

## A TERRITORIAL RIGHTS PROVISION ALLOWING FOR THE ENTRY OF FOREIGN INVESTMENTS

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### ABSTRACT

*One of the main issues that arises when investors plan to make investments in Indonesia is the transfer of land rights to one of the five investment barriers, which are connected to obstacles to land certification, building licenses, and land zoning. This effort discusses how problems involving land transfers are handled by national criminal law and how giving foreign investors legal certainty is achieved by the effectiveness of criminal legislation against land transfers. The aim of this research is to find out whether criminal law can resolve disputes related to the transfer of land rights so as to provide certainty and security for foreign investors regarding the transfer of land rights. by investigating problems through normative legal research or legal research carried out in libraries using a jurisprudential approach and theory of legal objectives, we will get solutions to existing problems so that this research provides qualitative research results based on the data and theory used. The study's findings lead to the conclusion that Article 52, paragraphs (1) and (2) of the UUPA, which deals with criminal laws against the transfer of land rights, regulates the criminal law of land area for its infringement. The form of attained legal certainty in the transfer of land rights for investors is provided by the effectiveness of criminal law in enforcing the law against communities that occupy property over the subject matter.*

**Keyword: Criminal Law; Land Rights; Foreign Investors.**

### ABSTRAK

Salah satu masalah utama yang muncul ketika investor berencana untuk melakukan investasi di Indonesia adalah pengalihan hak atas tanah yang merupakan salah satu dari lima hambatan investasi, yang terkait dengan hambatan sertifikasi tanah, izin mendirikan bangunan, dan zonasi tanah. Upaya ini membahas bagaimana masalah-masalah yang melibatkan pengalihan hak atas tanah ditangani oleh hukum pidana nasional dan bagaimana memberikan kepastian hukum kepada investor asing melalui efektivitas undang-undang pidana terhadap pengalihan hak atas tanah. Tujuan dari penelitian ini adalah untuk mengetahui apakah hukum pidana dapat menyelesaikan sengketa yang berkaitan dengan peralihan hak atas tanah sehingga dapat memberikan kepastian dan keamanan bagi investor asing terkait peralihan hak atas tanah. dengan melakukan investigasi permasalahan melalui penelitian hukum normatif atau penelitian hukum yang dilakukan secara kepustakaan dengan menggunakan pendekatan yuridis dan teori tujuan hukum, maka akan diperoleh solusi dari permasalahan yang ada sehingga penelitian ini memberikan hasil penelitian yang bersifat kualitatif berdasarkan data dan teori yang digunakan. Hasil penelitian menghasilkan kesimpulan bahwa Pasal 52 ayat (1) dan (2) UUPA yang mengatur tentang hukum pidana terhadap pemindahan hak atas tanah mengatur tentang hukum pidana pertanahan atas pelanggarannya. Bentuk tercapainya kepastian hukum dalam peralihan hak atas tanah bagi investor diberikan dengan adanya efektivitas hukum pidana dalam menegakkan hukum terhadap masyarakat yang menduduki tanah objek perkara.

**Kata Kunci: Hak Atas Tanah, Hukum Pidana, Investor Asing.**



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## 1. Introduction

When deciding which investments to make in this industry, land concerns are a key factor. One potential source of agri-conflict that was viewed as an investment risk was the issue of land ownership and renting. Consequently, there is currently little private investment in the agriculture industry. Comprehensive reforms that can improve the transparency of land ownership are necessary to address the land issue, particularly in Indonesia's rural areas.

Maintain the social values of the widespread use of land for large-scale agricultural enterprise while updating the legislation on land ownership and rental based on the value of fairness. Then, since the agriculture industry is seen as being unprofitable, investors won't be interested in investing in it without legal clarity and fairness. Even while some investors are prepared to construct the infrastructure required to support their endeavors, the absence of legal clarity will negatively affect the business environment and result in significant losses.

People require different things in their lives. It is this need that keeps him alive. Therefore, in order for man to survive in this planet, these demands must be met. Their lives will be happier the better they can be pleased, and vice versa. Not every one of those needs is at the same place. Some of these needs are referred to be fundamental or basic wants since they can only be satisfied by the provision of necessities like food, water, oxygen, sleep, and so forth. According to the 1945 UUD's article 33, paragraph 3, the state is in charge of the land, water, and natural resources found therein and uses them for the maximum benefit of the populace. When investors are intending to make investments in Indonesia (Arief, 2023), the problem of transferring land rights to one of the five investment obstacles related barriers to land certification, building licenses, and land zoning became a significant concern (Lawry et al., 2017). A nation's income can rise as a result of investment. Additionally, investors perceive a market for its modality but require assurances in it: 1. Clearly defined legal regulations. 2. safety in the nation's political stability. 3. the accessibility of means and resources for support. 4. A substantial ability to buy a goods.

Among the stated requirements or assurances, the most crucial one is the presence of resources and infrastructure (Yusta et al., 2011) that bolster the presumption that the existence of strategic land is subsequently bolstered by regulations pertaining to the terms of land ownership by investors for the intent of the enterprise (McLaughlin, 2019). The UUPA No. 5 of 1960 pertaining to the rights to land regulates the ownership of land. It is possible to possess land rights (Suartining & Djaja, 2023). One of the goals for investors is the ability to operate businesses and use structures, provided that these rights are granted subject to conditions (Santos et al., 2019), including a time restriction that must be met by requesting for an extension of authorization before the limit expires. One of the elements that gives investors more confidence to invest their shares is the assurance of legal certainty about land ownership. There are three reasons why investors make investments in a nation: 1) Limit or regulate such that the interests of other States or their citizens are not harmed by the activities of individual States. 2) Enhance emerging nations' economic standing. 3) Accelerate the expansion of the economy. For instance, raising income growth, generating jobs, and raising people's standards of living.

The three goals of the investment are that a nation's legal sovereignty should be able to balance out foreign laws that are relevant, especially those that protect landowners' rights from investors who own land rights. Given that context, the present study aims to address the following issue: 1) How does Indonesian criminal law address situations in which foreign nationals have conflicting land ownership rights? 2) What impact does international economic law have on the efficacy of criminal law in transferring land rights?

## 2. Method

This research uses normative legal research methods, using library material or secondary data. According to Soetandyo Wignjosoebroto, normative law research is specific to the study of law as a positive norm, as written in books or more accurately called doctrinal research. This research will provide qualitative results in its prescriptive nature (Listiyani & Said, 2018). The primary legal material in this study are Laws, Court Decisions, and books related to land transfer rights conflicts and secondary legal materials in this research are interviews with police related parties (Diskrimum Polda Sumatera Utara) as well as law practitioners, lawyers and tertiary law materials in the study are journals, legal dictionaries, and electronic media (Agegnehu et al.,

2021). Techniques in the collection of data and legal materials using field research and library studies (library research). The theory used in the analysis of the problem in this research uses the theory of the legal purpose. In the realization of the legal objectives Gustav Radbruch stated the need to use the priority basis of the three basic values that are the objectives of the law. This is because in reality, legal justice is often in conflict with the utility of law and legal certainty and so on.

### 3. Discussion

#### 3.1. Land ownership disputes are covered by agriculture-related criminal law

Land-related disputes can erode investor confidence and damage a nation's investment environment. Because Indonesia's current criminal laws pertaining to land are unable to give legal certainty (Gellert & Andiko, 2015), data on land conflicts against investors suggests that the country's investment climate is unfavorable because of the problem of legal uncertainty surrounding land ownership. Indonesia is placed 73rd out of 1909 nations in the World Bank Group's Easy of Doing Business (EoDB) or Easy of Doing 2020 rankings.

Tabel 1. International Dispute in Indonesia with Foreign Investors

Case	Factors and Restrictions	Legal Guidelines
Granting of concessions by the government to investors HGU PTPN II Status on Public Land	<p><b>FACTORS</b></p> <p>1) inadequate regulation 2) overlapping of the judiciary 3) overwhelming settlements and bureaucracy 4) high economic expectations 5) high public awareness 6) land stable while population increases 7) procedural deviations 8) wild claims.</p> <p><b>RESTRICTIONS</b></p> <p>1) Land certification 2) Building permits 3) Land zoning.</p>	<p>1) Decision of the Constitutional Court No. 35/Law-X/2012 concerning indigenous forests that are not part of the State forest. 2) Law No. 3/2020 concerning amendments to Act No. 4/2009 concerning mining of minerals and coal. 3) Law no. 41/1999 concerning forestry. 4) Law No. 18/2013 concerning the prevention and suppression of forest destruction. 5) Law n. 22/2019 concerning a sustainable agricultural welfare system. 6) Law Prp No. 51/1960 concerning prohibition of land use without a rightful license.</p>

Based on information table 1 this explains why there are barriers to investing in the agricultural sector or land use as a business, as well as the numerous regulations that govern the criminal penalties for offenses or crimes against land objects (Deininger, 2011). Then there is the annual height of the land struggle that occurs between the people and the government (Moore, 2017). One of the ramifications of signing an agreement on the World Trade Organization (WTO) is the demand made by foreign investors to the Indonesian government to accommodate land needs for factory development (Baldwin, 2016). One of the WTO's Trade Related Investment Measures (TRIMs) requires the government to remove any barriers that impede foreign investment operations. The fact that they are not allowed to buy or hold land in Indonesia is one of their problems. For investors who beyond the 30-year deadline, they seek an extension. Investors won't come as often as they would like without such accommodations.

As land use changes, new legal issues arise that must be resolved in order for the state to fully ensure the preservation of peoples' property. One of the things keeping investment or industrial relocation from China to Indonesia is the land issue. It is common knowledge that 33 international corporations have moved their factories out of China since trade relations between the United States and China improved a few years ago. An attempt was made to get around the US government's product protection laws. The land transfer mechanism in Vietnam offers assurances to foreign investors regarding the investment of their shares in 33 enterprises. Vietnam is the destination of choice for 23 enterprises, with the remaining Thailand and Malaysia being selected by foreign investors. There is a reason why foreign investment is not allowed in the nation (Marlina,

2019) : 1. The land permit process is incredibly bureaucratic. 2. The land mafia-caused battle over land. 3. The land use situation is transient.

One such location is in Banten, where PT Lotte Chemical Indonesia is now developing. Other parties are claiming ownership of the land on the Right to Land Management (HPL), which PT Krakatau Steel has had since the 1960s, 50 trillion was lost by the corporation in the fight (Maharani & Matthews, 2023). The Lubuk Pakam State Court then declared in its decision No. 3210/Pid.B/2020/PN.Lbp that the basis of the community's right to the land is SKTG (Surat Keterangan Tanah Garapan), which is false, in the land conflict between the PTPN II and the community of the bottom of the palm. This became a measure in the handling of the conflict related to the transfer of land rights. According to the Lubuk Pakam State Court's legal considerations in civil issues, as indicated in Decision No. 11/Pdt.G/2016/PN/Lbp and the Casation Decision No. 2435 K / Pdt/2019: (a) that the Chief BPN's Decision No. 10/HGU/BPN/2004, which grants the right to use the enterprise on the land, does not apply to PTPN II. (b) that the HGU certificate on the relevant ground cannot be viewed by the PIPN II. (c) that, regarding the land that HGU provided, there has been no definitive status for the past 12 years. (d) That the Claimant has been able to possess and use the disputed land since 2005 thanks to the Garapan Land Registration Charter. (e) that the BPN issued the Head of the BPN Decree Number 10 /HGU / BPN/2004, which serves as the legal foundation for a letter of such nature that isn't registered with the PAPN II. (f) declaring that an illegal act has been done by the PPSN II and the BPN Acts.

In the use of land illegally divided into a number of rules governing it, including: a) the illegal use of the land regulated in the Law No. 1 of 2023 on the Book of the National Criminal Law and the related Administrative Law on the Use of Agrarian Resources such as, the Environmental Act and the Agriculture Act. Some of these rules are very closely linked to increased investment in Indonesia. Some unlawful land use practices cannot be punished by criminal law because of inconsistency with the sanctions imposed on the perpetrators of farming enterprises such as companies based on HGU can not be given criminal sanctions only punishable by administrative sanctions as regulated in the Law No. 6 Year 2023 on Creation of Work (Pelawi et al., 2024).

Based on the decisions made by the criminal court and the civil court, there is some legal certainty in the land rights transfer process (Mashdurohatun et al., 2023), which encourages foreign investors to make investments that strengthen the national economy. The parties that violate the transfer of land rights are concerned about the application of criminal law to those who occupy the land over the object of the problem. Criminal law establishes legal certainty by evaluating the land ownership certificate's validity in light of the state court's ruling, which has been upheld as the rightful foundation for the possession and use of the land in question. According to the theory of financing purposes, the KUHP bill's explanation of the money's goal is: 1) Preventing illegal activity by upholding legal standards in order to preserve civilization. 2) Organizing the construction to socialize the populace and help them develop into decent and helpful individuals. 3) Finding a solution to the crime's dispute, reestablishing equilibrium, and fostering social harmony. 4) Releasing individuals from their guilt.

### 3.2. Impacts on foreign investors of the criminal law's effectiveness against land transfers

In order to stimulate the global or international economy, legal certainty has become an important consideration (Andersen, 2022) there are two types of law cultures that we may identify: internal and external. The table will be based on a comparative analysis of investment law and the resolution of land ownership disputes between the Indonesian government and Singapore (Pelc, 2017) based on data on investment level from 2018 to 2021.

Table 2. Actualization of investments in the nation's external financial reserve (JUTA US)

Negara Inveatasi	Proyek			Investasi		
	2019	2020	2021	2019	2020	2021
Amerika	2556,00	3590,00	1591,00	2139,14	1566,10	3880,10
Europa	5286,00	9275,00	5096,00	3655,49	2232,50	3453,00
Asia	2 0896,00	4 1310,00	1 9295,00	21567,35	24297,40	2 3358,70

According to the investment data table 2 above, one of the reasons for the decline in investment in the suggested project is the enterprise's land ownership and exploitation license. The fall in investment value can be attributed to ineffective exploitation rules and ownership licences, since their non-enforcement implies a lack of seriousness on the part of those in positions of authority. A regulation's threat and legitimacy will be diminished if it is not enforced, and there will be a legal void in the resolution of disputes involving the transfer of land rights. As a result, based on data from the nation with a favorable investment climate Singapore the investing nation has acquired a high degree of knowledge since the nation applies the idea of an integrated system to both land use and the registration of property rights. Based on the examination of State Court Decision No. 3210/Pid.B/2020/PN.Lbp, State Court Decision No. 11/Pdt.G/2016/PN/Lbps, and Cassation Decision No. 2435 K/Pdd/2019, Indonesia's criminal code can improve economic ties with foreign investors and give legal certainty to the investment community : 1. Complete the legal gaps in the criminal land conflict settlement. 2. Establishing a body for land transfers. 3. To avoid misuse of power, refine the idea of a digitization system incorporated into the land transfer procedure.

(a) the perpetrators of the illegal use of land are at risk of cessation of production for their enterprise; (b) the planned and equitable use of the land for the indigenous people; (c) the results of the management of the enterprise on the land can be maximized so as to create a growing and prosperous economy that has an impact on the local community (Roseland, 2000).

### **3.3. Land ownership provisions for investors' efforts to increase investment**

Foreign direct investment, sometimes referred to as "land seizers," has sharply expanded in emerging nations recently. The Food and Agriculture Organization of the United Nations (FAO), the World Bank, and other multilateral organizations have submitted two proposals in response to growing concerns about its detrimental effects. These are the Principles of Responsible Agricultural Investment Respecting Rights, Survival, and Resources, which aims to make such investments more responsible, and the Voluntary Guidelines on Responsible Governance of Land, Fisheries, and Forests in the context of National Food Security, which protects people's rights. One of its key tenets is that land rights belong to local people and that investors and host governments should uphold these rights by formalizing them in an open and inclusive way.

With reference to empirical data from Nepal, Tanzania, and Kyrgyzstan, we bring up three main issues with the formalization of asset rights. Firstly, we draw attention to the fact that acknowledging customary rights is a delicate and intricate process that runs the risk of disregarding legitimate claims and property rights. These suggestions don't address this in a way that is satisfactory. Second, we acknowledge that formalization including government intervention may occasionally be required; yet, in these situations, we are unable to advocate for a centralized method of formalizing property rights. Rather than advancing the rights of local communities, this strategy has frequently had the opposite effect. Thirdly, adopting the FAO standards' more rights-based perspective still runs the risk of bolstering the unbalanced local power structures.

The local community will have to decide whether or not their land can be traded for strangers, according to this concept. But enacting such a property regime necessitates a significant overhaul of the political system. The guidelines' framework alone is insufficient to address this. Conversely, long-term plans are required to safeguard customary rights. Therefore, a moratorium on land purchase would be the most appropriate from an analytical standpoint. These recommendations should not, however, be interpreted by investors or host governments as assurances of a seemingly risk-free land purchase. The paper ends by noting that a more comprehensive understanding of the possible outcomes and actions suggested in the context of "land acquisition" can be achieved by applying the perspective of legal pluralism (Locher et al., 2012).

## **4. Conclusion**

Criminal law enforcement must be prosecuted for their transgressions in order to give investors legal assurance. Article 52 paragraphs (1) and (2) of the Agrarian Tree Act No. 5 of 1960 (UUPA) on criminal provisions in the transfer of property rights govern the criminal law of the land area against its breach. When the legal system, legal culture, and legal institutions can be consistent in resolving land transfer issues as the goals of criminal law are enforced in administrative law, then criminal law enforcement based on provisions established against violations of land transfer rights can be effective. The type of legal certainty attained in the transfer of

land rights for foreign investors is attributed to the effectiveness of criminal law in enforcing the law against the people occupying the land in question.

The consequence of imposing sanctions on perpetrators of illegal land use is an indicator of the success of law enforcement against land use for investment. The balance of sanctions between farmers, both companies and individuals, provides a sense of justice and legal certainty for local communities and investors, such as the enforcement of the Law No. 39 of 2014 on Farming, which provides criminal sanctions for individual farmers but on the other hand, corporate entrepreneurs are at risk of administrative sanctions through the Act No. 6 of 2023 on the creation of jobs.

The management and use of land for investment must advance the rights of the local people and have an impact on the economy of local people. the provisions of setting the right to land for investors must be transparent and accountable in order to avoid the occurrence of crimes that can be committed by the government as an authority entitled to give permission to investors to conduct their business.

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## 6. Conflict of Interest

According to the author, the research was finished using data that was already available. The author declares that he has no conflicts of interest in doing this research.

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