

Reconstruction of Equitable Customary Land Management To Improve The Investment Climate in Jayapura Regency

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Abstrak: Customary land management in Jayapura Regency has a strategic role in encouraging regional economic growth through improving the investment climate. However, management practices have often caused problems such as land conflicts, legal uncertainty, and low participation of indigenous peoples in decision-making. This condition hinders investors from investing their capital optimally. This research aims to formulate a model for reconstruction of customary land management that is fair, provides legal certainty, and facilitates synergy between indigenous peoples, local governments, and investors. The research method used is a qualitative approach with a descriptive-analytical design. Data was obtained through in-depth interviews with traditional leaders, local government officials, investors, and academics, as well as through the study of relevant laws and regulations. The analysis was carried out using the Miles & Huberman interactive model technique, including data reduction, data presentation, and conclusion drawn. The results of the study show that equitable management of customary land requires formal recognition of customary rights, the existence of a clear written agreement mechanism between customary rights owners and investors, and the existence of permanent mediation institutions to resolve disputes quickly. The implementation of this reconstruction model has been proven to increase legal certainty, reduce potential conflicts, and encourage increased investment interest in Jayapura Regency.

Keywords : Customary Lands, Reconstruction, Justice, Legal Certainty, Investment, Jayapura Regency



INTRODUCTION

Customary land management in Jayapura Regency has a strategic role in economic development and investment. As a region with a customary rights-based land ownership system, indigenous peoples have the authority to manage and utilize land. However, in practice, customary rights often face legal challenges, especially in the context of investment. Uncertainty in the recognition and protection of customary rights causes conflicts between indigenous peoples and investors, thereby hindering the creation of a conducive investment climate.

The Basic Agrarian Law (UUPA) Number 5 of 1960 recognizes the existence of customary rights of indigenous peoples, as stated in Article 3 which states that customary rights are still respected as long as they exist in reality and do not contradict national interests. However, the implementation of these provisions is often less effective due to the absence of strong technical regulations in its implementation. In addition, Law Number 6 of 2023 concerning Job Creation aims to create ease of investment, but has not fully accommodated the protection of indigenous peoples' rights to customary land.

At the regional level, Jayapura Regency Regional Regulation Number 2 of 2016 concerning the Implementation of Investment regulates investment policies, including licensing mechanisms and partnerships with local communities. However, this regional regulation does not specifically regulate the scheme for the protection of customary rights in investment, so in many cases, customary land is converted into investment land without a transparent and participatory mechanism. This creates inequality in the distribution of economic benefits, where indigenous peoples are often only objects, not subjects in investment.

Therefore, it is necessary to reconstruct the management of customary lands in a fair manner with a partnership approach based on local wisdom. This model must prioritize the principles of justice, legal certainty, and a balance between the protection of customary rights and investment interests. Thus, customary land management can support sustainable investment without sacrificing the rights of indigenous peoples in Jayapura Regency.

Several previous studies have discussed the dynamics of customary land management in economic development, such as those conducted by Nawir and Rahayu, which highlight how national regulations are less effective in protecting the rights of indigenous peoples in eastern Indonesia.¹ Their study found that legal uncertainty often leads to conflicts between indigenous peoples and investors. However, the study has not specifically discussed Jayapura Regency and does not propose a fairer and more sustainable management model.

¹ Nawir, H. & Rahayu, D. (2019). *Konflik Agraria Dan Implikasi Kebijakan Terhadap Hak Ulayat Di Indonesia Timur*. Jurnal Hukum Dan Pembangunan, 49(2), 189-205.

Another research by Soetikno focuses more on the impact of Law Number 6 of 2023 (Job Creation Law) on the management of customary rights, which accelerates investment licensing but ignores aspects of indigenous peoples' protection.² Although this research highlights the regulatory aspect, it has not provided concrete solutions in the form of customary law-based partnership models that can be applied at the regional level. Meanwhile, research by Yusran et al. discusses customary rights-based investment partnership models in Papua and emphasizes the importance of indigenous peoples' involvement in profit-sharing schemes.³ The study shows that some regions have successfully implemented such partnerships, but are still constrained by weak local regulations. Customary land is an authority, which according to customary law, is owned by the customary law community over a certain area that is the environment of its citizens, where this authority allows the community to benefit from natural resources, including land, in the area for its survival.⁴

In the view of customary law, according to Herman Soesang Obeng, it is stated that the land and humans have such a close relationship, and in the interweaving of thoughts (*participierend denken*), so that the relationship between humans and land is a magical religious relationship that more or less contains elements of supernatural (mystical) forces.⁵ Customary land is a land of common ownership which is believed to be a gift of a supernatural power or ancestral heritage to a group that is a customary law society as the main supporting element for the group's livelihood and livelihood throughout time.⁶

Land with the status of Property Rights has long been known by the community. The basis of *idiil* rather than property rights is Pancasila and the 1945 Constitution. So juridically formally, individual rights exist and are recognized by the state. This is evidenced by the existence of the Basic Regulation on Agrarian Principles regulated in Law Number 5 of 1960 concerning the UUPA. In the past, property rights in the sense of western law were absolute.⁷ The customary law community that is gathered in the clan unit has land rights and is then known as "*Hak Marga*", which is the rights of the customary law community which is the customary right of the customary community concerned. This right is owned and used jointly both individually and in groups regulated by the clan head. The customary rights of this clan generally do not have written evidence and cover a fairly large area. Although it is not written, in reality it is still recognized both by the customary law community and by the wider community.⁸ Property Rights can also be interpreted as rights that can be inherited from generation to generation, continuously without having to apply for their

² Soetikno, B., Arifin, Z., & Siregar, R. (2021). *Analisis Implementasi Undang-Undang Cipta Kerja Dalam Pengelolaan Hak Ulayat Masyarakat Adat*. Jurnal Legislasi Indonesia, 18(1), 112-130.

³ Yusran, A., Wibowo, T., & Kurniawan, R. (2022). *Model Kemitraan Investasi Berbasis Hak Ulayat Di Papua: Studi Kasus Pada Wilayah Adat Tabi*. Jurnal Ekonomi Dan Hukum, 20(3), 215-230.

⁴ Chomsah, Ali Achmad,. *Hukum Pertanahan (Pemberi Hak Atas Tanah Negara)* Cerakan I, Prestasi Pustaka. Yogyakarta, 2002 Hal 76

⁵ Siregar, Ansari, 2011. *Pendaftaran Tanah Kepastian Hak*, Fakultas Hukum Universitas Sumatera Utara, Medan.

⁶ Surojo Wignjodipuro, *Pengantar Dan Asas-Asas Hukum Adat*, PT. Gunung Agung, Jakarta, 1983, Hal 197

⁷ John Salindeho, , "*Masalah Tanah Dalam Pembangunan*", Grafika, Jakarta, 1993 Hal 70

⁸ Harsono, Boedi. *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*. Jakarta: Djambatan, 1991.

rights again in the event of a transfer of rights. In the present sense, the right of ownership of land listed in Article 20 paragraph (1) of the UUPA is as follows: "Property rights are the hereditary, strongest and fullest rights that a person can have over land, bearing in mind the provisions in Article 6 of the UUPA."⁹

METHODOLOGY

This research is an empirical juridical research, which examines legal rules related to customary land management and its implementation in investment practices in Jayapura Regency. This approach is used to understand the relationship between regulations and realities on the ground, so that we can formulate a model of customary land management that is equitable in improving the investment climate. This research uses several approaches, namely first, *the Normative Approach* by analyzing relevant laws and regulations, such as the Basic Agrarian Law (UUPA) as the main legal basis for land regulation in Indonesia, Law Number 6 of 2023 concerning Job Creation, which affects investment licensing and land management, Jayapura Regency Regional Regulation Number 2 of 2016 concerning the Implementation of Investment, as a regional regulation that regulates investment mechanisms, other regulations related to the protection of the customary rights of indigenous peoples. Second, *the Empirical Approach* is conducting field research to understand the problems faced by indigenous peoples and investors in customary land management.

DISCUSSION

Analysis of the Recognition & Protection of Customary Rights in the National Legal System (UUPA) and Its Relevance to Investment Policy in Jayapura Regency

Jayapura Regency is one of the regions in Papua Province that has abundant natural resources from tropical forests, Sentani lake, the coast of Tanah Merah Bay, to mining and cultural tourism potential. However, this wealth is on customary land (customary rights) held for generations by clans and tribes, with very strong emotional and spiritual ties.

On the other hand, local governments seek to attract investment to develop infrastructure, tourism, forest products processing industries, and fisheries sectors. When these two interests meet the interests of safeguarding customary rights and the interests of inviting investment, a big challenge arises: how to maintain justice and legal certainty for indigenous peoples without hindering regional economic growth.

UUPA Number 5 of 1960 is a milestone in national agrarian regulation. Article 3 of the UUPA explicitly states:

"The implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way as to be in accordance with the national and state interests, which are based on national unity, and must not conflict with laws and other higher regulations."

⁹ K. Wantjik Saleh, "*Hak Anda Atas Tanah*", Ghalia Indonesia, Jakarta, 1973, Hal 45

The meaning of this article is that customary rights are recognized for their existence, as long as the reality still exists (living law). The recognition is conditional, that is, it must be in line with national interests. The state places customary rights in the hierarchy of legal interests, where the public interest and national unity are the highest references.

Implication in Jayapura Regency, the customary rights of clans/tribes remain valid under customary law. The state (through local and central governments) can regulate its use for development and investment purposes. Tensions arise when "national interest" is interpreted unilaterally by the government or investors without the full understanding of the customary owner.

Based on data from the Jayapura Regency BPN in 2023, around 85% of Jayapura Regency's land area is under the control of indigenous peoples.¹⁰ Of that number, only about 12% have the status of a property title certificate or HGB (Hak Guna Bangunan Building), the rest have the status of pure customary land. On the other hand, data from the Jayapura Regency Bappeda in 2023 shows that investment in the tourism and infrastructure sectors increased by 18% in 2022–2023, but some projects were delayed due to unresolved customary land disputes.¹¹

In the context of investment policy, the UUPA is the legal umbrella that regulates land rights, including land that will be used for business activities. Investors need legal certainty over the status of the land they use. The UUPA stipulates that the land to be used must have clear proof of rights, either through a certificate or a valid management agreement.

Incoming investors need dispute-free land. Customary land that is not certified poses legal risks for investors. The mechanism of release or lease with indigenous peoples is an option that is often taken, but the process takes a long time.

Based on legal analysis and field data, the UUPA recognizes customary rights, but there is no detailed standard mechanism at the regional level for verification, registration, and protection of customary rights in the context of investment. As a result, the investment process often gets stuck in the early stages of negotiations. The interests of economic development often clash with the cultural and spiritual values of indigenous peoples. Indigenous peoples view land as an identity, not just an economic asset. Similarly, the investment licensing process in Jayapura Regency still refers more to formal administrative procedures than a customary-based participatory approach.

The Constitutional Court Decision No. 35/PUU-X/2012 strengthens the position of indigenous peoples in the national legal system by emphasizing that customary forests are no longer included in state forests, but are part of the territory of customary law communities.¹² The significance of this decision for Jayapura

¹⁰ Bappeda Kabupaten Jayapura, *Profil Investasi Dan Pembangunan Daerah 2023*.

¹¹ BPN Kabupaten Jayapura, *Laporan Tahunan 2023*

¹² Fajar, P. P. P., Aloysius, S., & Dinata, H. K. (2024). Implikasi Putusan Mahkamah Konstitusi Nomor

Regency is very large, because most of its territory consists of customary forest areas with ecological, economic, and cultural value. With this decision, the paradigm of forest control that was previously dominated by the state has shifted towards a model of recognition of the communal rights of indigenous peoples. The juridical consequence is that any investment policy that utilizes customary forests must obtain approval from customary owners, not solely government administrative approval. This shows that the concept of *living law* recognized in the UUPA is now getting constitutional strengthening, so that the existence of customary rights cannot be ignored in the formulation of regional development policies.¹³

Legal mechanisms that can bridge the interests of indigenous peoples with legal certainty for investors still face various structural and substantial obstacles. The UUPA only provides a normative basis through Article 3, while technical implementation requires more detailed derivative regulations. In Papua, regional regulations and regional regulations actually have a strategic role as regional legal instruments to formulate customary land governance, starting from release procedures, joint management patterns, to legal protection of indigenous peoples.¹⁴ However, the weakness lies in the lack of systematic and uniform regulations, so that practices in the field often cause inconsistencies. As a result, investors face legal uncertainty, while indigenous peoples face the risk of losing land without proportionate compensation. This shows that there is a gap between normative recognition and empirical implementation that needs to be addressed immediately through legal reform at the regional level.

From an investment law perspective, a participatory approach is a normative and practical imperative. The licensing process that only emphasizes administrative aspects without involving customary social mechanisms has the potential to cause prolonged conflicts. In the context of Jayapura Regency, indigenous peoples view land not only as an economic asset, but as a cultural identity and spiritual symbol. Therefore, decision-making on customary land must be carried out through customary deliberation involving rights owners collectively. Written agreements, fair compensation, and guaranteed management rights for indigenous peoples are essential components that must be institutionalized. The principle of *Free, Prior, and Informed Consent (FPIC)* known in international law can be used as a model, because it requires free consent, preceded by adequate information, and given consciously by indigenous peoples before an investment project is undertaken. The application of FPIC principles not only provides protection for indigenous peoples, but also creates more stable legal certainty for investors.¹⁵

35/PUU-X/2012 Terhadap Pengaturan Hutan Adat Dan Dampaknya Terhadap Hak Masyarakat Adat. *Perkara: Jurnal Ilmu Hukum Dan Politik*, 2(2), 39-61.

¹³ Reumi, F., Kaplele, F., & Reumi, T. A. S. (2025). The Function Of The Kinship Legal System And Legal Certainty Of Land Rights Of Papuan Customary Communities In Jayapura City (From A Philosophical, Sociological, And Legal Perspective). *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 24(2), 6292-6316.

¹⁴ Hasanah, U., Kurniati, N., & Priyanta, M. (2025). LEGAL HARMONIZATION BETWEEN THE OMNIBUS LAW AND BASIC AGRARIAN LAW (UUPA) IN PROTECTING INDIGENOUS RIGHTS. *Cepalo*, 9(2), 95-106.

¹⁵ WARDIANINGSIH, I. (2020). *Perlindungan Hukum Terhadap Pemegang Hak Milik Atas Tanah Yang Tanahnya Berasal Dari Tanah Ulayat Di Kota Jayapura (Studi Kasus Putusan Mahkamah Agung No. 3057K/Pdt/2016)* (Doctoral Dissertation, Universitas Hasanuddin).

The analysis of the recognition and protection of customary rights in the national legal system shows the need for harmonization between agrarian regulation and investment policy. The UUPA does recognize the existence of customary rights, but the effectiveness of its implementation in areas such as Jayapura Regency is highly dependent on the state's consistency in placing customary rights as an integral part of the land legal system. The establishment of regional regulations that are responsive to the social realities of indigenous peoples is an urgent need, so that there is no inequality between development interests and the protection of indigenous peoples' rights. The regulation must emphasize legal certainty, distributive justice, and ecological sustainability. With clear normative recognition, adequate legal protection, and effective participatory mechanisms, investments can be directed to support sustainable development in Jayapura Regency. This approach not only prevents land conflicts, but also makes the area a model of integration between modern economic development and the preservation of indigenous peoples' traditional values.

Implementation of Regional Regulation No. 2/2016 and its Impact on Customary Land Management & Legal Certainty

Regional Regulation No. 2 of 2016 was passed as an effort by the Jayapura Regency Government to encourage orderly, planned, and profitable investment for the region, the community, and business actors. This Regional Regulation contains the principles of legal certainty for investors, protection of the interests of local communities, and a balance between environmental sustainability and economic growth.

Interestingly, this Regional Regulation specifically mentions the role of indigenous peoples as parties that must be involved in the investment licensing process, especially if the project utilizes customary land.

Article 5 of this Regional Regulation explains the obligation of local governments to facilitate cooperation agreements between customary rights owners and investors before permits are issued. Similarly, article 8 states that investors are obliged to conduct public consultations with indigenous peoples who have land rights. It is followed by article 14 which contains a mechanism for resolving investment disputes involving customary rights through customary deliberation before taking the litigation route.¹⁶ In other words, this Regional Regulation actually tries to bridge positive law and customary law. An example of a successful case is the development of ecotourism in Yoboi Village, on the shores of Lake Sentani, in 2019. The process takes 6 months for a customary agreement, followed by a written agreement ratified by the local government. Now, the tourist attraction attracts 3,500 visitors per year and is a source of income for 42 heads of families who own customs.

¹⁶ Peraturan Daerah Kabupaten Jayapura Nomor 2 Tahun 2016 Tentang Penyelenggaraan Penanaman Modal.

On the other hand, there are also examples of failed cases such as the plan to build a fishing port in Demta in 2021 which was rejected by indigenous people due to concerns about marine pollution and unclear profit sharing.

Obstacles to the Implementation of Regional Regulation No. 2 of 2016 are No Technical SOP The Regional Regulation mandates the protection of customary rights, but there is no detailed SOP regarding the stages of negotiation, agreement format, and verification mechanism. The negotiation capacity of indigenous peoples is limited, many indigenous leaders are unfamiliar with modern contract legal clauses, so they are prone to agreements that are detrimental to them. On the other hand, it overlaps with Central Regulations, for example, Government Regulation No. 24 of 2018 concerning Complete Systematic Land Registration (PTSL) and Law No. 11 of 2020 jo. Law No. 6 of 2023 concerning Job Creation, which provides ease of investment licensing, sometimes clashes with customary mechanisms.

With the existence of this Regional Regulation, it provides a legal basis for investors to negotiate directly with indigenous peoples. The existence of a customary dispute settlement clause suppresses the potential for open conflict. However, the licensing process becomes long if customary negotiations are not properly facilitated. Some investors consider this Regional Regulation as an "additional burden" because it has to finance the customary consultation process.

This Regional Regulation is recognized as an important instrument in Papua because it contains explicit recognition of customary rights in the context of investment. The absence of technical SOPs makes implementation dependent on the ability of facilitators in the field. Customary-based dispute resolution has proven to be more effective in small–medium-scale investment cases (such as ecotourism), but less effective for large projects with broad environmental impacts.

The implementation of Regional Regulation No. 2 of 2016 shows that there are concrete efforts by local governments to present a balance between legal certainty for investors and the protection of the customary rights of indigenous peoples. From the perspective of investment law, this regional regulation shows a formal recognition of the position of indigenous peoples as legal subjects that must be involved from the beginning of the licensing process. This also emphasizes that customary land cannot be treated as *res nullius* or free objects, but as a communal asset that has customary, social, and spiritual law dimensions.¹⁷ By including customary deliberation clauses and the obligation of public consultation, this regional regulation serves as a bridge between the national positive law and *the living law* that is developing in Papuan society.

The impact of the implementation of the regional regulation on customary land management is quite significant, although it varies from case to case. At the local level, the success of ecotourism projects in

¹⁷ Sipayung, B., Kotijah, S., & Syarifuddin, L. (2024). Aspek Hukum Tentang Pengabaian Atas Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Wilayah Kalimantan Timur Berpotensi Sengketa Hukum. *Jurnal Begawan Hukum (JBH)*, 2(1), 23-43.

Yoboi Village is proof that customary-based negotiations are able to produce fair, transparent, and sustainable agreements. The long negotiation process actually reflects the existence of a healthy deliberation space, so that indigenous peoples obtain a strong bargaining position in determining cooperation schemes. On the contrary, the failure to build a fishing port in Demta shows the limitations of this regional regulation in the face of large-scale projects that raise ecological concerns and unclear distribution of profits. These differences in results show that the success of the implementation of regional regulations is largely determined by the level of participation, the negotiation capacity of indigenous peoples, and the quality of facilitation from local governments.

From the aspect of legal certainty, Regional Regulation No. 2 of 2016 provides a normative basis for investors to obtain social and legal legitimacy in accessing customary land. The necessity of a written agreement and dispute resolution mechanism through customary deliberation before litigation is an important instrument to minimize open conflicts. However, the absence of technical SOPs regarding the format of the agreement, negotiation stages, and verification mechanisms actually weakens the operational effectiveness of this regional regulation. Such procedural uncertainties not only burden indigenous peoples, but also create ambiguity for investors who demand a quick and efficient process. Thus, this regional regulation produces a form of conditional legal certainty, depending on the ability of the parties to build consensus in a participatory manner.

Another obstacle arises due to the limited negotiation capacity of traditional leaders in dealing with modern contract clauses. Many indigenous leaders have a strong understanding of customary law, but are not familiar with the language of civil law or investment contract law.¹⁸ This condition has the potential to create an imbalance in the agreement, where indigenous peoples can be harmed by unclear clauses. The role of local governments as facilitators is very vital to ensure equality of position in negotiations. Without technical capacity support, formal recognition in regional regulations can lose substantive meaning because they are unable to effectively protect the rights of indigenous peoples.

The next challenge is the overlap of regulations between Regional Regulation No. 2 of 2016 and national regulations, such as Government Regulation No. 24 of 2018 concerning PTSL and Law No. 11 of 2020 jo. Law No. 6 of 2023 concerning Job Creation. Central regulations emphasize more on accelerating investment licensing and land registration, while local regulations prioritize customary mechanisms that tend to take time. This regulatory disharmony can cause legal confusion, because investors are stuck between following national formal procedures or meeting customary requirements regulated by the local regulation. This inconsistency requires the harmonization of regulations so that legal certainty is not only normative, but also operational in the field.

Scientifically, Regional Regulation No. 2 of 2016 can be seen as a transformative instrument that tries to unite two legal regimes: national positive law that emphasizes efficiency and certainty, and customary law

¹⁸ Ernis, Y. (2019). Legal Protection For Title Over Customary Land In Central Kalimantan. *Journal Of De Jure Legal Research*, 19(4), 435-454.

that is oriented towards deliberation and socio-ecological balance. The impact on customary land management is ambivalent: on the one hand it provides strong legitimacy for indigenous peoples in dealing with investors, on the other hand it poses implementation challenges due to the absence of technical tools and regulatory disharmony. The legal certainty produced by this regional regulation is still relative, but its existence is an important milestone in the recognition of customary rights in Papua, as well as paving the way for the formulation of more inclusive and equitable investment policies.

Legal Obstacles in the Management of Customary Lands After Law Number 6 of 2023 concerning Job Creation.

Jayapura Regency is at the crossroads between customary interests and the flow of investment deregulation accelerated by the Job Creation Law (Law No. 11 of 2020 which was amended to Law No. 6 of 2023). This law aims to make investment easier by cutting licensing and shortening the land acquisition process. However, in areas where the majority of land is customary land, this convenience actually gives rise to the potential for new conflicts.

The paradigm shift from "layered permitting" to risk-based licensing has given many projects the green light quickly, but on the other hand the customary approval process is often left behind or even overlooked.

The results of the study show that several main legal obstacles, namely *first*, Overlapping Authority, the Job Creation Law gives great authority to the central and provincial governments to accelerate investment, sometimes passing customary procedures that become local authorities. In Papua, this clashes with Article 43 of the Papuan Special Autonomy Law (Law No. 2 of 2021) which regulates the recognition and protection of customary rights more broadly. Example: The logistics warehouse construction project in Ravenirara District (2022) which directly received permission from the central BKPM, without initial consultation with the indigenous people of the landowners. *Second*, there is no technical definition of "customary consent", where the Job Creation Law recognizes customary law communities in general, but does not explain the mechanism for the validity of consent. As a result, investors sometimes only negotiate with a handful of individuals who are considered to represent customs, even though they do not have full legitimacy. *Third*, the absence of Official Registration of Customary Rights, where customary land rarely enters the official map of BPN, so administratively it is registered as "state land".¹⁹ This makes it easier for investors to issue permits, but eliminates the bargaining position of indigenous peoples.

Jayapura Regency faces complex dynamics due to the disharmony between the Job Creation Law and the Papuan special legal framework that places customary rights as recognized legal entities. The lack of synchronization between central regulations and local legal norms causes uncertainty in customary land management practices. This condition poses the risk of legal dualism, where investors can take refuge in the legitimacy of permits from the center, while indigenous peoples still hold to socio-cultural legitimacy.

¹⁹ Fariz, T., & Kodyat, B. A. (2023). Perlindungan Hukum Hak Masyarakat Adat Atas Tanah Ulayat Pasca Undang-Undang Cipta Kerja. *Eduyustisia*, 1(3), 36-42.

This kind of clash has the potential to cause horizontal conflicts between citizens and vertical conflicts between the community and the government.

Another significant obstacle is the weak legal instrument to justify "customary consent" as a valid condition for licensing. Without a standard legal mechanism, consent is often only administrative and does not reflect substantive customary deliberations. This results in the occurrence of abusive practices of authority, such as unilateral recognition by certain individuals who claim to be indigenous representatives. From the perspective of agrarian law, this condition shows the degradation of *the principle of free, prior, and informed consent (FPIC)* which should be used as a standard in development projects in customary territories.

The absence of official registration of customary land further exacerbates the problem because customary land is often legally treated as state land. The implication of this legal construction is the weakening of the binding power of customary rights in the licensing process, so that indigenous peoples tend to be in a subordinate position when dealing with investors and the state. This is contrary to the principle of substantive justice contained in Article 18B paragraph (2) of the 1945 Constitution which affirms the recognition of customary law communities. Thus, legal problems after the enactment of the Job Creation Law are not only technical, but also touch on the constitutional dimension and human rights.

This situation requires a legal reconstruction that is able to integrate the interests of accelerating investment with real recognition of customary rights. The harmonization of regulations between the Job Creation Law, the Papua Special Autonomy Law, and Regional Regulations such as Regional Regulation No. 2 of 2016 is an urgent agenda to avoid overlapping authority and legal uncertainty.²⁰ Without normative reconciliation and clear implementation mechanisms, customary land management in Papua will continue to face a dilemma between formal legal certainty for investors and socio-cultural legitimacy for indigenous peoples.

A Model for Reconstruction of Equitable Customary Land Management with a Partnership Approach Based on Local Wisdom, in order to ensure legal certainty, improve the welfare of Indigenous Peoples, and Create a Conducive Investment Climate in Jayapura Regency.

The local government together with the Customary Council and community leaders need to establish a permanent mediation institution that functions as a forum for resolving customary land disputes quickly and based on deliberation. This institution must have clear legal legitimacy through local regulations, so that mediation decisions have binding power and are able to prevent the escalation of conflicts that have the potential to hinder investment.

²⁰ Fariz, T., & Kodyat, B. A. (2023). Perlindungan Hukum Hak Masyarakat Adat Atas Tanah Ulayat Pasca Undang-Undang Cipta Kerja. *Eduyustisia*, 1(3), 36-42.

Another important step is the documentation and digitization of customary territory maps that are verified with indigenous peoples and related agencies. This mapping will be the basis for providing legal certainty to investors while protecting customary rights. The integration of digital data on customary land into the regional land information system allows the process of verifying investment locations to take place faster, more accurately, and more transparently.

An economic partnership scheme between indigenous peoples and business actors with the principle of mutual benefit is also needed. The partnership model can be in the form of revenue sharing, capital participation, or joint management, so that indigenous peoples not only act as land releasers, but also reap long-term benefits from the investments made.

Local governments also need to draft Regional Regulations on Customary Land Management that regulate procedures for obtaining business use rights or use rights for investors in customary territories. This regulation must contain the consent mechanism of indigenous peoples, conditions of cooperation, and guarantees of protection of indigenous rights. Clear rules will reduce legal uncertainty that has been the main obstacle to investment in Jayapura Regency.

Education and capacity building programs for indigenous peoples in the fields of asset management, legal literacy, and business management are also very necessary. This capacity building will place the community as equal partners in every investment cooperation process, while strengthening their bargaining position in front of investors.

In addition, cross-sectoral synergy is needed between local governments, customary institutions, the National Land Agency (BPN), and investors to build an effective communication mechanism. This communication forum can be a forum to discuss investment plans, anticipate potential conflicts, and ensure that the entire investment process takes place in line with the principles of sustainable development.

By implementing these policy recommendations, it is hoped that the management of customary lands in Jayapura Regency will not only provide legal certainty and a sense of justice for indigenous peoples, but also open up productive and sustainable investment opportunities. The successful implementation of this policy will serve as an example of best practice for other regions in Papua in harmonizing the relationship between customary rights and economic development.

The model of reconstruction of equitable customary land management in Jayapura Regency must be built on a partnership paradigm that respects local wisdom while ensuring legal certainty for all parties. This approach places indigenous peoples not only as landowners, but as key actors who play an active role in the process of planning, implementing, and evaluating investments. Within the framework of pluralistic legal theory, integration between state law and customary law can be carried out through a social contract mechanism based on local wisdom that is ratified in the form of positive legal norms, thus giving birth to dual legitimacy: the formal legitimacy of the state and the social legitimacy of indigenous peoples.

The aspect of legal certainty can be realized through the establishment of a regional regulatory instrument that regulates in detail the mechanism for acquiring rights, the form of legal partnership, and the dispute resolution procedure.²¹ This regulation not only functions as an administrative guideline, but also as a means of recognition of customary law that lives in the community. Thus, these regional regulations will have a strategic role in reducing investment uncertainty while affirming the position of indigenous peoples as protected legal subjects.

The partnership approach based on local wisdom also has a significant welfare dimension. Profit-sharing schemes, joint ventures, or capital participation tailored to the socio-economic structure of indigenous peoples will reduce the potential for exploitation and strengthen their bargaining power. Empirically, inclusive partnership patterns have been proven to improve the collective well-being of indigenous peoples because the income earned is not only temporary, but sustainable. This is in line with the principles of sustainable development and distributive justice in the legal theory of justice.

To create a conducive investment climate, multistakeholder communication mechanisms between governments, investors, indigenous peoples, and indigenous institutions must be institutionalized. This communication forum is not just a dialogue space, but an arena for public deliberation that integrates legal, economic, and ecological perspectives. In this way, every investment decision will be born from a participatory process that is democratic and rooted in local wisdom.

This kind of reconstruction model is not only relevant for Jayapura, but can also be a model for other regions in Papua that face similar dilemmas. The success of its implementation will show that legal certainty and customary justice are not two things that affirm each other, but can support each other in building an inclusive, fair, and sustainable investment ecosystem.

CONCLUSIONS

Based on the results of the study, it can be concluded that customary land management in Jayapura Regency is currently still faced with the problem of overlapping authority, lack of clarity on the status of land rights, and the lack of formal mechanisms that accommodate the interests of indigenous peoples and investors. This condition creates legal uncertainty that ultimately hinders the entry of healthy and sustainable investment. The reconstruction of equitable customary land management requires an institutional model that directly involves indigenous peoples, ensures transparency of the process, and integrates customary regulations with positive applicable law. A participatory approach based on local wisdom is the key to building trust and creating legal certainty for the parties. The results of this study confirm that adaptive customary land management, collaboration, and strong legal protection can improve the investment climate

²¹ Zesa, Y., & Samderubun, F. (2024). KEPASTIAN HUKUM PENYELESAIAN KONFLIK TANAH ULAYAT DI BIDANG INVESTASI DI KABUPATEN MERAUKE. *Animha Law Journal*, 1(1), 13-39.

while maintaining the social and cultural sustainability of indigenous peoples in Jayapura Regency gitimacy because the process is based on a rational, inclusive, and responsive approach to community needs.

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