



Job Creation Law and Ease of Doing Business: A Case of Investment Companies in Indigenous Peoples' Territories

Yenny Yorisca¹, Andika Putra Pratama², Anggara Wisesa³, Anita Afriana⁴

^{1,2,3,4} School of Business and Management, Bandung Institute of Technology, Bandung, Indonesia

ABSTRACT: The Job Creation Law was formed using the omnibus law method to achieve its goals to make changes to various laws and regulations equivalent to it to achieve the Law's goals. Unfortunately, there are problems in regulations that cause Indigenous Peoples and their traditional rights to become unprotected, causing legal uncertainty for investment companies that are reluctant to carry out their business activities in Indigenous Peoples' territories. This can hamper the realization of the ease of doing business that the Job Creation Law intends to achieve. Therefore, the Job Creation Law should review the regulations regarding investment companies' activities that carry out their activities in Indigenous Peoples' territories. The research method used is normative juridical method, emphasizing secondary data collection aiming to look for the role of the Job Creation Law to provide legal protection for Indigenous Peoples while providing legal certainty and doing business to investors who carry out business activities in Indigenous Peoples' territories. To provide business convenience for these companies and protect Indigenous Peoples' traditional rights, the Job Creation Law should change the provisions in the Village Law.

KEYWORDS: Investment; Indigenous Peoples; Job Creation Law; Legal Certainty; Omnibus Law.

1. INTRODUCTION

The promulgation of Law Number 11 of 2020 concerning Job Creation (starting now referred to as the Job Creation Law) has the primary objective of providing a climate of ease of doing business as stated in the considering point b of Job Creation Law¹:

that with Job Creation Law, it is expected to be able to absorb Indonesian workers as widely as possible during increasingly competitive competition and the requirements of economic globalisation.

To be able to realise the ease of doing business, the Job Creation Law divides its focus into several main clusters, namely, (1) convenience, protection and empowerment of cooperatives and micro, small and medium enterprises, (2) enhancing the investment ecosystem, and (3) accelerating national strategic projects, including improving protection and welfare of the workers.² To achieve these goals, several changes were made to the laws and regulations related to the Job Creation Law's existence using the omnibus law method.³ It is hoped that the simplification of the amendments to these laws and regulations could realise the Job Creation Law's main objectives immediately.

However, some things are not considered sufficiently in the Job Creation Law. One of the crucial clusters for realising Job Creation Law's main objective is to improve the investment ecosystem.⁴ The method of the Job Creation Law in terms of improving the investment ecosystem is stated in Article 6. In Article 6 of the Job Creation Law, it is stated that the improvement of the investment ecosystem and business activities is conducted by (1) application of risk-based Business Licensing; (2) simplification of the basic requirements for Business Licensing; (3) simplification of sectoral Business Licensing; and (4) simplification of investment requirements.

Given the safeguards described in Article 6 of the Job Creation Law, the emphasis on improving the investment ecosystem is placed on the licensing sector. Meanwhile, improving the investment ecosystem is not only about licensing. Article 4 of the Law Number 25 of 2007 concerning Investment Law (starting now referred to as the Investment Law) mentions other prerequisites for improving the investment ecosystem, namely:

Article 4

(1) The Government shall determine basic investment policies to:

- a. encourage the creation of a national business climate that is conducive to investment in order to strengthen the competitiveness of the national economy;
- b. accelerate the increase in investment.



- (2) In determining the primary policy as referred to in Paragraph (1), the Government:
- gives equal treatment to domestic investors and foreign investors while still paying attention to the national interest;
 - guarantees legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities following the provisions of laws and regulations; and
 - opens development opportunities and protects micro, small, medium enterprises and cooperatives.

Using a systematic interpretation⁵ of these regulations, in terms of improving the investment ecosystem, it is not only about the simplification of business licensing as mentioned in Article 6 of the Job Creation Law, but also about how the accountability of the licensing can provide things as stated in Article 4 (Paragraph 2) of the Investment Law. The improvement of the investment ecosystem as stated in Article 6 of the Job Creation Law is only one part of Article 4 (Paragraph 2, point b) of the Investment Law, which has not even been fully regulated because the Job Creation Law is only a licensing arrangement.⁶ In contrast, the essence of Article 4 (Paragraph 2, point b) of the Investment Law is a guarantee of legal certainty, business certainty, and business security for investors.⁷

Problems that often arise but do not receive attention from the Job Creation Law are business certainty, legal certainty, and business security that investors must enjoy in carrying out their business activities in territories of Indigenous and Tribal Peoples (hereinafter referred to Indigenous Peoples⁸). This occurs because there is no certainty for the Indigenous Peoples and their rights in their territory, and there is also no certainty for investors in carrying out business activities in the Indigenous Peoples' territories. Indigenous Peoples come with their Traditional Rights, which are recognised in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which reads,

The State recognises and respects the units of the Indigenous Peoples and their Traditional Rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in Law.

In the formulation of this article, the State recognizes and respects the unity of the Indigenous Peoples and their traditional rights. According to the Dissemination Guide Book of the 1945 Constitution issued by the People's Consultative Assembly of the Republic of Indonesia regarding Article 18B Paragraph (2), it is said that⁹,

Government units at the village level such as *gampong* (in NAD), *nagari* (in West Sumatra), *dukuh* (in Java), villages and *banjar* (in Bali), as well as various Indigenous People in various regions live based on custom with rights such as customary rights. On one condition, the Indigenous Peoples group exists and lives, not being forced to exist, not being alive. Therefore, in its implementation, the group must be further regulated in regional regulations stipulated by the DPRD. Apart from that, this stipulation was, of course, with a limitation, namely that it was not allowed to contradict the unitary State's principles.

From the definition of the article's formulation, it can be seen that this article aims to recognize and respect the Indigenous Peoples along with their Traditional Rights. Further regulations related to the recognition and respect for these traditional rights are contained in the Village Law Number 6 of 2004 and its derivative products in the form of the Minister of Internal Affairs of the Republic of Indonesia Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples. Minister of Internal Affairs of the Republic of Indonesia Regulation Number 52 of 2014 provides a legal basis for protecting Indigenous Peoples and their traditional rights. Article 1 Number 1 of Minister of Internal Affairs of the Republic of Indonesia Regulation Number 52 of 2014 states that Indigenous Peoples are Indonesian citizens who have unique characteristics, live in groups in harmony according to their Adat Law, have ties to ancestral origins and/or a common place of residence, have a strong relationship with the land and the environment, and the existence of a value system that determines the economic, political, social, cultural, legal institutions and makes use of a particular area from generation to generation.¹⁰ It can be seen from this definition that because of their characteristics, Indigenous Peoples have special rights, which are commonly referred to as traditional rights.¹¹

The State's recognition of Indigenous Peoples and their Traditional Rights often creates business uncertainty for investment companies wishing to carry out their activities in Indigenous Peoples' territories. This is because the recognition that the state has given to Indigenous Peoples has not clearly defined the rights and obligations of Indigenous Peoples as legal subjects. The existence of this uncertainty creates legal uncertainty in doing business for investors. Rejection reactions are often felt by investment



companies that carry out business activities in Indigenous Peoples' territories. In contrast, the Indigenous Peoples' territories' licensing procedure regulations still do not provide legal certainty in addressing their rights and obligations, both for the Indigenous Peoples themselves and the Investment Company.

Legislations regarding the recognition of the Traditional Rights of Indigenous Peoples are scattered in various laws and regulations, and the forms of recognition of the Indigenous Peoples and their Traditional Rights do not provide legal certainty.¹² This lack of legal certainty can create conflicts for Indigenous Peoples and investment companies that carry out their business activities in the territories of Indigenous Peoples. One example in 2019 was a conflict between the indigenous people of the Wambon Tekamerop tribe in Subur Village, Aiwat and Kaisah, Subur District, Boven Digoel Regency, Papua who rejected the existence of PT Merauke Rayon Jaya (MRJ) to operate in their territory. Nevertheless, PT MRJ continues to carry out its business activities due to the existence of an IUPHHK-HTI permit for PT MRJ based on SK.238 / MENLHK / SETJEN / KUM.1 / 52018 covering a territory of 206,800 hectares in Subur District (Boven Digoel) and Ulilin District (Merauke), issued by the Minister of Environment and Forestry. This territory is used from generation to generation by the local indigenous people.¹³

Another example is the Indigenous Peoples who inhabited the Pakawa Village, located in Pasangkayu District, Pasangkayu Regency, West Sulawesi. In 1991, PT Astra Agro Lestari (AAL) obtained a license for timber exploitation activities. The forest that the Indigenous Peoples guarded initially was given a permit by the Government to be converted into a timber business, resulting in the loss of the Indigenous Peoples' territory of the Pakawa.¹⁴ Besides, many other Indigenous Peoples have lost their territory due to business activities, such as arrests due to Penyang Village people's struggle to reclaim their territory controlled by the palm oil company, PT. HMBP, in Central Kalimantan.¹⁵ These conflicts can prevent the investment ecosystem from growing properly. Suppose there is certainty both for recognizing and respecting the Indigenous Peoples and their traditional rights and the licensing of an investment company that intends to carry out business activities in the Indigenous Peoples. In that case, this relationship can provide mutual benefits for both Indigenous Peoples and Investment Companies.

Because of that, this paper tries to provide an insight into several potential of disharmony in laws and regulations that can lead to the absence of legal certainty for both Indigenous Peoples and Investment Companies. This paper highlights several regulations that should be discussed and essential in carrying out the Job Creation Law's objectives. The Job Creation Law should include changes to some of these laws and regulations to improve the investment ecosystem and ultimately absorb labour. Amid increasingly competitive competition and requirements for economic globalization, Indonesia must still protect indigenous peoples' traditional rights according to the mandate of Article 18B Paragraph (2) of the 1945 Constitution.

The main objective of this study is to explain the kind of laws that should be amended by using the omnibus law method in the Job Creation Law in order to improve the investment climate by providing legal certainty for investors but at the same time protecting the traditional rights of the Indigenous Peoples. Several problem formulations were formulated as follows. First, how is the arrangement of Indigenous Peoples' traditional rights related to investment companies' activities in making Investment in Indigenous Peoples' territories in Indonesia's laws and regulations? Second, how should the regulation regarding investment companies' activities in Indigenous Peoples' territories be, using the omnibus law method in the Job Creation Law? This research will answer these questions in the discussion.

2. METHODS

This research was conducted using the juridical-normative method.¹⁶ The juridical normative method itself is a research method that only looks at secondary material. For the juridical-normative method, the analytical tool is to conduct *rechtsvinding*,¹⁷ wherein legal discovery itself there are legal construction and legal interpretation.¹⁸ The method of legal interpretation can be grouped into several kinds of methods. Bruggink groups the interpretation method into 4 (four) models: 1. *De taalkundige interpretatie* or language interpretation (grammatical interpretation); 2. *De wetshistorische interpretatie* or historical interpretation of laws; 3. *De systematische interpretatie* or systematic interpretation; 4. *De maatshappelijke interpretatie* or social interpretation (teleological / sociological interpretation).¹⁹ In this study, a grammatical and systematic method of legal interpretation will be used. After analyzing and obtaining satisfactory answers using the normative juridical method, conclusions can be drawn from the research.

The legal research methods used may differ from one country to another, depending on the legal tradition of that country.²⁰ Therefore, the research method used is the research limitation of this research. If similar research is to be conducted in a country with a different legal tradition, it is necessary to adjust the research method by taking into account the legal tradition of that country.



3. RESULTS AND DISCUSSION

The Regulation of Indigenous Peoples' Traditional Rights is Linked to Investment Companies' Activities in Investing in Indigenous Peoples' Territories In Indonesia's Laws and Regulations.

The primary source of regulation related to Indigenous Peoples' traditional rights is in the Indonesian Constitution, namely the 1945 Constitution. In the 1945 Constitution itself, traditional rights are regulated in Article 18B Paragraph (2) of the 1945 Constitution, which reads,

The state recognises and respects indigenous peoples and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

Based on the Dissemination Guide Book of the 1945 Constitution of the Republic of Indonesia, the formulation is "regulated by-laws" in the Article or Paragraph of the 1945 Constitution of the Republic of Indonesia, which means that the matters regulated in that provision must be formulated in a law-Special law issued for that purpose. Meanwhile, suppose the formulation is "regulated in-laws" in the Article or Paragraph of the 1945 Constitution of the Republic of Indonesia. In that case, the matters regulated in that provision can become the material of a law or several laws that are not explicitly issued for that purpose.²¹ Thus, the form of regulation of the Rights of Indigenous Peoples will generally become scattered in various related laws and regulations due to the existence of formulations regulated in Law.²² Because the regulations related to the traditional rights of Indigenous Peoples are scattered in various regulations, if inventoried, the regulations related to Indigenous Peoples' traditional rights within the Indonesian legal system's framework are as follows.

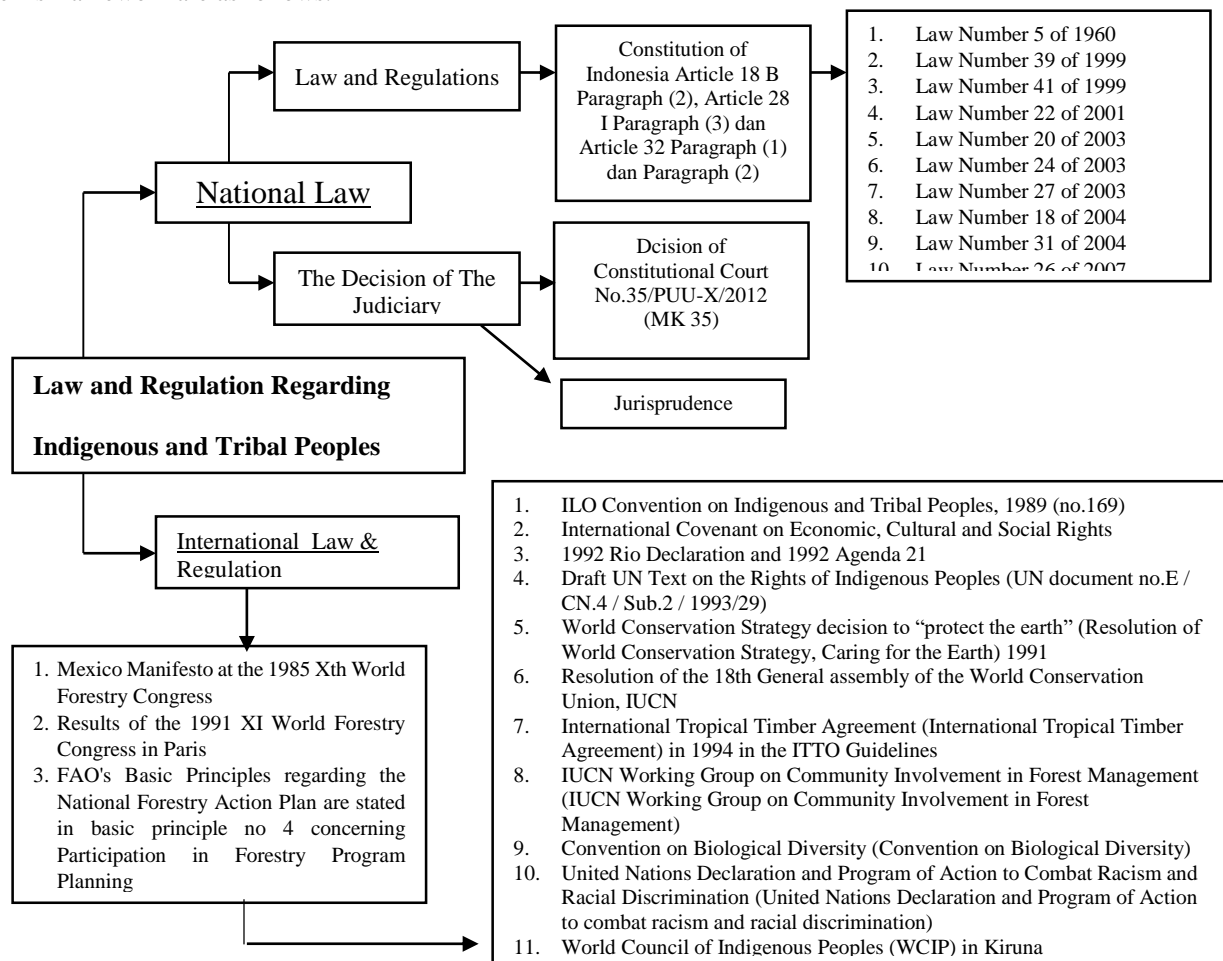


Figure 1. Regulations Providing Legal Protection for Indigenous Peoples
 Note. Based On The Laws And Regulations In Indonesia by Personal Analysis



Referring to the 1945 Constitution Article 18b Paragraph (2) is only found in Law no. 6 of 2014 concerning the Village (starting now referred to as the Village Law). This indicates that the primary basis for regulating the Indigenous Peoples' traditional rights at the law level is in Village Law.²³

Investment laws and regulations have the primary regulation in Law no. 25 of 2007 concerning Investment. However, other relevant regulations depend on the type and field of business that the Investment intends to carry out, and this causes the law and regulation of investment to be said to spread out in various legislative regulations.²⁴ If compiled in the form of Indonesian rules and regulations, the rules and regulations regarding Investment in the Indonesian regulations are as follows.

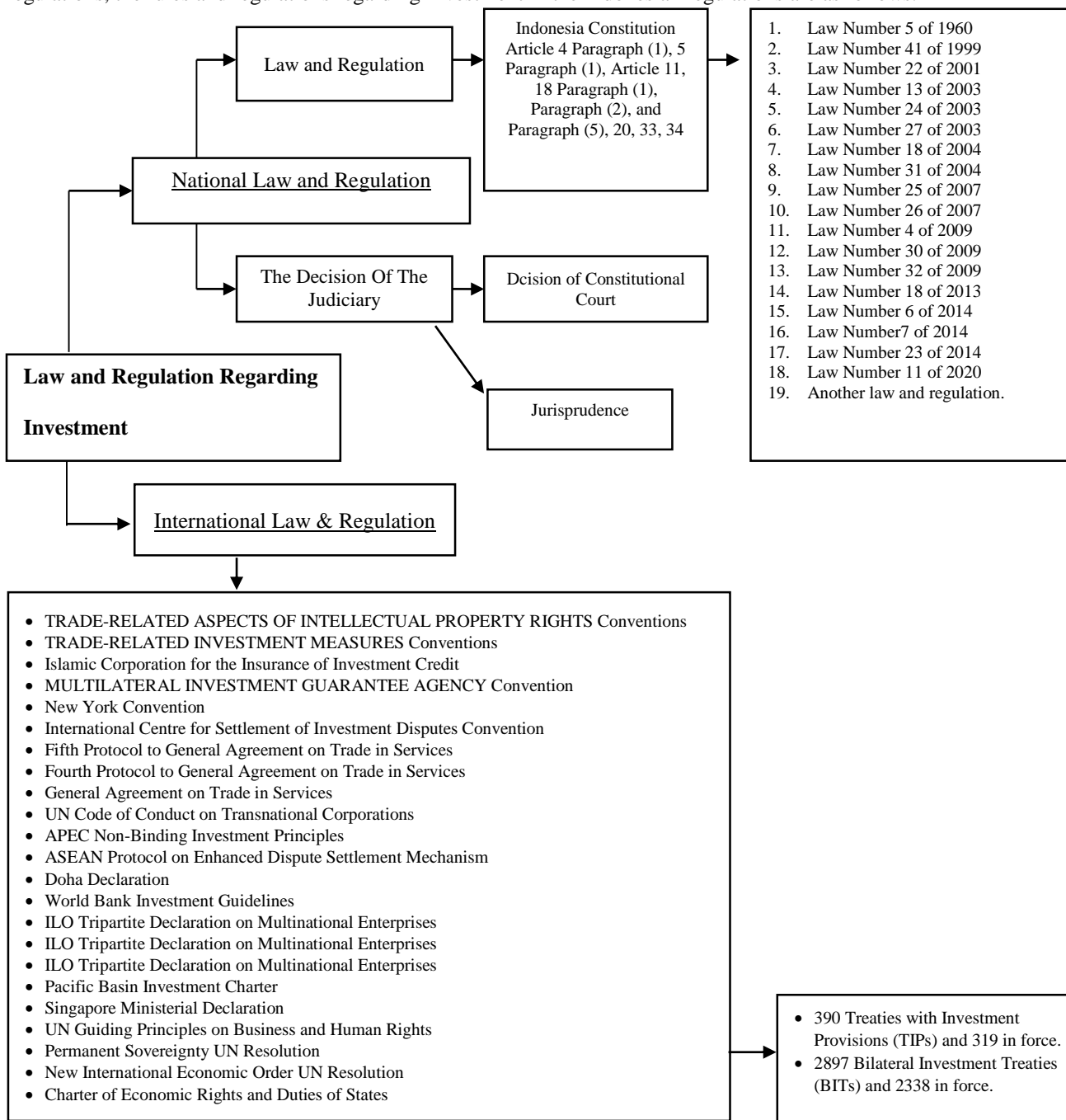


Figure 2. Regulating Regarding Investment

Note. Based On The Laws And Regulations In Indonesia by Personal Analysis



Figure 2 shows how investment regulation cannot be viewed simply because it covers many aspects following the relevant laws and regulations' provisions. It is also necessary to pay attention to local regulations following the regions in which Investment is to be made.²⁵

Regulations related to Indigenous Peoples' traditional rights are related to Indigenous Peoples' rights and depending on what is stipulated in the central statutory regulations and regional regulations of each region following the authorities contained in the Regional Law. The regulation of traditional rights itself, as previously discussed, is contained in Article 18B of the 1945 Constitution.²⁶ In this provision, it is seen that the regulation regarding the recognition and respect of Indigenous Peoples and their traditional rights is regulated in Law, which means that by using a grammatical interpretation²⁷ based on The Handbook of the 1945 Constitution of the Republic of Indonesia, the regulation is not carried out by specific laws.²⁸ Therefore, the regulation has become very scattered in various laws and regulations. However, regarding the recognition and respect of Indigenous Peoples, which are currently still regulated by sectoral laws and regulations, the basis for the regulation is in Minister of Internal Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples. The basis for this regulation's issuance is Law Number 32 of 2004 concerning Regional Government and Law Number 6 of 2014 concerning Villages. So that by carrying out a systematic interpretation,²⁹ the basis for recognition of the traditional rights of Indigenous Peoples related to recognition and respect for the traditional rights of Indigenous Peoples is contained in the Regional Government Law and the Village Law.

This arrangement can create a dispute over authority between regional and central government affairs and indigenous peoples' traditional rights. This is due to the potential for overlapping authority between the district or city government's authority or the provincial government's authority and the authority of the recognized Indigenous Peoples.³⁰ The regulations related to Indigenous Peoples in the Regional Government Law are only regulated in the Regional Government Law's attachment in item regarding the Division of Government Affairs in the Community and Village Empowerment Sector. Furthermore, in another section, it does not further regulate Indigenous Peoples' traditional rights. As for further regulation, if there is a systematic interpretation of the Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples, then the basis for other arrangements related to the recognition and respect of traditional rights of Indigenous Peoples is in the Village Law.³¹

From these various regulations, it can be seen that the protection of Indigenous Peoples' rights about Investment can only be found in Articles 103 to 106 and Article 110, which can be illustrated in the Figure 3.

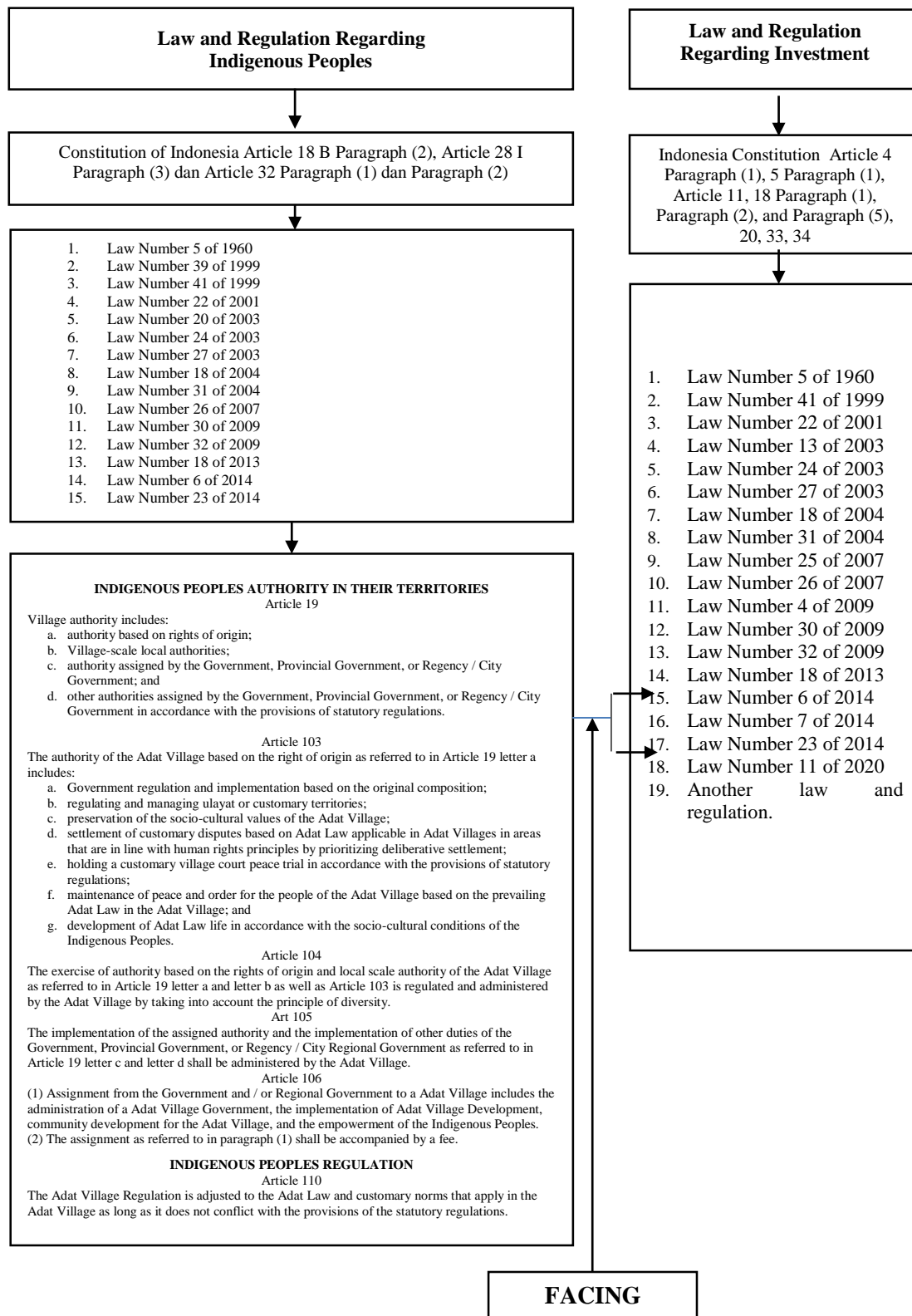


Figure 3. Recognition of the Traditional Rights of Indigenous Peoples in the Legislation in Indonesia Facing the Activities of Investment Companies Conducting Business Activities in the Territory of Indigenous Peoples

Note. Based On The Laws And Regulations In Indonesia by Personal Analysis



Regulations Regarding The Activities Of Investment Companies In Indigenous Peoples' Territories By Using The Omnibus Law Method In The Job Creation Law

In the Village Law, if the Indigenous Peoples have been recognized and endorsed based on the prevailing laws and regulations, they will have the authority as contained in Articles 103-106 and Article 110. Seeing from these provisions, using a grammatical interpretation,³² then in the territory of the Adat Village, the Indigenous Peoples have the authority to:

- a. Exercise their authority following the included rights of origin
 - 1) Government's regulation and implementation based on the original composition;
 - 2) regulation and management of *ulayat* or Indigenous Peoples' territories;
 - 3) preservation of the socio-cultural values of the Adat Village ;
 - 4) settlement of customary disputes based on Adat Law applicable in Adat Village in areas that are in line with human right principles by prioritising deliberative settlement;
 - 5) maintenance of a customary village court peace trial following the provisions of statutory regulations;
 - 6) maintenance of peace and order for the people of the Adat Village based on the prevailing Adat Law in the Adat Village; and
 - 7) development of Adat Law life following the socio-cultural conditions of the Indigenous Peoples.
- b. Exercise local scale authority of the Adat Village
- c. Carry out the assigned authority and implementation of other duties of the Government, Provincial Government, or Regency / City Regional Government
- d. Carry out the assigned authority and implementation of other duties of the Government, Provincial Government, or Regency / City Regional Government based on the prevailing laws and regulations;
- e. Exercise authority based on the Assignment from the Government and/or Regional Government to Adat Village s covering Adat Village Governments' administration, implementing Adat Village Development, fostering the Indigenous Peoples, and empowering the Indigenous Peoples;
- f. Make and enforce a Adat Village Regulation following the Adat Laws and customs norms that apply in the Adat Village as long as it does not conflict with the provisions of the laws and regulations.

By carrying out a grammatical interpretation³³ in Item f of Article 103 of the Village Law Number 6 of 2014, from the meaning of "maintaining peace and order for the people of the Adat Village based on the Adat Law in force in the Adat Village," it is seen that there is an enforcement of Adat Law. By carrying out a grammatical interpretation from Article 103 Point d, it is carried out using Adat Law if a dispute occurs. However, the regulations regarding the effectiveness of dispute resolution in Article 103 point d are not explained further and can raise questions and legal uncertainty regarding the extent to which customary dispute resolution is based on Adat Law.³⁴

Also, by using grammatical and systematic interpretation³⁵ in Articles 103 to 106 and 111 in conjunction with the Appendix for the Sharing of Authority of Regional Government Law Number 23 of 2014, there is an authority that can be assigned by the Government, Provincial Government, or Regency / City Government to the Adat Village Government. However, there is no further explanation regarding what authority can be assigned to an Adat Village³⁶. This raises confusion regarding the extent to which authority that central, city or district government can be assigned to and become the authority of the Adat Village. Therefore, about Investment, regulations regarding Investment in areas that are the authority of the Indigenous Peoples, apart from taking into account the regulations related to Investment and also regulations related to the business sector being carried out, using a systematic interpretation of Article 103- 106 and Article 110 of the Village Law Number 6 of 2014, must continue to heed the Adat Laws that apply to Adat Village s and if a dispute occurs due to an Adat Law violated by investment activities, the Indigenous Peoples have the authority based on Article 103 letter d to settle disputes with the management of authority by the Indigenous Peoples.

The regulations regarding the recognition of traditional rights of Indigenous Peoples in the laws and regulations in Indonesia face the activities of investment companies that carry out business activities in the territories of Indigenous Peoples as contained in Articles 103-106 and Article 110 of Law Number 6 of 2014 concerning Villages are inadequate in protecting the Indigenous Peoples. This is because, concerning the various powers given in the Law and regulations, it requires further explanation and/or still requires additional authorities from the Government, Provincial Governments, and/or City/Regency Governments. In granting authority to Adat Village based on the Principle of Proposal Rights as stipulated in Article 103 of the Village Law, there is the authority to



regulate and implement governance based on the original composition. However, it did not explain the extent to which the governmental structure based on the original arrangement could be implemented in the Adat Village. For example, is it permissible to create a Customary Government Institution that cannot be matched with village officials in general and then, related to the arrangement and management of *ulayat* or Indigenous Peoples' territories? This is interesting because whether the village government can designate the area as *ulayat* land, while the National Land Agency carries out the determination of *ulayat* land itself. This is as stated in the Regulation of the Minister of Agrarian and Spatial Planning Number 18 of 2019 concerning Procedures for Administration of Adat Territory for Indigenous Peoples' that requires that Indigenous Peoples' territory can be managed and registered at the local land office. This will lead to overlapping authorities between the Adat Village's authority and the local Land Agency's authority. Then, related to the settlement of customary disputes based on Adat Law in effect in Adat Village s in areas aligned with human rights principles by prioritising deliberative settlement, this is not sufficient to protect. Besides, there are no further implementing regulations, also regarding this matter, it becomes confusing regarding the extent to which the force applies to customary dispute decisions based on Adat Law. Then, related to the holding of a customary village court peace trial following the statutory regulations' provisions also becomes quite a problem. This is because, concerning the arrangement of the implementation of the Indigenous Peoples' court, there is no further regulation related to this matter, even though in the granting of such authority, there are words following the provisions of laws and regulations.

Regarding the maintenance of peace and order for the Adat Village people based on the applicable Adat Law in the Adat Village, there is no further regulation regarding the extent to which the Adat Village can take action based on maintaining community peace and order. Finally, in authority regarding the rights of origin, the authority to develop Adat Law life following the Indigenous Peoples' socio-cultural conditions also does not explain the extent to which the authority can be exercised. Apart from that, regarding the right of origin itself, it is not further explained in the laws and regulations regarding the extent to which the Indigenous Peoples can exercise this authority. Further provisions regarding the elaboration of this authority are only discussed in Article 104 of the Village Law, which only states that this authority and the local scale authority of the Adat Village as referred to in Article 19 letters a and b and Article 103 are regulated and administered by the Indigenous Peoples by paying attention to the principle of diversity. There is no further explanation regarding the extent to which the Adat Village may carry out these arrangements and arrangements.

Furthermore, about the implementation of the assigned authority and the implementation of other Government, Provincial Government, or Regency / City Regional Government duties, it is only stated that the Indigenous Peoples have the authority. However, as auditing has been carried out in other laws and regulations, it does not explain what kind of authority the Government, Provincial Government, City/ Regency Government may have assigned explicitly to Customary Villages, specifically whether all authorities can be assigned to the Indigenous Peoples is not explicitly regulated and does not exist. Therefore, this regulation is very inadequate in protecting the Indigenous Peoples and does not provide legal certainty.

Concerning the Indigenous Peoples' Territories Regulation, as referred to in Article 110, it is stated that the Adat Village's Regulation is adjusted to the Adat Law and customary norms that apply in the Adat Village as long as it does not conflict with the provisions of the statutory regulations. This does not provide legal certainty and does not guarantee protection because even though the Indigenous Peoples, who are the administrators of Adat Village, have the authority to make Adat Village Regulations, it is not further explained about the extent to which the Customary Village Regulation can bind people who are not included in the community of the Indigenous Peoples but are in the area of Adat Village. This causes the binding strength of this regulation to be unclear.

From the description above, the systematic thinking in regulating the recognition of traditional rights of Indigenous Peoples in the laws and regulations in Indonesia in dealing with the activities of investment companies that carry out business activities in the territories of Indigenous Peoples can be seen in Figure 4.

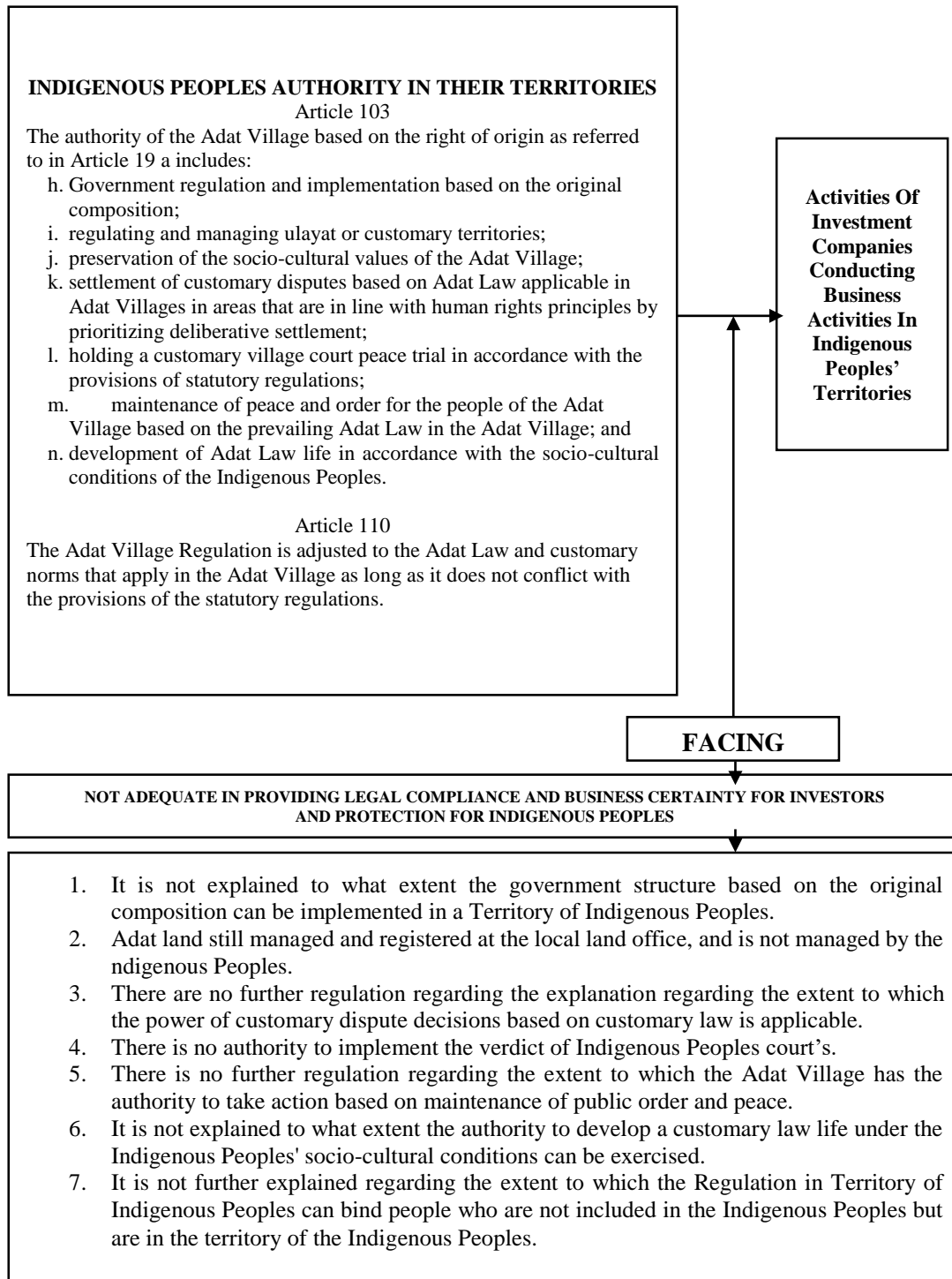


Figure 4. Analysis of Regulations Regarding the Recognition of Traditional Rights of Indigenous Peoples facing Investment Companies that Conducting Business Activities in the Territory of Indigenous Peoples

Note. Based On the Laws And Regulations In Indonesia by Personal Analysis

However, there are regulations regarding the recognition of Indigenous Peoples' traditional rights in the laws and regulations in Indonesia facing the activities of investment companies that carry out business activities in the territories of Indigenous Peoples;



this is not sufficient.³⁷ Evidenced by this regulation, of the many regulations governing the recognition of traditional rights of Indigenous Peoples in the laws and regulations in Indonesia dealing with the activities of investment companies that carry out business activities in the territory of Indigenous Peoples, there is only one Law which only found in the provisions regarding Adat Villages.³⁸ Furthermore, the regulations that provide self-recognition, as discussed earlier, are characterized by the State taking specific legal actions by granting authority. However, the powers granted are still very inadequate with many legal uncertainty findings and the absence of further regulations regarding how such powers are carried out by the Adat Village, as shown in the chart above.

The regulation of the Job Creation Law should be able to provide a solution to the inadequacy of regulations regarding the recognition of traditional rights of indigenous peoples in the laws and regulations in Indonesia in dealing with the activities of investment companies that carry out business activities in the territories of Indigenous Peoples. The Job Creation Law comes with one of the hopes of providing ease of doing business³⁹ and the existence of inadequate protection itself can cause legal uncertainty, which causes ease of doing business to be difficult to maximally achieve⁴⁰. The existence of the Job Creation Law can provide changes to the regulations for the Law as explained in the previous meaning, namely the Village Law to be able to provide adequate protection for the Indigenous Peoples to create legal certainty for investment companies to carry out their activities in territories of Indigenous Peoples.

The Academic Manuscript⁴¹ of the Job Creation Bill, in essence, is as follows:⁴²

"Omnibus Law is a practice of drafting laws and regulations, which is mainly done in countries that adhere to the common law/ *anglo saxon* system, such as America, Canada, England, the Philippines and others. The process is called a legislating omnibus, and the product is called an omnibus bill. The word omnibus comes from Latin, which means everything or everything."

Bryan A. Garner, et.al (Eds.) In Black's Law Dictionary Ninth Edition uses the term omnibus bill, which means:⁴³

- (1) A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provision.
- (2) A bill that deals with all proposals relating to a particular subject, such as an "omnibus judgeship bill" covering all proposals for new judgments or an "omnibus crime bill" dealing with different subjects such as new crimes and grants to states for crime control.

As a result of this definition, the Job Creation Law, which was formulated using the omnibus law method, covers much material or all other legal materials that are related, either directly or indirectly. The most important of its outreach is its alignment with the objectives of creating the Job Creation Act.⁴⁴ The purpose of this Job Creation Act itself should be able to provide ease of doing business,⁴⁵ but the arrangement of ease of doing business in terms of investment activities in Indigenous Peoples does not get serious attention.

In carrying out investment activities, investors need legal certainty and certainty in business, guaranteed in the Investment Law.⁴⁶ In line with realizing the Job Creation Law, which can provide ease of doing business under the Job Creation Law's original purpose. Thus, several changes in the provisions of Village Law should be done so that protection for the Indigenous Peoples is adequate and can provide legal certainty and business certainty for investors who carry out their activities in territories of Indigenous Peoples.

Some terms that should be changed, replaced and added to the Job Creation Law to increase the ease of doing business in Indonesia are as follows:

- (1) Amendment to Article point d of the Investment Law Number 25 of 2007, which was initially formulated to "respect the cultural traditions of the community around the location of investment business activities" to "recognise and respect the cultural traditions of the community around the location of investment business activities". This is done so that there is synchronisation between the Investment Law and the Constitution 1045 Article 18 B Paragraph (2).
- (2) The addition of Article 106A to the Village Law, "The authority of Adat Village as contained in Article 103 to Article 106 is further regulated in a Regulation of the Minister of Home Affairs."
- (3) Additional Paragraph in Article 98 of the Village Law Number 6 of 2014. Added Paragraph (2), which reads Stipulation of Adat Village with District / City Regional Regulations, shall be further regulated in a Regulation of the Minister of



Home Affairs. This is done so that there is a synchronisation of the designation of the customary Village and the protection of the Indigenous Peoples and their traditional rights.

- (4) The addition of Paragraph in Article 111 of the Village Law becomes, "(3) Special Provisions for Adat Village s shall be further regulated in a Government Regulation". As previously explained, the regulations regarding customary villages and the authorities need further elaboration and further synchronisation. The current Government Regulation on Village is insufficient to provide further regulations regarding the territories of the Indigenous Peoples and the protection of their traditional rights.

It is hoped that Job Creation Law will be able to provide ease of doing business for the Indonesian people. The desired change is a change that is comprehensive and can be felt by all Indonesian people. Thus, it is necessary to make changes to the Village Civil Service Law Number 6 of 2014 in Job Creation Law, in which the provisions do not exist. It is proposed that the arrangements as described previously can exist in the amendments to the Job Creation Law so that it could provide adequate legal protection for Indigenous Peoples to provide legal certainty and business assurance for investors who conduct their business activities in Indigenous Peoples' territories.

4. CONCLUSION AND RECOMMENDATION

Conclusion

It can be concluded that the regulation of Indigenous Peoples' traditional rights is associated with investment in statutory regulations in Indonesia, which are scattered in various laws and regulations. Regarding the regulation regarding investment, there is a regulation in the Job Creation Law to increase business ease. The current regulations are not yet adequate in protecting the Indigenous Peoples, potentially causing legal uncertainty for companies to invest in carrying out business activities in Indigenous Peoples. This can also lead to the inability to achieve the Job Creation Law's objectives, namely creating ease of doing business. Therefore, there should be amendments to the provisions in the Village Law regarding the Adat Village provisions, particularly Article 98, Article 111, and Article 106A of the Village Law contained in the Job Creation Law so that there are legal certainty and certainty in doing business for Investment Companies that carry out their business activities in Indigenous Peoples' territories.

Recommendations

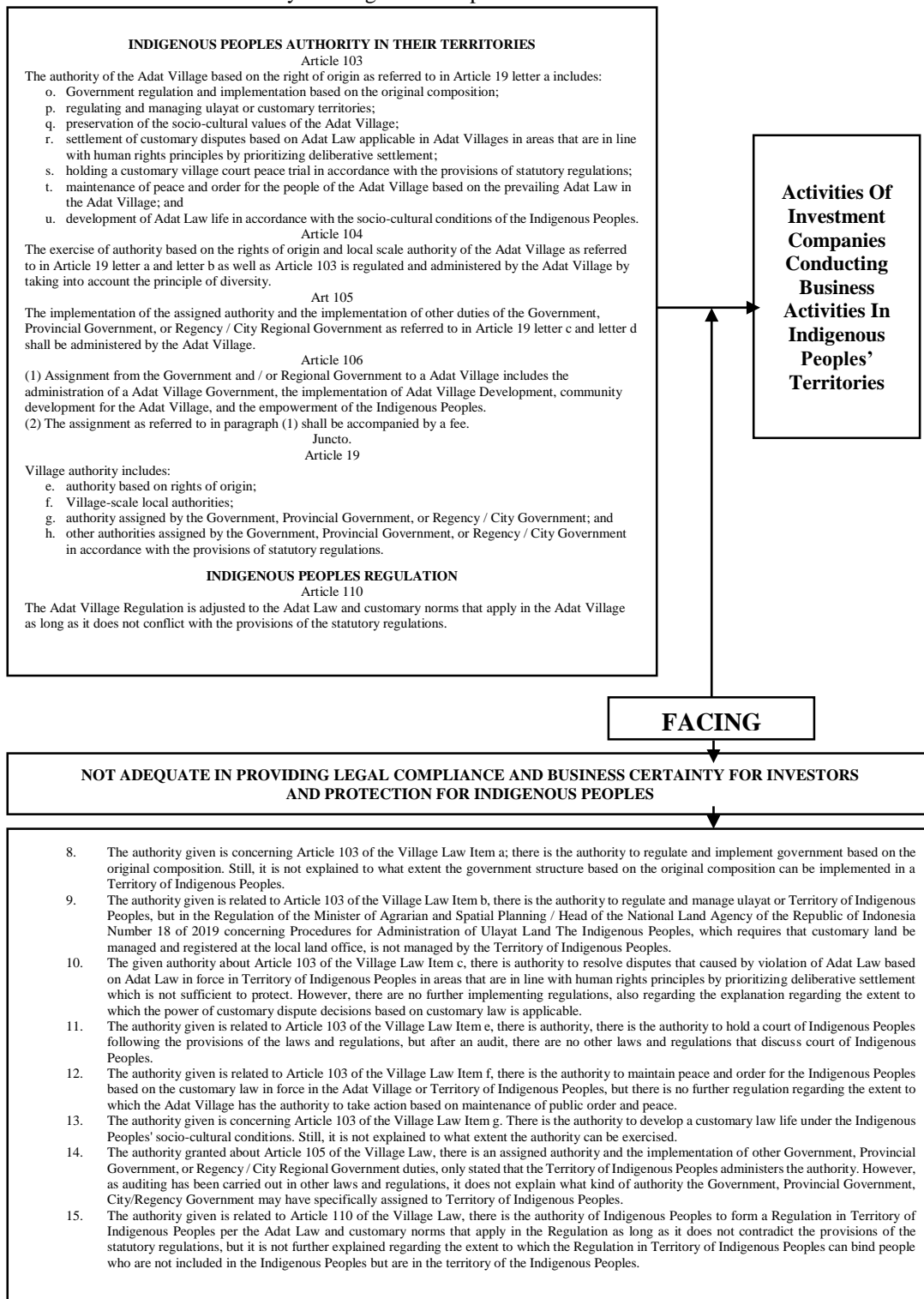
The following are the recommendations from this study.

- (1) It is suggested that investment activities bring inclusive welfare to both the investment company itself and the community concerned. Especially the activities of investment companies that carry out their business activities in territories of Indigenous Peoples, these investment companies' activities must ultimately bring prosperity to the Indigenous Peoples in the region. Investment is undeniably a significant economic stimulus and is urgently needed for the development of a country; however, its investment activities should not violate and harm the people living in the investment area, including the Indigenous Peoples. Indigenous Peoples need to obtain legal protection for their existence and their traditional rights. Therefore, the study's main suggestion is that there is a need to regulate the protection of Indigenous Peoples and their traditional rights, which can provide legal certainty for both the Indigenous Peoples themselves and investment companies.
- (2) It is suggested that the drafting officials improve the regulations regarding the Recognition and Protection of traditional rights of Indigenous Peoples in the laws and regulations in Indonesia in dealing with the activities of investment companies that carry out business activities in existing Indigenous Peoples because several Articles and Paragraphs need to be added and several Articles and Paragraphs that are not in sync with the recognition and protection of traditional rights of Indigenous Peoples as regulated in Article 18B Paragraph 2 of the 1945 Constitution
- (3) It is suggested that the Government implement regulations related to special provisions for customary villages because the existing Village regulations are not sufficiently capable of protecting and recognizing Indigenous Peoples and their traditional rights.
- (4) It is suggested that the relevant ministries draft regulation regarding the regional regulation model focusing on the recognition and respect as well as protection of indigenous peoples and their traditional rights. This is done so that there is uniformity. With the enactment of this regulatory model, it is hoped that it can provide more legal certainty for Indigenous Peoples and investment companies in carrying out their business activities in territories of Indigenous Peoples.



5. Appendix

Analysis of Regulations Regarding the Recognition of Traditional Rights of Indigenous Peoples facing Investment Companies that Conducting Business Activities in the Territory of Indigenous Peoples





REFERENCES

1. Consideration point b from Indonesia, Law Of The Republic Of Indonesia Number 11 Year 2020 Concerning Job Creation. Law 11 Of 2020. State Gazette Of The Republic Of Indonesia Year 2020 Number 245. Supplement To The State Gazette Of The Republic Of Indonesia Number 6573.
2. Consideration point c from Indonesia, Law Of The Republic Of Indonesia Number 11 Year 2020 Concerning Job Creation. Law 11 Of 2020. State Gazette Of The Republic Of Indonesia Year 2020 Number 245. Supplement To The State Gazette Of The Republic Of Indonesia Number 6573.
3. Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi," *Jurnal Legislasi Indonesia* Vol 17, no. 12 (2020): 1–10.
4. Vincent Suriadinata, "Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1 (2019): 115–132.
5. Systematic interpretation of law can be interpreted as departing from the notion that one legal rule with another legal rule is interrelated, meaning that there is no legal rule that stands alone, every legal rule has a place in the legal field. That place becomes a certain place. This is a consequence of the interdependence of each social phenomenon. Some legal rules that contain several equations or aim to achieve the same object are a set of certain rules that recognize an internal interrelation or *innerlijke samenhang* into a legal institution or *rechtsinstituut*, for example a legal institution concerning marriage. There is a relationship between legal institutions. Legal institutions that contain equality together constitute a legal field or *rechtveld*. Thus, for example, all customary law institutions in Indonesia together constitute one large legal field that is certain in nature and is called Indonesian customary law. Between the field of Indonesian customary law and other legal fields - for example, the field of constitutional law - there is a big difference, namely a deep difference in nature, although there are similarities. See further on Utrecht, *Pengantar Hukum Indonesia*, (Jakarta: Ichtiar Baru, 1983), p. 122.
6. See more at Investment Law regulation in Law Number 25 of 2007 at Sentosa Sembiring, *Hukum Investasi* (Bandung: Nuansa Aulia, 2010).
7. Muhammad Insa Ansari, "Omnibus Law Untuk Menata Regulasi Penanaman Modal," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (2020): 71.
8. Herein after in this paper, Indigenous People will be defined as stated in the ILO Convention C169 - Indigenous and Tribal Peoples Convention, 1989, as in Indonesian Law it is called the Masyarakat Hukum Adat.
9. Sekretariat Jenderal MPR RI, Panduan Pemasyarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Sesuai dengan Urutan Bab, Pasal, dan Ayat, Majelis Permusyawaratan Rakyat, Jakarta, 2007, p. 92-93.
10. Article 1 Point 1 Regulation of Minister of Internal Affairs of the Republic of Indonesia Number 52 of 2014 Concerning the Guidelines for the Recognition and Protection of Indigenous People. Permendagri Number 52 of 2014. State Gazette of the Republic of Indonesia of 2014 Number 951.
11. See more at Ananda Prima Yurista. Pengejawantahan Hak Tradisional Masyarakat Hukum Adat Dalam Pengaturan Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil. *Jurnal Legislasi Indonesia*. Vol. 13 N0. 02 - Juni 2016:203 - 212
12. Sulaiman Sulaiman, Muhammad Adli, and Teuku Muttaqin Mansur, "Ketidakteraturan Hukum Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Indonesia," *Law Reform* 15, no. 1 (2019): 12.
13. Timoteus Marten, Masyarakat Adat Tolak PT Merauke Rayon Jaya, 2020, access from <https://jubi.co.id/masyarakat-adat-tolak-pt-merauke-rayon-jaya/> pada 9 April 2020 At 23.20 WIB
14. Agus Mawan, Orang Bunggu Perjuangkan Wilayah Adat Mereka, 2019 access from <https://www.mongabay.co.id/2019/10/29/orang-bunggu-perjuangkan-wilayah-adat-mereka/> pada 10 April 01.23 WIB.
15. Indra Nugraha dan Yusy Marie, Perjuangkan Tanah yang Diklaim Perusahaan Sawit, Tiga Warga Kotawaringin Timur Malah Ditahan, 2020, access from <https://www.mongabay.co.id/2020/03/12/perjuangkan-tanah-yang-diklaim-perusahaan-sawit-tiga-warga-kotawaringin-timur-malah-ditahan/> pada 10 April 00.12 WIB
16. Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).
17. Ph. Visser; Hoft, *Penemuan Hukum*, judul asli *Rechtsvinding*, diterjemahkan oleh B. Arief Sidharta, (Bandung: Laboratorium Hukum FH Univ. Parahiayangan, 2001), Pp.25



18. Jazim Hamidi, *Hermeneutika Hukum, Teori Penemuan Hukum Baru dengan Interpretasi Teks*, UII Press, Yogyakarta, 2005, Pp. 53.
19. Philipus M. Hadjon dan Tatiek Djatmiati, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, 2005, Pp. 26.
20. H. Klug, *Constitutionalism, Comparative*, Editor(s): Neil J. Smelser, Paul B. Baltes, *International Encyclopedia of the Social & Behavioral Sciences*, Pergamon, 2001, Pp. 2643-2648.
21. See more at Sekretariat Jendral MPR RI, *Op. Cit.*, p. 44.
22. H. Abdurrahman, *Draft Laporan Pengkajian Hukum Tentang Mekanisme Pengakuan Masyarakat Hukum Adat* (Jakarta: Disusun Oleh Tim Dibawah Pimpinan: Dr. H. Abdurrahman, S.H., M.H. PUSAT PENELITIAN DAN PENGEMBANGAN SISTEM HUKUM NASIONAL BADAN PEMBINAAN HUKUM NASIONAL KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA R.I., 2015). p. 27-36, 56-83
23. The provisions in other laws and regulations do not give special authority and rights to indigenous people. See and compared to Zayanti Mandasari, "Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi)," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (2014): 227–250; Amrina Rosyada, Esmi Warassih, and Ratna Herawati, "Perlindungan Konstitusional Terhadap Kesatuan Masyarakat Hukum Adat Dalam Mewujudkan Keadilan Sosial (Constitutional Protection of Indigenous People in Achieving Social Justice)," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 1–22.
24. Agnes Fitryantica, "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law," *Gema Keadilan* 6, no. 3 (2019): 300–316, <https://ejournal2.undip.ac.id/index.php/gk/article/view/6751>; Sembiring, *Hukum Investasi*, 21–36.
25. Dhaniswara K. Harjono, *Hukum Penanaman Modal* (Jakarta: PT.Raja Grafindo Persada, 2007); Sembiring, *Hukum Investasi*.
26. Lalu Sabardi, "Konstruksi Makna Yuridis Masyarakat Hukum Adat Dalam Pasal 18B Uudn Ri Tahun 1945 Untuk Identifikasi Adanya Masyarakat Hukum Adat," *Jurnal Hukum & Pembangunan* 44, no. 2 (2014): 170.
27. Grammatical interpretation is defined as the interpretation of words in law according to the norms of language or grammatical norms. Language with law is closely related, law is impossible without language, law requires words or language because language is the only tool used by legislators to express their will. Grammatical interpretation is the right effort to try to understand a statutory rule text. Formulating a law or an agreement should use a language understood by the community which is the objective of the legal arrangement. Because the interpretation of laws is basically an explanation in terms of the language used, it is clear that the making of a rule of law must be bound by language. See Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006, p. 220.
28. Based on The Handbook of the 1945 Constitution of the Republic of Indonesia the formulation is regulated by laws contained in the Article or paragraph of the 1945 Constitution of the Republic of Indonesia which means that the matters regulated in that provision must be formulated by special laws issued for that purpose. As for what is regulated in the laws contained in the Article or paragraph of the 1945 Constitution of the Republic of Indonesia, it means that the matters regulated in that provision can become the material of a law or several laws that are not specifically issued for that purpose. Compare with Sekretariat Jendral MPR RI, *Op. Cit.*, p. 44.
29. Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*; Afif Khalid, "PENAFSIRAN HUKUM OLEH HAKIM DALAM SISTEM PERADILAN DI INDONESIA," *Al' Adi* IV, no. 11 (2014): 9–36.
30. Soegiyono. Pentingnya Harmonisasi Pembentukan Peraturan Perundang-Undangan. *Kajian Kebijakan dan Hukum Kedirgantaraan*. Access from https://puskkpa.lapan.go.id/files_arsip/Soegiyono_Pentingnya_Harmoniasi_2015.pdf. tanggal 24 Juni 2020 At 13.10 WIB
31. Mulyanto Mulyanto, "Penguatan Masyarakat Hukum Adat Dalam Undang-Undang Nomor 6 Tahun 2014 Tentang Desa Dari Perspektif Kajian Yuridis," *Journal of Indonesian Adat Law (JIAL)* 2, no. 3 (2018): 74–104; Zain Mochamad Adib and Ahmad Siddiq, "Pengakuan Atas Kedudukan Dan Keberadaan Masyarakat Hukum Adat (MHA) Pasca Dibentuknya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *Jurnal Penelitian Hukum* 2 (2015): 63–76.
32. Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*.



34. Jawahir Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia," *Jurnal Hukum Ius Quia Iustum* 20, no. 1 (2013): 21–36.
35. Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*.
36. Mochamad Adib and Siddiq, "Pengakuan Atas Kedudukan Dan Keberadaan Masyarakat Hukum Adat (MHA) Pasca Dibentuknya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa."
37. Sulaiman, Adli, and Mansur, "Ketidakteraturan Hukum Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Indonesia"; Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia"; Mandasari, "Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi)."
38. Mulyanto, "Penguatan Masyarakat Hukum Adat Dalam Undang-Undang Nomor 6 Tahun 2014 Tentang Desa Dari Perspektif Kajian Yuridis."
39. Pudjo Utomo, "Omnibus Law : Dalam Perspektif Hukum Responsif," *Nurani Hukum* 2, no. 1 (2020): 33; Ansari, "Omnibus Law Untuk Menata Regulasi Penanaman Modal."
40. Compared to Agung Sujati Winata, "Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing Dan Implikasinya Terhadap Negara," *Ajudikasi : Jurnal Ilmu Hukum* 2, no. 2 (2018): 127.
41. Based on Indonesian Law, at the time of establishing a new law, research is carried out first which is contained in an Academic Manuscript (Law Number 12/2011 concerning The Establishment of Legislation in Indonesia
42. Academic Paper Rancangan Undang-Undang Cipta Kerja, p. 24.
43. Bryan A. Garner, *et. al.* (Eds.). *Black's Law Dictionary Ninth Edition*. St. Paul: West Publishing Co., 2009, p. 186.
44. Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi."
45. Ansari, "Omnibus Law Untuk Menata Regulasi Penanaman Modal."
46. R A S Hernawati and J T Suroso, "Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law," *Jurnal Ilmiah MEA (Manajemen ...* 4, no. 1 (2020): 392–408, <http://journal.stiemb.ac.id/index.php/mea/article/view/557>; Ansari, "Omnibus Law Untuk Menata Regulasi Penanaman Modal."