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A Model for Utilizing Common Land for Investment Through HPL that Strengthens the Position of Indigenous Communities

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ABSTRACT

This research stems from significant changes in national agrarian policy through Government Regulation 18/2021 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) 14/2024, which for the first time opened the possibility of establishing customary land as a source of Land Management Rights (HPL) and recognizing indigenous communities as their holders. However, this recognition remains administrative in nature and is not accompanied by a substantive framework that ensures the protection of rights, full participation, and fairness for indigenous communities in investment practices. The research method used is normative legal research with legislative, conceptual, and comparative approaches, enriched by empirical findings from HPL management practices in various indigenous territories. This approach allows for an in-depth analysis of regulatory disharmony, administrative practices, and socio-legal dynamics that influence the position of indigenous communities in the HPL scheme. The results show that although the national legal system has formally recognized customary land, significant normative and institutional gaps remain. The implementation of HPL in the field often weakens the bargaining position of indigenous communities due to limited legal access, the absence of substantive participation mechanisms, and the dominance of state and investor interests in the decision-making process. In addition, regulations regarding timeframes, cooperation mechanisms, and ecological protection still do not provide adequate legal certainty.

Keywords: *Customary Land, Land Management Rights (HPL), Customary Law Communities, Legal Justice, Sustainability.*

INTRODUCTION

Indonesia is a pluralistic nation with a rich socio-cultural heritage and a highly diverse customary law community structure. Amidst this heterogeneity, land is positioned not simply as an agrarian object, but as a multidimensional entity containing cosmological, spiritual, social, and economic values. In various Nusantara traditions, land is understood as a living space, a living space, and a space of identity that binds indigenous communities through generations.[1] The use of the terms siti, lemah, leumah, palemahan, petak, bumi, and tanah reflects that the relationship between humans and land has a depth of meaning that goes beyond just private ownership relations.[2]

[1] Muhajir Utomo, *Ilmu Tanah Dasar-Dasar Dan Pengelolaan* (Jakarta: Prenada Media, 2017).
[2] Bambang Hermanto, Irwanda Irwanda, and Irwanda Irwanda, "REVITALISASI PENGAKUAN HAK ATAS TANAH ULAYAT MELALUI REFORMASI HUKUM AGRARIA DI INDONESIA," *Nusantara; Journal for Southeast Asian Islamic Studies* 20, no. 2 (January 7, 2025): 144, https://doi.org/10.24014/nusantara.v20i2.35140.

Therefore, land ownership always concerns the existential issues of indigenous communities, so that land cannot be separated from the sustainability and dignity of the indigenous community itself.

At the national level, land is a fundamental element in the formation of legal systems and public policies. The state is obliged to maintain a balance between land use for national development and the protection of community land rights.[3] However, historical facts show that Indonesian land governance has never been free from competing interests between the state, the market, and indigenous communities. Land has become a tug-of-war between exploitative economic interests and the sustainability-oriented communal values of indigenous communities.[4] The tension between these two interests demands that the state build a legal system capable of integrating the philosophical values of land with the needs of modern development.

Recognition of customary law communities and customary rights has been normatively affirmed in Article 18B paragraph (2) of the 1945 Constitution. However, this recognition is conditional as long as it is still alive, in accordance with the development of society, and does not conflict with the principles of the Unitary State of the Republic of Indonesia.[5] These conditional conditions often create room for interpretation, preventing customary rights from receiving substantive protection. In many cases, the state prioritizes administrative certainty over social justice for indigenous communities.[6] This tension shows that despite constitutional recognition, in practice indigenous communities remain in a vulnerable position, especially when customary lands intersect with development and investment projects.

Customary land as a communal right has a unique character, owned by a customary association, is inherited, and is the basis of social identity.[7] Experts such as Soepomo and Ter Haar emphasize that customary rights are the foundation of the customary social order that regulates relations between individuals and associations.[8] Therefore, the weakening of customary rights means the weakening of the social structure of indigenous communities themselves. The intertwining dynamics between customary rights and individual rights reflect internal tensions over land ownership, but the real problem arises when external intervention, particularly from the state and investors, creates an imbalance in power relations that causes indigenous communities to lose control over their living spaces.[9]

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[3] Ardiansyah Madjid, Siti Barora Sinay Siti, and Nam Rumkel, "Perlindungan Hukum Terhadap Hak-Hak Masyarakat Atas Tanah Akibat Alih Fungsi Lahan Untuk Proyek Strategis Nasional Dan Pertambangan Di Kabupaten Halmahera Timur," *JURNAL HUKUM PELITA* 6, no. 2 (November 8, 2025): 750–64, https://doi.org/10.37366/jhp.v6i2.6217.

[4] Any Farida, "FAKTOR-FAKTOR YANG MEMPENGARUHI PERGESERAN NILAI-NILAI OTENTIK KEINDONESIAAN KE HUKUM POSITIVISTIK DALAM SISTEM HUKUM NASIONAL," *JPeHI (Jurnal Penelitian Hukum Indonesia)* 4, no. 2 (December 23, 2023): 1, https://doi.org/10.61689/jpehi.v4i2.504.

[5] Natal Frantomas Nababan and Martono Anggusti, "Pengakuan Wilayah Adat Dalam Perspektif Hukum: Perbandingan Masyarakat Adat Dengan Dan Tanpa SK Pemerintah Kabupaten Serta Urgensi RUU Masyarakat Adat," *Hukum Dan Masyarakat Madani* 15, no. 2 (November 13, 2025): 283–98, https://doi.org/10.26623/humani.v15i2.13078.

[6] Agung Iriantoro and Sujatmiko Sujatmiko, "Sinergi Hukum Adat Dan Hukum Islam Dalam Penyelesaian Sengketa Tanah Adat," *Tasyri' : Journal of Islamic Law* 4, no. 2 (July 15, 2025): 1323–50, https://doi.org/10.53038/tsyr.v4i2.424.

[7] Rodhiyah Mardhiya, "Hak Ulayat Masyarakat Hukum Adat Dalam Implementasi Pembangunan Hukum Nasional Di Indonesia," *Jurnal Hukum Lex Generalis* 5, no. 9 (October 10, 2024), https://doi.org/10.56370/jhlg.v5i9.514.

[8] Soepomo, *Hukum Adat Indonesia* (Jakarta: Pradya Paramita, 1962).

[9] Stephy Anggi Eliza Tambunan, Gregorian Aldi Montana Tarigan, and Annekhne Ditalia Ben-Hardty Manurung, "Hak Ulayat Versus Hak Milik: Dinamika, Konflik, Dan Resolusi," *Neoclassical Legal Review:*

Regulatory developments demonstrate that the protection of customary land rights is volatile. Article 3 of the Basic Agrarian Law (UUPA) does recognize customary land rights, but with conditions that limit their implementation. Ministerial Regulation No. 5/1999 provides guidelines, but implementation is highly dependent on the political will of local governments. Legal reforms following the Job Creation Law brought significant changes through Government Regulation 18/2021, which opened the possibility of establishing HPL (Land Use Permit) for customary land. Normatively, this represents a step forward, as for the first time, indigenous peoples can become HPL holders. However, this normative progress does not automatically eliminate structural inequalities, as the recognition process remains dependent on administrative mechanisms within local governments and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). This demonstrates a regulatory gap between recognition and protection.

In investment-driven development, HPL plays a strategic role as a bridge between state land and economic activity. HPL facilitates collaboration between the government and investors, making it frequently used in large-scale projects.[10] However, when HPL is placed on customary land, the problem becomes more complex. In many regions, the partnership model through HPL actually results in unequal relations between indigenous communities, the state, and third parties. While Dian Cahyaningrum's (2022) research does see the potential of HPL as a fair partnership scheme, she also emphasizes the need for a robust oversight mechanism to prevent the instrument from becoming a legal tool for transferring control of customary land.[11] On the other hand, Rosmidah, Hosen, and Sasmiar's (2023) critique shows that post-Job Creation Law land law policy is too pro-investment, thus ignoring the social function of land.[12]

Empirical conditions demonstrate that normative progress does not always result in substantive justice. The case of Nagari Sitapa, which received HPL for customary land, was indeed a milestone, but research by Afdal Aperta Safatullah (2025) shows that without a participatory management model, indigenous communities can lose control even if formally recognized as HPL holders.[13] Similarly, the experience of Nagari Sungayang, a national pilot project, demonstrates the importance of transparent, institutionally-based governance. Land Use Permits (HPL) will only protect indigenous communities if accompanied by substantive partnership regulations, not simply certification administration. These two cases demonstrate that the core issue is not simply recognition, but who controls the land after the HPL is established.

These various dynamics demonstrate the urgency of developing a legal model for customary land use through HPL that not only ensures legal certainty but also ensures justice, participation, and socio-ecological sustainability. The need for this model arises from the gap between formal recognition and substantive protection, between administrative regulations and the realities of indigenous communities, and between national development interests and the constitutional rights of indigenous peoples.

Journal of Law and Contemporary Issues 4, no. 1 (May 27, 2025): 28–35, https://doi.org/10.32734/nlrjolci.v4i1.20611.

[10] Herwansyah Herwansyah, "Analisis Dampak Kehadiran Hak Pengelolaan (HPL) Bagi Tanah Ulayat MasyarakatAdat Pasca Disahkannya UU Cipta Kerja," *Jurnal Fundamental Justice* 6, no. 2 (September 23, 2025): 165–76, https://doi.org/10.30812/fundamental.v6i2.5119.

[11] Dian Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Investasi," *Jurnal Negara Hukum* 13, no. 1 (2022).

[12] Rosmidah, M. Hosen, and Sasmiar, "Penataan Struktur Hukum Hak Atas Tanah Dalam Rangka Keadilan Dan Investasi," *Jurnal Recital* 5, no. 2 (2023).

[13] Afdal Aperta Safatullah, "Analisis Pemberian Hak Pengelolaan Lahan (HPL) Di Atas Tanah Ulayat Masyarakat Adat Nagari Sitapa," *Sumatera Law Journal* 3, no. 1 (2025): 254–62.

Therefore, this article seeks to formulate an approach to customary land use through HPL that strengthens the position of indigenous peoples as primary subjects, not objects of development. This approach is expected to establish a new balance between investment interests and the protection of customary rights within Indonesia's agrarian legal framework.

METHODS

This research is a normative juridical research that analyzes positive legal regulations regarding land management, using three layers of legal science as proposed by Bahder Johan Nasution, namely legal dogmatics, legal theory, and legal philosophy.[14] At the legal dogmatic level, this research examines the normative structure and regulatory gaps in customary land in the UUPA, PP 18/2021, and the Ministerial Regulation of ATR/BPN through juridical-technical reasoning. At the legal theory level, the research examines general concepts such as state authority, indigenous peoples' rights, and agrarian legal relations through an interdisciplinary critical approach, as emphasized by Philipus M. Hadjon that legal theory is an explanatory discipline for clarifying juridical concepts.[15] Meanwhile, in the realm of legal philosophy, studies are directed at the values of justice, state legitimacy, and moral relations between the state and indigenous communities, in line with GW Paton's view that legal philosophy examines the normative basis and deepest meaning of law.[16] The use of these three layers allows this research not only to describe positive law, but also to assess the coherence, logic, and ideality of regulating the use of customary land through HPL.

In terms of approach, this study uses a combination of statute approach, conceptual approach, political approach, comparative approach, and case approach. The statutory approach is used to examine the ratio legis of customary land regulation in agrarian regulations. The conceptual approach is used to analyze the doctrine of communal rights and the concept of justice. Meanwhile, the legal political approach assesses the direction of state policy in regulating customary land as stated by Bahder Johan Nasution regarding rechtsidee as the legal maker.[17] A comparative approach was used to identify best practices from countries such as Canada, Malaysia, and the Philippines, particularly regarding communal land protection. A case study approach was used to analyze court decisions and empirical practices such as Nagari Sitapa and Sungayang. Primary, secondary, and tertiary legal materials were collected through card and electronic systems, then analyzed through description, systematization, and explanation, with hermeneutic and systematic interpretation. The analysis was conducted within an open system framework to formulate an ideal legal construction regarding the use of customary land through HPL (Hultural Land Use Permit) that strengthens the position of indigenous communities.

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[14] Bahder Johan Nasution, *Metode Penelitian Hukum, Cetakan Kedua* (Bandung: Mandar Maju, 2016).

[15] Afnan Rifai Sulistyo et al., "Comparison of Personal Data Protection in Indonesia and Thailand: Case Studies and Comparisons," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (October 16, 2025): 773–82, https://doi.org/10.38035/gijlss.v3i3.539.

[16] Agus Panahatan Panjaitan et al., "Hukum Kekerasan Anak Dalam Perspektif Filsafat Hukum: Analisis Atas Keadilan Dan Hak Asasi Manusia Di Indonesia," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. 2 (June 7, 2025): 858–65, https://doi.org/10.55606/jurrish.v4i2.5318.

[17] Edi Purwanto and Helmi, "Legal Politics of Land Dispute Settlement Post The Implementation of The Work Copyright Law in Realizing Security and Justice of Land Rights in Indonesia," *JHK: Jurnal Hukum Dan Keadilan* 1, no. 4 (2024): 14–23, https://doi.org/https://doi.org/10.61942/jhk.v1i4.182.

RESULTS AND DISCUSSION

HPL Regulations from the Perspective of Investment Law in Indonesia

Regulations regarding land management rights are based on a philosophical foundation that places land as a vital element in the social, economic, and spiritual life of a community. Land is understood not only as a legal object but also as a public resource that must be managed with due regard for the principles of social justice, public benefit, and sustainability.[18] Within this framework, the state carries out its control function as mandated by Article 33 paragraph (3) of the 1945 Constitution to ensure that every form of land use leads to the greatest prosperity of the people.[19] Therefore, the philosophy of HPL regulation is not only aimed at establishing a positive legal structure, but also ensuring that access, distribution, and utilization of land are carried out fairly in accordance with cultural, social, and human rights values.

The principle of social justice is the primary foundation because every land right, including individual rights, is normatively limited by its social function, as affirmed in Article 6 of the UUPA. This concept of social function shifts the paradigm of rights from an absolute nature to a structure oriented toward a balance between the interests of the individual and the wider community.[20] Furthermore, the principles of public benefit and state sovereignty also emphasize that land use must not conflict with the public interest, including the protection of the living space of indigenous communities. Therefore, HPL regulations must ensure a harmonious relationship between national development interests and the communal rights of indigenous communities, who have long lived under customary law structures.[21]

Historically, the concept of land rights has developed from the legal dualism before the UUPA, namely between eigendom in the Western legal system and property rights according to customary law.[22] In the customary law system, land rights give community members the authority to utilize land within the limits of local customary provisions, whereas in the concept of eigendom based on the Civil Code, ownership rights are full but remain subject to limitations of public interest.[23] The elimination of this dualism through the UUPA reinforces the principle of unifying agrarian law and ensures that all land rights are subject to the principle of social function. This philosophy also forms the basis for the birth of various other forms of rights, including Land Management Rights (HPL), which

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[18] Arief Fadillah Ramadhan et al., "Analisis Dinamika Keadilan Lingkungan Dan Pengelolaan Sumber Daya Alam: Studi Kasus Pencapaian Hak Tanah Masyarakat Desa Wadas Terhadap Rencana Pembangunan Bendungan Bener," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 3, no. 2 (June 5, 2024): 331–51, https://doi.org/10.55606/jhpis.v3i2.3825.

[19] Caca Kurniasari et al., "Program Landreform Sebagai Upaya Perubahan Kepemilikan Lahan Secara Menyeluruh Untuk Mencapai Kesejahteraan Yang Adil Dan Merata," *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum* 2, no. 1 (July 18, 2024): 62–69, https://doi.org/10.58707/aldalil.v2i1.525.

[20] Marianus Elki Semit and Pius Pandor, "REFLEKSI FILOSOFIS TRANSFORMASI MENUJU MASYARAKAT TERBUKA: WAWASAN LIBERALISME INDONESIA PERSPEKTIF FRANCIS FUKUYAMA," *JURNAL REINHA* 15, no. 2 (December 24, 2024): 147–61, https://doi.org/10.56358/ejr.v15i2.366.

[21] Iqbal Maulana et al., "Pengaturan Jangka Waktu Yang Berkeadilan Atas Perjanjian Kerjasama Kepada Pihak Ketiga Hak Pengelolaan Diatas Tanah Ulayat," *Tunas Agraria* 7, no. 3 (September 2, 2024): 285–302, https://doi.org/10.31292/jta.v7i3.352.

[22] Glenn Richard Pandelaki, Ronny A. Maramis, and Deasy Soeikromo, "Kajian Hukum Pemberian Hak Atas Tanah Negara Bekas Eigendom Verponding Menjadi Hak Milik," *Innovative: Journal Of Social Science Research* 5, no. 5 (October 3, 2025): 15–36, https://doi.org/10.31004/innovative.v5i5.21250.

[23] Muhammad Rifaldi Setiawan and Lalu Panca Tresa D., "KEDUDUKAN PEMBUKTIAN HAK LAMA DALAM RANGKA PENDAFTARAN HAK ATAS TANAH DI INDONESIA," *Ganec Swara* 19, no. 2 (June 1, 2025): 601–7, https://doi.org/10.59896/gara.v19i2.269.

grant the state and certain entities the authority to regulate, plan, and cooperate in land use.

Normative regulations regarding land rights, including HPL, are based on customary law principles, statutory provisions, and government implementation. The UUPA recognizes customary law methods for land rights to arise, such as land clearing, inheritance, and transfer of rights, and affirms the acquisition of rights through government decrees and conversions based on statutory provisions.[24] Through this framework, state control becomes the basis for determining various types of land rights, including ownership rights, HGU, HGB, usage rights, and HPL, all of which function to regulate the distribution of authority and land use in line with the ideals of national agrarian law.

The philosophy of HPL regulation thus cannot be separated from the state's goal as a welfare state that positions land as an instrument of welfare and sustainable development.[25] HPL is present as a form of public authority to manage land in order to encourage development, maintain orderly use of space, and protect the rights of the community, including indigenous communities.[26] With a philosophical foundation that emphasizes distributive justice, the social function of land, and public interest, HPL regulations must ensure the creation of a balance between state authority, individual rights, and communal rights so that land use is not only formally legal but also socially and morally legitimate.

Customary land registration regulations are essentially built through the negative publicity system framework adopted by Government Regulation No. 24 of 1997, where certificates serve only as strong, but not absolute, evidence. Normatively, this principle opens up room for correction through judicial mechanisms if there are more legitimate claims according to customary law or historical evidence of communal ownership. On the one hand, the logic of negative publicity provides protection for well-intentioned subjects, but on the other hand, this mechanism creates vulnerability for indigenous communities because certificates issued based on formal administrative data can be challenged by anyone claiming customary rights to the land. Thus, philosophically, customary land registration regulations still contain a tension between the formal legitimacy of the state and the socio-historical legitimacy of customary law, so that the legal certainty promised by certificates is not fully based on the principle of substantive justice.

Academic critiques by Yance Arizona and Moh. Isfironi demonstrate that the primary problem is not simply the absence of regulations, but the failure of legal structures to operationalize the recognition of customary rights. Overlapping sectoral policies, weak law enforcement, and development policies that marginalize indigenous communities mean that customary land certificates lack the social power equivalent to their administrative power.[27] The long history of development under the New Order, from resettlement programs and unilaterally designating forest areas to changing

[24] Mary Grace Megumi Maran and Yohanes Leonardus Ngompat, "Sistem Lelen (Perjanjian Bagi Hasil) Di Kabupaten Sikka: Tinjauan Hukum Adat Dan Perbandingannya Dengan Hukum Nasional," *Unes Journal of Swara Justisia* 9, no. 2 (July 20, 2025): 347–60, https://doi.org/10.31933/4e5mf116.

[25] Maltus Hutagalung, "Tinjauan Yuridis Perpanjangan HGB Tanpa Persetujuan Di Atas HPL Pasca UU Cipta Kerja," *All Fields of Science Journal Liaison Academia and Sosiety* 5, no. 1 (August 7, 2025): 135–43, https://doi.org/10.58939/afosj-las.v5i1.782.

[26] Dadang Fernando, Laily Nur Aisah, and Tembang Merah Sunny Socialista, "Pengaruh Labelisasi Hak Pengelolaan Terhadap Eksistensi Hak Ulayat Masyarakat Hukum Adat," *Law, Development and Justice Review* 8, no. 2 (May 31, 2025): 106–25, https://doi.org/10.14710/ldjr.8.2025.106-125.

[27] Tri Mulyadi, Muhammad Yusuf, and Hendrik Dengah, "Eksistensi Hak Ulayat Masyarakat Adat Di Kota Jayapura Dalam Konteks Ancaman Penyerobotan Tanah," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 4, no. 1 (March 30, 2025): 175–86, https://doi.org/10.55606/jhpis.v4i1.5553.

customary government structures into "administrative villages," created conditions in which indigenous communities lost their bargaining power and were even accused of encroaching on land that had historically been their living space. In this regard, registering customary land without legal and political reconstruction only reinforces the unequal power relations between the state, investors, and indigenous communities.

The lack of justice-based legal certainty is also evident in customary land registration regulations in several regions, such as Bali and West Sumatra, which demonstrate a disharmony between national norms, regional regulations, and customary law. The case of the confusion surrounding the regulation of land belonging to Customary Villages in Bali illustrates flawed normative formulations that violate the principle of clarity, leading to multiple interpretations regarding whether customary land can be registered in the name of a Customary Village, Temple, or other customary entity.[28] In West Sumatra, the complexity of the customary land structures of the nagari, tribes, and communities gives rise to registration problems that are never resolved because positive law fails to capture the dynamic communal ownership relations and customary hierarchies that exist.[29] These two cases demonstrate that the state lacks a viable legal pluralism paradigm, but rather a centralized paradigm that forces all forms of communal rights into an individual rights-based certification framework. The weaknesses of customary land registration regulations can be critically mapped in the following aspects:[30]

1) Legal substance aspect: national law is still biased towards individualism and does not fully recognize communal ownership structures;
2) Legal structure aspects: limited capacity of land institutions, slow and expensive processes, and minimal access for indigenous communities to legal services;
3) Legal culture aspect: there is no acceptance by the apparatus and the community of the concept of customary rights as layered communal rights, so that certification based on the Western model often erodes social cohesion and customary values.

These three aspects demonstrate that the problem of customary land registration is not merely administrative but structural, namely the failure of the legal system to respect the plurality of land ownership forms, the history of indigenous communities, and the socio-cultural context. Within the framework of agrarian justice, the reconstruction of customary land registration must be built through an approach that combines legal pluralism, restorative justice, and social sustainability.[31] Programs such as the Complete Systematic Land Registration (PTSL) do improve administrative efficiency and formal legal certainty, but they do not automatically address the issue of substantive justice for indigenous communities if they are not synchronized with the recognition of communal rights. Therefore, regulatory reform needs to be directed at establishing specific regulations on customary land certification, implementing community-based land registration mechanisms, strengthening the role of ninik mamak (heads of customary law), krama desa (village officials), or other customary institutions in verifying legal data, and carefully implementing the principle of rechtsverwerking (legality) to prevent manipulation and rights grabbing. By ensuring harmony between state legitimacy and

[28] Damai Siallagan, "Hukum Adat as Embodied Law: Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia," 2024, https://doi.org/10.2139/ssrn.4986123.

[29] Annisa Diva Murbarani, Zefrizal Nurdin, and Hengki Andora, "Peralihan Tanah Ulayat Kaum Di Kota Padang," *Unes Journal of Swara Justisia* 9, no. 1 (May 2, 2025): 125–39, https://doi.org/10.31933/ahzmxm98.

[30] Sukirno, *Politik Hukum Pengakuan Hak Ulayat* (Jakarta: Kencana, 2018).

[31] Rohyani Rigen Is Sumilat, "Implementation of the Regulation of the Minister of ATR/BPN No. 14 of 2024 in the Registration of Customary Land Rights of Customary Law Communities," *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 8, no. 2 (October 12, 2024): 1832–41, https://doi.org/10.36526/santhet.v8i2.4485.

customary legitimacy, customary land registration can truly provide fair legal certainty, not simply certificates that are "formally strong but morally weak."

The implementation of management rights originating from customary land for investment purposes must be understood constitutionally, namely that the state holds the right to control as stipulated in Article 33 paragraph (3) of the 1945 Constitution, which is then explained in Article 2 paragraph (1) of the UUPA, that the state has the authority to regulate the allocation, use, supply and maintenance of the earth, water and space.[32] However, this state authority is not legal ownership, but rather public authority to regulate its use for the greatest possible prosperity of the people. If management rights (HPL) are allocated from customary land, the philosophical rationale should not diminish the original authority of indigenous communities as holders of communal rights, but rather balance state authority with the traditional rights of indigenous communities.[33] Maria SW Soemardjono's criticism shows that making customary land into HPL can actually "transfer" customary authority to become part of state authority, so there is a risk of state appropriation of communal rights.[34] Therefore, the construction of the HPL determination for customary land must ensure that customary land does not merely become an object for providing investment land, but still maintains the socio-historical legitimacy of indigenous communities as the original legal subjects of the land.

Within the investment framework, the government argues that HPL is a more efficient land provision instrument, as emphasized in Government Regulation No. 18 of 2021. The explanation of Article 5 paragraph (2) of the Government Regulation emphasizes that HPL from customary land can only be assigned to customary law communities that have been recognized through formal mechanisms of statutory regulations. However, the recognition mechanism regulated in Minister of Home Affairs Regulation No. 52 of 2014 proves that the recognition of customary communities is highly dependent on the political will of local governments through the process of identification, verification, and determination. When formal recognition becomes a prerequisite for determining HPL, many customary areas have the potential to lose their management rights because they have never been recognized administratively, even though sociologically and historically, customary life still continues.[35] MARThis problem demonstrates that the use of HPL for investment on customary land is built on a legal gap, requiring formal recognition from the state, while indigenous communities do not always have formal legal evidence of their territory. Consequently, customary land cannot be designated as HPL even though it is substantively a communal right, thus opening up space for state and investor domination over indigenous communities' living spaces.

The implementation of investment on customary land in various regions, such as West Sumatra and Lebak, Banten, demonstrates a disparity between norms and practices.

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[32] Ahmad Valdo Rizky et al., "STATE AUTHORITY IN LAND CONTROL: CONSTITUTIONAL ANALYSIS OF THE IMPLEMENTATION OF ARTICLE 33 PARAGRAPH 3 OF THE 1945 CONSTITUTION," *Awang Long Law Review* 8, no. 1 (November 29, 2025), https://doi.org/10.56301/awl.v8i1.1865.

[33] Baharuddin et al., "THE ESSENCE OF THE STATE'S RIGHT TO CONTROL LAND FOR PEOPLE'S PROSPERITY ACCORDING TO ARTICLE 33 OF THE 1945 CONSTITUTION," *Veredas Do Direito* 22, no. 2 (October 22, 2025): e223291, https://doi.org/10.18623/rvd.v22.n2.3291.

[34] Ida Ayu Mas Ratu and Ida Bagus Agung Putra Santika, "IMPLEMENTATION OF THE GRANTING OF LAND OWNERSHIP RIGHTS BY THE STATE FOR FOREIGN CITIZENS UNDER ARTICLE 21 PARAGRAPH 3 OF THE BASIC AGRARIAN LAW," *Journal of Court and Justice*, June 14, 2024, 76–85, https://doi.org/10.56943/jcj.v3i2.546.

[35] Maria Kristina Salmah et al., "THE LEGAL STATUS OF CERTIFICATES OF CULTIVATION RIGHTS IN THE CONTEXT OF CONSTITUTIONAL LAW: AN ANALYSIS OF CASE DECISION NUMBER 4655 K/Pdt/2023," *Klausula (Jurnal Hukum Tata Negara, Hukum Adminitrasi, Pidana Dan Perdata)* 3, no. 2 (October 30, 2024): 105, https://doi.org/10.32503/klausula.v3i2.5991.

West Sumatra Regional Regulation No. 6 of 2008, for example, established a pattern of cooperation that requires the principle of mutual benefit and recognizes that customary land must be restored to its original status after the cooperation period ends (Article 11).[36] However, legally, this provision conflicts with national agrarian regulations, as rights such as HGU granted on customary land must revert to the state upon expiration, not to the indigenous community. In Banten, Lebak Regional Regulation No. 32 of 2001 even provides maximum protection by prohibiting outsiders from interfering with Baduy customary rights (Article 9), while Lebak Regional Regulation No. 8 of 2015 regulates which zones can be developed for cooperation with investors.[37] This demonstrates that legal pluralism at the regional level is not always in sync with national law, thus the implementation of HPL as an investment scheme has the potential to create new uncertainties. Investors often choose to purchase customary land so it can be registered as HGU and used as collateral by banks, rather than engaging in cooperation schemes that are seen as offering no economic security.

To ensure equitable legal certainty, the implementation of HPL for customary land must be directed towards creating a balance between national development needs and the protection of the communal rights of indigenous communities. The state must ensure that customary land does not lose its communal character after being designated as HPL and guarantee a substantial return of rights after the cooperation period ends.[38] Furthermore, the mechanism for recognizing indigenous peoples must be reformed not only through administrative recognition, but also through recognition based on social facts and customary institutions. Without such reform, the implementation of HPL for investment will only strengthen the centralization of agrarian power and weaken the position of indigenous peoples. The constitutional principle of "for the greatest prosperity of the people" must be interpreted as communal welfare, not simply macroeconomic growth. Therefore, the implementation of HPL for customary land must be built not only on investment efficiency, but also on distributive justice, social sustainability, and respect for the collective rights of indigenous peoples.

The regulation of the cooperation period for Management Rights (HPL) originating from customary land occupies a crucial position in the protection of the rights of customary law communities, not only as a technical aspect of the agreement, but as an instrument of substantive justice.[39] Because customary land is the basis of identity, communal sovereignty, and the living space of indigenous communities, the term of the cooperation must be seen as a mechanism for distributing benefits, not simply a legal instrument accommodating investment interests. In this regard, Article 7 paragraph (1) letter b and Article 44–45 of ATR/BPN Regulation 18/2021 indicate that the state has not provided clear normative standards regarding the minimum and maximum limits of the agreement term, thus creating legal uncertainty. This ambiguity contradicts the constitutional principle of recognizing indigenous communities as stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution, which places the sustainability of the identity and traditional rights of indigenous communities as a mandate of state protection. Therefore, determining the term of the HPL cooperation must be placed within the framework of Rawls' fairness and Aristotelian-Höffnerian

[36] Dulhani, "Pemanfaatan Tanah Ulayat Untuk Investasi."

[37] Tangerangnet, "Pengakuan Masyarakat Adat Kasepuhan Tantangan Bupati Lebak," 2025.

[38] M. Nazir Salim et al., "From Tradition to Transformation: Customary Land Dynamics and State Protection in Manggarai, Indonesia," *Humanities, Arts and Social Sciences Studies*, March 7, 2025, https://doi.org/10.69598/hasss.25.1.267517.

[39] Sri Susyanti Nur et al., "The Role of Land Banks in the Customary Land Management Rights of Customary Law Community Units," *International Journal of Law and Society (IJLS)* 4, no. 1 (May 27, 2025): 108–30, https://doi.org/10.59683/ijls.v4i1.189.

social justice, which ensures that the inequality of benefits arising from cooperation must benefit those who are structurally more vulnerable, namely indigenous communities.[40]

Table 1. Provincial Regulations on Recognition and Protection of Indigenous Legal Communities

No.	Provincial Regional Regulations	Recognized Indigenous Communities
1	South Kalimantan Regional Regulation No. 2/2023	Indigenous Peoples of South Kalimantan
2	Papua Regional Regulation No. 5/2022	Papuan Indigenous Peoples
3	NTB Regional Regulation No. 11/2021	Indigenous People of NTB
4	West Sumatra Regional Regulation No. 7/2018	Indigenous Peoples of West Sumatra
5	East Kalimantan Regional Regulation No. 1/2015	Indigenous Peoples of East Kalimantan
6	Central Kalimantan Governor Regulation No. 13/2009	Indigenous Peoples of Central Kalimantan
7	Papua Regional Regulation No. 23/2008	Papuan Indigenous Peoples

Source: Provincial Regulation, processed 2025

Table 2. District/City Regional Regulations on Recognition and Protection of Indigenous Legal Communities

No.	Local regulation	Indigenous Peoples
1	Seluma Regency Regulation No. 3/2022	Seluma Indigenous Community
2	East Luwu Regional Regulation No. 1/2022	East Luwu Indigenous People
3	Gunung Mas Regional Regulation No. 9/2022	Gunung Mas Indigenous Community
4	Aru Islands Regional Regulation No. 2/2022	Aru Ursia–Urlima
5	HSS Regional Regulation No. 1/2022	Indigenous People of South Hulu Sungai
6	Soralungun Regional Regulation No. 3/2021	Soralungun Indigenous Community
7	Ketapang Regional Regulation No. 8/2020	Ketapang Indigenous Community
8	Bengkayang Regional Regulation No. 4/2019	Bengkayang Indigenous Community
9	North Toraja Regional Regulation No. 1/2019	North Toraja Indigenous People
10	Paser Regional Regulation No. 4/2019	Paser Indigenous Community
11	Nunukan Regional Regulation No. 15/2018	Indigenous People of Nunukan
12	Melawi Regional Regulation No. 4/2018	Melawi Indigenous People
13	Sanggau Regional Regulation No. 1/2017	Sanggau Indigenous Community

[40] Lenny Husna, Sukamto Satoto, and Dwi Suryahartati, "Legal Analysis of Land Management Rights (HPL) in National Development: Regulatory Challenges and Investment Opportunities in Indonesia," 2025, 162–71, https://doi.org/10.2991/978-2-38476-436-5_14.

14	Sorong Regional Regulation No. 10/2017	Moi Indigenous People
15	West Kutai Regional Regulation No. 13/2017	West Kutai Indigenous People
16	Kotabaru Regional Regulation No. 19/2017	Kotabaru Indigenous Community
17	Bulungan Regional Regulation No. 12/2016	Bulungan Indigenous Community
18	Enrekang Regional Regulation No. 1/2016	Enrekang Indigenous Community
19	Bombana Regional Regulation No. 4/2015	Moronene Hukaea Laea Indigenous People
20	Bulukumba Regional Regulation No. 9/2015	Ammatoa Kajang Indigenous Community
21	Malinau Regional Regulation No. 10/2012	Malinau Indigenous Community
22	Lebak Regional Regulation No. 32/2001	Baduy Indigenous Community

Source: Regency/City Regional Regulation, processed 2025

Given the increasingly broad development of regional regulations recognizing indigenous peoples, the state should consistently ensure that the terms of HPL cooperation on customary land are always based on the principles of justice and social sustainability. The term should not be determined solely based on economic calculations or investment interests, but must consider the continuity of the identity, traditional rights, and communal sovereignty of indigenous peoples as guaranteed by the 1945 Constitution. When the term mechanism is built through meaningful participation, transparency, and periodic evaluation that provides space for renegotiation, then HPL can become an instrument that not only increases investment but also honors indigenous peoples as equal legal subjects.[41] Thus, national agrarian law must evolve from merely providing investment space to ensuring that every form of customary land use truly reflects the principle of substantive justice for indigenous communities.

a. The Ideal Concept of Utilizing Customary Land through HPL for Fair and Sustainable Investment

An ideal concept for utilizing customary land through Land Management Rights (HPL) is needed as a normative-implementative framework to ensure that the transformation of customary land into the HPL legal regime does not diminish the collective rights of indigenous communities. Government Regulation No. 18 of 2021 does acknowledge that management rights can originate from customary land, as stipulated in Article 4. However, this article does not provide guidance on how to implement a utilization model that is fair, proportional, and in accordance with customary law. Without an ideal concept, HPL has the potential to become a formalization instrument that actually weakens the position of indigenous communities by transferring some customary authority to become part of the "state's right to control" rather than strengthening customary autonomy.[42] Thus, an ideal concept is needed to determine the

[41] Gheovani Abdul Aziz, Suhariningsih Suhariningsih, and Endang Sri Kawuryan, "The Right of Management Originating from Indigenous People Ulayat Land: Determinant of Solution," *International Journal of Business, Law, and Education* 5, no. 2 (August 19, 2024): 2177–84, https://doi.org/10.56442/ijble.v5i2.804.

[42] Iqbal Maulana et al., "Justice for Indigenous People: Management Right Term to Third Parties," *Indonesia Law Reform Journal* 4, no. 1 (June 5, 2024): 59–74, https://doi.org/10.22219/ilrej.v4i1.33058.

philosophical boundaries, authority, utilization strategies, and protection mechanisms in every form of investment cooperation on customary land.

Constitutionally, customary land is in a strong position because it is protected by Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects customary law communities and their traditional rights as long as they are alive. In addition, Article 33 paragraph (3) of the 1945 Constitution states that land, water, and natural resources are controlled by the state for the greatest prosperity of the people. The Constitutional Court's decision also emphasized that the phrase "controlled by the state" does not mean that the state owns customary land, but only carries out regulatory (regelendaad), management (bestuursdaad), administration (beheersdaad), and supervision (toezichthoudendaad) functions.[43] Based on this, the ideal concept of utilizing customary land must place indigenous peoples as the main subject, not merely recipients of the transfer of authority, with the state acting as a guide so that such utilization does not violate the constitutional rights of indigenous peoples.

On the other hand, the technical regulations in ATR/BPN Regulation 18/2021 create a normative vacuum, particularly regarding determining the term of land use agreements. Article 44 paragraph (1) letter d stipulates that the term must be stated in the agreement, but Article 45 paragraph (2) states that the term of land rights cannot exceed the term stated in the agreement, without providing a basis or formula for determining that term. This normative vacuum creates legal uncertainty for indigenous communities and investors, thus risking unequal contract practices and violating the principle of distributive justice. This urges the development of an ideal concept that includes standard time periods, maximum limits, ecological adjustments, and periodic evaluations.

At the sociological level, the need to formulate an ideal concept is inseparable from the reality that customary land has experienced significant shrinkage due to investment expansion and unilateral claims that have been ongoing since the New Order era. When the state legal framework prioritizes macroeconomic interests and industrialization, customary land protection mechanisms are often ineffective. Agrarian conflicts involving indigenous communities also demonstrate that the existence of HPL does not automatically bring justice, but can actually increase inequality if not accompanied by the principles of participation, free, prior, and informed consent (FPIC), and full recognition of customary institutional structures.[44] Therefore, the ideal concept must include the principle of legal pluralism which takes into account the interaction between customary law and state law in the form of integration, incorporation, competition and conflict.

The ideal concept for utilizing customary land through HPL must be based on the premise that indigenous peoples' rights to their land are part of human rights, as stipulated in Article 1 of Law No. 39 of 1999, which affirms that human rights are inherent to all human beings and must be protected by the state. Ignoring customary land rights means ignoring the rights to cultural identity, living space, and ecological sustainability of indigenous peoples. Therefore, every investment policy through HPL must be designed in such a way that it not only provides economic benefits but also maintains the socio-cultural sustainability of indigenous peoples and the ecological integrity of their

[43] Ilham Mustafa, Suhadi Suhadi, and Irawaty Irawaty, "Legal - Political Analysis of Indigenous Relocation in Rempang : Between Agrarian Justice and the Shadow of Colonial Land Doctrine. (Study Of Land Tenure Conflict Between The Community And BP Batam)," *Journal of Law, Politic and Humanities* 5, no. 6 (September 20, 2025): 5063–77, https://doi.org/10.38035/jlph.v5i6.2326.

[44] Sitti Isramira Pratiwi et al., "Juridical Analysis Of Land Allocation In Forest Areas Over BP Batam's Management Rights On Rempang Island," *International Journal of Humanities and Social Sciences Reviews* 1, no. 3 (August 2, 2024): 01–16, https://doi.org/10.62951/ijhs.v1i3.43.

territories.[45] This approach emphasizes that the use of customary land is not merely an economic activity, but an action that is directly related to the sustainability of a community.

The four pillars of the ideal model for utilizing customary land through HPL essentially serve as a fundamental correction to the positive legal framework that still positions indigenous peoples as objects of regulation. HPL in existing regulations, particularly Articles 136–142 of the Job Creation Law and Article 67 of Ministerial Regulation of ATR/BPN 9/1999, explicitly stipulates that management rights can only be held by state legal entities or certain public legal entities. Normatively, this raises an epistemic problem: indigenous peoples are positioned as recipients of delegated authority, rather than as holders of genuine legitimacy. Therefore, an ideal, justice-oriented model demands a fundamental repositioning of indigenous peoples, who must be recognized as "customary public legal entities" that inherently meet the requirements for HPL subjects. Otherwise, the utilization of customary land through HPL will remain within the logic of state centralization, potentially creating relational imbalances between the customary and the investing state.[46]

It is at this point that formal recognition becomes the most crucial foundation. Without strong legal recognition, HPL for customary land will simply be a form of domesticating customary rights within the state's administrative framework.[47] The ideal concept emphasizes that formal recognition must be preceded by participatory mapping, the determination of customary territories through non-discriminatory administrative mechanisms, and harmonization between customary law and positive law. Formal recognition is also a prerequisite for legal justice so that customary land is no longer dependent on "conditional recognition" as stated in Article 18B paragraph (2) of the 1945 Constitution, which is often interpreted restrictively. With strong legal recognition, indigenous communities can emerge as sovereign subjects in determining the direction of their investment utilization.

The implementation of substantive participation (FPIC) is key to achieving procedural justice. In practice, many investment projects on customary lands fail to meet the FPIC principle because deliberations are conducted in a formalistic manner, information is not provided adequately, or decisions are made by parties who do not represent the indigenous community.[48] An ideal model with a sustainability perspective requires not only free and prior, but also informed participation. Indigenous communities must understand ecological risks, long-term consequences, potential conflicts, and benefit-sharing models before granting consent. Under pluralistic law, FPIC also serves to bridge customary deliberation mechanisms with the contractual mechanisms of the investing state, ensuring that collective customary decisions retain equal legal force.

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[45] Ahmad Faruqi, Dhiauddin Tanjung, and Hasan Matsum, "AGRARIAN CONFLICT OVER LAND OF PT. INDONESIAN RAILWAYS IN LANGKAT: AN ANALYSIS OF POSITIVE LAW AND ISLAMIC LAW," *SOSIOEDUKASI : JURNAL ILMIAH ILMU PENDIDIKAN DAN SOSIAL* 14, no. 3 (August 25, 2025): 1461–69, https://doi.org/10.36526/sosioedukasi.v14i3.6104.

[46] Walter Timo de Vries and Sukmo Pinuji, "Balancing Between Land and Sea Rights—An Analysis of the 'Pagar Laut' (Sea Fences) in Tangerang, Indonesia," *Land* 14, no. 7 (July 1, 2025): 1382, https://doi.org/10.3390/land14071382.

[47] Sinta Munawaroh et al., "Agrarian Conflict Of Rempang Island Traditional Communities From A Government Communication Perspective And Political Ecology," *POLITICO* 24, no. 1 (March 26, 2024): 12–34, https://doi.org/10.32528/politico.v24i1.1773.

[48] Soukphavanh Sawathvong and Kimihiko Hyakumura, "A Comparison of the Free, Prior, and Informed Consent (FPIC) Guidelines and the 'Implementation of Governance, Forest Landscapes, and Livelihoods' Project in Lao PDR: The FPIC Team Composition and the Implementation Process," *Land* 13, no. 4 (March 23, 2024): 408, https://doi.org/10.3390/land13040408.

The next pillar, collaborative management, critically reflects the need to avoid the top-down management model dominant in HPL schemes to date. The ideal concept demands governance that combines the strengths of three actors: the cultural legitimacy of indigenous communities, the administrative legality of the state, and the financial and investment capacity of third parties. However, collaborative management must not relegate indigenous communities to mere passive landowners. They must be positioned as co-managers and co-decision-makers. In this way, co-management becomes an arena for the redistribution of power, not just the distribution of benefits. From the perspective of distributive and commutative justice, this model ensures that investment does not result in the structural exploitation that often occurs in plantation, mining, and industrial estate projects located in indigenous territories.

The ideal model for utilizing customary land through HPL has very significant legal implications because it seeks to reform the historical relationship between the state and indigenous communities, which has been unequal due to the dominance of the state's right to control. On the one hand, Article 2 of the UUPA and Article 33 paragraph (3) of the 1945 Constitution provide a broad mandate for the state to regulate and control the earth, water, and space. However, an overly centralistic interpretation of HMN has been proven to give rise to practices of unilateral takeover of customary land through mechanisms of state land designation, business concessions, and national strategic projects. The ideal model that places indigenous communities as legal subjects of HPL has important consequences: the state must shift the paradigm of domain to a paradigm of recognition and facilitation. This means that law is no longer understood merely as "the ruler's orders" as Austin said, but as an instrument of justice that humanizes the use of power (Magnis-Suseno).[49] Consequently, changes to the HPL design will require reform of the current legislation which limits HPL subjects to public legal entities, thereby closing the door to indigenous communities as holders of historical legitimacy.

Socially, this ideal model represents a significant repositioning for indigenous communities. Under the modern agrarian regime, indigenous communities were positioned as recipients of development policies, rather than as determinants and managers of resources. This aligns with Max Weber's diagnosis of the stages of legal rationality, and Indonesian law currently occupies the "formal-rational" stage. However, its relationship with indigenous communities remains "substantive-irrational," as customs are often viewed as vestiges of tradition that must be adapted to suit state interests.[50] Through formal recognition and substantive participation (FPIC), the ideal model offers a social correction: Indigenous peoples are no longer considered traditional entities, but political actors with the capacity to make collective decisions. Within a legal-political framework, this means Indigenous peoples enter the collective decision-making space, as defined by Mitchell, rather than being objects of public policy.[51] The social consequences are an increase in the bargaining position of indigenous communities and the minimization of horizontal and vertical conflicts that have arisen from the neglect of indigenous social structures in development projects.

Economically, the implications of this ideal model are highly strategic. Customary land, previously treated as "land without commercial value" due to the lack of formal legal rights, has become a highly valuable asset in HPL-based investment schemes. However,

[49] Lili Rasjidi and Ira Thania Rasjidi, *Dasar-Dasar Filsafat Dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2010).

[50] Budiono Kusumohamidjojo, *Teori Hukum: Dilema Antara Hukum Dan Kekuasaan* (Bandung: Yrama Widya, 2019).

[51] Helen Newing et al., "'Participatory' Conservation Research Involving Indigenous Peoples and Local Communities: Fourteen Principles for Good Practice," *Biological Conservation* 296 (August 2024): 110708, https://doi.org/10.1016/j.biocon.2024.110708.

the ideal model emphasizes that its economic value should not be placed solely in the logic of extraction, but rather in the logic of redistribution and sustainability. Co-management ensures that benefit sharing takes the form of ongoing income, social shares, or long-term royalties. From the perspective of Aristotle's theory of distributive justice, benefits should be shared based on the contributions and moral standing of indigenous communities as the original owners of the resources.[52] Furthermore, customary-based HPL can be an inclusive economic instrument: opening access to financing, supporting local micro-enterprises, and legitimizing the development of customary economic sectors such as agrotourism, ecotourism, and the bioeconomy industry. Thus, the ideal model not only provides economic value but also restructures local economies that have been marginalized.

The ecological implications of the ideal model are also crucial, particularly given that many indigenous territories are located within vulnerable ecosystems such as tropical forests, watersheds, and coastal areas. The marginalization of indigenous communities has been shown to accelerate ecological damage because external actors lack spiritual and cultural ties to customary lands. The ideal concept emphasizes that ecological sustainability must be a fundamental principle of customary land use, in accordance with customary law, which upholds the principle of cosmic balance. From a development theory perspective, this model rejects development paradigms that emphasize growth alone and instead promotes a sustainability paradigm that integrates social, economic, and environmental aspects. By placing indigenous communities as primary managers, the ideal model enables the implementation of customary-based ecological regulations, such as prohibitions on sacred areas, land rotation, and seasonal resource management. The HPL then serves as a "legal bridge" for customary ecological practices to be recognized in state law.[53]

From a legal and political perspective, the ideal model has direct implications for land law policy. When the state recognizes indigenous communities as subjects of management, it must restructure regulatory instruments that have historically been biased toward state authority and investors. Mahfud MD emphasized that law is a product of politics, and legal politics determines the direction of legal change.[54] Thus, implementing the ideal model means shifting the political configuration from an authoritarian-centralist pattern to a democratic-responsive one. In a democratic configuration, legal products should be responsive because they incorporate the aspirations of the people. The ideal model, based on customary law, falls within this paradigm, thus demanding political openness, public participation, and limitations on power. Another consequence is that the state must reduce the practice of agrarian legal politics that views the "public interest" as a basis for broadly revoking customary rights. The interpretation of Article 18 of the Basic Agrarian Law and Article 33 of the 1945 Constitution must be returned to the principle of the people's prosperity, not the legitimacy of land acquisitions that marginalize indigenous communities.

Finally, the implications for the national agrarian legal system are also profound. The ideal model encourages harmonization between customary law and state law, as enshrined in Article 5 of the UUPA, but with a less ambivalent interpretation. Until now, recognition of customary rights has been limited to the requirement that they "do not

[52] Dhananjay Jagannathan, "A Defense of Aristotelian Justice," *Ergo an Open Access Journal of Philosophy* 11 (October 30, 2024), https://doi.org/10.3998/ergo.6787.

[53] Dian Rahmawati, Datuk Ary A. Samsura, and Erwin van der Krabben, "From Policy to Practice: How Public Land Policies Shape Private-Sector Housing Development—An Indonesian Case," *Land* 14, no. 5 (April 23, 2025): 916, https://doi.org/10.3390/land14050916.

[54] Ery Pamungkas and Maslihati Nur Hidayati, "Instrumentalisasi Hukum Dan Ketahanan Demokrasi," *Tasyri' : Journal of Islamic Law* 4, no. 1 (January 20, 2025): 609–34, https://doi.org/10.53038/tsyr.v4i1.420.

conflict with the national interest," a loose phrase often used to dismiss customary rights. With the ideal model, the national interest is redefined: protecting customary land, preserving the ecology, and ensuring the well-being of local communities are all part of the national interest. Furthermore, the existence of HPL as a utilization instrument requires land registration, an inventory of customary territories, and a rights recording mechanism integrated with the modern land system. This creates legal certainty, as intended by the UUPA. Thus, the ideal model is not merely a theoretical concept, but a legal political agenda that demands the reconstruction of the structure, substance, and culture of Indonesian land law toward a just, responsive, and sustainable legal system.

CONCLUSIONS

The configuration of the legal relationship between the state, indigenous communities, and investors in the utilization of customary land through the Land Management Rights (HPL) scheme still essentially shows an unequal relationship pattern, because the state tends to place customary law in a subordinate position through the determination of HPL which often does not involve indigenous communities substantively and does not meet the standards of Free, Prior, and Informed Consent (FPIC). To correct this structural injustice, a customary land utilization model is needed that is based on four main components: formal recognition, substantive participation, collaborative management, and substantive legal justice protection that is theoretically supported by the theory of justice, the theory of rights, the theory of legal pluralism, and the theory of development. This model positions indigenous communities as collective legal subjects who are sovereign over their customary land, the state as a facilitator of rights protection, and investors as partners bound by a fair and equal agreement. Through the application of this ideal framework, customary land management can be directed towards creating legal certainty, substantive justice, ecological sustainability, inclusive economic prosperity, and preventing agrarian conflicts that have arisen from the neglect of indigenous peoples' rights in national land policies.

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