



## Reconstruction of Land Exertion for Investment

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### ABSTRACT

*This study aims to determine the basis of welfare, so the nature of investment in land is placed in the basic values of Pancasila and the 1945 Constitution. The type of research used is normative legal research using a statutory approach. The results show that the concept of diversion through the principle of restorative justice for criminal acts against property has actually been practiced by indigenous peoples in Indonesia since ancient times and is still practiced today, but in the Indonesian legal system or the criminal justice system has not been explicitly regulated in statute form. The use, application and regulation are still at the level of discretion in each law enforcement agency in accordance with the internal rules that bind the respective law enforcement agencies. For this reason, to implement the values contained in Pancasila and the mandate of the state constitution, economic law in the investment sector must be directed at encouraging balanced economic growth, prosperity, and equal distribution of opportunities. In this regard, the obligation to have social and environmental responsibility must be implemented in any investment activity that uses the land as a production factor by giving local governments the role of supervising the implementation level.*

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### 1. Introduction

Investment is the keyword for economic growth because the investment can encourage an increase in output significantly besides that, it will also automatically increase the demand for input, thus increasing employment opportunities and community welfare as from the income received by the community. Today many countries issued policies to increase investment in both domestic and foreign capital. This has been done by the government with the consideration that, investment activities will be able to encourage a country's economic activities, absorption of labor, increase in output produced, save foreign exchange, or even increase foreign exchange. Looking at the existing reality, investment is a dominant factor in the economic development of a country. This can be seen from the statistics which show that the higher the investment values of a country the higher the country's economic growth.

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Based on the agrarian aspect, government policies in the land sector are strongly influenced and intervened by multinational companies. The perspective of the capitalist regime sees land as a commodity, so that land is released from inherent social ties that can damage the joints of community life, either sooner or later and in turn will cause turmoil of resistance.<sup>2</sup> This condition results in not achieving the purpose of the agrarian designation for the welfare of the farming community. because it has implications for degradation of agricultural soil quality even land conflicts are horizontal either.<sup>3</sup>

The need to increase the value of an investment for each country, especially developing countries like Indonesia, in increasing economic growth will make the governments of each country compete to create a conducive investment climate in their country. This is done through various efforts, including restoring the political situation, security, and order, providing incentives to investors, providing convenience in the bureaucracy, ensuring legal certainty, and establishing diplomatic relations both bilaterally and multilaterally with other countries. All of these efforts are oriented towards increasing the value of an investment which in the end is expected to increase economic growth so that the country's aspiration to create welfare for its people can be achieved.

The importance of investment for the nation-state has resulted in investment flows moving across the boundaries of state sovereignty and has positioned transnational corporations as the main non-state actors in investment activities.<sup>4</sup> Government policies that are oriented towards the side of investment actors, particularly in investment activities, have positioned land as a production variable, which in the final analysis has resulted in degradation of the carrying capacity of the land for the welfare of the community. The practice of land exertion as a production factor that prioritizes pure economic aspects has created social sustainability problems for the surrounding community.

The phenomenon of the “*anak dalam* tribe” in Jambi has lost its sustainability potential because the land which is their source of life has been converted into oil palm plantations, and with limited knowledge, they are forced to consume oil palm fruit in sequence. maintain their survival without knowing the fatal consequences for their health, even more tragic: *anak dalam* tribe is considered a pest that must be eradicated by investors.

The isolation of the community from their source of life after the land which is their source of livelihood is converted to investment activities raises the problem that investment activities on land supported by government policies have not been implemented by mandate contained in Pancasila and the 1945 Constitution. From this paper, it is hoped that the extent to which land exploitation practices for investment are based on welfare values as mandated by Article 33 Paragraph (3) of the 1945 Constitution.

## **2. Method**

The type of research used is normative legal research by using a statute approach, conceptual approach, historical approach, and philosophical approach. The research was conducted by using literature/documentation studies and then analyzed qualitatively based on primary legal materials (statutory regulations), secondary legal materials (library materials and scientific journals), and tertiary law materials (law dictionaries).

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<sup>2</sup> Noer Fauzy Rachman and Laksmi Savitri. (2011). Kapitalisme dan Pengembangan, Perampasan Tanah Global, dan Agenda Studi Gerakan Agraria, dalam Hak Asasi Manusia dan Fundamentalisme. *Jurnal Dignitas*, 7(2): 14.

<sup>3</sup> Dianto Bachriadi. (2004). Tendensi Dalam penyelesaian Konflik Agraria di Indonesia: Menunggu Lahirnya Komisi Nasional untuk Penyelesaian Konflik Agraria (KNUPKA). *Jurnal Dinamika Masyarakat*, 3(3): 141.

<sup>4</sup> Juajir Sumardi. (2012). *Hukum Perusahaan Transnasional dan Franchise*. Makassar: Arus Timur, p. 4.

### **3. Land Exertion for Investment in Maluku Based on Welfare Values**

#### **3.1. The Essence of Investing in Land-based on Pancasila and the 1945 Constitution**

Investment activity is an activity to produce a certain production value. Therefore, according to the author, the investment must always be linked to production. The word production comes from the English word to produce, which means to produce. Thus an investment activity is an activity that aims to produce goods and/or services.<sup>5</sup>

Production activities can take place if production factors are available. Production factors are everything that is needed to produce goods and services. Production factors consist of natural resources, labor, capital, and skills or entrepreneurial resources, including technology. Therefore, investment activities require inputs known as factors of production. Although there is no standard agreement, according to the author's opinion, the production factor in the form of land is the main production factor in ongoing investment activities, especially investments that produce output in the form of goods.

The fundamental principle that must always be considered in the production process is the principle of economic welfare. In the capitalist system, there is an appeal to produce goods and services based on the principles of economic welfare. For this reason, investment activities that make the land a factor of production must always be directed to contribute to the economic welfare of the community, especially the communities around the ongoing investment activities.

In connection with the position of land as a factor of production, investment in land requires legal certainty, because legal conflicts over land ownership are counter-productive in the ongoing production process. Legal conflicts over land in various ongoing investment activities have reduced the country's risk of a country which has an impact on reducing the investment climate.

In essence, the discovery of Pancasila cannot be separated from the divine space. Based on spiritual values, the existence of Pancasila in the archipelago is evidence of God's response. Therefore, to see the noble values of Pancasila in state administration practices, especially the role of the state in investment activities that make the land a production factor, cannot avoid the spiritual dimension. From a normative perspective, Pancasila is agreed as a philosophical foundation with ground norm quality so that it is positioned as the source of all sources of law. For that, all laws and regulations must come from the values of Pancasila. But unfortunately, the phenomenon shows that this nation is trapped in an existing state of astray. The neglect of the sacred values of Pancasila in ongoing legal practice has an impact on the inability to achieve the aspired state goals, namely a just and prosperous society.

Pancasila in the constitutional dimension has been agreed as the ground norm. The logical consequence is that every constitutional life that takes place must describe and realize the values contained in each of the precepts of Pancasila. The existence of Pancasila is at the top of the constitutional system pyramid, which will guide the government system in achieving the noble goals that we aspire to together. Therefore, Pancasila is a source of the basic law for the State, whether written, namely the 1945 Constitution or unwritten basic law or convention, as well as a source of law for the formation of legislation (including regulations governing investment activities).

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<sup>5</sup> Uncategorized. (n.y). *Pengertian Produksi dan Faktor Produksi*. Available online from: <http://pengertianahli.id/2013/12/pengertian-produksi-dan-faktor-produksi.html> . [Accessed November 12, 2018].

The value description of social justice for all Indonesian people in the space of the constitution is reflected in Article 33 Paragraph (3) of the 1945 Constitution which emphasizes “The earth, water and natural resources contained therein shall be controlled by the State and used as much as possible for the prosperity of the people”. Such formulation indicates the existence of a provision on how the State does or acts (*handelen*), think (*denken*), and will (*willen*) on the earth, water, and the natural resources contained therein. This shows that the State has the authority to regulate the use of natural resources (including exertion of land).

The authority granted by the 1945 Constitution to the State, which at the level of implementation is carried out by the government, must be in line with and in line with the philosophical values of Pancasila and the constitutional mandate of the 1945 Constitution. The logical consequence is that any legal policy that is developed to regulate investment activities that make the land a production factor must contain the value of social justice and welfare for the people. This philosophical value should absorb every move and policy step taken by the government.

### **3.2. Land Exertion for Investment Based on Welfare in Maluku**

According to Maria S. W. Soemardjono said that the concept of the right to control the State and the greatest possible prosperity of the people, which in its operation is manifested in various organic laws (Agrarian Law, Forestry Law, Mining Law, etc.) The names of state land, state forest, and so on, directly or indirectly reduce the right of the community to take advantage of the agrarian/natural resources concerned.<sup>6</sup>

Legislation that has been formed has not placed the dimensions of humanity, justice, and welfare for the community. Whereas the government as the state’s representative is given the authority to take care of the earth, water, and natural resources contained therein. There is management authority against the earth. Water and the natural resources contained therein provided to the state, then the regulation and management of the earth, water, and natural resources must get great attention from the state because the main element is to regulate and manage (*regelen en besturen*) within the framework of this understanding it can be said that in the control, the state only performs *bestuursdaad* and does not do *eigensdaad*.<sup>7</sup>

In its implementation, the right of state control over land must be based on the principles of the national economy as mandated in Article 33 Paragraph (4) of the 1945 Constitution which confirms that the national economy is carried out based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, insight environment, independence, and by maintaining a balance between progress and national economic unity.

Based on the principles of the national economy as mandated in the 1945 Constitution, then it is imperative that any investment activity that takes place, especially investments that make the land the main production factor, must not neglect the objectives of the welfare of the community around the ongoing investment activities. The principle of welfare built into a constitutional basic framework shows that in investment activities, the orientation is placed on the side of the community (community-based investment management), not on the side of the state or investment actors (state and investor based investment management).

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<sup>6</sup> Maria S. W. Soemardjono. (2008). *Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya*. Jakarta: Kompas, p. 90.

<sup>7</sup> Bagir Manan. (1995). *Aspek Hukum Daerah atas Bahan Galian*. Bandung: Unpad, p. 4.

Thus, it must be understood that investment activities that make the land a factor of production will also include social, cultural, political, legal, and religious/spiritual aspects. Therefore, the issue of investing in land is not only seen from the legal aspect alone, but also must pay attention to other broader aspects so that the principles of welfare, security, and humanity become the main considerations in determining policies in the field of licensing. For example, on the one hand, there are indigenous peoples with their customary rights, and on the other hand, there is the use of lands for investment and development purposes by the government. The clash of powers between customary law communities and the government is often seen as hindering development in Indonesia.

In Maluku Province, land dispute issues occur mainly related to territorial boundaries between villages/countries, customary ownership claims by different groups of citizens, conflict due to overlapping customary territories with administrative areas. The conflict in the land sector is further complicated by the presence of the government and investors especially investments related to significant land use (area) such as plantations, mining, manufacturing industries, including forestry. Investments in this sector will put pressure on land use, namely land.<sup>8</sup>

The Provincial Government of Maluku continues to strive to improve the investment climate, which aims to accelerate the rate of economic growth, expand employment opportunities, increase community income, and reduce poverty levels. Various steps, in the form of developing an investment information system, simplifying licensing procedures and investment services, are expected to increase the level of investment in Maluku.

Concerning the cultivating right, based on Article 28 of the 1960 Basic Agrarian Law, which is meant by the cultivating right is "The right to land exertion which is directly controlled by the State". In reality, in Maluku, there are not only lands that are directly controlled by the State, but there are also stretches of customary lands. These customary lands can be classified into three groups of customary lands, namely "Land or Land of *Petuanan* Rights", *Dati* land which is owned by relatives or partnerships, and Inheritance land which is owned by individuals. The three groups of land are still regulated according to the provisions of customary law.

The position of customary lands in Maluku is strengthened by the Regional Regulation of Maluku Province Number 14 of 2005 concerning Reestablishment of the Country as a Customary Law Community Unit in the Maluku Provincial Government Territory state that, one of the conditions for a person to claim customary rights is to have a historical relationship with the territory. People who do not meet these requirements enter administrative villages. Recognition of the rights of customary law communities has been constitutionally recognized by the 1945 Constitution (after amendments), which are regulated in Article 18B Paragraph (2) and Article 28I Paragraph (3).

In the context of conflict management, for example, the settlement pattern adopted for rooted land conflicts and low escalation resolved with conflict resolution by way of build communication, and provide access to information as widely as possible. In conflicts that are only related to the compensation price, it is not only related to the physical sale value of the land but more to the economic, socio-cultural, and political aspects which also affect the livelihood sustainability of the right holder. Thus, even though mass mobilization occurs in every conflict on the surface, access to the implementation of the negotiations

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<sup>8</sup> Mahrita. A. Lakburlawal. (n.y). *Tanah Adat dan Pemanfaatannya bagi Pengembangan Investasi Masyarakat Hukum Adat*, Available online from: <https://fhukum.unpatti.ac.id/lingkungan-hidup-pengelolaan-sda-danperlindungan-hak-hak-adat/267-tanah-adat-dan-pemanfaatannya-bagi-pengembangan-investasimasyarakat-hukum-adat-di-maluku> . [Accessed November 14, 2018].

that have been carried out, namely negotiation and mediation, will be quite an effective way.

As in land conflicts which are rooted in the disrespect for the customary rights of customary communities, handling must be carried out more freely, not only conflict resolution but also conflict resolution by formulating strategies for the causes of conflict through reconceptualizing the relationship between the state, the private sector/companies and, customary law communities. Agung Basuki Prasetyo explained that it is not accommodated criteria for the existence of customary rights in the Basic Agrarian Law (not explicitly regulated) may result in open conflict between the customary law community and the owner of the capital, both private and public legal entities, as well as between one customary law community and another customary law community.<sup>9</sup> But, in its implementation, according to Rosmidah<sup>10</sup>, in the basic agrarian law, there are still limitations on legal recognition in the form of requirements, policies in each regional government agency are not yet synergistic, thus creating sectionalization and there is no clarity about which institution is most competent in managing existence and rights. The rights of the customary law community, and not yet created a comprehensive regulatory model in the legal recognition of the existence of customary law communities, both the substance, and the implementation framework.

Reconceptualization of land Tenure relations for investment, the state is given the authority to determine and regulate legal relations between people and agrarian resources through the right to control. The state as the supreme power organization of all the people plays a role in regulating the allocation of agrarian resources so that they can be optimally utilized for the great welfare of the people. According to Darwin Ginting, the principle of controlling the state is the norm, then prosperity is the goal to make the people happy so that the government must make statutory instruments that give people access to land ownership and bring legal certainty to the people and investors in investing.<sup>11</sup>

In line with this, one of the efforts to improve the welfare of the community is through the implementation of development that utilizes land parcels directly controlled by the state and land rights based on the principle of respecting land rights. Development of land parcels rights is exercised based on the consent of the rights holder through voluntary submission, waiver of rights, and revocation of rights. Release of land rights is a termination of legal relations between the holder of land rights and the land they control by providing compensation based on deliberation. Release this land can only be done based on approval and agreement from the right holder regarding the implementation technique as well as the size, as well as the form of compensation to be given. The activity of relinquishing this right is not only carried out for the public interest only but also can be done for private interests. Regarding lands that are being relinquished and receive compensation is land that already has a right based on the Basic Agrarian Law and customary community lands.<sup>12</sup>

Concerning substance Article 18B Paragraph (2) above means that in investment activities that make the land the main production factor, they must pay attention to the

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<sup>9</sup> Agung Basuki Prasetya. (2007). Pengakuan Hak Ulayat Masyarakat Hukum Adat (antara Regulasi dan Implementasi). *Jurnal Masalah-Masalah Hukum*, 36(2), 153.

<sup>10</sup> Rosmidah. (2010). Pengakuan Hukum Terhadap Hak Ulayat Masyarakat Hukum Adat dan Hambatan Implementasinya. *Inovatif: Jurnal Ilmu Hukum*, 2(4), 97.

<sup>11</sup> Darwin Ginting. (2011). Reformasi Hukum Tanah dalam Rangka Perlindungan Hak atas Tanah Perorangan dan Penanam Modal. *Jurnal Hukum*, 18(1), 77.

<sup>12</sup> Husen Alting. (2013). Konflik Penguasaan Tanah di Maluku Utara: Rakyat Versus Penguasa dan Pengusaha, *Jurnal Dinamika Hukum*, 13(2), 278.

rights of the customary law community as long as they still exist its existence is recognized and does not conflict with national interests. Furthermore, article Article 28I Paragraph (3) of the 1945 Constitution confirms the following: “Cultural identities and rights of traditional communities are respected following the times and civilizations”. Furthermore, in the MPR Decree XVII/MPR/1998 it states in Article 41 as follows: “The cultural identity of traditional communities, including rights over customary land is protected, in line with the times”.

By reviewing the essence of Article 33 Paragraph (3) of the 1945 Constitution, Article 18B Paragraph (2) of the 1945 Constitution, Article 28I Paragraph (3) of the 1945 Constitution, as well as Article 41 of the MPR Decree XVII/ MPR/1998, then juridically, the existence of indigenous people’s lands in the national land system is still recognized. This should be a major consideration when investment activities will be carried out on customary law community land. The logical consequence is that state land and customary land have different legal statuses so that they must be treated differently when the land is to be used for investment activities. If not, then land conflicts will still be high.

From the findings disclosed by the agrarian development consortium, it was stated that in 2015 the total area of agrarian conflict was 400,430.00 Ha. The most agrarian conflicts occurred in the plantation sector, namely 127 conflicts (50%), then 70 conflicts in the infrastructure development sector (28%), then in the forestry sector 24 conflicts (9.60%), 14 conflicts in the mining sector (5, 2%), and others as much as 9 conflicts (4%). Based on the findings of the agrarian development consortium mentioned above, the agrarian conflicts that mostly occur are in the plantation sector. This of course can also happen in Maluku Province. However, for large plantation investments in Maluku, it seems that they are still unable to compete with smallholder plantations that have developed earlier in Maluku. The following can be seen in table 1 of the large plantation companies in Maluku from 2012 to 2017 as follows:

**Table 1.** Large Plantation Companies and The Total Area in Maluku Province

Large Plantation Companies	Large Plantation Companies					
	Number of Companies	11	8	13	67	12
Area (Ha)	50,809	62,798.2	81,568.72	481,403	293,665	178,256

Source: Statistics Maluku, 2017.

Besides the potential of a plantation that which developed in Maluku, also has potential in the mining sector. Maluku has various mining and mineral potentials that have not been optimally developed. Gold is abundant in Wetar and Lirang Islands, while kaolin, quartz sand, sulfur, lime, pumice, asbestos, manganese, copper, chrome, and other mineral materials are scattered in 40 mining areas in Maluku. Besides, oil and gas mining locations have been found around the islands of Seram, Buru, Aru Islands, and Tanimbar.

Mining and minerals in Maluku include nickel, oil, and gas, pumice, manganese, gold, silver, barite, and mercury. Geologically, Maluku Province is located between the meeting point of the 3 main plates forming the earth’s crust, namely the Eurasian (north) plate, the Indo Australia (south) plate, and the Pacific (west) plate, which are potential areas for the formation of various mineral, geothermal, and mineral deposits. Hydrocarbon basins allow it to be developed. Potential minerals (mining) and potential energy to be developed commercially include gold, copper, nickel, limestone, sulfur, petroleum, and geothermal energy, which are found in various areas in Maluku Province.

**Table 2.** Geothermal Potential in Maluku Province

Name of location	Potential	Note
Tulehe Village, Ambon Island, Maluku Tengah	100 MWe	
Oma Village, Haruku Island, Maluku Tengah	25 MWe	
Nalahia Village, Nusalaut Island, Maluku Tengah	25 MWe	
Tiouw Village, Saparua Island, Maluku Tengah	25 MWe	Eksplorasi
Elpaputih Village, Seram Island, Maluku Tengah	25 MWe	
Larike Village, Ambon Island, Maluku Tengah	25 MWe	
Waeyapo Village, Buru Island, Buru	25 MWe	
Batabual Village, Buru Island, Buru	25 MWe	
Kapala Madan Village, Buru Island, Buru Selatan	25 MWe	
Hative Besar Village, Ambon Island, Ambon	25 MWe	
Tawiri Village, Ambon Island, Ambon	25 MWe	

Source: Department of Energy and Mineral Resources of Maluku Province

Besides that, Maluku has potential industrial mineral resources that have the prospect of further development, including:

- 1) Limestone. Located on Buru Island, Leksula District, Buru Utara Regency (Waesuwa River, Nalbesi River, Mount Nalbesi, Mount Leksula, Tanjung Kobatha, and Tifu Village) has reserves estimated at 1,129,000,000 tons and a spread area of 312.5 Ha., and Tifu Village, with reserves of 200,000 tons; Namrole Subdistrict, Buru Selatan District (Fatmite Village and Lektamal Village) has a reserve of 9,880,000 tonnes.
- 2) Sulfur. Located on Damar Island, MBD Regency (Mount Wurlali and Kehli Village) has a reserve of 1,920 tons and a spreading area of 65.24 Ha.; Serua Island (Teon Island, Nila Island, and Manuk Island) with a spread area of 8.01 ha.
- 3) Marble. Located on Seram Island, West Seram Regency (Mount Nakele and Mount Kasieh, Kec. Taniwel; Mount Anuena and Mount Keki, Buano Island) each has reserves of 3,733,000,000 tons, 1,047,600,000 tons, 412,799,999 tons, respectively, and 11.2 million tonnes.
- 4) Peldspar. Located on Lempung, Kwarsa Sand, Iron Sand, and Garnet, which are scattered in several areas in Maluku Province.

In Maluku customary land is still under the control of the local customary law community. For that, we need a grand design of land entrepreneurs that fulfills the principles of sustainable welfare based on the environment. On the one hand, companies need sustainable production activities so that the company not only has an economic responsibility to the company's stakeholders (shareholders and consumers), gets profit and raise share prices, and has the legal responsibility to the government (paying taxes, fulfilling the requirements of an Environmental Impact Analysis and other provisions), but companies in the production process that are carried out must also carry out social responsibilities as referred to in Article 1 Number 3 of Law Number 40 of 2007 concerning Limited Liability Companies, that the social and environmental responsibility of the company is: committed to and participate in sustainable economic development to increase the quality of life and environment that is beneficial for both individuals, local communities and society in general.

At an ideal with more and more business activities being carried out in Indonesia should further improve the welfare of the Indonesian people in general and the community around business activities in particular. However, the current reality is just the opposite. With the increasing number of business/business activities carried out by investors in Indonesia, there are many new, more complex problems. Currently, entrepreneurs who

carry out business activities are solely profit-oriented, seeking profit solely for shareholders, directors, commissioners, and company employees. While people who are in direct contact with business activities, get negative impacts from the environment arising from business activities.

Whereas, in Law Number 40 of 2007 concerning Limited Liability Companies, there is a provision on Corporate Social Responsibility in article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, in which the corporate law discourse on the epistemology of corporate social responsibility is constructed from the idea of corporate responsibility aimed at other constituencies. As *a quasi* public entity, the company, as emphasized by E. Merrick Dodd Jr., companies have a responsibility not only to their owners (shareholders) but also to multi-constituents or more popularly known as stakeholders, with these social and environmental responsibilities, the company does not only have a mission to be profit-oriented but also has a mission to advance and prosper the surrounding community (communities around investment activities).

Indonesia as state law with the birth of social responsibility and the environment as an obligation we can describe as follows:

- 1) Article 33 paragraph 3 of the 1945 Constitution confirms that earth, water, and natural resources contained therein controlled by the State and used for the greatest prosperity of the people.
- 2) Article 28 H paragraph (1) of the 1945 Constitution affirms that everyone has the right to live in physical and spiritual prosperity, live and get a good and healthy living environment, and be entitled to health services.
- 3) In Article 74 Paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, it is stated that companies that carry out their business activities in the field of or related to natural resources are obliged to carry out social and environmental responsibilities.
- 4) In Article 15 of Law Number 25 of 2007 concerning Investment, the mandate is emphasized that every investment is obliged to apply the principles of good corporate governance and carry out corporate social responsibility to continue to create harmonious relationships, following the environment, values, norms, and local community culture. Article 16 of Law Number 25 of 2007 regulated that each investor responsible for preserving the environment. This case also is part of Social and environmental responsibilities.
- 5) In Law Number 32 of 2009 concerning Environmental Protection and Management. Based on Article 68 of the law, every person who carries out a business or activity is obliged to:
  - a. Provide information related to environmental protection and management correctly, accurately, openly, and timely;
  - b. Maintain the sustainability of environmental functions; and
  - c. Obey provisions on environmental quality standards or standard criteria for environmental damage.
- 6) In Law Number 22 of 2001 concerning Oil and Natural Gas. In this law it is stated that upstream business activities carried out by business entities or permanent establishment based on cooperation contract with the Implementing body is obliged to contain basic provisions, one of which is provisions concerning the development of surrounding communities and guarantees of the rights of indigenous peoples (Article 11 paragraph (3)). Apart from this clause, it is also regulated in Article 40 paragraph (5) it is also stated that business entities or permanent establishments that

carry out oil and gas business activities (upstream business activities and downstream business activities) are also responsible for developing the environment and local communities.

- 7) Article 88 of Law Number 19 of 2003 concerning State-Owned Enterprises States. (1) State-Owned Enterprises can set aside a portion of their net profits to foster small businesses/cooperatives as well as fostering communities around state-owned enterprises; (2) Further provisions regarding the allowance and use of profits as referred to in paragraph (1) regulated by a Ministerial Decree.
- 8) Article 2 of Government Regulation Number 47 of 2013 concerning Social and Environmental Responsibilities stated that every company as a legal subject has social and environmental responsibilities.
- 9) Apart from the aforementioned statutory regulations in the form of ministerial regulations, there is also the Regulation of the Minister for State-Owned Enterprises Number PER-08/MBU/2013 of 2013 concerning the Fourth Amendment to the Regulation of the State Minister for State-Owned Enterprises Number PER-05/MBU/2007 concerning the Partnership Program for State-Owned Enterprises with Small Businesses and Community Development Programs.

Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies is directed that a company is not individualistic as if it is in a vacuum, even though its existence is in a community environment consisting of various social stratifications in which social unrest may occur in its life. Companies as legal subjects, their existence should not interfere with the public interest in the form of activities that disturb the public. The government as part of a state institution, one of which has the authority to grant a license to the existence of a company, actually gives a mandate in its management to the company that it has permitted, of course, that will provide benefits to the community not only for personal gain.

The granting of this license has a philosophical meaning which can be described as a state-owned by the people who then hand over its management to the government to carry out its best management through granting permits for any legal subject who is interested in managing it so those good activities are carried out. and does not interfere with the existence of society. If there are parties who have been permitted and then commit irregularities that can interfere with the existence of the community and threaten the welfare of the community, then the government, as the party that represents the community in the management, has the right to revoke the permit that was previously granted.

Viewed from a philosophical point of view, social and environmental responsibilities have an important role as well as placing an important position that law is a tool of social engineering that is evident in the legal system in Indonesia. This is because the company's existence in the community is directed to be a company that understands the problems of the surrounding community through the form of meetings that can be held regularly to parse the problems experienced by the community and the limitations of the government with assisted by optimizing the company's role in solving problems experienced by the community.

Companies that do not carry out social and environmental responsibilities are starting to stop their activities themselves. The absence of community and government support will naturally experience problems in activities if there is pressure from the community to stop company activities. In this case, social and environmental responsibilities are the form of developing a legal system in Indonesia that helps the company to maintain its existence by

paying attention to the existence of society and paying attention to the problems faced by the government. So it is not appropriate if the social and environmental responsibility which is raised through the limited liability company law is an additional burden on the company.

Land exertion for investment activities can be seen in three forms, namely state property, or legal claims owned by the government, such as in-state forests or national parks, then private property, or legal claims owned by individuals or corporations, and common property or communal property, namely a group of individuals form a group and have a legitimate claim to a resource. Concerning *petuanan* land. In common property, all group members are guaranteed access to resources, based on rules that are jointly created and accepted, whereas in the other two forms this condition does not occur.

By paying attention to the concept of common property as has been stated, in providing equal distribution of opportunities for all people around investment activities in the context of sustainable justice, it is necessary to design the construction of land use for investment purposes directed at a balance between the interests of the state, the private sector, and the community. For that, local governments must encourage the development of a just investment climate and certainty so that investment activities that utilize the land as a production factor can provide benefits for the state, private sector, and communities around investment activities. Besides, the obligation for companies to carry out social and environmental responsibility programs at the implementation level must be supervised by the local government.

#### **4. Conclusion**

The concept of diversion through the principle of restorative justice is a criminal act, in essence, indigenous peoples in Indonesia have practiced their wealth against their assets from time immemorial until now, but in the criminal justice system it has not been explicitly regulated in law. The use, application and regulation are still within the level of discretion in each law enforcement agency following the internal rules that bind each law enforcement agency.

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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