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Overlapping Investment Permits and Customary Territories: A Legal Analysis of Agrarian Conflict

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ABSTRACT

Agrarian conflicts stemming from overlapping investment permits in customary areas indicate a fundamental problem within the Indonesian legal system, particularly regarding the disharmony between the recognition of customary rights and sectoral licensing policies. This study aims to analyze the conflicting norms between the recognition of customary communities and the granting of investment permits, and to formulate an ideal legal framework for resolving this conflict. The research method used is normative legal research with a statutory and conceptual approach, analyzed qualitatively through primary and secondary legal materials. The results show that the provisions regarding customary rights in the constitution and agrarian regulations are still conditional and open to interpretation, while sectoral regulations tend to facilitate licensing without thorough verification of customary land status. This creates vertical and horizontal normative conflicts that have implications for increasing agrarian conflict. Furthermore, government administrative practices prioritize the formal legality of permits over the substantive recognition of customary rights, thus creating legal uncertainty and distributive injustice. Therefore, regulatory harmonization, strengthening the recognition of customary rights, and reformulating the licensing system based on agrarian justice are needed. A progressive legal approach is also important to ensure that the law functions as a means of achieving substantive justice in resolving agrarian conflicts.

Keywords: *Overlapping Permits, Customary Rights, Agrarian Conflict, Legal Certainty, Justice.*

INTRODUCTION

The increase in investment in the natural resources sector over the past few decades is a logical consequence of an economic development orientation based on the exploitation of agrarian resources. From an economic law perspective, investment is positioned as a strategic instrument for driving national growth, as reflected in various deregulation and debureaucratization policies for licensing.[1] However, this approach tends to ignore the socio-agrarian dimensions inherent in Indonesia's land tenure structure. Mochtar Kusumaatmadja's development law theory asserts that law should function as a means of societal renewal, not simply as a means of legitimizing economic power.[2] In this case, investment expansion that is not balanced with the protection of indigenous peoples' rights has the potential to create structural inequality in land ownership.

[1] Rachman, S. N., Polontoh, H. M., Harefa, J. E., Harefa, A., & Yuliana, T. (2025). Analisis Hukum terhadap Aturan Hukum Penanaman Modal Asing dalam Mendorong Investasi di Indonesia. *Jurnal Hukum Lex Generalis*, *6*(4). https://doi.org/10.56370/jhlg.v6i4.1650

[2] Suherman, H. A. (2025). Relevansi Teori Hukum Pembangunan Dan Teori Hukum Progresif Dalam Pembentukan Teori Hukum Pancasila. *HUNILA: Jurnal Ilmu Hukum Dan Integrasi Peradilan*, *4*(1), 1-13.

The increasing pressure on land resulting from investment expansion is inextricably linked to the construction of agrarian law, which grants dominant authority to the state through the doctrine of state control rights. This doctrine, as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, legitimizes the state to regulate the allocation, use, and control of land. However, in practice, the implementation of state control rights often shifts to justifying the granting of permits to corporations without considering the communal rights of indigenous communities. This indicates a deviation from the principle of the social function of land rights, which should be the primary foundation of agrarian policy. Therefore, the imbalance between investment interests and the protection of indigenous communities is a crucial issue that requires in-depth legal analysis.

Empirically, agrarian conflicts in Indonesia have shown a steady increase in intensity year after year, particularly in the plantation and mining sectors. Data compiled by the Agrarian Reform Consortium shows that hundreds of conflicts occur annually, with a relatively similar pattern: clashes between corporate interests and indigenous communities. These conflicts are not only horizontal but also vertical, involving state legitimacy through the granting of permits. From the perspective of conflict theory proposed by Ralf Dahrendorf, conflict is a consequence of the unequal distribution of power in society.[3] Thus, agrarian conflict can be understood as a manifestation of the unequal power relations between the state, corporations and indigenous communities.

Furthermore, the characteristics of agrarian conflicts in Indonesia demonstrate a systemic pattern indicating regulatory failure to accommodate the plurality of legal systems. Indigenous communities adhering to customary law often lack adequate recognition within the positive legal system. This aligns with Satjipto Rahardjo's view, which emphasizes the importance of laws that are responsive to social realities.[4] When state law fails to accommodate customary law, it results in marginalization of indigenous communities. In this case, agrarian conflict is not simply a land dispute, but also reflects a recognition crisis within the national legal system.

Normatively, recognition of indigenous legal communities is guaranteed in the 1945 Constitution of the Republic of Indonesia, specifically Article 18B paragraph (2), which emphasizes that the state recognizes and respects the unity of indigenous legal communities and their traditional rights. This recognition theoretically reflects the principle of legal pluralism that recognizes the diversity of legal systems within society. However, this recognition is conditional, namely as long as the indigenous community still exists and is in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia. This conditional clause creates broad room for interpretation and has the potential to weaken the position of indigenous communities. Therefore, this normative recognition has not yet fully provided effective protection in practice.

Strengthening the recognition of customary rights is also reflected in the provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which recognizes the existence of customary rights as long as they exist and their implementation does not conflict with national interests. However, the formulation of this norm indicates the subordination of customary rights to state interests. From the perspective of the principle

[3] Maghfiroh, F. (2026). Ketimpangan sosial sebagai mekanisme reproduksi kekuasaan dalam struktur masyarakat modern. *Dimensia: Jurnal Kajian Sosiologi*, 101-112. https://doi.org/10.21831/dimensia.v15i1.94019

[4] Lorenza, T. N., & Mulyadi, A. (2026). Membaca Arah Politik Hukum Indonesia: Telaah Kritis Terhadap Logika Pembentukan Hukum Nasional. *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan*, *5*(1), 133-152. https://doi.org/10.47200/awtjhpsa.v5i1.3089

of distributive justice, this situation creates inequality because indigenous communities do not have equal bargaining power with the state or corporations.[5] Furthermore, the lack of a clear operational mechanism for recognizing customary rights has weakened the implementation of these norms. As a result, customary rights are often overlooked in the investment permitting process.

On the other hand, investment licensing regulations in the natural resources sector show a tendency to prioritize economic interests. This is evident in Law Number 3 of 2020 concerning Mineral and Coal Mining, which facilitates the acquisition of mining business permits for businesses. Furthermore, Law Number 11 of 2020 concerning Job Creation introduces a risk-based licensing system aimed at accelerating investment. From an administrative law perspective, this policy reflects a paradigm shift from control to facilitation. However, this accelerated licensing process is often not accompanied by adequate verification of land status, thus opening up opportunities for overlapping permits.

The conflicting norms between the recognition of indigenous peoples' rights and investment licensing regulations are at the heart of agrarian conflicts. On the one hand, the constitution and agrarian law recognize customary rights, but on the other, sectoral regulations grant the state broad authority to grant permits over the same land. According to Hans Kelsen's hierarchy of norms theory, lower norms should not conflict with higher norms.[6] However, in practice, there is disharmony between constitutional norms and sectoral norms. This situation indicates a failure to harmonize laws and regulations in Indonesia.

These conflicting norms can also be analyzed through the principle of lex superior derogat legi inferiori, which asserts that higher norms must override lower norms. However, in government administration practice, this principle is not always consistently applied. Government officials often prioritize sectoral technical regulations over general constitutional norms. This indicates a problem with legal implementation that is not only normative but also structural. Thus, the agrarian conflict reflects the failure of the legal system to ensure normative consistency.

The legal implications of these conflicting norms are the emergence of legal uncertainty, which is detrimental to all parties. Indigenous communities are vulnerable because their rights are not effectively protected, while investors face legal risks due to protracted land disputes. From the perspective of the principle of legal certainty, this situation contradicts the basic principles of the rule of law, which require clarity and consistency of norms. Furthermore, legal uncertainty also leads to a decline in trust in the legal system. Therefore, resolving agrarian conflicts requires an approach that is not only normative, but also structural and cultural.

Furthermore, agrarian conflicts stemming from overlapping investment permits demonstrate the need for comprehensive agrarian law reform. Such reform must include harmonization of laws and regulations, strengthening the recognition of indigenous peoples' rights, and improving the licensing system. From the perspective of progressive legal theory, the law must adapt to societal needs and not become bogged down in mere

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[5] k Wiryani, F., SH, M. S., & Febriansyah Ramadhan, S. H. (2025). *KEADILAN AGRARIA: Relasi Konstitusi, Hak Menguasai Negara, dan Konflik Struktural*. Setara Press Penerbit Buku Hukum PT Cita Intrans Selaras (Citila).

[6] Martinelli, I., Gunawan, G. G., Alfariza, R. M., & Khoe, K. J. D. L. (2025). KEDUDUKAN HUKUM WARIS DALAM SENGKETA TANAH: ANALISIS TEORI HIERARKI NORMA HANS KELSEN PADA PUTUSAN MA NO. 1072 K/PDT/2024. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, *12*(5), 2013-2020. https://doi.org/10.31604/jips.v12i5.2025.2013-2020

normative formalities.[7] Therefore, a more responsive and inclusive approach is needed to resolve agrarian conflicts. Without fundamental reform, agrarian conflicts will continue to recur and potentially become more complex.

Based on the overall description, it can be concluded that the main problem in agrarian conflicts related to overlapping investment permits in customary areas lies in conflicting norms that have not been systematically resolved. This condition is exacerbated by weak implementation of norms, unequal power relations, and minimal recognition of customary law. Therefore, this article will focus its analysis on the legal construction of overlapping investment permits from the perspective of agrarian conflicts, with an emphasis on identifying and resolving conflicting norms. This analysis is expected to contribute to formulating solutions capable of achieving legal certainty and substantive justice. Therefore, this research is not only descriptive but also prescriptive in offering reform of agrarian law in Indonesia.

METHODS

The research method used in this article is a normative legal research method (normative juridical) with a statutory approach and a conceptual approach. Normative legal research positions law as a norm written in legislation and as a rule that guides behavior. The statutory approach is carried out by examining various regulations related to investment regulations and the recognition of indigenous peoples' rights, such as the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, and other sectoral regulations. Meanwhile, a conceptual approach is used to analyze legal concepts such as customary rights, state control rights, and agrarian conflicts from the perspective of legal theory and legal principles. According to Peter Mahmud Marzuki, normative legal research aims to find legal rules, legal principles, and legal doctrines to address the legal issues faced, making it relevant for use in examining conflicting norms in overlapping investment permits in indigenous areas. [8]

This research also uses an analytical approach to critically examine the synchronization and harmonization between applicable legal norms. The legal materials used include primary legal materials in the form of laws and regulations, secondary legal materials in the form of literature, scientific journals, and expert opinions, as well as tertiary legal materials as supporting materials. The legal material collection technique is carried out through library research, while the legal material analysis is carried out qualitatively using legal interpretation methods, both systematic and teleological interpretations. Soerjono Soekanto explains that legal research is a scientific activity based on certain methods, systematics, and thinking to study legal phenomena with the aim of gaining a deep understanding of the legal problems being studied.[9] Thus, the method used in this research is expected to be able to provide a comprehensive analysis of conflicting norms and their implications for legal certainty in agrarian conflicts.

RESULTS AND DISCUSSION

[7] Aji, P. B. S. (2026). Hukum Progresif Dalam Sistem Hukum Indonesia. *AMU Press*, 1-85. https://ejournal.amertamedia.co.id/index.php/press/article/view/648

[8] Sukmawan, Y. A., & Damayanti, D. (2025). Metode Penelitian Hukum Normatif dan Empiris sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum. *Notary Law Journal*, *4*(3), 114-128. https://doi.org/10.32801/nolaj.v4i3.116

[9] Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, *2*(2), 114-123. https://e-journal.unkaha.ac.id/index.php/slj/article/view/26

Legal Analysis of the Normative Conflict between the Recognition of Customary Rights and the Granting of Investment Permits in Indonesian Laws and Regulations

The recognition of customary law communities and customary rights in the Indonesian legal system normatively obtains constitutional legitimacy through the 1945 Constitution of the Republic of Indonesia, specifically Article 18B paragraph (2) which states that the state recognizes and respects the unity of customary law communities and their traditional rights. The formulation of this norm indicates formal recognition of the existence of customary law as part of national legal pluralism. However, this recognition is not absolute because it is limited by the condition "as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia". This conditional clause raises serious interpretative problems because it opens up space for state subjectivity in determining the existence of customary communities. From a legal theory perspective, this condition reflects normative uncertainty that has the potential to weaken legal protection for customary communities. Therefore, this constitutional recognition still requires strengthening through more operational and unambiguous regulations.

The provisions regarding customary land rights in Law Number 5 of 1960 concerning Basic Agrarian Regulations affirm the existence of indigenous peoples' land rights, but remain subordinated to national interests. The Basic Agrarian Law recognizes customary land rights as long as they exist in reality and their implementation does not conflict with national and state interests. This formulation normatively indicates that customary land rights are not positioned as equal rights to other land rights, but rather as residual rights. From the perspective of the principle of distributive justice, this situation creates inequality because the state has a dominant position in determining the validity of these rights.[10] Furthermore, the lack of clear parameters regarding "national interest" further expands the government's discretion. Thus, the norms in the UUPA have the potential to become legitimate instruments for ignoring customary rights in practice.

The main problem with recognizing customary rights lies in the phrase "as long as it is alive," which is open to multiple interpretations and lacks clear indicators. This phrase is often interpreted restrictively by the government, requiring administrative proof that is difficult for indigenous communities to fulfill. From the perspective of Satjipto Rahardjo's progressive legal theory, the law should favor substantive justice and not become bogged down in administrative formalities.[11] However, in practice, recognition of indigenous communities relies on formal recognition by the state, thus ignoring existing social realities. This demonstrates a gap between law on the books and law in action. As a result, indigenous communities often lose their rights due to their inability to meet the required administrative requirements.

On the other hand, sectoral investment licensing regulations show a different trend, namely, providing convenience and certainty for business actors. Provisions in Law Number 3 of 2020 concerning Mineral and Coal Mining grant the government broad authority to determine mining business permit areas without an explicit obligation to consider the existence of customary areas. This norm reflects a policy orientation that

[10] Marslathifah, A. N., Rahayu, A. S. N., & Damayanti, S. (2025). Keadilan Distributif dan Ketimpangan Sosial dalam Kebijakan Kenaikan Tunjangan DPR. *Equality: Law and Social*, *1*(2), 75-79. https://ejournal.risetanakbangsa.id/jhs/article/view/53

[11] Riana, A., & Setyawati, L. (2025). Perlindungan Hukum Bagi Pekerja Disabilitas di Indonesia: Perspektif Perlindungan Hukum Satjipto Rahardjo. *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam*, *5*(2). https://doi.org/10.14421/staatsrecht.v5i2.4664

places greater emphasis on the exploitation of natural resources than on protecting the rights of indigenous peoples. From an administrative law perspective, permit issuance should be based on the precautionary principle and the protection of the public interest.[12] However, in practice, the licensing process often ignores the social and cultural aspects inherent to customary land. This demonstrates an imbalance in regulatory design that favors economic interests.

Furthermore, Law Number 11 of 2020 concerning Job Creation introduced a risk-based licensing system aimed at accelerating investment and increasing national economic competitiveness. While this policy has legitimate objectives, its implementation has raised serious issues in the context of land tenure. Simplifying licensing procedures has the potential to reduce verification mechanisms for land status, including the existence of customary rights. From the perspective of the principle of legal certainty, accelerating licensing without adequate verification actually creates new uncertainty in the form of overlapping permits.[13] Furthermore, the absence of an explicit obligation to consult with indigenous communities increases the potential for conflict. Therefore, this regulation needs to be reviewed within the framework of protecting indigenous peoples' rights.

The conflicting norms between the recognition of customary rights and the granting of investment permits can be clearly identified within the structure of legislation. Vertically, there is a conflict between constitutional norms that recognize the rights of indigenous peoples and sectoral laws that facilitate licensing without adequate protection for those rights. From the perspective of Hans Kelsen's hierarchy of norms theory, lower norms should not conflict with higher norms.[14] However, in practice, sectoral laws often ignore this principle. This indicates disharmony within the national legal system. As a result, constitutional norms lose their effectiveness in providing real protection. In addition to vertical conflicts, there are also horizontal conflicts between sectoral laws governing natural resources. Each sector, such as mining, forestry, and plantations, has its own regulations that are not systematically integrated. This situation leads to overlapping authority and permit issuance in the same area. From the perspective of the principle of lex specialis derogat legi generali, there should be clarity regarding which norm applies in a given situation.[15] However, the lack of harmonization makes it difficult to consistently apply these principles. This exacerbates the complexity of agrarian conflicts on the ground. Thus, normative conflicts are not only vertical, but also horizontal and structural.

Overall, the conflicting norms between the recognition of customary rights and the granting of investment permits reflect the failure of the legal system to balance economic

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[12] Nibras, N. B., Ariiq, M. D. F., Sianipar, B. B., & Halimatussadia'h, S. (2025). Penyalahgunaan Diskresi Administratif Dalam Perizinan Tambang Pasca UU Cipta Kerja: Konflik Investasi dan Keadilan Lingkungan. *Causa: Jurnal Hukum dan Kewarganegaraan*, *13*(5), 101-110. https://doi.org/10.6679/pt8vkr35

[13] Mayasari, D. N. (2025). Kepastian Hukum Bagi Pelaku Bisnis Dalam Memperoleh Izin Berusaha Melalui Lembaga Perizinan Online Single Submission (OSS). *Media Hukum Indonesia (MHI)*, *3*(3). https://ojs.daarulhuda.or.id/index.php/MHI/article/view/1631

[14] Suhenriko, M. (2023). Implementasi teori hierarki Hans Kelsen terhadap perumusan kebijakan di Indonesia. *Jurnal Ilmiah Multidisipin*, *1*(2), 64-71. http://ejournal.lumbungpare.org/index.php/jim/article/view/191

[15] Wijayanti, S., Sari, Z. N., Salam, S., & Firdaus, A. A. (2024). Norm Clash in Lex Superior Derogate Legi Inferiori Principle's Implementation on Circular Letters and Laws. *Reformasi Hukum*, *28*(3), 234-250. https://doi.org/10.46257/jrh.v28i3.732

and social interests. The conditional and ambiguous norms for recognizing indigenous peoples clash with the expansive and facilitative norms for investment permits. This situation creates a legal dualism that leads to prolonged agrarian conflict. From a justice perspective, this situation demonstrates an imbalance in the distribution of rights and obligations between indigenous peoples and corporations.[16] Therefore, comprehensive legal harmonization efforts are needed to address these conflicting norms. Without fundamental reform, agrarian conflicts will continue to be a structural problem in the Indonesian legal system. Top of Form

The phenomenon of prioritizing the administrative legality of permits over the substance of customary rights recognition reflects the dominance of a positivistic approach in administrative law practice in Indonesia. The government tends to assess the legitimacy of land ownership solely based on formal documents such as business permits, land use rights, or concessions, without delving into the social realities within communities. This approach ignores the reality that customary rights of indigenous communities are often not formally documented but still possess strong social legitimacy. From a legal theory perspective, this situation demonstrates the tension between formal law and living law. Eugen Ehrlich emphasized that effective law is law that lives within society, not merely written norms.[17] Thus, the dominance of administrative legality has the potential to negate the existence of customary law as part of the national legal system.

The government's tendency to prioritize administrative legality is also closely related to a bureaucratic paradigm that prioritizes procedural certainty over substantive justice. In practice, as long as a permit is issued in accordance with administrative procedures, it is considered valid and binding, even if it substantially conflicts with the rights of indigenous peoples. This demonstrates a reduction in the meaning of legal certainty to merely procedural certainty, rather than just certainty. From the perspective of the general principles of good governance (AUPB), this action contradicts the principles of accuracy and justice. Therefore, an overly formalistic orientation in government administration has become a source of agrarian conflict. This situation emphasizes that administrative legality is not always synonymous with social legitimacy. Furthermore, the practice of prioritizing administrative legality reflects the state's failure to integrate legal pluralism into the administrative system. Indigenous peoples, who live with their own legal systems, are often not accommodated in licensing mechanisms based on state law. This results in legal exclusion of indigenous peoples, where they are not recognized as legal subjects with land rights. Satjipto Rahardjo criticized the legal approach which was rigid and unresponsive to social reality, because it could give rise to injustice.[18] In this context, the disregard for customary law demonstrates that the national legal system is not yet fully inclusive. Consequently, agrarian conflict becomes inevitable due to the clash between two unintegrated legal systems.

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[16] Merdiani, W., & Ruslina, E. (2025). Peran Hukum dalam Peningkatan Kesejahteraan melalui Ekonomi Berbasis Keadilan: Role of Law in Enhancing Welfare through a Justice-Based Economy. *Res Nullius Law Journal*, *7*(1), 63-72. https://doi.org/10.34010/rnlj.v7i1.15524

[17] Febriyanti, S. A., Rahma, Z. S., Moenek, E. A., Mulyana, Z. M., Titu, F. F., & Febrianty, Y. (2025). Relevansi teori hukum murni Hans Kelsen dengan pendekatan sosiologi hukum dalam memahami efektivitas hukum di Indonesia. *QOSIM: Jurnal Pendidikan Sosial & Humaniora*, *3*(4), 1547-1556. https://doi.org/10.61104/jq.v3i4.2512

[18] Putra, S. M., Purwanto, M. I., & Hosnah, A. U. (2025). Krisis Nilai Antara Hukum Positif Dan Moral Sosial: Telaah Terhadap Penegakan Hukum Pidana Di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *3*(6), 8658-8665. https://doi.org/10.61104/alz.v3i6.2582

Normatively, prioritizing administrative legality often contradicts the mandate of the 1945 Constitution of the Republic of Indonesia which recognizes and respects customary law communities.[19] Although the rights of indigenous peoples are constitutionally recognized, in administrative practice, this recognition is not consistently implemented. This indicates a gap between constitutional norms and bureaucratic practices. From the perspective of the hierarchy of norms theory, this situation should not occur because lower norms must obey higher norms. However, reality shows that administrative norms often dominate in practice. Thus, there is a serious problem in implementing the principle of constitutional supremacy. Furthermore, the dominance of administrative legality also strengthens the position of corporations as legally valid permit holders, even though their existence is substantively questioned by indigenous communities. This creates an imbalance in power relations between corporations and indigenous communities. From the perspective of the theory of distributive justice, this situation indicates an unfair distribution of agrarian resources. The state should act as a balance, but in practice, it tends to favor economic interests. As a result, indigenous communities are in a vulnerable and marginalized position. Therefore, administrative legality often becomes a tool to legitimize unfair land ownership.

The implication of this practice is the increasing intensity of structural and ongoing agrarian conflicts. When indigenous peoples feel their rights are being ignored, conflicts arise not only at the legal level but also at the social and political levels. These conflicts often result in the criminalization of indigenous peoples defending their territories. From a criminal law perspective, this situation indicates the potential for the misuse of the law as a repressive tool. This contradicts the principle of a state governed by the rule of law, which should protect the rights of citizens. Thus, prioritizing administrative legality not only creates conflict but also has the potential to violate human rights.

This practice demonstrates a failure to implement the principle of prudence in granting permits. The government should conduct a thorough verification of land status before issuing permits, including ensuring the absence of claims from indigenous communities. However, in many cases, this verification is inadequate. This indicates that existing administrative procedures are unable to guarantee substantive justice. From an administrative law perspective, this situation can be categorized as maladministration. Therefore, reforms to the permit system are needed to ensure the protection of indigenous peoples' rights. Ultimately, the government's tendency to prioritize the administrative legality of permits over the substantive recognition of indigenous rights reflects a structural problem within the Indonesian legal system. This overly formalistic approach, unresponsive to social realities, has exacerbated agrarian conflicts. From a progressive legal perspective, the law should be a tool for achieving justice, not simply a tool for legitimizing power.[20] Therefore, a paradigm shift in government administration is needed that places greater emphasis on substantive justice. Without such change, agrarian conflicts will continue to recur and become increasingly complex. Therefore, comprehensive legal reform is a necessity. Bottom of Form

[19] Rina Yulianti, S. H. (2022). *Perlindungan Hukum Bagi Hak Masyarakat Atas Sumber Daya Pesisir*. Scopindo Media Pustaka.

[20] Rizqullah, A. A., Situmorang, A. F., & Bakt, F. M. D. (2025). Peran hukum progresif dalam mencari keadilan menurut Satjipto Rahardjo. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, *3*(01). http://journal.forikami.com/index.php/nusantara/article/view/971

The Legal Construction of Overlapping Investment Permits in Customary Areas from the Perspective of the Principles of Legal Certainty and Justice

The concept of overlapping permits from the perspective of state administrative law essentially reflects a systemic failure in permit governance, which should uphold the general principles of good governance. Overlapping permits occur when more than one permit is issued for the same land without thorough verification of the land's legal status.[21] This situation indicates procedural flaws in the administrative process, particularly regarding the principles of accuracy and prudence. Under administrative law doctrine, such actions can be classified as maladministration because they ignore the state's obligation to ensure the validity of an object before issuing a state administrative decision. Failure to verify land status, particularly for customary areas that have not been formally mapped, is a major factor in the overlapping permits. Thus, this problem is not merely technical in nature but also reflects structural weaknesses in the government administration system.

Overlapping permits are not only caused by procedural weaknesses, but also by the fragmentation of authority between institutions that regulate the natural resources sector.[22] Each sector has its own licensing regime, which is often not systematically integrated, creating room for conflicts of authority. From an administrative law perspective, this situation contradicts the principles of coordination and integration that should underpin governance. Consequently, permits issued by one agency can conflict with those issued by another. This demonstrates that overlapping permits are a manifestation of institutional disharmony. Therefore, resolving this issue requires an approach that is not only normative but also institutional.

In terms of legal certainty, the phenomenon of overlapping permits creates serious problems that threaten the fundamental principles of the rule of law. Legal certainty requires clarity, consistency, and predictability in the application of legal norms. However, when more than one permit exists for the same object, legal certainty becomes an illusion because there is no clarity regarding legitimate rights. Gustav Radbruch's theory of the three basic legal values places legal certainty as one of the main pillars, alongside justice and expediency.[23] In agrarian conflicts, these three values are often in tension and difficult to resolve. Therefore, analysis of overlapping permits must consider the balance between them.

The relationship between legal certainty, justice, and utility becomes particularly complex in agrarian conflicts involving indigenous communities and investors. Legal certainty is often formally interpreted as document certainty, so that administratively valid permits are considered legally legitimate. However, from a justice perspective, this legitimacy can be questioned if they are obtained at the expense of indigenous peoples' rights. In this context, Gustav Radbruch's theory asserts that a grossly unjust law is not worthy of being called law. Therefore, legal certainty cannot be separated from substantive justice. Thus, an overly formalistic approach to understanding legal certainty

[21] Utomo, S. (2023). Problematika Tumpang Tindih Status Kepemilikan Tanah. *Jurnal Hukum Bisnis Bonum Commune*, 53-61. https://doi.org/10.30996/jhbbc.v6i2.8356

[22] Dewi, R. T. P., & Ramli, A. (2025). Analisis Terhadap Kepemilikan Hak Atas Tanah yang Mengalami Tumpang Tindih (Studi Kasus di Kelurahan Muktiharjo Kidul Kota Semarang). *Bookchapter Hukum dan Lingkungan*, *1*, 1595-1632. https://bookchapter.unnes.ac.id/index.php/hk/article/view/573

[23] Azzahra, S. N., Saragih, Y. M., Yusuf, M., & Pasaribu, U. R. (2025). Analisis yuridis tindak pidana korupsi suap berdasarkan teori kepastian hukum. *Jurnal Multidisiplin Dehasen (MUDE)*, *4*(3), 593-598. https://doi.org/10.37676/mude.v4i3.8533

has the potential to perpetuate injustice. The legal uncertainty arising from overlapping permits has far-reaching implications for both indigenous communities and investors. Indigenous communities are particularly vulnerable because their rights are not formally recognized in the administrative system. Meanwhile, investors who have legally obtained permits also face legal risks due to protracted land disputes.[24] From an economic law perspective, this situation creates investment uncertainty that can hamper economic growth. Thus, overlapping permits not only harm indigenous communities but also undermine overall economic interests. Therefore, resolving this issue is crucial in the context of national development.

From the perspective of the principle of justice, the unequal distribution of land ownership between indigenous communities and corporations indicates structural injustice.[25] The state, through its licensing policies, tends to grant greater access to corporations than to indigenous communities. This contradicts the principle of distributive justice, which demands a proportional and fair distribution of resources. In this context, indigenous communities are often the ones disadvantaged by losing access to the resources that are their lifeblood. Therefore, analysis of overlapping permits must consider the justice dimension as a primary factor. Without justice, legal certainty lacks substantive meaning.

State dominance in controlling natural resources is also a factor exacerbating this inequality. Through the doctrine of state control rights, the government has broad authority to determine land allocation and use. However, this authority is often used to promote economic interests without considering the rights of indigenous communities. From the perspective of social justice theory, this situation indicates a policy bias that does not favor vulnerable groups. Therefore, a more inclusive and equitable policy reorientation is needed. The state should act as a protector, not as a party reinforcing inequality. Overall, overlapping investment permits in indigenous territories reflect the complexity of legal issues involving normative, administrative, and social aspects.[26] The failure to ensure legal certainty, justice, and benefits in a balanced manner has exacerbated agrarian conflicts. From a legal perspective, this situation indicates a crisis in Indonesia's agrarian resource management system. Therefore, comprehensive legal reform is needed to address this problem. Such reform must include improvements to the licensing system, strengthening the recognition of indigenous peoples' rights, and enhancing inter-institutional coordination. This is expected to create a more just, certain, and beneficial legal system for all parties.

The ideal legal framework for resolving agrarian conflicts arising from overlapping investment permits in customary areas must stem from the need for an integrative harmonization of norms between the recognition of customary rights and licensing regulations. This harmonization cannot be achieved partially; it must simultaneously

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[24] Yansen, A. (2025). PERLUNYA SISTEM ADMINISTRASI PERTANAHAN YANG ANDAL DAN TRANSPARAN: MEMBANGUN KEPASTIAN HUKUM, PENYELESAIAN SENGKETA YANG ADIL, DAN MENDUKUNG INVESTASI SERTA AKSES USAHA. *JEBIMAN: Jurnal Ekonomi, Bisnis, Managemen dan Akuntansi*, *3*(6), 465-474. https://sociohum.net/index.php/JEBIMAN/article/view/312

[25] Asadi, S. (2024). Eksistensi Hak Guna Usaha (HGU) terhadap Tanah Negara dalam Perspektif Keadilan Agraria:-. *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum*, *3*(5), 236-242. https://doi.org/10.55681/seikat.v3i5.1577

[26] Widjaja, G. (2025). Konflik Dan Harmonisasi Regulasi Hak Atas Tanah Laut: Studi Literatur Tentang Penataan Wilayah Pesisir dan Implikasinya Terhadap Penegakan Hukum dan Perlindungan Hak Masyarakat. *Jurnal Salome: Multidisipliner Keilmuan*, *3*(4), 563-573. https://wikep.net/index.php/SALOME/article/view/304

address the substance, structure, and culture of the law. From a legal systems theory perspective, agrarian conflicts reflect a failure to integrate various legal subsystems, which operate in a sectoral and asynchronous manner.[27] Therefore, a legal model is needed that integrates constitutional norms regarding the recognition of indigenous communities with administrative norms for granting investment permits. This integrative approach must ensure that every licensing policy consistently considers the existence and rights of indigenous communities as a primary variable. Thus, the law will no longer be an instrument of legitimizing conflict, but rather a means of just resolution.

Strengthening the recognition and protection of customary rights is a fundamental element in this legal framework. Conditional recognition, as currently stipulated in the 1945 Constitution of the Republic of Indonesia and Law Number 5 of 1960 concerning Basic Agrarian Regulations, needs to be reformulated into a more explicit and operational form. The "as long as it is still alive" requirement has been proven to create uncertainty and open up room for interpretation that is detrimental to indigenous communities. Therefore, clear parameters and a recognition mechanism are needed that does not rely entirely on government discretion. From the perspective of the principle of legal certainty, explicit recognition will provide more effective protection for indigenous communities.[28] Thus, legal recognition of customary rights must be prioritized in agrarian law reform. In addition to strengthening recognition, reformulating the licensing system based on agrarian justice is also an urgent need. The licensing system, which has been oriented toward accelerating investment, must be balanced with a rigorous verification mechanism for land status. Verification of customary territories must be a primary requirement before issuing permits, not merely an administrative formality. From an administrative law perspective, this aligns with the principles of prudence and accuracy in decision-making. Without adequate verification, the potential for overlapping permits will continue to arise. Therefore, reformulation of the licensing system must include spatial data integration, recognition of customary territories, and community participation in the decision-making process.

A progressive legal approach is an important foundation for formulating solutions to agrarian conflicts. Satjipto Rahardjo emphasized that the law must favor substantive justice and not become bogged down in normative formalities.[29] In this context, resolving agrarian conflicts cannot rely solely on administrative legality but must also consider justice for indigenous communities. A progressive legal approach encourages judges and law enforcement officials to make legal breakthroughs in resolving conflicts. This is crucial given the numerous cases in which formal law perpetuates injustice. Therefore, the law must function as a tool for liberation, not oppression. Furthermore, a progressive legal approach also demands a paradigm shift in government administration. Government officials must not merely act as enforcers of regulations, but also as agents of justice sensitive to social realities. In practice, this means that every licensing decision must consider the social and cultural impacts on indigenous communities. This approach

[27] Putri, K. V. G., & Akhmaddhian, S. (2025). Harmonisasi Regulasi Nasional dalam Pengelolaan dan Pemanfaatan Tanah dalam Perpektif Teori Sistem Hukum. *Logika: Jurnal Penelitian Universitas Kuningan*, *16*(02), 197-206.

[28] Pasaribu, R. S., & Simamora, J. (2022). Pengakuan Dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba. *Nommensen Journal of Legal Opinion*, 1-15. https://doi.org/10.51622/njlo.v3i1.606

[29] Lorenza, T. N., & Mulyadi, A. (2026). Membaca Arah Politik Hukum Indonesia: Telaah Kritis Terhadap Logika Pembentukan Hukum Nasional. *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan*, *5*(1), 133-152. https://doi.org/10.47200/awtjhpsa.v5i1.3089

aligns with the principle of social justice that underpins agrarian resource management. Therefore, legal reform addresses not only normative aspects but also changes the mindset of government officials. Without a paradigm shift, the law will remain a tool for legitimizing power.

Recommendations for harmonization and synchronization of regulations are a strategic step to address ongoing normative conflicts. Harmonization must be achieved through revisions to conflicting laws and regulations and the development of new, more integrative regulations. From the perspective of the hierarchy of norms theory, every sectoral regulation must be aligned with constitutional norms that recognize the rights of indigenous peoples.[30] Furthermore, a coordination mechanism between institutions is needed to ensure consistency in regulatory implementation. Without harmonization, normative conflicts will continue to recur. Therefore, integrated legislation is key to resolving agrarian conflicts. Beyond normative harmonization, policy synchronization is also necessary at the implementation level. This includes data integration between government agencies, the development of comprehensive maps of customary areas, and strengthening the role of local governments in recognizing indigenous communities. From an administrative law perspective, this synchronization is crucial to prevent overlapping authority and licensing. Furthermore, indigenous communities' participation in planning and decision-making processes must be guaranteed normatively. Thus, the resulting policies are not only legally valid but also socially legitimate. This will strengthen public trust in the legal system.

Overall, the ideal legal framework for resolving agrarian conflicts must address the ongoing issues of conflicting norms, legal uncertainty, and injustice. An integrative approach, strengthening the recognition of customary rights, reformulating the licensing system, and implementing progressive law are key elements in this framework. Comprehensive legal reform is needed to ensure that the law functions effectively in regulating the control of agrarian resources. Without fundamental reform, agrarian conflicts will continue to be a structural problem that is difficult to resolve. Therefore, a strong commitment from all stakeholders is required to realize a just and sustainable legal system.

CONCLUSIONS

Overlapping investment permits in customary areas are a clear manifestation of conflicting norms within the Indonesian legal system, which have not yet been optimally harmonized, particularly between the recognition of customary rights and the sectoral licensing regime. Normatively, recognition of indigenous communities remains conditional and open to wide interpretation, while investment regulations provide administrative convenience without ensuring the substantive validity of land status. This situation has led the state to prioritize the formal legality of permits over the protection of indigenous communities' constitutional rights, thus triggering protracted agrarian conflicts. From the perspective of legal certainty and justice, this situation creates uncertainty for all parties, both indigenous communities who have lost their rights and investors who face the risk of legal disputes. Therefore, an integrative legal construction is needed through regulatory harmonization, strengthening the unconditional

[30] Hutabarat, C. P. H. C. P., & Anggusti, M. A. M. (2026). ANALISIS HUKUM TERHADAP PERAN DAN REGULASI PARALEGAL DALAM PERLINDUNGAN HAK MASYARAKAT ADAT DI INDONESIA. *Judge: Jurnal Hukum*, *6*(06), 1815-1825. https://doi.org/10.54209/judge.v6i06.1816

recognition of customary rights, and reformulating the licensing system based on verification of customary territories. A progressive legal approach is crucial to ensure that the law functions not only as an administrative instrument but also as a means of realizing substantive justice in resolving agrarian conflicts.

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