

## PREFACE

### **The Existence of Indigenous Peoples in The Investment Regime**

Investment, agrarian reform, and indigenous peoples are keywords that are still hot discussion material in Indonesia. Since the enactment of the Copyright Work Law, the assumption of ease of licensing in investment has always been contradicted by the impact of natural conditions inherent in it there are customary lands provided by the state. It should be understood here about the basic concept of land rights as referred to in Article 33 of the 1945 Constitution is the earth's water and the wealth contained therein is controlled by the state. The concept of land tenure by the state is referred to as management rights. the right of control of the country can be enforced to autonomous regions and indigenous legal communities, only necessary and not contrary to the national interest. Land tenure by indigenous peoples is thus a management right granted by the state to indigenous peoples. The existence of indigenous peoples has been constitutionally recognized in Article 18 B paragraph 2 of the 1945 Constitution, that the State recognizes and respects the unity of indigenous peoples and their traditional rights if they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is stipulated in the law.

The recognition of the constitution to traditional indigenous peoples is faced with a modern administrative system that demands data collection as a form of legal certainty. The rolling agrarian reform demands data collection of customary land (ulayat rights) to each region (Regulation of the Minister of Agrarian and Spatial Affairs/Head of the National Land Agency No. 18 of 2019). Of course, it is highly dependent on the initiation of each local government to conduct data collection on customary land (ulayat).

Simplification of licensing in the Copyright Work Law is faced with customary land, considering before the existence of this law was signalled there had been some transition of customary land into plantations as an investment impact. Concerns have arisen since the enactment of the Copyright Work Law on the increasingly scattered indigenous lands because of ease of investment, especially related to licensing. This is of course a serious threat to the existence of indigenous peoples who are recognized for their constitutional rights.

Recognition of indigenous peoples is a state obligation and a right for indigenous peoples. This proposition must be understood by all parties, at a time when the government needs investment, this need should not violate the rights of indigenous peoples. To create legal certainty, the local government must immediately conduct data collection on the existence of indigenous peoples fairly. This needs to be done so that

the investment is not detrimental to indigenous peoples, because its existence is constitutionally recognized.

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