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Customary Law and the Challenges of Modern Investment: Strategies for Maintaining a Balance between Traditional Values and Economic Growth

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ABSTRACT

This article examines the challenges posed by modern investment to customary law and proposes legal strategies to maintain a balance between traditional values and economic growth. While investment is promoted as a key driver of development, its implementation in customary territories often generates normative conflicts arising from divergent conceptions of land, consent, and economic relations. This study identifies three central legal issues: normative ambiguity regarding the position of customary law in investment governance, a legal vacuum in the binding recognition of customary consent, and conflicts of norms between market-oriented investment regimes and communal legal systems. Employing a normative juridical method with statute, conceptual, and case approaches, the article analyzes constitutional recognition of indigenous rights, investment-related legal frameworks, and comparative doctrinal perspectives. The analysis demonstrates that customary law should not be treated as an obstacle to investment, but as a normative constraint and enabler that can enhance social legitimacy, reduce conflict, and support sustainable economic growth. The article argues that investment governance which marginalizes customary norms ultimately undermines legal certainty and long-term economic stability. It proposes prescriptive legal strategies, including strengthening the legal status of customary consent, integrating customary norms into impact assessments, institutional coordination with customary authorities, and pluralistic judicial interpretation. Integrating customary law into investment regulation is essential to reconcile economic development with social justice and legal coherence.

Keywords: *customary law, investment law, economic growth, indigenous rights, legal pluralism.*

INTRODUCTION

The expansion of modern investment has become a central driver of economic growth in developing countries, including Indonesia. Investment is widely promoted as a mechanism to enhance infrastructure, employment, and national competitiveness. However, in regions where customary law governs land tenure, resource management, and social relations, investment activities frequently generate legal and social tensions. These tensions arise not merely from economic disparities but from a normative clash between market-oriented investment regimes and customary legal systems rooted in communal values and collective rights.[1]

Customary law regulates land, natural resources, and economic relations through norms that emphasize communal ownership, social responsibility, and long-term sustainability. In contrast, modern investment law prioritizes legal certainty, individual

[1] Bimantoro et al., "Dampak Perubahan Nilai-Nilai Hukum dalam Masyarakat Tradisional dan Modern," *Journal Publicuho* 7, no. 3 (2024).

property rights, and capital mobility. This divergence creates a structural conflict of norms when investment projects intersect with customary territories. While investment law seeks predictability and efficiency, customary law seeks social harmony and protection of collective interests. The absence of a coherent legal framework to reconcile these objectives has resulted in recurring conflicts over land conversion, resource exploitation, and displacement of customary communities.[2]

From a constitutional perspective, indigenous peoples and their traditional rights are formally recognized. Article 18B paragraph (2) of the 1945 Constitution acknowledges indigenous communities and their customary rights, subject to certain conditions.[3] However, this recognition has not been fully operationalized within investment-related legislation. Sectoral laws governing land acquisition, infrastructure development, and natural resource exploitation often prioritize investment facilitation over customary protection, effectively subordinating traditional values to economic objectives. This situation reflects a normative ambiguity regarding the legal status of customary law in investment governance.

Empirical studies demonstrate that investment projects frequently alter customary land rights and social structures. Hamid et al. (2025) show that the conversion of customary land in Bali has profound impacts on local communities and economic development patterns.[4] Polontoh et al. (2025) further illustrate that unclear customary land management frameworks hinder investment certainty while simultaneously marginalizing indigenous interests.[5] These findings indicate that the tension between investment and customary law is not a zero-sum conflict but a consequence of inadequate legal integration.

Existing scholarship has explored investment and customary law from fragmented perspectives. Abdelhadi (2025) analyzes responsible investment from a constitutional perspective but does not address customary legal systems.[6] Aragão et al. (2025) examine customary leadership in territorial planning, yet their analysis remains context-specific.[7] Studies on Islamic and customary economic institutions emphasize ethical investment principles but rarely engage with positive investment law frameworks.[8] Consequently, there remains a research gap concerning the normative reconciliation between customary law and modern investment regimes.

This article addresses that gap by examining how customary law can be positioned as a normative constraint and guide for investment governance without undermining economic growth. It argues that the failure to integrate customary law into investment regulation creates legal uncertainty, social conflict, and unsustainable development. Accordingly, this article proposes prescriptive legal strategies to maintain a balance between traditional values and economic growth through normative integration rather than legal marginalization.

METHODS

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[2] H. Hamid et al., "The Impact of Customary Land Rights Conversion on Local Communities and Economic Development in Bali," *Asia Pacific Viewpoint* (2025).

[3] Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).

[4] H. Hamid et al., "The Impact of Customary Land Rights Conversion," 2025.

[5] H. Polontoh et al., "Reconstruction of Equitable Customary Land Management To Improve The Investment Climate," *Ipso Jure* (2025).

[6] M. Abdelhadi, "Responsible Investment Within the Framework of Sustainable Development," *Constitutional Review* (2025).

[7] N. Aragão et al., "The Customary Law and the Traditional Leadership Power in Angola," *Urban Science* (2025)

[8] T. Kurniasari, "Kekuatan Hukum Lembaga Keuangan Adat Hindu," *REUSAM* 9, no. 2 (2022).

This research employs a normative juridical method to analyze the relationship between customary law and modern investment in the context of economic growth. The normative approach is appropriate because the central issues examined concern normative ambiguity, legal vacuums, and conflicts of norms between customary law and investment-oriented legal regimes. Rather than assessing economic performance empirically, this study focuses on legal norms, doctrines, and principles that govern investment activities and customary rights.[9]

The statute approach is used to examine constitutional provisions, investment laws, land regulations, and sectoral legislation affecting customary territories. Primary legal materials include the 1945 Constitution, investment-related statutes, and regulations governing land acquisition and natural resource exploitation. This approach allows for the identification of inconsistencies between investment facilitation policies and the protection of customary rights.[10]

The conceptual approach is employed to analyze key legal concepts such as customary law, investment protection, economic growth, and legal pluralism. Customary law is examined as a normative system that embeds social and cultural values, while investment law is analyzed as a framework oriented toward capital security and market efficiency.[11] This conceptual analysis exposes the normative tension between collective rights and economic liberalization.

The case approach complements statutory and conceptual analysis by examining patterns in disputes involving investment projects and customary communities. Although this research does not focus on a single judicial decision, it analyzes recurring legal issues arising from land acquisition, compensation disputes, and investment-related conflicts in customary areas. The integration of these approaches forms the basis for prescriptive recommendations aimed at harmonizing customary law and modern investment governance

RESULTS AND DISCUSSION

Normative Conflict between Customary Law and Modern Investment Regimes

Modern investment regimes are designed to prioritize legal certainty, predictability, and the protection of capital. These objectives are typically operationalized through statutory guarantees, licensing frameworks, and contractual mechanisms that favor individualized property rights and rapid land conversion. In contrast, customary law regulates land and economic relations through collective ownership, social consent, and long-term stewardship. The interaction between these two normative systems generates a structural conflict of norms that remains inadequately addressed within Indonesia's legal framework.[12]

This conflict is most evident in the treatment of customary land within investment processes. Investment law and related sectoral regulations often assume land to be an alienable commodity that can be acquired, converted, or compensated through formal procedures. Customary law, however, conceptualizes land as a communal asset inseparable from social identity and cultural continuity. When investment projects proceed on customary land without substantive recognition of communal consent, the

[9] Peter Mahmud Marzuki, *Legal Research*, rev. ed. (Jakarta: Kencana, 2017).

[10] H. Hartati, R. Rubiyanto, and C. Ceprudin, "Perlindungan Hukum Pelaku Usaha Tradisional dari Ekspansi Ritel Modern," *Iqtisad* (2023).

[11] H. Khuan et al., "Customary Law in Modern Legal Systems," *Novum Jus* 19, no. 2 (2025).

[12] M. Abdelhadi, "Responsible Investment Within the Framework of Sustainable Development," *Constitutional Review* (2025).

resulting legal arrangements may be formally valid yet socially illegitimate. This condition illustrates a normative disjunction between legality and legitimacy.[13]

Constitutional recognition of indigenous peoples provides a normative foundation for reconciling this tension, yet its implementation remains inconsistent. Article 18B paragraph (2) of the 1945 Constitution acknowledges indigenous communities and their traditional rights, but investment-related legislation rarely translates this recognition into operative safeguards.[14] Instead, customary interests are often addressed through compensation schemes that inadequately reflect communal loss and cultural disruption. This approach reduces customary law to an economic variable rather than recognizing it as a normative constraint on investment activities.

Comparative scholarship reinforces the universality of this conflict. Aragão et al. (2025) demonstrate that in Angola, customary leadership structures are frequently sidelined in territorial planning for investment, resulting in spatial injustice and social resistance.[15] Similarly, Lanzoni (2025) highlights the tension between cultural heritage protection and economic development within customary international law, underscoring the difficulty of balancing investment imperatives with traditional values.[16] These studies suggest that normative conflict is not inevitable but arises from legal frameworks that privilege economic growth without adequate normative integration.

Empirical research in Indonesia further illustrates the consequences of unresolved normative conflict. Hamid et al. (2025) show that the conversion of customary land for tourism and infrastructure development in Bali has generated social fragmentation and long-term economic vulnerability for local communities.[17] Polontoh et al. (2025) argue that the absence of equitable customary land management frameworks undermines both investment certainty and indigenous rights.[18] These findings indicate that neglecting customary law ultimately destabilizes the investment climate itself.

From a prescriptive standpoint, the normative conflict between customary law and modern investment regimes must be addressed through legal harmonization rather than hierarchical subordination. Customary law should function as a normative boundary that shapes the conditions under which investment is permitted, rather than as an obstacle to be neutralized. Without such recalibration, investment governance will continue to produce legal uncertainty, social conflict, and unsustainable economic outcomes.

Customary Law as a Normative Constraint and Enabler of Sustainable Investment

Customary law should not be conceptualized solely as a barrier to investment but as a normative framework capable of guiding sustainable and socially legitimate economic growth. When properly integrated, customary norms can function both as constraints that prevent exploitative investment practices and as enablers that enhance

[13] H. Hamid et al., "The Impact of Customary Land Rights Conversion on Local Communities and Economic Development in Bali," *Asia Pacific Viewpoint* (2025).
[14] Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).
[15] N. Aragão et al., "The Customary Law and the Traditional Leadership Power in Angola," *Urban Science* (2025).
[16] N. Lanzoni, "Cultural Heritage Protection versus Social and Economic Development," *International Journal of Cultural Property* (2025).
[17] H. Hamid et al., "The Impact of Customary Land Rights Conversion," 2025.
[18] H. Polontoh et al., "Reconstruction of Equitable Customary Land Management To Improve The Investment Climate," *Ipso Jure* (2025).

long-term investment stability. This dual role challenges the prevailing assumption that customary law and investment interests are inherently antagonistic.[19]

As a normative constraint, customary law imposes limits on land acquisition, resource extraction, and profit maximization. These limits are grounded in communal consent, ecological balance, and intergenerational responsibility. By requiring collective deliberation and approval, customary law mitigates the risk of unilateral land conversion and ensures that investment projects align with local values. This constraint is particularly relevant in sectors such as tourism, mining, and agribusiness, where unchecked investment can erode social cohesion and environmental sustainability.[20]

At the same time, customary law can act as an enabler of investment by providing social legitimacy and reducing conflict. Investment projects that respect customary norms are more likely to gain community acceptance, minimize resistance, and ensure continuity. Hartati et al. (2023) demonstrate that protecting traditional economic actors from modern retail expansion contributes to inclusive economic growth and market stability.[21] Similarly, Kurniasari (2022) shows that customary financial institutions, such as Village Credit Institutions in Bali, strengthen informal economies while coexisting with modern financial systems.[22] These examples illustrate that customary law can support economic growth when its normative function is acknowledged.

The following table summarizes the contrasting yet complementary roles of customary law in the context of modern investment:

Table 1. Normative Functions of Customary Law in Modern Investment Governance

Dimension	**Customary Law as Constraint**	**Customary Law as Enabler**
Land governance	Limits land conversion through communal consent	Provides social legitimacy for land use
Resource management	Restrains exploitative extraction	Ensures sustainable resource utilization
Social relations	Protects communal cohesion	Reduces investment-related conflict
Economic impact	Prevents short-term exploitation	Supports long-term investment stability
Legal function	Normative boundary for investment	Complementary framework for growth

Despite these functions, formal legal systems rarely institutionalize customary law within investment governance. Investment regulations typically emphasize speed, efficiency, and capital protection, relegating customary considerations to consultative processes without binding force.[23] This marginalization perpetuates a legal vacuum in which customary law lacks enforceability despite its substantive relevance.

[19] H. Khuan et al., "Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa," *Novum Jus* 19, no. 2 (2025).
[20] A. Lubis, "Hukum Adat dan Ketahanan Pangan," *Mimbar Administrasi* 19, no. 1 (2022).
[21] S. Hartati, R. Rubiyanto, and C. Ceprudin, "Perlindungan Hukum Pelaku Usaha Tradisional," *Iqtisad* (2023).
[22] T. Kurniasari, "Kekuatan Hukum Lembaga Keuangan Adat Hindu," *REUSAM* 9, no. 2 (2022).
[23] R. Saad et al., "Balancing National Sovereignty: The Impact of Bilateral Investment Treaties," *MILRev* 4, no. 1 (2025).

Prescriptively, integrating customary law into investment governance requires redefining investment success beyond short-term economic indicators. Legal frameworks should mandate substantive engagement with customary norms as part of investment approval and monitoring processes. Such integration would not undermine economic growth but would recalibrate it toward sustainability and social legitimacy. By positioning customary law as both a constraint and an enabler, the law can maintain a balance between traditional values and economic growth in the modern investment landscape.

Prescriptive Legal Strategies for Balancing Customary Values and Economic Growth

Maintaining a balance between customary values and economic growth requires a prescriptive legal strategy that addresses the structural causes of conflict between customary law and modern investment regimes. As demonstrated in the previous discussions, the primary challenge does not lie in the incompatibility of customary law with investment per se, but in the absence of legal mechanisms that integrate customary norms into investment governance. This absence creates a legal vacuum in which investment proceeds without adequate normative guidance from customary law, resulting in social conflict, legal uncertainty, and unsustainable development outcomes.[24]

A central prescriptive strategy involves strengthening the legal status of customary consent within investment processes. Current investment and land acquisition frameworks often treat community consultation as a procedural requirement rather than a substantive condition. Customary law, however, conceptualizes consent as a collective and normative prerequisite for legitimate land use. Legal reform should therefore reposition customary consent as a binding legal requirement in investment approval, particularly in projects affecting customary land and resources.[25] Such reform would enhance legal certainty by clarifying the conditions under which investment is lawfully conducted, while simultaneously protecting communal interests.

Another critical strategy concerns the integration of customary norms into investment impact assessment mechanisms. Environmental and social impact assessments are typically framed in technical and economic terms, with limited consideration of customary values and social structures. Incorporating customary law as a substantive assessment criterion would ensure that investment projects are evaluated not only for their economic feasibility but also for their compatibility with traditional land use patterns, social relations, and cultural continuity.[26] This approach aligns with the broader shift toward responsible and sustainable investment reflected in contemporary constitutional and international legal discourse.

Institutional coordination represents a further prescriptive dimension. Investment governance often involves multiple agencies operating within fragmented regulatory frameworks. Customary institutions are rarely positioned as decision-making actors within this structure. Legal frameworks should therefore provide for institutional collaboration between state authorities and customary bodies, enabling joint decision-making or co-regulation in investment governance.[27] Such collaboration would reduce

[24] M. Abdelhadi, "Responsible Investment Within the Framework of Sustainable Development," *Constitutional Review* (2025).
[25] H. Hamid et al., "The Impact of Customary Land Rights Conversion on Local Communities and Economic Development in Bali," *Asia Pacific Viewpoint* (2025)
[26] N. Lanzoni, "Cultural Heritage Protection versus Social and Economic Development," *International Journal of Cultural Property* (2025).
[27] N. Aragão et al., "The Customary Law and the Traditional Leadership Power in Angola," *Urban Science* (2025).

normative conflict and foster mutual accountability between investors, state institutions, and customary communities.

Judicial interpretation also plays a crucial role in balancing traditional values and economic growth. Courts adjudicating investment-related disputes should adopt a pluralistic interpretative approach that recognizes customary law as a source of normative guidance rather than as an extralegal consideration. Judicial reluctance to engage with customary norms often stems from concerns over legal certainty. However, certainty is undermined, not enhanced, when customary law is systematically excluded.[28] Pluralistic interpretation would allow courts to mediate between economic objectives and customary values in a principled manner.

Finally, prescriptive strategies must acknowledge that economic growth divorced from social legitimacy is inherently unstable. Investment projects that disregard customary law frequently encounter resistance, litigation, and reputational risk. By contrast, investment aligned with customary norms tends to generate social acceptance and long-term stability. Legal strategies that integrate customary law into investment governance therefore serve both normative justice and economic rationality.

CONCLUSIONS

This article demonstrates that the challenges posed by modern investment to customary law are not rooted in an inherent incompatibility between traditional values and economic growth, but in normative ambiguity, legal vacuums, and conflicts of norms within existing legal frameworks. Customary law embodies collective values, social responsibility, and long-term stewardship that remain relevant to contemporary investment governance. However, these values are frequently marginalized by investment regimes that prioritize procedural efficiency and capital protection.

The analysis confirms that excluding customary law from investment governance undermines both social legitimacy and economic sustainability. Investment conducted without substantive recognition of customary norms generates conflict, legal uncertainty, and long-term instability. Conversely, integrating customary law as a normative constraint and enabler enhances investment legitimacy and supports sustainable economic growth.

Prescriptively, this article argues for legal strategies that reposition customary law as an integral component of investment governance. These strategies include strengthening the legal status of customary consent, incorporating customary norms into impact assessments, fostering institutional collaboration, and adopting pluralistic judicial interpretation. By embedding customary law within modern investment frameworks, the legal system can maintain a balanced relationship between traditional values and economic growth, ensuring that investment serves not only economic objectives but also social justice and legal coherence.

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[28] H. Khuan et al., "Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa," *Novum Jus* 19, no. 2 (2025).

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