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## Intersection of International Civil Law and Customary Rights in Foreign Oil Palm Plantation Disputes in Indonesia

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### ABSTRACT

*In Indonesia, oil palm plantation firms and indigenous peoples have issues that illustrate the intricate interplay between customary law, national agrarian law, and international civil law. Due to foreign concession permissions and investment agreements, constitutionally recognized customary rights may not matter. This study analyzes international civil law elements of jurisdiction, choice of law, and recognition and enforcement of foreign judgments in land disputes involving foreign palm oil companies and evaluates customary rights. Agrarian laws and policies, jurisprudence, international legal documents like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and other pertinent legal instruments are studied utilizing normative legal research with a juridical-comprehensive approach. Foreign corporate investors utilize international arbitration and investment agreements to forum shop, denying indigenous peoples access to the host state, according to the report. Additionally, declarative recognition prevails owing to the absence of integration and the exclusion of customary rights in investment contracts and international dispute resolution. This research emphasizes the need to refine customary rights protection mechanisms, the application of Free, Prior, and Informed Consent (FPIC), and the intersection of domestic, customary, and international law on fairness in agrarian conflict resolution and indigenous peoples' legal protection*

**Keywords:** Agrarian Conflict; Customary Law; International Civil

### ABSTRAK

*Sengketa agraria yang melibatkan perusahaan perkebunan sawit asing dan masyarakat adat di Indonesia memperlihatkan pertautan yang rumit antara hukum adat, hukum agraria nasional, dan prinsip hukum perdata internasional. Meskipun hak ulayat diakui secara konstitusional, implementasinya sering kali melemah ketika berhadapan dengan izin konsesi dan perjanjian investasi yang mengandung unsur asing. Penelitian ini bertujuan menganalisis pengaruh prinsip hukum perdata internasional – khususnya yurisdiksi, pilihan hukum, serta pengakuan dan pelaksanaan putusan asing – dalam penyelesaian sengketa tanah dengan perusahaan sawit asing, serta mengevaluasi keberlakuan hak ulayat dalam konteks tersebut. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan yuridis-komprehensif melalui kajian terhadap peraturan agraria, putusan pengadilan, instrumen internasional seperti UNDRIP, serta studi kasus relevan. Hasil penelitian menunjukkan bahwa perusahaan asing kerap memanfaatkan klausul arbitrase internasional untuk mengalihkan forum sengketa, sehingga membatasi akses masyarakat adat terhadap peradilan nasional. Selain itu, hak ulayat belum sepenuhnya terintegrasi*

*dalam kontrak investasi maupun mekanisme penyelesaian sengketa lintas negara, sehingga pengakuannya sering bersifat deklaratif. Penelitian ini menekankan pentingnya penguatan mekanisme perlindungan hak ulayat, penerapan Free, Prior, and Informed Consent (FPIC), serta harmonisasi antara hukum nasional, hukum adat, dan norma internasional agar penyelesaian sengketa agraria lebih adil dan memberikan kepastian hukum bagi masyarakat adat.*

**Kata Kunci:** Konflik Agraria; Hukum Adat; Perdata Internasional

## INTRODUCTION

The research method describes the research design, population and sample (research targets), data collection techniques, and data analysis techniques. Qualitative research with case studies, phenomenology, and others, at least presents the research location, the presence of researchers, research subjects, informants, and research data collection techniques, as well as a description of research data analysis techniques (for literature research, mention the amount of literature and explain the standards for selecting literature as the object of study (accreditation/reputation of journals, year of publication, etc.). For quantitative research, population, sample, and data analysis techniques should be presented.

International civil law provides a framework for managing legal connections among entities from various countries, including instances with foreign components in cross-border commercial transactions or activities (Rahman et al., 2024). This branch of law consists of three elements: the first is jurisdiction, which establishes the competent forum for cases involving foreign elements; the second is the recognition and enforcement of foreign judgments, which governs the implementation of one country's judgment in another; and the third is legal pluralism, which determines the applicable law for resolving cross-border relationships (Wantu et al., 2023). These components are essential in disputes between foreign corporations and the local populace of a nation, especially concerning land issues.

The implementation of foreign civil laws in Indonesia's agricultural sector, particularly with oil palm plantations with foreign investments and government-sanctioned concessions, is gaining prominence (Arfiani et al., 2020) (Gobel et al., 2023). While the customary rights of Indigenous Peoples are recognized within the national legal framework, the reality is that the licensing agreements and investment policies are biased towards the economic interests of Indigenous Peoples. As a result, Indigenous Peoples have been deprived of their economically, environmentally, and spiritually vital lands that support their livelihoods

A primary issue is jurisdiction. Indigenous peoples in Indonesia are being litigated against by multinational plantation firms that use jurisdictional concerns based in international arbitration provisions, so transferring dispute resolution from Indonesian courts to foreign arbitration venues (Dungga & Muhtar, 2022). This leads to unequal access, since Indigenous peoples lack the financial resources and legal expertise to participate in international conflicts.

This issue pertains to the recognition of and adherence to the decision. Although the Indonesian court's ruling favors the indigenous people, its impact will be nullified if the Company fails to comply with the regulations of its home nation

(Yassine et al., 2024). This scenario illustrates that transnational agricultural conflicts are influenced by both national legislation and interjurisdictional dynamics.

Furthermore, the legal consideration of selecting the applicable jurisdiction's laws would be significant when a foreign entity enters into a contract with the Indonesian Government, whereby the contract specifies certain laws to control the parties' legal relationship. The issue's complexity escalates when the interests of the indigenous population are unrepresented in the contract, despite being the directly impacted party. In these disputes, a confrontation often arises between national laws that recognize United Customary Law and international laws, the principles of which are articulated in instruments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

An illustration of a complex issue encompassing international civil law, customary rights, and the expansion of foreign oil palm plantations involves the Ombudsman Commission of the Republic of Indonesia, the Yerisiam (Menya) Tribe in Nabire, Papua, and PT Nabire Baru, an oil palm plantation company acting as a proxy for Goodhope Asia Holdings Ltd. of Singapore and Malaysia (Colchester et al., 2013). The corporation has secured site licenses and plantation concessions from the local authorities, including a region that intersects with the Yerisiam people's evergreen customary woods.

The absence of Free, Prior, and Informed Consent (FPIC) characterizes several permit procurement procedures. Historically, several chiefs have not even undertaken the approval of land transactions (EIA-Telepak Papua, 2009). The Company intruded onto the customary area and, using bulldozers, eliminated the Yerisiam people's resistance, claiming that the concession infringed against land limits normally possessed by the indigenous people, which has ecological, economic, and spiritual significance.

Since Goodhope Asia Holdings is a member of the Roundtable on Sustainable Palm Oil (RSPO), the Yerisiam Indigenous peoples lodged a formal complaint against PT Nabire Baru through the RSPO complaint system. Each complaint has a cross-border aspect, since the RSPO is a global organization, and its governance framework includes a secretariat based in Malaysia and a network of autonomous entities in Switzerland (Saturi, 2016). Indigenous peoples, similar to many other instances, lack the information, technical expertise, and resources necessary to effectively participate in international processes, whereas companies do not face such challenges and leverage their membership in cross-border international alliances and contracts to sustain their concession activities (Eco-Business, 2016). This situation exemplifies the structural inequities inherent in the quest for justice, particularly as land disputes involving foreign palm oil corporations transcend national boundaries to the transnational level, where international treaty frameworks incorporate non-judicial mechanisms for dispute resolution.

This case illustrates that agricultural issues involving foreign entities and their plantations are linked to the infringement of cultural rights, violations of specific archaeological rights, and a type of cultural inter-theoretical confrontation with both national and international law. This development alone elucidates the paradox of the total absence of legal claims by third parties regarding the concessions issued by the

relevant authorities and the legally valid acts of those authorities. Without equilibrium modifications, it is unfeasible to resolve the impasse in the international arena. The RSPO and similar organizations have shown the influence and significance of extraterritorial legal tools on the dynamics of indigenous populations in conflict. The legal definition of specific cultural rights must integrate international and domestic law in a manner that encompasses the Free, Prior, and Informed Consent (FPIC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ensuring that indigenous communities are not marginalized in foreign investments in plantations.

This viewpoint arises from the need, as articulated in the UN Guiding Principles on Business and Human Rights (UNGPs), that international corporations must also respect the rights of indigenous populations (Rs et al., 2023). One concept of Equitable Treatment in the industry is the International standard of Free, Prior, and Informed Consent (FPIC). Activities affecting customary lands must be conducted with free, prior, and informed permission. Nonetheless, several research indicate that firms and/or governments are inadequately implementing this idea.

The intricacies, intertwining, and interdependencies of primary rule(s) of transnational and civil international law, customary law(s), and agrarian law(s) along with agrarian confrontations of and with foreign investors, particularly in/ex/o agriculture and the palm oil industry, require recognition of interactions and relationships with espoused transcending agrarian paradigms, thereby necessitating an immigration perspective of international civil law, international human rights law, and international humanitarian law as well as agrarian law with the paradigm of civil and international law, as here, inter-human and transcended human relationships, in the hopes of achieving substantive justice as legal, civil, and international humanitarian law, and human rights, and legal aid, with the humanitarian needs of the severely disenfranchised and indigenes that embrace, and are exposed to, the modern global and vastly intrusive investment capital flows and the global opportunities that may be vexatious, if not downright invasive, confrontational, and exploitive.

Due to the complexity of alien investment, foreign and palm oil plantation, and customary law, which are legal paradigms within civil transnational law, it is crucial to determine whether national and international law conflict or not.

Problem formulation (1) What are the implications of the several facets of international civil law, including jurisdiction, choice of law, recognition, and enforcement of foreign judgments, on the resolution of land disputes involving foreign oil palm plantation corporations in Indonesia? and (2) What is the status, extent of application, and adequacy of the impact of indigenous customary rights in the context of competing customary law, national agrarian laws, and international law in oil palm land conflicts involving foreign entities?

## METHODS

The approach used in this investigation is Normative legal research refers to the examination of legal doctrines and relevant legal principles (Mahmud Marzuki, 2011). The applied technique is termed a comprehensive juridical approach, which

integrates the examination of national laws and regulations, international legal instruments, and the norms of customary law recognized inside Indonesia's legal system (Soerjono Soekanto, 2004). The primary legal texts for this research are the Basic Agrarian Law, the Constitution of the Republic of Indonesia, the Constitutional Court's rulings on Customary Rights, UNDRIP, the UNGPs, and specific documents pertaining to International Law on Dispute Resolution. Secondary legal materials include both legal and non-legal scholarly resources pertaining to the foreign oil palm plantation sector, reports from international organizations, and pertinent case studies. Systematic and teleological legal reasoning were used to legal sources to ascertain the meanings of laws pertinent to the evolving imperatives of safeguarding the rights of indigenous peoples. This research employs the implications of international civil law using a descriptive-normative methodology for the initial issue. The law governing civil relations in international contexts, including jurisdiction, choice of law, recognition and enforcement of foreign judgments, as well as national and customary law, is examined for its interrelated complementarities. Additionally, transnational dispute resolution is analyzed through comparative legal research, as indicated by the literature (Hoecke, 2011).

The second inquiry about the custom protection statute pertaining to the accountability of foreign entities is notably significant. This has been addressed through a legal-analytical approach thoroughly documented in the principles of fairness and good faith, Free, Prior, and Informed Consent (FPIC), and International Law, specifically the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business and Human Rights as integrated into national legal frameworks. The study will examine empirical specifics, notably concerning foreign palm oil firms and the Yerisiam Indigenous People, which will inform the evaluation of the legal protection of customary rights and the level of legal protection gaps between das sollen and das sein. The research employs a triangulation method utilizing primary and secondary legal materials, alongside a normative-analytical integration approach, to propose viable legal frameworks aimed at reinforcing the protection of the rights of Indigenous peoples and enhancing legal safeguards in international law concerning borders that should remain accessible to foreign plantation enterprises.

## RESULTS AND DISCUSSION

### *Implications of International Civil Law on the Settlement of Foreign Palm Company Land Disputes in Indonesia*

The issue of international civil law regarding land rights conflicts with foreign plantation firms highlights the complications arising from the intersections of national law, customary law, and the international legal framework. The issue involves multinational firms in Indonesia confronting land rights demands from local and indigenous groups. This pertains to international civil law, namely judicial jurisdiction, conflict of laws, and the acceptance and execution of decisions. The determination of judicial jurisdiction poses challenges in almost all disputes, especially for foreign corporations seeking to transfer the matter to international arbitration due to treaty terms in concession agreements (Gobel et al., 2024). This

problem has a foreign aspect, since international corporations operating in Indonesia face land rights demands from local and indigenous groups.\

Furthermore, the distinctive characteristics of agricultural conflicts in international civil law are influenced by the nature of the dispute, namely a tort or, in simpler words, a non-contractual disagreement (Vinata, 2010). Some of them are tort conflicts, primarily extrinsic to the contract, and therefore, in contrast to contractual disputes, which are regulated by the concept of contractual freedom. Disputes regarding the infringement of customary rights, land appropriation, or environmental pollution are not readily resolved within the parameters of a contract; consequently, the legal framework and dispute resolution mechanisms are not exclusively based on the concession agreements between the company and the state. This raises a distinct legal issue: to what degree can a forum selection provision or a legal selection clause in a contract be enforceable against a third party, who is not a signatory to the contract, specifically concerning the Indigenous peoples whose lands are affected.

Dispute resolution concerning contracts in international arbitration often entails jurisdiction (Rihwanto, 2016). The prevalence of international commercial arbitration is often legally justified by the theory of freedom of contract, as articulated in Article 1338 of the Civil Code. Nonetheless, the transfer of forums has significant repercussions, since the rights in question belong to indigenous peoples, who have been overlooked. This is enshrined in national law, namely in Article 3 of the UUPA and Article 18B (2) of the 1945 Constitution, which legally obligates the state to maintain and safeguard the customary rights of indigenous peoples. This jurisdictional gap raises the question of the extent to which an international arbitration court addresses agricultural concerns concerning the customary rights of a community. The barrier to the indigenous peoples' socioeconomic standing restricts their access to international forums.

This is where the challenges of landlordship practices emerge, stemming from the conflict of laws regulating land and the resulting cross-border conflicts. In addressing cross-border land disputes and the convergence of local and international land law, which encompasses the UUPA, as well as international law including conflicts with UNDRIP and international land law. These concession treaties are governed by Indonesian national law; yet, foreign entities will interpret the rules restrictively to maintain an appearance of legitimate authority and control over the property. Conversely, indigenous land border crossing practices encompass the indigenous land rights pertaining to border crossings and the acknowledgment of customary practices and constitutional provisions, albeit within formal legal frameworks; the legal and formal non-custodial practices in formal contexts are informal in nature regarding legal arrangements (Rs et al., 2023).

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasizes the necessity of safeguarding indigenous peoples' lands and territories; however, foreign business entities frequently neglect this obligation, rationalizing their actions by asserting that they have obtained official government authorization (Arfiani et al., 2020). Consequently, there exists a vertical conflict between governments and indigenous peoples, in addition to several horizontal

conflicts within customary, governmental, and international legal frameworks. Furthermore, Article 1343 of the Code provides legal grounds for contesting the legality of a concession agreement if its execution contravenes propriety, law, or decency, or infringes against the rights of indigenous peoples.

Indigenous peoples of Indonesia have rights that are protected legally, but when facing foreign investors, (Yassine et al., 2024) claim these rights are only a source of claim without value. Foreign investors easily transfer their resources from Indonesia to other countries leaving Indigenous peoples' rights unprotected and their debts unregulated. Indonesia's indigenous peoples, therefore, are impacted legally and financially as there are very few ways to pursue these companies through the foreign court systems.

The situation is exacerbated by the multi-jurisdictional corporate stacking of international palm firms. The corporations operating in Indonesia are distinctly separated from their controlling companies located in Singapore, Malaysia, or other nations. This arrangement exemplifies fragmentation in Private International Law effectively. Fragmentation significantly complicates the enforcement of claims when the accountable entities vary from the operational corporations in Indonesia. This company structure is prevalent in the palm oil industry and is used to mitigate legal risks associated with cross-border operations.

The disparities in the legal systems of various nations complicate the execution of the ruling. Moreover, the dimension of corporate social responsibility within the UNGPs necessitates recognition of indigenous peoples' rights; nevertheless, it is non-binding, rendering it highly dependent on the company's goodwill and local governmental policies. Upon examining the underlying dynamics of the problem, it is clear that resolving land disputes with other nations need national legal systems to promote equilibrium. It is necessary to harmonize agricultural legislation with the Public Interest Litigation and international legal standards regarding the rights of indigenous peoples.

The range of disciplinary issues outlined above, together with the ramifications of the PIL, influence not only procedural elements but also significantly impact the efficacy of institutional structures for resolving agricultural disputes. The interrelations of jurisdiction, choice of law, and enforcement create a web of cross-border conflicts that are more intricate than typical domestic agricultural issues.

This transnational conflict has the following outcomes:

1. International arbitration predominates, hence restricting indigenous peoples' access to justice.
2. There are normative intersections among customary law, domestic law, and international law.
3. The issue of cross-border application leads to the ineffectiveness of Indonesian court rulings.
4. Indigenous peoples face legal uncertainty.
5. There exists a disparity between the official legality of the organization and the socio-cultural legitimacy among the populace.

Consequently, the resolution of conflicts necessitates a comprehensive, integrative, and substantive approach to justice that encompasses the enhancement of Free, Prior, and Informed Consent (FPIC), the alignment of Public International Law (PIL) standards with domestic legislation, and the reconfiguration of institutions for agrarian dispute resolution.

### ***Position, Applicability, and Binding Strength of Customary Rights in Foreign Oil Palm Plantation Land Disputes***

Customary law is an integral component of Indonesia's legal system and is recognized as a facet of national identity (Abdussamad et al., 2024). Customary law is also the social values, norms, and practices of the indigenous community of the social system, and of the social system of the society, and of the society of the social system. The law of custom law is recognised in article 18B paragraph (2) of the 1945 constitution which states that demontrator dissolution and discrimination in this country also with indigenous peoples and the clan custom law as well as their submitted dominion (Cahyaningrum, 2022), and in article 3 of the basic agrarian law which states that the custom of domination of the field of agrarian domination should be acknowledged and the domination of the rights of dominion of the custom of the field of agrarian dec monopoly, should be acknowledged, but only the domination of the rights of dictation of the law which is fundamentally contrary to the national interest (Bakung et al., 2024). Thus, under normative interpretation, customary rights are legally aligned with the rights of the people, and any legal contradiction undermines these customary rights.

However, favorable legal frameworks do not consistently acknowledge normative agrarian licensing systems that prioritize legally sanctioned business operations (HGU) or location and plantation business licenses. There is a propensity to categorize formal administrative frameworks that reinforce customary rights as "social rights," hence not seen as evidence of legal land holding by the land administration (Fatimah & Andora, 2010). Customary rights, unrecorded in the PTSL system, remain unverified, are omitted from licensing verification, and are thus deemed inferior to state-sanctioned concession permits (Simarmata, 2021).

When foreign entities engage in ownership agreements with the government and occupy traditionally inhabited territory, a conflict arises among three legal frameworks: the domestic laws governing land ownership and associated rights, the territorial laws regulating agrarian administrative actions, and international laws that acknowledge and enforce the rights of the indigenous populace, including the UN's Declaration on the Rights of Indigenous Peoples, which mandates Free, Prior and Informed Consent (FPIC) for any economic initiative affecting the land. From a business standpoint, the validity of the concession is the only factor that provides a commercial rationale for the contractual agreements. For Indigenous Peoples, the sole justification for contracts permitting economic exploitation lies in their land and customary laws, which grant them the authority to grant or deny consent for the economic exploitation of their traditional territories.

Documents such as UNDRIP underscore that the rights to indigenous lands and territories are integral to the collective rights of indigenous peoples, asserting

that, from a global moral and legal standpoint, Free, Prior, and Informed Consent (FPIC) must be upheld in all activities impacting indigenous territories. Although UNDRIP is classified as "soft law," several academics contend that its ideas are increasingly used as legal references by diverse judicial entities and institutional actors such as the RSPO (Gabrys, 2014). Thus, its enactment as legislation serves as a compelling authority that bolsters the claims of indigenous peoples about extractive enterprises, such as oil palm plantations that are mostly foreign-owned.

Most agricultural conflicts in Indonesia illustrate the misalignment of the three legal systems. For instance, one may examine the situation of the Anak Dalam tribe in Jambi. Numerous investigative reports and independent studies conducted by the Forest Peoples and Sawit Watch programs indicate that local governments have been granting concessions for thousands of hectares of land to Malaysian oil palm plantation companies, invariably without consulting the indigenous populations (Colchester et al., 2013). Subsequently, the firm used heavy machinery to level portions of land, resulting in the community's loss of traditional territory, disruption of their livelihoods, and the forfeiture of essential holy sites. Documents from UNDP (2018) and Human Rights Watch (2019) assert that these actions disregard the principles of Free, Prior, and Informed Consent (FPIC) and the rights of indigenous peoples to their territory.

Indigenous Peoples, in their legal actions, emphasize the 1945 Constitution, specifically Article 18B (2) and 3 of the UUPA, alongside the principles outlined in UNDRIP and the Good Faith Principle as articulated in Civil Code Article 1339. Conversely, businesses contend that they adhere to formal legality, possessing legitimate concession permits, and frequently invoke jurisdictional defenses, including arbitration clauses from investment treaties, a prevalent practice in cross-border land disputes (Winarta, 2022). This stage elucidates how international legal processes might be used to mitigate the binding implications of customary law, given that indigenous peoples have never participated in such arbitration provisions.

The courts have determined that the main courts' verdict, which partly supports the territorial claims of the Orang Dalam tribe, acknowledges the tribe's fundamental constitutional rights and reflects constitutional considerations. Nevertheless, the appeals procedure and the corporation's disobedience show the relative fragility of these rights. These factors are exacerbated by the influences of customary and international law, as well as the existence of formidable foreign companies that are dominant in financial, legal, and corporate domains. The FPP (2014) report exemplifies how foreign firms exploit the dispersion of legal frameworks, particularly with customary and Indigenous territory and the associated duties.

To resolve the second issue, the scope, execution, and jurisdiction of customary rights might be enhanced by harmonizing customary law with legal systems. The robust basis of the legitimacy of customary rights may be established by combining a customary land registration system with Article 3 of the UUPA, as recommended by (Arba, 2021). Secondly, FPIC must not be a simple formality; it should be a legally binding standard mandated by legislation for the issuance of HGUs. It must be standardized and is mandated by law, similar to the requirements

for FN practitioners. Third, the stipulations of UNDRIP need to be integrated into domestic legislation to ensure that their execution is not exclusively reliant on campaigning. The constraints on using international arbitration over customary rights must be acknowledged; otherwise, businesses may use it to evade local dispute resolution. The ability of indigenous institutions and the provision of legal help to indigenous peoples must be enhanced to provide successful recovery processes.

Within this framework, the obligatory character of customary rights is no longer contingent upon moral acceptance or administrative formalism, but is entirely encompassed by a legal system endowed with constitutional power, international acknowledgment, and robust operational protections.

## CONCLUSION

Conflicts over land occupation by foreign corporations engaged in palm oil plantations in Indonesia illustrate how international civil law influences the dynamics of conflicts related to jurisdiction, choice of law, and the recognition and execution of foreign judgments. The quest of indigenous peoples for national justice is frequently hindered by arbitral clauses that permit a transfer of jurisdiction to international arbitration, resulting in a significant imbalance in access to justice regarding cross-border disputes. It also illustrates how the conflicts over land are shaped by international governance. Indigenous peoples are deprived of the implementation of customary rights, a reality that remains unprotected and unacknowledged by legal frameworks governing permits, investment contracts, and transnational disputes. This situation exacerbates their vulnerability regarding the customary rights to which they are constitutionally entitled, rights that conflict with foreign plantation concessions granted.

These results signify a transition towards a more unified and reorganized legal framework including statutory law, customary practices, and international law. A trinity should exist in agricultural and investment policies that incorporates customary rights, Free, Prior, and Informed Consent (FPIC), and supports international law, particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the UN Guiding Principles on Business and Human Rights. This would enhance equality in the settlement of agricultural conflicts across countries and provide legal certainty, while maintaining environmental sustainability and safeguarding the rights of indigenous peoples.

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