusional Masyarakat Adat," Jurnal Administratum (2024). https://doi.org/10.37253/jjr.v22i2.1502.

[33] Ahmad Redi, "Perlindungan dan Pengakuan Masyarakat Adat dan Tantangannya dalam Hukum Indonesia," Jurnal Hukum IUS QUIA IUSTUM (2023). https://doi.org/10.47637/legalita.v7i1.1936.

[34] Muhammad Adhi, et al, Ketidakteraturan Hukum dan Perlindaungan Masyarakat Hukum Adat di Indonesia, 15/10, (2019), hlm. 17-18 28. https://doi.org/10.20885/iustum.vol20.iss1.art2.

in nature, leaves communities excluded from decision-making relating to the use of their land. This creates tension between development interests and the rights of customary communities.[35]

With regard to the continued existence of hak ulayat, it has been stated that communal rights are at risk of erosion if investment regulation does not explicitly provide mechanisms for recognition and fair compensation.[36] Land-based investment without clear protection for communal rights may alter the structure of land control and weaken the position of customary communities in the long term.

In the context of natural resource governance, it has been emphasized that the protection of the rights of customary law communities in the utilization and management of forests requires genuine policy support, not merely normative recognition.[37] The principles of meaningful participation, transparency, and recognition of customary territories must become integral components of natural resource utilization regulations, particularly when such territories become the object of investment.

In addition, regional regulations (*Peraturan Daerah or Perda*) may serve as concrete instruments of the State's affirmative stance toward customary communities if they are designed to strengthen the recognition and protection of *hak ulayat*.[38] However, their effectiveness remains dependent on harmonization with national regulations and on the commitment of regional governments in implementation. It may therefore be affirmed that the State's affirmative stance, through regulation on investment and the protection of MHA, must be realized in several principal respects:

1. Clear and integrated normative recognition across all sectoral regulations;
2. Mechanisms for the determination and protection of customary territories prior to the issuance of investment permits;
3. The application of the principle of meaningful participation (free, prior and informed consent);
4. The provision of fair and accessible dispute resolution mechanisms; and
5. The harmonization of central and regional regulations to prevent overlapping authority.

Without these measures, investment regulation risks relegating customary law communities to a subordinate position within the national development agenda. Therefore, the State's affirmative stance is insufficient if expressed only through constitutional recognition; it must also be reflected in the design and implementation of regulations that substantively protect the rights of customary law communities.

E. The Eco-City Project and the Denial of MHA

Amid rapid global economic expansion and investment growth, the presence of the State is crucial in providing recognition of and protection for MHA in Indonesia. In practice, however, this issue can be observed more specifically in the case of the Local Customary Community (Masyarakat Adat Tempatan, KERAMAT) of Rempang, which has been confronted with the Eco-City Project in Batam, Riau Islands Province, as well as the Redu customary community, which has faced the construction of the Mbay/Lambo Dam in Rendubutowe Village, South Aesesa District, Nagekeo Regency, East Nusa Tenggara. The Eco-City Project in Batam, Riau Islands Province, was designated a National Strategic Project (PSN) pursuant to Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia No. 7 of 2023 concerning the Third Amendment to Regulation of the Coordinating Minister for Economic Affairs No. 7 of 2021 concerning Amendments to the List of National Strategic Projects.

According to data held by WALHI, the Eco-City project on Rempang Island would displace 16 old Malay villages that have existed on Rempang since 1834. The customary communities, consisting of the Malay ethnic group, the Sea Tribe (Suku Laut), and several other groups, have occupied Rempang Island for more than 200 years. For centuries, the land on Rempang Island has been regarded as belonging entirely to the customary communities. The majority of the customary community members living on Rempang Island have rejected relocation as a consequence of this project because they would lose their living space. The 16 old villages that would be displaced include Tanjung Kertang, Tanjung Kelingking, Rempang Cate, Belongkeng, Pantai Melayu,

[35] Ibid, hlm. 219.

[36] Nofialdi, "Eksistensi Hak Ulayat Masyarakat Hukum Adat dalam Masa Investasi," Menara Ilmu (2016). 30. https://doi.org/10.31599/sasana.v8i2.1272.

[37] Arman L. Djou, "Perlindungan Hak Masyarakat Hukum Adat dalam Pemanfaatan dan Pengelolaan Hutan," Tadulako Master Law Journal (2024). https://doi.org/10.31078/jk2214.

[38] Suryani & Rahmat Hidayat, "Peran Peraturan Daerah dalam Melindungi Hak-Hak Masyarakat Adat di Indonesia," Jurnal Glegar (2023). https://doi.org/10.61942/jhk.v1i1.43.

Monggak, Pasir Panjang, Sungai Raya, Sembulang, Dapur Enam, Tanjung Banun, Sijatung (Sijantung), Dapur Tiga, Air Lingka, Kampung Baru, and Tanjung Pengapit.[39]

The customary communities of Rempang have managed their customary territories and communal lands in accordance with their customary law. However, under pressure from national development and economic interests, many customary territories have been displaced or taken over without processes that prioritize the principles of justice and respect for hak ulayat. One major source of conflict among MHA, the government, and corporations concerns communal land rights. The State must be present in adopting policies that are more inclusive and respectful of hak ulayat in order to create justice and welfare for MHA. In the case of the customary communities of Rempang, they have a strong bond with their hak ulayat, namely customary land inherited from generation to generation and forming part of their cultural identity.[40]

In the planning process, the customary communities of Rempang were not involved, and this constitutes an exclusionary practice in the development process within their own territory. The socialization conducted by the government and the developers often failed to involve the community actively, with the result that their aspirations and rights were neglected.[41]

III. CONCLUSION

Legal development in the context of National Strategic Projects (PSN) cannot be separated from the dynamics of economic growth and the agenda of increasing national investment. The relationship between legal development and economic development is sequential in nature: law should serve as the normative foundation that precedes and guides growth, rather than merely functioning as an instrument to legitimize accelerated investment. When economic development is pursued in the absence of legal certainty and regulatory harmonization, the risks of social conflict, overlapping authority, and legal uncertainty inevitably increase.

In the context of investment growth, the need for regulation lies not only in the simplification of procedures and administrative deregulation, but also in the quality of legal norms, the consistency of law enforcement, and the integration of central and regional policies. Regulatory harmonization, institutional strengthening, and legal certainty are prerequisites for the creation of a stable and sustainable investment climate.

Nevertheless, the acceleration of development through PSN frequently intersects with the living spaces and rights of customary law communities (masyarakat hukum adat or MHA). Although the Constitution has recognized the existence of MHA and their traditional rights, the implementation of legal protection within investment regulation and land acquisition frameworks continues to face both normative and structural challenges. The lack of clarity in the mechanisms for determining customary territories, the weak integration of the recognition of hak ulayat into sectoral policies, and the limited presence of meaningful participation by customary communities all indicate that the State's affirmative commitment has not yet been fully realized in substantive terms.

Accordingly, the ideal sequence of legal development in the context of PSN and national investment should begin with: (1) clear recognition and determination of customary law communities and their customary territories; (2) cross-sectoral regulatory harmonization that integrates the protection of communal rights; (3) the application of the principle of meaningful participation prior to the issuance of investment permits; (4) the provision of effective and equitable dispute resolution mechanisms; and (5) the consistent oversight of regulatory implementation.

Thus, the State's affirmative stance is insufficient if expressed only through constitutional norms or formal declarations; rather, it must be reflected in a regulatory design that places the protection of customary law communities as a prerequisite to the implementation of development and investment projects. Only through a structured and just sequence of legal development can the acceleration of national development proceed in harmony with the principles of the rule of law and social justice.

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[39] Solidaritas Nasional untuk Rempang, Keadilan Timpang di Pulau Rempang; Temuan Awal Investasi atas Peristiwa Kekerasan dan Dugaan Pelanggaran HAM, Jakarta, 2023, hlm .18-19

[40] Aditya Ramadhan Harahap dan Fahririn, Tantangan dan Solusi dalam Implementasi Undang-Undang Agraria dan Hukum Adat di Rempang, *Batavia; Buletin Aksi Visi Penelitian Sosial Humaniora*, 1/5, (2024), hlm. 216.

[41] Ibid, hlm. 220.

Conflicting Interest Statement

The author(s) declare that there is no conflict of interest regarding the research, authorship, and/or publication of this article.

Publishing Ethical and Originality Statement

The author(s) affirm that this manuscript is an original work that has not been previously published, in whole or in part, and is currently not under consideration for publication elsewhere. All sources used have been properly acknowledged and cited. The study relies exclusively on publicly available legal and scholarly materials and therefore did not involve human participants, personal data, or experiments requiring institutional ethical approval. The author(s) confirms that the preparation and submission of this manuscript comply with accepted standards of publication ethics and integrity.

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