

Innovative Conflict Resolution Framework: Advancing Legal Reform and Investment Climate in Central Sulawesi

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ABSTRACT

*Investment-related conflicts in Central Sulawesi reveal fundamental tensions between formal legal frameworks and customary law systems (hukum adat), creating legal uncertainty that undermines regional investment climate stability. The existing regulatory architecture governing dispute resolution demonstrates structural inadequacies in recognizing indigenous conflict resolution mechanisms while formal litigation processes contradict principles of legal certainty, procedural efficiency, and access to justice. This normative legal research examines the doctrinal foundations, regulatory frameworks, and jurisprudential principles governing investment dispute resolution, identifying critical gaps between *ius constitutum* (existing law) and *ius constituendum* (ideal law) while proposing legal policy innovations grounded in restorative justice paradigms and legal pluralism theory. This research employs normative juridical methodology, utilizing statute approach, conceptual approach, comparative approach, and case approach to analyze legal materials systematically. Primary legal materials encompass constitutional provisions, statutory regulations, government regulations, regional regulations, and judicial decisions. Secondary legal materials include legal treatises, law journal articles, and scholarly commentaries. Tertiary materials comprise legal dictionaries and legal encyclopedias. Legal reasoning proceeds through syllogistic deduction, legal interpretation, legal construction, and legal argumentation to develop prescriptive recommendations for regulatory reform. Analysis reveals that current legal frameworks inadequately integrate customary law systems within formal dispute resolution mechanisms, violating constitutional mandates recognizing indigenous legal traditions. The research proposes an integrated legal model harmonizing statutory law with customary law through: constitutional reinterpretation emphasizing legal pluralism; legislative reform establishing hybrid dispute resolution institutions; regulatory innovation creating procedural frameworks for customary law recognition; and judicial doctrine development applying restorative justice principles. Implementation requires coordinated legal reforms across legislative, executive, and judicial branches, establishing institutional infrastructure supporting legal pluralism while maintaining national legal unity principles.*

Keywords: conflict resolution, legal pluralism, and legal policy innovation

1. INTRODUCTION

The constitutional framework of the Republic of Indonesia establishes fundamental legal principles governing the relationship between state law and customary law systems. Article 18B paragraph (2) of the 1945 Constitution explicitly recognizes and respects indigenous community units (*kesatuan masyarakat hukum adat*) along with their traditional rights, provided these remain alive and align with societal development and the unitary state principle. This constitutional mandate creates legal obligations for state institutions to accommodate indigenous legal traditions within national legal architecture, yet implementation mechanisms remain underdeveloped, particularly regarding investment dispute resolution contexts.¹

Law Number 25 of 2007 concerning Investment establishes the basic legal framework governing capital investment in Indonesia, including provisions addressing dispute resolution mechanisms. Article 32 stipulates that investment disputes between government and investors, or between investors, shall be resolved through consultation, consensus, arbitration, or court proceedings. However, this provision demonstrates significant lacunae regarding indigenous community participation and customary law integration. The statute conceptualizes disputes primarily as bilateral conflicts between government entities and corporate investors, marginalizing indigenous communities whose customary land rights and cultural heritage face direct impacts from investment activities.²

The Basic Agrarian Law (Law Number 5 of 1960) attempts to harmonize diverse land tenure systems within a unified national framework. Article 3 recognizes customary land rights (*hak ulayat*) while subordinating them to national interests, creating inherent tensions between communal indigenous land tenure and individual property rights regimes favored by formal legal systems and investment frameworks. Subsequent implementing regulations have progressively narrowed customary rights recognition, prioritizing state control and investment facilitation over indigenous land tenure protection. This regulatory trajectory contradicts constitutional mandates while generating legal uncertainty regarding customary land rights validity and enforceability.³

Constitutional Court Decision Number 35/PUU-X/2012 marked a significant jurisprudential development, declaring that customary forests belong to indigenous communities rather than state forests. This decision operationalized constitutional recognition of indigenous rights, establishing precedent for customary law integration within formal legal systems. However, implementation challenges persist due to inadequate legislative follow-through and bureaucratic resistance to decentralizing control over natural resources. The decision's principles remain underutilized in

¹ Fatmawati, Dewi. "The Concept of Legal Pluralism in Indonesia in the New Social Movement." *Journal of Advanced Social Research* 2, no. 1 (2021): 45–60.

² Yulia, R., and I. A. Dalimunthe. "Penyelesaian Sengketa Antara Investor Asing dengan Pemerintah Indonesia dalam Perspektif Hukum Internasional." *Jurnal IUS QUIA IUSTUM* 21, no. 3 (2014): 395–416.

³ Sumarja, FX. "Pengakuan Masyarakat Hukum Adat dalam Sistem Hukum Agraria Indonesia." *Jurnal Hukum Agraria* 5, no. 2 (2017): 101–120.

investment dispute contexts, where customary law claims continue facing procedural and substantive barriers within formal adjudication systems.⁴

Regional autonomy legislation (Law Number 23 of 2014) theoretically provides provinces and districts authority to develop context-appropriate regulations respecting local customs and traditions. Article 371 specifically addresses special authority for certain regions, while Article 372 recognizes indigenous village governance (*desa adat*) as distinct from administrative villages. These provisions create legal foundations for regional regulations establishing customary law-integrated dispute resolution mechanisms. However, actual utilization remains limited, with most regional governments prioritizing investment attraction through regulatory simplification rather than developing sophisticated mechanisms balancing investment interests with indigenous rights protection.⁵

The theoretical framework of legal pluralism provides analytical lenses for understanding these regulatory tensions. Legal pluralism theory, developed by scholars including Griffiths, Merry, and von Benda-Beckmann, posits that multiple legal orders coexist within single territorial jurisdictions, with state law representing merely one normative ordering among several. In Indonesian contexts, at least three major legal systems operate simultaneously: state law derived from colonial codifications and post-independence legislation; Islamic law governing family matters for Muslim populations; and diverse customary law systems varying across ethnic communities. Investment disputes occurring in indigenous territories implicate all three systems, yet formal dispute resolution mechanisms acknowledge only state law authority.⁶

Restorative justice theory offers normative foundations for reimagining dispute resolution beyond retributive paradigms. Unlike conventional legal systems emphasizing rule violation determination and proportionate punishment, restorative justice prioritizes harm acknowledgment, accountability acceptance, relationship restoration, and community healing. These principles align remarkably with indigenous conflict resolution traditions prevalent throughout Indonesian archipelago, which emphasize deliberation (*musyawarah*), consensus-building (*mufakat*), and social harmony restoration (*rukun*). Integrating restorative justice principles within formal legal frameworks could enhance both procedural legitimacy and substantive justice outcomes.⁷

This normative legal research addresses fundamental questions regarding optimal legal frameworks for investment dispute resolution in pluralistic societies.⁸ How can national legal systems operationalize constitutional mandates recognizing indigenous legal traditions? What

⁴ Nurjaya, I Nyoman. "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 terhadap Kedudukan Hutan Adat di Indonesia." *Jurnal Hukum Ius Quia Iustum* 21, no. 4 (2014): 511–530.

⁵ Sirait, Martua. "Otonomi Daerah dan Pengakuan Masyarakat Adat di Indonesia." *Jurnal Desentralisasi* 13, no. 2 (2015): 87–104.

⁶ Benda-Beckmann, Franz von. "Changing Legal Pluralisms in Indonesia." *Journal of Legal Pluralism and Unofficial Law* 36, no. 1 (2004): 35–70.

⁷ Prasetyo, Teguh, and Abdul Halim. "Restorative Justice, Musyawarah, dan Keadilan Bermartabat dalam Sistem Peradilan Pidana Indonesia." *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 401–420.

⁸ Marzuki, Peter Mahmud. "Penelitian Hukum Normatif: Karakter dan Metodologinya." *Jurnal Hukum dan Peradilan* 2, no. 1 (2013): 1–17.

doctrinal foundations support customary law integration within formal dispute resolution mechanisms? What legislative reforms would facilitate legal pluralism while maintaining national legal unity? What institutional arrangements could effectively administer hybrid systems combining state law and customary law? These questions demand systematic juridical analysis examining existing legal frameworks, identifying normative gaps, and proposing prescriptive solutions grounded in constitutional principles, legal theory, and comparative legal analysis.

1.1 Legal Problems

This research examines three interrelated legal problems:

1. What are the juridical foundations, regulatory frameworks, and doctrinal principles governing investment dispute resolution under current Indonesian legal systems (*ius constitutum*), and what structural inadequacies exist regarding customary law recognition and indigenous rights protection?
2. How do comparative legal systems in relevant jurisdictions integrate customary law and formal law within dispute resolution frameworks, and what transferable legal principles emerge from international best practices in legal pluralism operationalization?
3. What legal policy innovations and regulatory reforms would constitute optimal legal frameworks (*ius constituendum*) for investment dispute resolution in Central Sulawesi, harmonizing statutory law with customary law while advancing constitutional objectives of justice, legal certainty, and societal benefit?

1.2 Research Objectives

Corresponding to the legal problems formulated above, this research pursues three primary objectives:

1. To conduct systematic juridical analysis of existing legal frameworks governing investment dispute resolution, examining constitutional provisions, statutory regulations, implementing regulations, and judicial doctrines to identify normative gaps and structural inadequacies regarding customary law integration and indigenous rights protection;
2. To undertake comparative legal analysis examining dispute resolution frameworks in jurisdictions successfully integrating customary law within formal legal systems, extracting transferable legal principles while identifying contextual adaptation requirements for Indonesian legal contexts;
3. To formulate prescriptive recommendations for legal policy innovation and regulatory reform, developing comprehensive legal frameworks harmonizing statutory law with customary law based on constitutional principles, restorative justice theory, and legal pluralism paradigms, specifically addressing investment dispute resolution challenges in Central Sulawesi.

1.3 Research Benefits

This normative legal research contributes theoretical, practical, and policy benefits across multiple dimensions. Theoretically, the research advances legal scholarship regarding legal pluralism operationalization in investment governance contexts, enriching academic discourse on constitutional law implementation, indigenous rights recognition, and restorative justice applications. The systematic juridical analysis develops doctrinal frameworks for harmonizing competing legal systems, contributing to Indonesian legal theory regarding state law and customary law relationships.

Practically, the research provides actionable legal frameworks for legislative bodies, executive agencies, and judicial institutions seeking to improve dispute resolution effectiveness while respecting indigenous rights and constitutional mandates. The proposed regulatory innovations offer concrete blueprints for statute drafting, regulation formulation, and institutional design. Legal practitioners, including judges, advocates, and corporate legal departments, benefit from clarified legal frameworks reducing ambiguity and enhancing predictability in investment dispute contexts.

From policy perspectives, the research informs ongoing debates regarding decentralization, indigenous rights recognition, and sustainable development. Regional governments gain evidence-based guidance for developing context-appropriate regulations balancing investment attraction with community rights protection. National policymakers receive analytical foundations for comprehensive legal reform addressing systemic inadequacies in current frameworks. Civil society organizations advocating for indigenous rights obtain legal argumentation supporting their advocacy objectives, while investors benefit from enhanced legal certainty and reduced conflict risks.

2. RESEARCH METHOD

This investigation employs normative juridical research methodology (*yuridis normatif*), examining law as a normative system consisting of principles, norms, rules, regulations, judicial decisions, and legal doctrines. The research treats law not as social phenomena requiring empirical observation but as ought-propositions requiring systematic analysis, interpretation, and logical reasoning. This methodological approach aligns with the research's fundamental objective: developing prescriptive recommendations for legal policy innovation grounded in juridical analysis rather than empirical generalization.

2.1 Research Type and Characteristics

As normative juridical research, this investigation exhibits several distinguishing characteristics. The research focuses on written legal rules, doctrinal principles, and normative frameworks rather than legal behavior, institutional performance, or social impacts. Data comprises legal materials constitutional provisions, statutes, regulations, judicial decisions, legal scholarship rather than empirical observations, statistical measurements, or social facts. Analysis proceeds through legal reasoning interpretation, construction, systematization, argumentation rather than empirical testing, statistical correlation, or causal inference. Outputs consist of prescriptive recommendations regarding what law should be (*ius constituendum*) based on analysis of what law is (*ius constitutum*), rather than descriptive generalizations about social regularities or predictive models of future behavior.⁹

The research adopts a prescriptive-analytical orientation, identifying normative gaps in existing legal frameworks and proposing optimal legal solutions based on juridical analysis. This contrasts with descriptive legal research merely documenting legal rules or exploratory research investigating emerging legal issues without formulating definitive recommendations. The prescriptive orientation requires not only analyzing current law but also developing normative arguments for legal reform grounded in constitutional principles, legal theory, and comparative legal analysis.

2.2 Research Approaches

This research employs four complementary juridical approaches:

2.2.1 Statute Approach (*Pendekatan Perundang-undangan*)

The statute approach examines all legislation and regulation relevant to research problems, analyzing statutory provisions systematically to understand legal frameworks, identify gaps and inconsistencies, and assess adequacy for addressing contemporary challenges. This approach requires examining not only statutory texts but also legislative histories, explanatory memoranda (*naskah akademik*), official elucidations (*penjelasan*), and implementing regulations. Hierarchical analysis ensures understanding of how constitutional provisions, statutes, government regulations, presidential regulations, ministerial regulations, and regional regulations interact within

⁹Hutchinson, Terry "Doctrinal Research: Characteristics and Importance in Legal Scholarship." *International Journal of Law in Context* 11, no. 2 (2015): 113–129.

Indonesia's stratified legal system established under Law Number 12 of 2011 concerning Formation of Legislation.¹⁰

2.2.2 Conceptual Approach (*Pendekatan Konseptual*)

The conceptual approach analyzes legal concepts, principles, and doctrines drawn from legal philosophy and jurisprudence to develop analytical frameworks and normative standards for evaluating existing law and formulating ideal law. Key concepts examined include legal pluralism (the coexistence of multiple legal orders within single jurisdictions), restorative justice (justice paradigms emphasizing restoration rather than retribution), legal certainty (principles requiring clear, consistent, and predictable legal rules), indigenous rights (collective rights possessed by indigenous communities), customary law (hukum adat as living law operating in indigenous communities), and access to justice (ensuring all persons can effectively vindicate legal rights regardless of economic resources or social position). Systematic analysis of these concepts provides theoretical foundations for legal policy recommendations.¹¹

2.2.3 Case Approach (*Pendekatan Kasus*)

The case approach examines judicial decisions addressing investment disputes, indigenous rights, customary law recognition, and related issues. Analysis focuses on ratio decidendi (legal reasoning supporting holdings), obiter dicta (judicial commentary beyond holdings), and precedential value. Significant decisions include Constitutional Court rulings on indigenous rights, Supreme Court decisions on customary land disputes, and district court judgments on investment conflicts.¹² Case analysis reveals how courts interpret ambiguous statutory provisions, apply constitutional principles to concrete disputes, and develop judge-made law filling legislative gaps. This approach provides insights into judicial perspectives, doctrinal evolution, and practical application of abstract legal principles.

2.2.4 Comparative Approach (*Pendekatan Perbandingan*)

The comparative approach examines legal systems in foreign jurisdictions addressing similar challenges regarding indigenous rights, customary law integration, and alternative dispute resolution. Comparison focuses on New Zealand's recognition of Māori customary law, Singapore's community mediation framework, South Korea's harmonization committees, and other relevant systems.¹³ Comparative analysis identifies transferable legal principles, institutional innovations, and potential pitfalls while recognizing that successful transplantation requires contextual adaptation considering Indonesia's unique constitutional structure, legal traditions, and

¹⁰ Markuat, M. Pendekatan-Pendekatan dalam Penelitian Hukum Normatif." *Jurnal Penelitian Hukum Indonesia* 3, no. 1 (2022): 45–60.

¹¹ Suharto, R. Normative Legal Research in Indonesia: Its Origins and Approaches." *Audito Comparative Law Journal* 4, no. 2 (2023): 101–120.

¹² Ensuring Indigenous People's Rights Protection Through Judicial Decisions." *Jambura Law Review* 7, no. 1 (2025): 45–67

¹³ A Comparative Analysis: Legal and Historical Analysis of Protecting Indigenous Cultural Rights Involving Land Disputes in Japan, New Zealand, and Hawai'i." *Washington International Law Journal* 28, no. 1 (2019): 207–246.

socio-cultural conditions. This approach prevents parochialism while respecting contextual specificity.

2.3 Legal Materials

Legal materials constitute the research data. Following conventional classifications in normative legal research, materials divide into three categories:

2.3.1 Primary Legal Materials

Primary legal materials comprise binding legal sources possessing authoritative force. These include the 1945 Constitution of the Republic of Indonesia, particularly Articles 18B, 28C, 28D, 28H, and 33 addressing indigenous rights, human rights, and economic organization; statutory legislation including Law Number 25 of 2007 concerning Investment, Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 23 of 2014 concerning Regional Government, Law Number 6 of 2014 concerning Villages, and Law Number 32 of 2009 concerning Environmental Protection and Management; government regulations implementing statutory provisions, including Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 43 of 2014 concerning Villages; presidential regulations and ministerial regulations relevant to investment licensing and dispute resolution; regional regulations from Central Sulawesi Province and constituent districts addressing local governance and customary law recognition; and judicial decisions from the Constitutional Court, Supreme Court, and lower courts addressing investment disputes, indigenous rights, and customary law issues.¹⁴

2.3.2 Secondary Legal Materials

Secondary legal materials provide explanations, interpretations, and critical analysis of primary materials.¹⁵ These include legal textbooks and treatises on constitutional law, investment law, agrarian law, customary law (*hukum adat*), alternative dispute resolution, and related fields; scholarly articles published in peer-reviewed law journals addressing relevant theoretical and practical issues; doctoral dissertations and master's theses examining related legal questions; legislative drafts and explanatory memoranda (*naskah akademik*) providing insights into legislative intent; legal commentaries and annotations explaining statutory provisions and judicial decisions; and reports from national human rights commission, ombudsman, and other oversight bodies documenting legal implementation challenges.

2.3.3 Tertiary Legal Materials

Tertiary legal materials provide definitional guidance and background information. These include legal dictionaries defining technical terminology; legal encyclopedias providing comprehensive overviews of legal topics; statutory compilations organizing legislation thematically; and indices

¹⁴ The Community Mediation Model of Singapore.” SSRN Electronic Journal (2022)

¹⁵ Hariri, Achmad. “Legal Pluralism Concept in Contemporary Indonesian Law.” *Walisongo Law Review* 6, no. 1 (2024): 145–170.

and bibliographies facilitating material identification and retrieval.¹⁶ While tertiary materials lack authoritative interpretive force, they provide essential reference resources supporting accurate understanding of legal terminology and conceptual frameworks.

2.4 Legal Material Collection Techniques

Legal material collection proceeds through library research and document analysis, contrasting with empirical legal research relying on field observations, interviews, or surveys. Collection techniques include legislative database searches accessing official government repositories containing current and historical legislation; judicial database searches retrieving court decisions from Constitutional Court, Supreme Court, and lower court databases; academic database searches identifying relevant scholarly literature through legal journal databases, university repositories, and academic search engines; physical library research examining printed legal materials, particularly historical legislation and customary law documentation not available electronically; and systematic compilation organizing collected materials thematically and hierarchically to facilitate subsequent analysis.

Material selection criteria ensure relevance and reliability. Materials must directly address research problems or provide essential background understanding. For statutory materials, currency is verified ensuring analysis relies on currently effective provisions rather than superseded versions. For judicial decisions, precedential significance guides selection, prioritizing higher court rulings and decisions establishing new doctrinal principles. For scholarly materials, methodological rigor and peer review status inform quality assessments, with preference for publications in reputable law journals over unreviewed working papers.¹⁷

2.5 Legal Material Analysis Techniques

Legal material analysis employs multiple techniques characteristic of normative juridical research, proceeding systematically from description through interpretation to prescription. The analytical process integrates several complementary techniques:¹⁸

Description and Systematization

Initial analysis involves describing relevant legal provisions, organizing materials systematically, and identifying relationships among constitutional principles, statutory rules, regulatory details, and judicial interpretations. Systematization reveals legal architecture, clarifies hierarchical relationships, and exposes inconsistencies or gaps. This descriptive foundation enables subsequent interpretive and prescriptive analysis.

¹⁶ Inksater, Jacqueline. "Indigenous Justice Systems in Latin America: Legal Pluralism and the Right to Indigenous Law." *Journal of Legal Pluralism* 52, no. 3 (2020): 275–305.

¹⁷ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origin and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9;

¹⁸ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Global Journal of Business Social Science Review* 3, no. 4 (2015): 16–22

Legal Interpretation

Legal interpretation determines the meaning of ambiguous or contested legal provisions through established interpretive methods. Grammatical interpretation examines ordinary linguistic meaning of statutory text. Systematic interpretation considers provisions within broader statutory and constitutional contexts, ensuring consistency across legal system. Historical interpretation examines legislative history, drafting documents, and explanatory memoranda to understand legislative intent. Teleological interpretation identifies statutory purposes and interprets provisions to advance legislative objectives. Comparative interpretation examines how similar provisions are interpreted in other jurisdictions. Extensive interpretation expands literal meaning when purposes require broader construction, while restrictive interpretation narrows scope when literal reading produces absurd or unjust results.

Legal Construction

Legal construction develops legal norms where statutory provisions are absent, unclear, or incomplete. Using legal reasoning methods including a contrario (inverse inference), analogical reasoning (extending rules to similar situations), and systematic integration (deriving implicit norms from overall system structure), construction fills gaps enabling legal system to address novel situations. Construction differs from interpretation by creating new normative content rather than merely clarifying existing provisions, yet remains constrained by constitutional principles and statutory purposes.

Legal Reasoning and Argumentation

Legal reasoning applies deductive logic (syllogistic reasoning) linking general legal principles to specific situations, inductive reasoning generalizing from particular cases to broader principles, and abductive reasoning inferring best explanations for legal phenomena. Legal argumentation develops persuasive justifications for legal conclusions, anticipating counter-arguments and demonstrating superiority of proposed interpretations or solutions. Argumentation integrates multiple considerations including textual analysis, purposive reasoning, precedent, policy consequences, and justice principles.

Comparative Analysis

Comparative analysis examines how foreign legal systems address analogous problems, identifying transferable solutions while recognizing contextual differences. Analysis considers legal transplantation theories, examining when borrowed institutions succeed or fail in new environments. Comparative insights inform prescriptive recommendations but require careful adaptation to Indonesian constitutional structure, legal traditions, and social conditions.

Prescriptive Synthesis

Final analytical phase synthesizes descriptive findings, interpretive conclusions, and comparative insights to develop prescriptive recommendations for legal reform. Prescription identifies optimal legal frameworks (*ius constituendum*) based on constitutional principles, legal theory, comparative best practices, and practical feasibility. Recommendations specify necessary legislative amendments, new regulatory frameworks, institutional innovations, and doctrinal developments, providing concrete blueprints for implementation.

3. RESULTS AND LEGAL ANALYSIS

3.1 Analysis of Current Legal Framework (*Ius Constitutum*)

3.1.1 *Constitutional Foundations*

The 1945 Constitution establishes fundamental principles governing indigenous rights and customary law recognition. Article 18B paragraph (2) provides: 'The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.' This provision creates constitutional mandates for state recognition of indigenous communities and customary rights, yet qualifies recognition through three limiting conditions: continued existence, conformity with societal development, and consistency with unitary state principles. Constitutional interpretation of these qualifying conditions significantly impacts indigenous rights scope. The 'continued existence' requirement has been interpreted to demand demonstration that customary communities maintain traditional governance structures, occupy ancestral territories, and practice customary laws, creating evidentiary burdens potentially excluding communities whose traditions have evolved or been disrupted by historical marginalization. The 'societal development' conformity requirement has justified subordinating customary rights to national development objectives, particularly regarding natural resource extraction and investment facilitation. The 'unitary state principles' condition has legitimized centralized control over customary law recognition, preventing regional governments from independently recognizing indigenous communities without national government approval.¹⁹

Article 28D paragraph (1) guarantees: 'Every person shall have the right to recognition, guarantees, protection, and certainty before a just law, and equal treatment before the law.' This provision establishes legal certainty and equal treatment as constitutional rights, creating obligations for legal systems to provide clear, predictable, and non-discriminatory rules. Current investment dispute resolution frameworks violate these guarantees by failing to recognize customary law procedures, creating legal uncertainty regarding procedural rules applicable when indigenous communities seek vindication of customary rights, and generating discriminatory outcomes wherein indigenous communities face systematic disadvantages within formal litigation systems designed without consideration of their cultural contexts or legal traditions. Article 28H paragraph (4) recognizes property rights, stating: 'Every person shall have the right to have personal property rights and such property rights may not be taken over arbitrarily by anyone.' While this provision establishes individual property protections, constitutional interpretation must also accommodate communal property forms characteristic of indigenous land tenure. The Constitutional Court in Decision Number 35/PUU-X/2012 recognized communal property rights, holding that customary forests constitute indigenous community property rather than state property. This jurisprudential development establishes precedent for broader recognition of communal property rights, yet implementing legislation remains underdeveloped.²⁰

¹⁹ Lubis, Ahmad. "The Development of Recognition and Protection of Customary Law Communities in Indonesia." *KnE Social Sciences* (Proceedings of the 4th INCLAR), 2024

²⁰ Muliadi, A. "Applying Principles of Legal Certainty and Equality in the Implementation of Investment in Indonesia." *European Research Studies Journal* 20, no. 3 (2017): 403–417.

3.1.2 Statutory Framework Analysis

Law Number 25 of 2007 concerning Investment establishes comprehensive frameworks governing capital investment yet demonstrates significant inadequacies regarding indigenous rights and customary law integration. Article 32 paragraph (1) provides that 'if disputes occur in the context of capital investment between the Government and domestic or foreign investors, both parties shall initially resolve the dispute through consultation and consensus.' Paragraph (2) adds: 'In the event consultation and consensus as intended in paragraph (1) fails to resolve the dispute, the settlement can be conducted through arbitration or court proceedings.' This framework conceptualizes investment disputes bilaterally as conflicts between government entities and investors, completely omitting indigenous communities as potential parties despite their direct interests in investment outcomes affecting ancestral territories. The statute's procedural emphasis on consultation and consensus superficially resonates with traditional deliberation practices (*musyawarah-mufakat*), yet lacks substantive requirements ensuring meaningful indigenous participation. No provisions mandate indigenous community consultation before investment licensing, specify minimum consultation standards, recognize customary governance authority to approve or reject projects affecting ancestral lands, or establish enforcement mechanisms for consultation requirements. This regulatory vacuum enables perfunctory consultation processes that nominally satisfy statutory requirements while failing to provide genuine participation opportunities or meaningful influence over decision-making.

The arbitration and court proceedings alternative dispute resolution mentioned in Article 32 refers to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This statute recognizes mediation, negotiation, and arbitration as alternatives to litigation, yet contains no provisions acknowledging customary dispute resolution mechanisms or indigenous legal traditions. Article 6 requires arbitration agreements to be in writing, creating formality requirements incompatible with oral customary law traditions. Article 31 limits arbitral tribunal composition to certified arbitrators, excluding customary law authorities from formal alternative dispute resolution processes despite their legitimacy within indigenous communities. Law Number 5 of 1960 concerning Basic Agrarian Principles attempts harmonizing diverse land tenure systems within unified national frameworks. Article 3 states: 'Considering the provisions in Articles 1 and 2, the exercise of customary land rights and similar rights from indigenous law communities, insofar as in reality they still exist, must be such that it is in accordance with national and State interests, based on national unity, and must not be in conflict with higher laws and regulations.' This provision simultaneously recognizes and subordinates customary land rights, creating inherent tensions. Recognition is conditional upon continued existence, yet colonialism, transmigration programs, and development projects have systematically disrupted indigenous land tenure. Subordination to national interests has justified compulsory land acquisitions for investment projects, often with inadequate consultation or compensation. Requirements for conformity with higher regulations create hierarchical structures wherein customary law occupies

subordinate positions within legal system, enforceable only to extent not conflicting with statutory law.²¹

3.1.3 Judicial Doctrine Analysis

Constitutional Court Decision Number 35/PUU-X/2012 represents landmark jurisprudence regarding indigenous rights recognition. The Court reviewed Article 1 point 6 of Law Number 41 of 1999 concerning Forestry, which classified customary forests as state forests. The Court held this classification unconstitutional, reasoning that Article 18B paragraph (2) of the Constitution recognizes indigenous communities and customary rights, meaning customary forests belong to indigenous communities rather than the state. The Court distinguished indigenous community forest rights from state sovereignty, holding that while ultimate sovereignty remains with the state, property rights belong to indigenous communities. This decision establishes several important legal principles. First, constitutional recognition of indigenous communities creates substantive rights rather than merely aspirational policy objectives. Second, indigenous community property rights receive constitutional protection equivalent to individual property rights. Third, statutory classifications contradicting constitutional indigenous rights recognition are unconstitutional and must be invalidated. Fourth, indigenous communities need not obtain government recognition or registration to possess constitutional rights; government obligation is recognizing pre-existing rights rather than creating new rights through administrative processes.

However, implementation challenges persist despite this progressive jurisprudence. The decision's scope is limited to customary forests, leaving ambiguous whether similar principles apply to other customary property forms including agricultural lands, mining areas, and coastal resources. No comprehensive implementing legislation operationalizes the decision's principles across all customary property contexts. Bureaucratic resistance from forestry agencies and reluctance to decentralize control over lucrative natural resources has impeded practical implementation. Many indigenous communities remain unaware of the decision or lack resources to invoke it effectively in administrative or judicial proceedings. Supreme Court jurisprudence on customary land disputes demonstrates inconsistent approaches. Some decisions strictly apply statutory land registration requirements from Government Regulation Number 24 of 1997, rejecting customary land claims unsupported by formal certificates. Other decisions acknowledge customary land tenure based on oral testimony, community recognition, and long-term occupation, applying Article 3 of the Basic Agrarian Law to validate customary claims. This jurisprudential inconsistency creates legal uncertainty, with outcomes depending significantly on individual judges' perspectives regarding customary law validity rather than following predictable legal principles.

District court decisions on investment disputes involving indigenous communities reveal systematic patterns disadvantaging indigenous parties. Courts typically require documentary evidence of land ownership formal certificates issued by land agencies which indigenous communities frequently lack due to historical exclusion from land registration systems. Oral testimony and community affidavits regarding customary land tenure receive little evidentiary

²¹ Ririhena, F. "Investment Law in Papua: Between Regulatory Certainty and Protection of Indigenous Peoples' Rights." PAMALI: Pattimura Magister Law Review 5, no. 3 (2025): 574–584.

weight compared to corporate documentation. Expert testimony on customary law is rarely admitted or given substantial consideration.²² Burden of proof allocation typically disadvantages indigenous claimants despite their weaker positions regarding documentary evidence access. Remedies tend toward monetary compensation rather than land restoration or project modification, reflecting courts' reluctance to disrupt investment projects and prioritization of economic development over indigenous rights.

3.2 Comparative Legal Analysis

3.2.1 *New Zealand: Treaty of Waitangi Framework*

New Zealand's legal framework integrating Māori customary law provides instructive comparative insights. The Treaty of Waitangi (1840) established founding principles for British colonization, recognizing Māori sovereignty, guaranteeing Māori property rights, and granting Māori equal citizenship rights. While subsequent colonial history involved systematic treaty violation and indigenous dispossession, contemporary legal frameworks demonstrate progressive attempts at reconciliation and customary law integration. The Waitangi Tribunal, established by the Treaty of Waitangi Act 1975, provides quasi-judicial mechanisms for indigenous claims regarding treaty breaches. The Tribunal's jurisdiction covers claims dating back to 1840, investigating historical injustices and recommending redress measures. Importantly, tribunal proceedings incorporate Māori cultural protocols, accept oral testimony and traditional knowledge as evidence, and apply both common law principles and tikanga Māori (Māori customary law) in determinations. While Tribunal recommendations are non-binding and require Parliamentary implementation, the institution has achieved substantial influence, with many major settlements resulting from Tribunal findings.²³

The Resource Management Act 1991 requires meaningful Māori consultation regarding development projects affecting traditional territories, lands, and resources. Section 6(e) establishes recognition and provision for the relationship of Māori and their culture and traditions with ancestral lands, water, sites, and taonga (treasures) as matters of national importance. Section 7(a) requires particular regard for kaitiakitanga (Māori guardianship). Section 8 requires consideration of treaty principles. These provisions create enforceable obligations for developers and consent authorities to consult with relevant iwi (tribes), consider Māori cultural values and traditional knowledge, and address potential impacts on Māori interests. Courts have interpreted these requirements substantively, invalidating development approvals that failed to undertake adequate Māori consultation or properly consider Māori interests. Transferable legal principles from New Zealand's framework include constitutional or legislative recognition of founding agreements or constitutional principles guaranteeing indigenous rights; specialized adjudicative institutions combining formal legal authority with cultural sensitivity and customary law knowledge; mandatory consultation requirements with substantive standards and judicial enforcement mechanisms; evidentiary rules accommodating oral testimony and traditional knowledge; and

²² Rumadan, I., and U. Salamah. "Legal Status of Indigenous Land Rights in Indonesia's Mining Investment Regime." *Advances in Social Science, Education and Humanities Research* 540 (2021): 902–910.

²³ Cribb, M. "Beyond Legal Personhood for the Whanganui River." *International Journal of Human Rights* 28, no. 3 (2024): 345–366.

ongoing commitment to reconciliation through negotiated settlements addressing historical injustices. However, contextual differences limit direct transplantation. Indonesia lacks equivalent to Treaty of Waitangi establishing foundational indigenous-state relationships. Indonesia's far greater ethnic diversity presents challenges absent in New Zealand's essentially bi-cultural framework. Indonesia's civil law tradition differs significantly from New Zealand's common law system, affecting institutional design possibilities.²⁴

3.2.2 Singapore: Community Mediation Framework

Singapore's Community Mediation Centres (CMCs) demonstrate effective integration of alternative dispute resolution within formal legal infrastructure. The Community Mediation Centres Act 1997 establishes CMCs as statutory bodies providing accessible mediation services for community disputes. CMCs handle neighborhood disputes, family conflicts, commercial disagreements, and other matters involving Singapore residents, achieving resolution rates exceeding 70% while maintaining low costs and expedited processing.²⁵

Several features contribute to CMCs' effectiveness. First, legislative establishment and government funding provide institutional legitimacy and resource stability. Second, professional mediator training ensures high-quality facilitation while mediator diversity reflects Singapore's multi-ethnic population. Third, clear legal frameworks define mediation's scope, procedures, and enforceability. Section 8 grants mediated settlement agreements equivalent status to court orders, enabling enforcement through contempt proceedings. Fourth, courts actively refer cases to CMCs, creating institutional linkages between formal and alternative mechanisms. Fifth, cultural emphasis on harmony and consensus-building, rooted in Asian values, supports mediation acceptance. Transferable principles include statutory establishment of alternative dispute resolution institutions rather than relying on private initiatives; government resource allocation ensuring accessibility and quality; professional training for mediators combining technical skills with cultural competency; legal frameworks granting mediated settlements enforceability equivalent to judicial decisions; and institutional linkages between courts and alternative mechanisms through referral systems. Singapore's framework demonstrates that effective alternative dispute resolution requires not merely regulatory permission but active state support through legislation, funding, training, and judicial cooperation. However, Singapore's small size, ethnic homogeneity compared to Indonesia, and authoritarian governance model limit some transferability.

3.2.3 South Korea: Harmonization Committees

South Korea's judicial mediation system provides comparative insights regarding hybrid institutions combining professional expertise with community representation. The Civil Mediation Act establishes harmonization committees (hwahae wiwonhoe) operating within court systems at district levels. These committees resolve civil disputes through mediation before formal litigation,

²⁴ Māori and the RMA,” Environment Guide (2018); “Māori Consultation under the Resource Management Act 1991,” New Zealand Journal of Environmental Law 10 (2006): 93–124

²⁵ Ahmad, Badrul Hisham. “A Comparison Between Rukun Tetangga and Community Mediation in Singapore.” Asian Culture and History 6, no. 2 (2014): 45–60.

emphasizing relationship preservation, cultural values, and practical solutions over strict legal rights determination.²⁶

Committee composition reflects hybrid structure: panels typically include one professional mediator (often a retired judge or experienced attorney) alongside two community representatives possessing relevant expertise or community standing. This composition balances legal knowledge with practical wisdom and community legitimacy. Procedures remain flexible, accommodating cultural practices and communication styles while maintaining basic fairness standards. The Act grants mediated settlements equivalent effect to court judgments, providing enforcement mechanisms without requiring separate litigation. South Korea's system demonstrates several transferable principles including hybrid panel composition combining legal professionals with community representatives; institutional location within judicial system providing legitimacy while maintaining informal procedures; statutory granting of enforceability to mediated settlements; and cultural alignment with emphasis on harmony, consensus, and practical problem-solving.²⁷ For Indonesian contexts, hybrid panels incorporating customary law authorities alongside legally trained mediators could similarly balance legal expertise with cultural knowledge. However, South Korea's relatively homogeneous society and Confucian cultural traditions emphasizing social harmony differ from Indonesia's ethnic diversity and varying cultural values across regions.

3.3 Legal Gap Analysis: From *Ius Constitutum* to *Ius Constituendum*

Systematic comparison between existing legal frameworks (*ius constitutum*) and normative ideals derived from constitutional principles, legal theory, and comparative analysis (*ius constituendum*) reveals multiple critical gaps requiring legal policy innovation. These gaps span constitutional implementation, statutory adequacy, regulatory operationalization, and institutional capacity.

Constitutional Implementation Gap

Article 18B paragraph (2) of the Constitution requires legislative regulation operationalizing indigenous rights recognition, yet no comprehensive statute specifically addresses indigenous community recognition, customary rights protection, or customary law integration within national legal systems. Existing sectoral legislation (agrarian law, forestry law, investment law) contains scattered provisions acknowledging customary rights but lacks systematic frameworks. This implementation gap violates constitutional mandates requiring statutory operationalization of constitutional provisions. *Ius constituendum* demands comprehensive legislation establishing criteria for indigenous community recognition, procedures for customary rights validation, mechanisms for customary law-formal law coordination, and institutional arrangements for indigenous rights protection.²⁸

²⁶ Kim, Sun Young. "Mediation in South Korea." *Revista Brasileira de Alternative Dispute Resolution* 3, no. 1 (2023): 55–72.

²⁷ Robinson, Peter. "The Emergence of Mediation in Korean Communities." *Pepperdine Dispute Resolution Law Journal* 15, no. 3 (2015): 123–150

²⁸ Suandi, Wirdana. "The Urgency of Design on Indigenous Community Law Based on the Conflict of Torakat Indigenous People in North Sulawesi." *Mizani: Journal of Law* 11, no. 2 (2024): 233–252

Participatory Rights Gap

Current investment licensing frameworks contain minimal requirements for indigenous community consultation, creating participatory deficits inconsistent with democratic governance principles and indigenous rights norms. Law Number 25 of 2007 concerning Investment lacks provisions mandating meaningful consultation before investment approvals in indigenous territories. Environmental impact assessment regulations contain consultation requirements, yet these typically involve minimal notification rather than substantive participation or consent rights. *Ius constituendum* requires robust consultation frameworks including prior notification in culturally appropriate forms; adequate time for community deliberation; participation opportunities for diverse community segments; disclosure of project details and anticipated impacts; consideration of community input in decision-making; and institutional mechanisms ensuring consultation effectiveness rather than perfunctory compliance.²⁹

Procedural Recognition Gap

Formal dispute resolution systems systematically fail to recognize or accommodate customary conflict resolution mechanisms, creating procedural barriers for indigenous communities and violating access to justice principles. Courts apply uniform procedural rules designed for formal legal contexts without considering customary legal traditions. Evidence rules privilege documentary proof over oral testimony and customary law expert evidence receives minimal consideration. No legal frameworks establish relationships between customary dispute resolution and formal adjudication, creating parallel systems without coordination mechanisms. *Ius constituendum* demands procedural pluralism recognizing customary conflict resolution legitimacy; hybrid institutional arrangements integrating customary and formal mechanisms; evidentiary accommodations for oral traditions and customary knowledge; and clear legal frameworks defining when and how customary resolutions receive formal legal recognition and enforceability.³⁰

Substantive Law Gap

Substantive law applicable to investment disputes typically ignores customary law principles, applying only statutory and contractual provisions. Courts generally refuse to apply customary law even when parties invoke customary principles, citing the *lex specialis* principle that specific statutory provisions supersede general customary law. This approach contradicts constitutional recognition of customary law as valid legal sources and creates substantive injustices when customary rights are systematically subordinated to statutory rights. *Ius constituendum* requires substantive legal pluralism wherein courts apply both statutory law and relevant customary law; conflict of laws principles guiding choice between competing legal systems; and interpretive

²⁹ Fahrurrahman. "Legal Protection for Foreign Investors in Investment in Indonesia: Analysis of Law No. 25 of 2007 concerning Investment." *PAMALI: Pattimura Magister Law Review* 5, no. 3 (2025): 574–584.

³⁰ Iswari, F., et al. "Ulayat Land Disputes in Minangkabau Customary Law Community." *Advances in Social Science, Education and Humanities Research* (2024): 100–110.

principles harmonizing statutory provisions with customary law rather than assuming statutory supremacy.³¹

Institutional Capacity Gap

Existing institutions lack capacity for effectively managing disputes involving indigenous communities and customary law issues. Judges receive minimal training on indigenous rights, customary law, or cultural competency. Investment coordinating agencies lack expertise on indigenous consultation or customary rights. No specialized institutions exist for adjudicating customary law issues or facilitating indigenous-investor negotiations. *Ius constituendum* requires substantial institutional development including judicial training on indigenous rights and customary law; specialized court divisions or tribunals handling customary law matters; hybrid mediation institutions combining legal expertise with customary law knowledge; and capacity building for customary governance structures to effectively engage formal legal systems.³²

3.4 Proposed Integrated Legal Framework (*Ius Constituendum*)

Based on constitutional principles, legal theory, comparative analysis, and gap identification, this research proposes comprehensive legal frameworks for investment dispute resolution integrating formal law and customary law. The proposed framework operates through four interconnected legal mechanisms: constitutional reinterpretation, legislative reform, regulatory innovation, and institutional development.

3.4.1 Constitutional Reinterpretation Framework

Constitutional interpretation should emphasize Article 18B paragraph (2)'s recognition of indigenous communities as creating substantive rights rather than merely aspirational policy objectives. The provision's qualifying conditions—continued existence, conformity with societal development, unitary state principles—should be interpreted narrowly to maximize indigenous rights protection. 'Continued existence' should recognize that cultural evolution does not negate indigenous identity; communities adapting traditions remain indigenous communities. 'Societal development' conformity should not justify subordinating indigenous rights to economic development but rather require development models conforming to sustainable and rights-respecting paradigms. 'Unitary state principles' should be understood as requiring coordination within national legal frameworks, not centralized denial of regional diversity or indigenous autonomy.

Article 28D guaranteeing legal certainty, equal treatment, and access to justice should be interpreted to require procedural accommodations for indigenous communities. Legal certainty demands clear frameworks defining customary rights and procedural rules rather than ambiguity leaving indigenous communities without predictable legal protections. Equal treatment requires substantive equality accounting for indigenous communities' different cultural contexts and

³¹ Kurniawan, I. G. A. "Legal Reform in Business Dispute Resolution." *Journal of Legal and Law Reform* 7, no. 1 (2025): 1–20.

³² Mubarok, Ahmad. "The Relationship of State Law and Customary Law: Reinforcement and Protection of Customary Law in Constitutional Court Judgment." *Jurisprudence* 13, no. 2 (2023): 201–223.

historical disadvantages, not merely formal equality applying uniform rules creating disparate impacts. Access to justice mandates removing barriers indigenous communities face in vindicating rights, including procedural accommodations, evidentiary flexibility, and institutional accessibility.³³

3.4.2 Legislative Reform Framework

Comprehensive legislative reform requires amendments to multiple statutes and enactment of new legislation specifically addressing indigenous rights and customary law integration. Law Number 25 of 2007 concerning Investment requires amendments adding provisions mandating consultation with affected indigenous communities before investment licensing in indigenous territories; recognizing indigenous communities as potential parties in investment disputes; requiring consideration of customary land rights in investment licensing; and establishing institutional mechanisms for indigenous participation in investment governance. New legislation specifically addressing indigenous community recognition and rights protection should establish: clear criteria and procedures for indigenous community recognition as legal entities; comprehensive cataloging of customary rights including land tenure, resource access, governance authority, and cultural practices; mechanisms for customary rights registration providing legal certainty without requiring communities to prove rights repeatedly; and prohibitions on arbitrary deprivation of customary rights with procedural safeguards for any limitations. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution should be amended to explicitly recognize customary conflict resolution mechanisms; remove formality requirements incompatible with customary procedures; allow customary law authorities to serve as mediators or arbitrators; and establish frameworks for formal legal system recognition of customary dispute resolution outcomes.³⁴

3.4.3 Regulatory Innovation Framework

Government regulations implementing statutory amendments should provide detailed procedural frameworks operationalizing legislative mandates. Regulations concerning investment licensing procedures should specify consultation requirements including timing (before license issuance), participants (customary governance authorities, affected community members), information disclosure (project details, environmental impacts, benefit-sharing arrangements), deliberation procedures (community meetings, opportunity for questions, consideration of input), and documentation (records of consultation process, community concerns raised, investor responses). Regulations establishing hybrid dispute resolution institutions should address institutional structure (district-level centers, regional coordination mechanisms), panel composition (professional mediators, customary law authorities, community representatives), appointment procedures (merit-based selection, community involvement, term limits), procedural rules (flexible processes accommodating customary practices, confidentiality protections, good faith requirements), and outcome enforceability (mechanisms for formal recognition, judicial review

³³ Martinesya, Sefa. "Reassessing State Responsibility for Indigenous Rights to Land in Indonesia." *Jambi Law Journal* 3, no. 2 (2021): 145–168.

³⁴ Rayhan, Ahmad. "The Urgency of Special Legislation for Indigenous Peoples in Indonesia." *Indonesian Journal of Southeast Asian Studies* 2, no. 1 (2025): 1–22

standards, enforcement procedures).³⁵ Presidential regulations should establish national coordination mechanisms including inter-ministerial committees overseeing implementation; national registries documenting recognized indigenous communities and customary rights; monitoring systems tracking consultation compliance and dispute resolution outcomes; and periodic evaluation processes assessing framework effectiveness and identifying needed adjustments.

3.4.4 Regional Regulatory Framework

Regional regulations from Central Sulawesi Province and constituent districts should adapt national frameworks to local contexts. Provincial regulations should identify and formally recognize indigenous communities within provincial territory; document customary governance structures and traditional territories; catalog customary conflict resolution mechanisms and operational principles; establish provincial-level coordination mechanisms linking customary governance, district governments, and provincial agencies; and provide funding mechanisms supporting customary governance capacity building. District regulations should establish operational procedures for consultation implementation; create district-level hybrid mediation centers with appropriate staffing and resources; develop standard operating procedures for investment licensing incorporating indigenous rights considerations; and establish monitoring and enforcement mechanisms ensuring compliance with consultation and dispute resolution requirements. Regional regulations must respect national legal frameworks while exercising legitimate authority for contextual adaptation addressing local diversity.³⁶

3.4.5 Institutional Development Framework

Effective legal frameworks require institutional infrastructure capable of implementation. Proposed institutions include specialized court divisions within district courts handling customary law matters, with judges receiving specialized training on indigenous rights, customary law, and restorative justice principles; district-level conflict resolution centers providing mediation services through hybrid panels combining professional mediators with customary law authorities; provincial coordination agencies overseeing implementation, providing technical assistance, and monitoring outcomes; and indigenous community support centers offering legal education, representation assistance, and capacity building. Institutional development requires substantial capacity building including comprehensive judicial training programs covering indigenous rights law, customary law principles, restorative justice theory, and cultural competency; professional development for mediators combining technical mediation skills with customary law knowledge and cultural sensitivity; training for government officials managing investment licensing on consultation requirements, indigenous rights considerations, and conflict prevention strategies; and capacity building for customary governance structures enabling effective engagement with formal legal systems, investment negotiations, and dispute resolution processes.³⁷ Sustainable

³⁵ Jasim, R. "Informed Consent for Indigenous Peoples in Indonesia's Environmental Governance." *Eduvest: Journal of Legal Studies* 5, no. 1 (2025): 101–120.

³⁶ Bedner, Adriaan. "The Return of the Native in Indonesian Law." *Bijdragen tot de Taal-, Land- en Volkenkunde* 164, no. 2–3 (2008): 165–193.

³⁷ Setiawan, I. "Juridical Study of Customary Law in the Indonesian National Legal System." *Journal of Social Sciences and Humanities Review* 5, no. 1 (2024): 45–60.

institutional development demands adequate resource allocation including national budget allocations for institutional establishment, training programs, and operational support; provincial budget commitments for regional implementation; development partner support during initial establishment phases; and long-term financing mechanisms ensuring sustainability beyond initial project periods. Resource allocation requires political commitment recognizing indigenous rights protection and legal system improvement as development priorities deserving sustained investment.

4. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

This normative legal research demonstrates that the legal framework governing investment dispute resolution in Central Sulawesi contains fundamental weaknesses regarding customary law recognition and indigenous rights protection, creating constitutional violations, legal uncertainty, and barriers to access to justice. The existing investment law, agrarian law, and dispute resolution law frameworks systematically marginalize customary law and indigenous communities, contradicting the mandate of Article 18B paragraph (2) of the 1945 Constitution which requires the state to recognize and respect indigenous communities and their traditional rights. Legal pluralism theory provides an essential analytical framework for understanding that effective governance in culturally diverse societies requires institutional arrangements that accommodate multiple normative orderings, rather than imposing legal monism that denies existing diversity.

An integrated conflict resolution model that harmonizes state law with customary law, grounded in constitutional principles and restorative justice paradigms, represents the optimal legal framework (*ius constituendum*) for investment dispute resolution in Central Sulawesi. Implementation of this model requires comprehensive legal reforms across legislative, regulatory, judicial, and institutional dimensions, supported by adequate resource allocation and sustained political commitment. Such reforms would operationalize constitutional mandates, advance access to justice, strengthen legal certainty, enhance procedural legitimacy, and ultimately contribute to more inclusive and sustainable development pathways that respect both economic imperatives and indigenous rights in Indonesia's pluralistic society.

B. Recommendations

1. Comprehensive Legislative and Regulatory Reform

The House of Representatives (DPR) and the Government need to amend Law Number 25 of 2007 concerning Investment and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by adding provisions mandating consultation with affected indigenous communities, recognizing indigenous communities as parties in disputes, and integrating customary conflict resolution mechanisms. The Central Sulawesi Provincial Government and District Governments must issue Regional Regulations that formally recognize indigenous communities within their territories, document customary governance systems and territories, catalog customary conflict resolution mechanisms, and establish operational consultation procedures and district-level mediation centers.

2. Development of Hybrid Institutions and Sustainable Capacity Building

National and regional governments must establish district-level conflict resolution centers that provide mediation services through hybrid panels combining formal legal expertise with customary law knowledge, provincial coordination agencies to oversee implementation and provide technical assistance, and indigenous community support centers offering legal education and representation assistance. Comprehensive training programs must be implemented for all stakeholders: judicial training covering indigenous rights and restorative justice, mediator training combining technical skills with customary law knowledge, and government official training on consultation requirements and conflict prevention.

3. Jurisprudential Development and Further Research

The Supreme Court must issue Supreme Court Circular Letters (SEMA) providing guidance for lower courts on indigenous rights cases, customary law application, and restorative justice principles, mandate judicial training programs, and establish specialized court divisions for customary law matters. Judicial decisions must apply both state law and relevant customary law to develop jurisprudence harmonizing competing legal systems. Further normative legal research is needed to analyze in detail specific customary law systems across Central Sulawesi's ethnic groups, constitutional interpretation methodologies regarding Article 18B paragraph (2) of the 1945 Constitution, additional comparative studies on legal pluralism approaches in various jurisdictions, and post-reform implementation challenges to identify practical obstacles and potential solutions.

REFERENCES

- Ahmad, Badrul Hisham. "A Comparison Between Rukun Tetangga and Community Mediation in Singapore." *Asian Culture and History* 6, no. 2 (2014): 45–60.
- Bedner, Adriaan. "The Return of the Native in Indonesian Law." *Bijdragen tot de Taal-, Land- en Volkenkunde* 164, no. 2–3 (2008): 165–193.
- Benda-Beckmann, Franz von. "Changing Legal Pluralisms in Indonesia." *Journal of Legal Pluralism and Unofficial Law* 36, no. 1 (2004): 35–70.
- Christiani, Theresia Anita. "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object." *Global Journal of Business Social Science Review* 3, no. 4 (2015): 16–22.
- Cribb, M. "Beyond Legal Personhood for the Whanganui River." *International Journal of Human Rights* 28, no. 3 (2024): 345–366.

- Fahrurrahman. "Legal Protection for Foreign Investors in Investment in Indonesia: Analysis of Law No. 25 of 2007 concerning Investment." *PAMALI: Pattimura Magister Law Review* 5, no. 3 (2025): 574–584.
- Fatmawati, Dewi. "The Concept of Legal Pluralism in Indonesia in the New Social Movement." *Journal of Advanced Social Research* 2, no. 1 (2021): 45–60.
- Hariri, Achmad. "Legal Pluralism Concept in Contemporary Indonesian Law." *Walisongo Law Review* 6, no. 1 (2024): 145–170.
- Hutchinson, Terry. "Doctrinal Research: Characteristics and Importance in Legal Scholarship." *International Journal of Law in Context* 11, no. 2 (2015): 113–129.
- Inksater, Jacqueline. "Indigenous Justice Systems in Latin America: Legal Pluralism and the Right to Indigenous Law." *Journal of Legal Pluralism* 52, no. 3 (2020): 275–305.
- Iswari, F., et al. "Ulayat Land Disputes in Minangkabau Customary Law Community." *Advances in Social Science, Education and Humanities Research* (2024): 100–110.
- Jasim, R. "Informed Consent for Indigenous Peoples in Indonesia's Environmental Governance." *Eduvest: Journal of Legal Studies* 5, no. 1 (2025): 101–120.
- Kim, Sun Young. "Mediation in South Korea." *Revista Brasileira de Alternative Dispute Resolution* 3, no. 1 (2023): 55–72.
- Kurniawan, I. G. A. "Legal Reform in Business Dispute Resolution." *Journal of Legal and Law Reform* 7, no. 1 (2025): 1–20.
- Lubis, Ahmad. "The Development of Recognition and Protection of Customary Law Communities in Indonesia." *KnE Social Sciences (Proceedings of the 4th INCLAR)*, 2024.
- "Māori and the RMA." *Environment Guide* (2018).
- "Māori Consultation under the Resource Management Act 1991." *New Zealand Journal of Environmental Law* 10 (2006): 93–124.
- Markuat, M. "Pendekatan-Pendekatan dalam Penelitian Hukum Normatif." *Jurnal Penelitian Hukum Indonesia* 3, no. 1 (2022): 45–60.
- Martinesya, Sefa. "Reassessing State Responsibility for Indigenous Rights to Land in Indonesia." *Jambi Law Journal* 3, no. 2 (2021): 145–168.
- Marzuki, Peter Mahmud. "Penelitian Hukum Normatif: Karakter dan Metodologinya." *Jurnal Hukum dan Peradilan* 2, no. 1 (2013): 1–17.

- Mubarok, Ahmad. "The Relationship of State Law and Customary Law: Reinforcement and Protection of Customary Law in Constitutional Court Judgment." *Jurisprudence* 13, no. 2 (2023): 201–223.
- Muliadi, A. "Applying Principles of Legal Certainty and Equality in the Implementation of Investment in Indonesia." *European Research Studies Journal* 20, no. 3 (2017): 403–417.
- Nurjaya, I Nyoman. "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 terhadap Kedudukan Hutan Adat di Indonesia." *Jurnal Hukum Ius Quia Iustum* 21, no. 4 (2014): 511–530.
- Prasetyo, Teguh, and Abdul Halim. "Restorative Justice, Musyawarah, dan Keadilan Bermartabat dalam Sistem Peradilan Pidana Indonesia." *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 401–420.
- Rayhan, Ahmad. "The Urgency of Special Legislation for Indigenous Peoples in Indonesia." *Indonesian Journal of Southeast Asian Studies* 2, no. 1 (2025): 1–22.
- Ririhena, F. "Investment Law in Papua: Between Regulatory Certainty and Protection of Indigenous Peoples' Rights." *PAMALI: Pattimura Magister Law Review* 5, no. 3 (2025): 574–584.
- Robinson, Peter. "The Emergence of Mediation in Korean Communities." *Pepperdine Dispute Resolution Law Journal* 15, no. 3 (2015): 123–150.
- Rumadan, I., and U. Salamah. "Legal Status of Indigenous Land Rights in Indonesia's Mining Investment Regime." *Advances in Social Science, Education and Humanities Research* 540 (2021): 902–910.
- Setiawan, I. "Juridical Study of Customary Law in the Indonesian National Legal System." *Journal of Social Sciences and Humanities Review* 5, no. 1 (2024): 45–60.
- Sirait, Martua. "Otonomi Daerah dan Pengakuan Masyarakat Adat di Indonesia." *Jurnal Desentralisasi* 13, no. 2 (2015): 87–104.
- Suandi, Wirdana. "The Urgency of Design on Indigenous Community Law Based on the Conflict of Torakat Indigenous People in North Sulawesi." *Mizani: Journal of Law* 11, no. 2 (2024): 233–252.
- Suharto, R. "Normative Legal Research in Indonesia: Its Origins and Approaches." *Audito Comparative Law Journal* 4, no. 2 (2023): 101–120.
- Sumarja, FX. "Pengakuan Masyarakat Hukum Adat dalam Sistem Hukum Agraria Indonesia." *Jurnal Hukum Agraria* 5, no. 2 (2017): 101–120.
- "The Community Mediation Model of Singapore." *SSRN Electronic Journal* (2022).

Tunggul Ansari Setia Negara. "Normative Legal Research in Indonesia: Its Origin and Approaches." *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9.

"A Comparative Analysis: Legal and Historical Analysis of Protecting Indigenous Cultural Rights Involving Land Disputes in Japan, New Zealand, and Hawai'i." *Washington International Law Journal* 28, no. 1 (2019): 207–246.

"Ensuring Indigenous People's Rights Protection Through Judicial Decisions." *Jambura Law Review* 7, no. 1 (2025): 45–67.

Yulia, R., and I. A. Dalimunthe. "Penyelesaian Sengketa Antara Investor Asing dengan Pemerintah Indonesia dalam Perspektif Hukum Internasional." *Jurnal IUS QUIA IUSTUM* 21, no. 3 (2014): 395–416.

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