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## Juridical Study Regarding the Function of Land for Investment Interests in the Region

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**Abstract:** Apart from being used for personal and group interests, land also has an important role as an investment. The aim of this research is to find out accurately and clearly how land is allocated and used for investment purposes in the region, as well as to find the best solution to problems related to the function of land as an investment vehicle according to regional conditions. Normative research focuses on the principles and level of legal synchronization of the application of land law and various regulations in the field of investment law. Normative research, also known as library research, uses secondary data from primary, secondary, and tertiary legal materials. The results of the research show that there is no specific law that regulates investment in the region, so that customary rights to land designated and used are interpreted differently, and disputes often occur regarding the boundaries of customary land that is used as the main means (object) of investment in a region. area. Therefore, based on the principle of regional autonomy, regional governments must immediately make regional regulations regarding investment that are in accordance with local conditions and the interests of indigenous communities in owning their customary land.

**Keyword:** Functions of Land, Investment in the Region.

### INTRODUCTION

Human life depends on land as one of the most important natural resources. Owning land can mean having savings or capital. Land is very important for an individual's social status in a society that is an agrarian society. The history of land control over generations can determine whether someone comes from a particular area or not.

Land in customary law communities has two functions: as a "social asset" and a "capital asset". In its function as a "capital asset", land functions as a "media" and functions as a source of economic and community life, especially for farmers who live in villages. However, when the New Order promoted investment in the plantation sector, the rights of customary law communities were ignored. As a result, they lose the ability to utilize the land they own to improve their economic life (Hermayulis, 2001).

Land control has become integrated into the community's lifestyle and produces rules that the community obeys. In regulating state life, the state government must consider this.

The central government tends to control regions by granting land use permits for significant investment because it considers efficiency and attracting investors (Eriska Wulani, 2001).

Land acquisition for development projects is protected by legal instruments regulated in Presidential Decree Number 55 of 1993, but former land owners do not benefit from these provisions. Many reasons are used to pressure communities to give up their land but retaining their customary laws means they are against development. In fact, they are often accused of wanting to break away from the Republic of Indonesia, which is considered by some people as a cover or classic excuse without clear legal guidelines. All of this causes people to be faced with the choice of "like eating simalakama fruit". In the end, the people gave up their land with all the consequences.

Statements by investors and policy makers are the most prominent, although discussion and publication of these statements and accusations is uneven. Meanwhile the voice of the community seems to be ignored. Until reforms begin, these conditions remain. People during the reform era demanded land rights.

Business people allege that there is a lack of clarity in land laws regarding investments in the region. Some domestic investors and business people sometimes state that Indonesia's legal instruments are poor and do not support global economic competition. To avoid these accusations, decisions made by the Agrarian Minister or Head of the National Defense Agency during the reform government were changed to Head of the Defense Agency.

From this situation, the problem is whether the existing legal system in Indonesia is complicated enough, whether the law remains relevant and develops over time, and whether the law is difficult to apply globally. Although there are some issues that can be resolved, there are several aspects of land law that must be taken into account that have been sidelined in development practice.

Land, together with liquid capital, labor, and expertise, is one of the main regional assets. Investment activities require land as a location. One aspect of the product that must be considered is the regulation of land tenure.

Capital can be the main reference through various media and economic activities, and investment is a global problem. One way to get investor capital is to invest directly in the financial business sector or manufacturing industry. Taking into account the fact that the opportunity to invest can be undertaken by anyone and in very different ways, the results will also be very different. Organizers of investment activities, especially those with authority, must ensure this. Therefore, investment laws must consider all investors' interests and allow investor recipients to be in a position that does not disturb the group or the environment (Sri Rejeki Hartono, 2005).

According to the Big Indonesian Dictionary, investment means investing funds or money in a company or project with the hope of making a profit. Basically, investing is buying assets that can be resold at a higher value in the future. Investment can also be thought of as deferring current spending for future spending. Future profits are compensation for the time and risks associated with the investment.

"Investment is an investment in one or more assets owned and usually has a long term period with the hope of making a profit in the future," said Sunariyah. Currently, many countries are implementing policies to increase domestic and foreign capital investment. The government does this because investment will improve the country's economy, increase employment, increase output, save foreign exchange, or even increase foreign exchange (Ridwan Khairandy, 2002).

"An investment project is a plan to invest resources, whether in large projects or small projects, to gain benefits in the future," said Husnan. These benefits are usually in the form of monetary value, but capital can also be in the form of other objects, such as land,

machinery, buildings, etc. However, every aspect of investment must be valued in money. An investment plan must be analyzed carefully.

Various facilities provided by the central and regional governments based on regional autonomy have contributed to the increase in the number of illegal logging in Papua. The function of land as the main investment vehicle is closely related to forestry investment.

According to Ir. Marten Kayoi, MM Head of the Papua Provincial Forestry Service, the main cause of the large number of illegal logging in Papua is the existence of logging permits from the provincial government which allows indigenous Papuans to log areas of 100 to 200 ha (Kopermas), which can then be expanded to 1000 ha.. This permit was originally intended for the welfare of the native population, but later became illegal.

Kopermas often have disputes over the boundaries of their customary land used for logging. Timber barons use this situation to connect indigenous community groups or cooperatives, so that they can expand their logging areas. Although this article does not discuss illegal logging practices and all the legal aspects related to them, it will talk about the normative division and use of land for investment purposes in the region.

According to Hawin, the implementation of regional autonomy is closely related to the function of land as a means of investment in the region. Successful investment in a region, whether made by foreign or local investors, sometimes brings consequences, such as the large number of illegal logging activities in Papua (Hawin, 2003).

Land rights originate from state control rights. Land rights can be owned by individuals, groups or legal entities, both private and public. According to Soedikno Mertokusumo, the authority of land rights holders over their land is divided into two:

1. General Authority: the holder of land rights has the authority to use his land, including the body of earth, water and space above it, as necessary for purposes directly related to the use of the land within its boundaries according to the UUPA and other relevant legal regulations.
2. Special Authority: Special authority allows land owners to use their land according to its type. For example, land owners with freehold rights can use their land for agricultural purposes or construct buildings; land owners with building rights can use their land only to construct buildings on land they do not own; and land owners with business rights can use their land for business purposes.

Article 4 paragraph (1) UUPA states that "On the basis of state control rights over land as intended in Article 2 it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, both themselves and together with other people and legal entities."

## **METHOD**

This research is normative research, which emphasizes research on legal principles and the level of legal synchronization of the application of land law and various regulations in the field of investment law.

## **RESULTS AND DISCUSSION**

In Indonesia, demands for complete regional autonomy can no longer be stopped. The best option to maintain the unity of the Republic of Indonesia at this time is to do it in full. Independence is necessary for regional autonomy, which means that regional governments must work hard to eliminate the habit of receiving shares or quotas and do everything for the prosperity and progress of their own communities.

Land is the main regional wealth, and investing clearly requires a place to carry out investment activities. Therefore, regulating the allocation and use of land for investment purposes in the region must be a primary concern.

Since Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations came into force, land is considered to be a part of the earth. The corridor of the unitary state of the Republic of Indonesia allows recognition that agrarian law, or customary agrarian law, applies to indigenous peoples. The legal source can be found in Articles 5 and 56 of the UUPA, which function as a supplement or complement to national agrarian law. Article 33 paragraph (3) of the 1945 Constitution, Article 1 paragraph (2) and 4 of the UUPA, and Article 33 paragraph (3) of the 1945 Constitution stipulate nationalist, unitary and nationalist principles in agrarian law. These articles relate to the use of earth, water and the natural resources contained therein for the welfare of the Indonesian people.

Articles 21 and 56 of the UUPA stipulate that ownership rights to land can only be owned by Indonesian citizens (including indigenous communities), and ownership rights to forest products can only be owned by Indonesian citizens. These provisions are related to the implementation of investment in certain sectors. Therefore, this legal method is closely related to domestic investors, or Domestic Investment. Law Number 11 of 1967 regulates the extraction of mining goods; Law Number 5 of 1967, which has been amended by Law Number 41 of 1999; Law Number 24 of 1992 concerning Spatial Planning; and Law Number 23 of 1997 concerning Environmental Management.

Internationalism, pluralism and decentralization oppose the nationalist spirit in this Law. Internationally, foreign investors are demanding that Indonesia give them the opportunity to utilize Indonesian land for various purposes, including business. In the decentralization process, Indonesia is trying to give authority that previously belonged to the central government to regional governments. So far, the conflict between the central government and customary law communities has caused local governments to feel sidelined.

In the land sector, during reform, indigenous and regional communities demanded all these authorities. This shows pluralism. Regional governments demanded that the central government receive all powers. This is manifested, among other things, in the practice of organizing the Land Administration and Land Agency. Recently, there has been an "action" by the city or district government to elect the Head of the Land Office for each region themselves. The city or district government is fully responsible for land administration, including permits, certificates and other land rights. There are pros and cons to the demands made by the city and district governments.

This is because up to now there has been no line of authority; there are only policy lines for resolving land cases. Power often leads to conflicts between sector interests and pride in achieving policy goals. This is also caused by the idea of regional autonomy which is regulated in Law Number 22 of 1999 and followed by government regulations, such as Government Regulation Number 25 of 2000.

In addition, the community (especially customary law communities) demands that their rights to the land, including the natural resources contained therein, be returned and handed back to them to control it. Not only do these demands make land issues more difficult, but they also create a new "label" for customary law communities, namely "the community has been manipulated by certain parties to take advantage." These labels must be considered carefully, and customary law communities must understand land tenure patterns and their rights to land.

According to Law no. 25 of 2007 concerning Capital Investment, foreign and domestic investment is defined as capital investment. However, in economic or business law literature, the term investment is divided into investment made directly by local investors (both domestic investors and foreign investors), and investment made indirectly by foreign parties (For this can be explained as follows :

1. Long Term Capital Investment or Direct Investment: This is a type of direct investment where the direct investor is directly involved in managing the business and is directly responsible for losses.

2. Indirect Investment: This is a type of investment where the investor buys securities issued by the company or owned by the company.

In Law Number 5 of 1960, various statutory regulations which implicitly regulate the function of land and the customary rights of customary law communities to land are regulated. As with mining and forestry laws, the implementation of this law still raises doubts and uncertainty regarding the limits of authority of the central government, rights holders and regional governments.

If we pay attention to Article 14 paragraph (2) of Law Number 5 of 1960, which states that "Based on the general plan in paragraph 1 of this article and bearing in mind the relevant regulations, the Regional Government shall regulate the supply, allocation and use of earth and water. , as well as space for the regions, according to the circumstances of each region", the government referred to here is the Central Government, and the Regional Government only ratifies the general plans made by the Central Government.

Regional Autonomy is then given to municipal or district governments. Translating regional authority that has not been regulated in detail in implementing regulations is a problem. This can cause regional conflicts, as is the case with coastal area management problems that have occurred in several coastal areas, such as sea plotting based on Articles 7 and 10 of Law Number 22 of 1999.

The implementation of regional autonomy in the land sector varies in each region due to differences in how land is controlled in society in accordance with regional conditions and customary law (recognized in Article 3 and Article 56 of the UUPA). This needs to be watched out for and studied thoroughly about the benefits and harms. Legal uncertainty will arise due to unclear land registration in accordance with regional conditions and local customary law. This will make it difficult to increase the economic value of land in the era of globalization. Furthermore, this will definitely prevent the region from attracting foreign and domestic investors to invest there.

In terms of the Indonesian legal basis for investment implementation, Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment do not have articles regulating the allocation and use of land for investment purposes. Thus, it is clear that the different formulation of the Law does not regulate the specifications for the allocation and use of land for investment purposes.

To prevent monopolies by foreign capitalists resulting from investment policies, Presidential Decree Number 23 of 1980 stipulates special provisions regarding joint ventures relating to land, in Article 3 paragraph (1) which states that "in the case of the holder of the right to cultivate the land use of the business to the joint venture as intended in Article 2, then the right to use the business may not be used as collateral for debt in any form."

In terms of the function of land as an investment vehicle, this needs to be considered thoroughly. Although the law does not yet limit the size of plantation land that can be owned by companies, as is the case in Papua, this must be anticipated from the start. Such a situation could lead to the emergence of a new type of monopoly, namely control of land by a company or group of foreigners. Because it will be related to foreign companies, land control will sooner or later have an impact on state control authority.

Apart from the legal instruments mentioned above, regulations regarding land owned by customary law communities or what is known as ulayat rights have different interpretations, as shown by Article 3 of Law Number 5 of 1960.

Certain investors free up community land by way of compensation, not by buying and selling. The law of "sale and purchase" differs from "compensation" because the former is related to the principle of agreement between both parties, while the latter has other elements involving coercion. For the most part, this coercion is associated with the smooth running of development (especially in the economic sector), and is often referred to as a "shield" by Presidential Decree Number 55 of 1993. There is an element of this coercion because the

government tends to be on the side of investors. The government ignores society with its unique cultural diversity.

The existence of "magic letters" and various similar forms of protection which are currently being "rummaged through" to be revealed shows that investors are taking sides. Society rejects this uniqueness due to incomprehension, inability to understand, and desire for simplicity, along with various "excuses." Research on social and cultural patterns of society is considered insignificant.

This land acquisition has led to community actions which have been described as "brutal" and "unlawful", even seeming "criminal". As a result, empty land, golf courses, plantation land, and so on have been covered. Indigenous law communities demand that the government and investors return their land that has been acquired for development and plantations. The demands filed are similar to lava from a volcano that erupted a long time ago.

One of the weaknesses in drafting agreements between indigenous people who own cultivated land (timber forests) and investors is that there is a feeling of need and great dependence on investors, so that the initial capital gain is ultimately taken into account. In Papua, this practice occurs between wood barons and community cooperatives, resulting in illegal logging practices that are widespread and surprising.

Economic development has ignored the law and ignored land law, which has caused damage to the national economy and the restoration of customary law on communal land. Therefore, an alternative solution to the problem or solution that must be taken is to prepare legal instruments that specifically regulate investment so that they can create clear rules of the game and can protect all parties, especially the weak parties (especially the community).

## CONCLUSION

There are no specific laws governing investment in regions, so that customary rights to land used and designated are interpreted differently, and disputes often occur regarding the boundaries of customary land which is used as the main means (object) of investment in an area. Therefore, based on the principle of regional autonomy, regional governments must immediately make regional regulations regarding investment that are in accordance with local conditions and the interests of indigenous communities in owning their customary land. In Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment, there are no articles that regulate how land can be used for investment purposes.

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