SUSTAINABLE DEVELOPMENT IN THE CAPITAL CITY OF THE ARCHIPELAGO (Land Protection of Indigenous Peoples)

Dwi Ria Latifa
Faculty of Law, Pancasila University
Jalan Borobudur No. 7, Pegangsaan, Menteng, Jakarta Pusat, DKI Jakarta
E-mail: rialatifa@yahoo.com

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Abstract

The process of relocating IKN from Jakarta Province to Paser Penajam Utara Regency and Kutai Kartanegara Regency in East Kalimantan Province requires approximately 256,142 hectares of land. The problem is that the area contains land owned by indigenous peoples and they are concerned that the IKN development will displace indigenous peoples' land. The certainty of ownership of land rights is important for indigenous peoples because it is related to livelihoods, biodiversity conservation, and group and cultural identity. This paper aims to examine how to minimise the land problems of indigenous peoples at the IKN development stage. This research method uses a normative juridical approach. The results show the need for protection efforts for Indigenous Peoples. Efforts that need to be taken include the completion of the Indigenous Peoples Bill, the establishment of a Legal Entity for indigenous peoples, recognition of the existence of indigenous peoples and their assets through local regulations, provision of alternative livelihoods for indigenous peoples, development of facilities for indigenous peoples, settlement of overlapping IKN land and customary land, and relocation of indigenous peoples in IKN if necessary.

A. Introduction

The relocation of the Indonesian capital from Jakarta to Kalimantan was announced by the President of the Republic of Indonesia Joko Widodo on 16 August 2019. Mr. Widodo stated that there will be a relocation of the capital from Jakarta to East Kalimantan. In the announcement, the President mentioned that one of the reasons for the relocation is that the population in Jakarta has exceeded its capacity. According to the Central Statistics Agency (BPS) report, the population of DKI Jakarta is 15,938 people per square kilometre with a total of 10 million people[1]. It cannot be denied that Jakarta is the centre of activities of Indonesia, especially in the context of the economy.

[1] BPS DKI Jakarta Province, "DKI Jakarta Population Data," September 19, 2024, https://jakarta.bps.go.id/indicator/12/124/1/3-1-1-penduduk-laju-pertumbuhan-penduduk-distribusipersentase-penduduk-kepadatan-penduduk-rasio-jenis-kelamin-penduduk-menurut-provinsi-kabupatenkota-kecamatan.html.

President Jokowi also explained that the development and relocation of the capital city to East Kalimantan was carried out, among others, for the sake of equitable economic growth throughout the Republic of Indonesia[2]. This is certainly in line with the principle of Equitable Development, although the centre is in Jakarta. but development must be evenly distributed throughout Indonesia. Based on data from the Central Statistics Agency (BPS) in 2020, the economic contribution of the island of Java to Indonesia's economic growth or Gross Domestic Product (GDP) was 59% and inversely proportional to the economic growth of other islands which only ranged from 6-20%[3].

Based on the IKN Law, the implementation of IKN Nusantara development is designed into 5 stages. The first stage is carried out in 2022-2024, the second stage in 2025-2029, the third stage in 2030-2034, the fourth stage in 2035-2039, and the fifth stage in 2040-2045. The first to third stages are targeted at resolving overlapping land ownership issues, building public facilities, as well as strengthening the involvement of indigenous and local leaders and communities in various aspects of development and economic opportunities[4].

The relocation of the nation's capital outside Java aims to reduce the ecological burden of Jakarta, which is already very heavy. Whether it's population density, traffic congestion, air pollution or poor water conditions[5]. However, this big plan raises concerns for indigenous peoples in the area that will be occupied by the IKN. This is because there is no law-level regulation that protects their rights. The Indigenous People's Bill is still in the draft stage. Meanwhile, in the IKN location, several customary territories have had boundary stakes installed and representatives of indigenous peoples feel that they have never been consulted. In fact, so far, the area cannot be issued land ownership certificates because it has the status of a Forestry Cultivation Area.

[2] Ministry of Communication and Information, "Relocating the Capital to Spur Equity and Justice Outside Java," September 19, 2024, https://www.kominfo.go.id/content/detail/20729/pemindahan-ibu-kotauntuk-pacu-pemerataan-dan-keadilan-di-luar-pulau-jawa/0/berita.
[3] Nur Jamal Sha'id, "6 Reasons the National Capital is Moving from Jakarta to East Kalimantan," *Kompas.com*, September 19, 20224, https://money.kompas.com/read/2022/02/11/052456426/6-alasan-ibu-kota-negara-pindah-dari-jakarta-ke-kalimantan-timur?page=all#google_vignette.
[4] Vice Admira Firnaherera and Adi Lazuardi, "Pembangunan Ibu Kota Nusantara: Antisipasi Persoalan Pertanahan Masyarakat Hukum Adat," Jurnal Studi Kebijakan Publik 1, no. 1 (2022): 71–84, https://doi.org/10.21787/jskp.1.2022.71-84.
[5] Jurnal Enersia Publika, "Analisis Dampak Pemindahan Ibu Kota Negara (IKN) Terhadap Social Security," Legal Studies Journal 6, no. 1 (2022): 1–12, https://doi.org/10.30588/jep.v6i1.1086.

Customary law communities are constitutionally recognised by the Indonesian government. According to Ter Haar, Masyarakat Hukum Adat has the following characteristics[6]:
"An organised group of people settled in an area, possessing its own power and wealth in the form of visible and invisible objects, each member of the unit experiencing life as a natural thing according to nature and none of the members having any thought of dissolving or leaving the bond."

Friedrich Carl von Savigny, a leader of the historical legal school, stated that law is not the only factor in national life. There are other factors such as language, customs, morals, and others. Von Savigny views law as a historical phenomenon, so that the existence of each law will have differences according to the place and time when the law is enacted. In other words, law must be an incarnation of the soul of a nation or *volkgeist*[7]. In line with this, Van Vollenhoven stated that the customary law system is not based on regulations made by the government, but is based on actions that are considered appropriate and binding by custom and society. Unfortunately, in modern times, customary law is increasingly marginalised. Positive laws that apply in society are often compiled without regard to customary laws that have already lived in the community[8].

Based on this, it is appropriate that indigenous peoples in the IKN area have their interests protected by law, given that Indonesia is a country rich in customary culture, as confirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "The State recognises and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." Therefore, this paper examines Sustainable Development in IKN related to the land issues of indigenous peoples in the IKN location.

[6] Alting, H., *Legal Dynamics in the Recognition and Protection of Indigenous People's Rights to Land* (LaksBang: PRESSindo, 2010).
Alting, H., *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah* (LaksBang: PRESSindo, 2010).
[7] Soemadiningrat, O., *Rekonseptualisasi Hukum Adat Kontemporer* (Bandung: Bandar Maju, 2022).
[8] Setyawan, V. P., "Prospek Pemberlakuan Delik Adat Dalam Hukum Pidana Nasional (RUU-KUHP)," Justitia Et Pax: Jurnal Hukum 35, no. 2 (2019): 221–237, https://doi.org/10.24002/jep.v35i2.2069.

B. Method

According to Soerjono Soekanto, Legal Research Methods are scientific activities based on certain methods, systematics, and thoughts that aim to study one or several certain general symptoms by analysing them. The type of research used in writing this research is juridical-normative, which is a legal research method carried out by analysing/researching from existing and written legal sources based on literature such as applicable laws, books and journals related to problems arising from the development of the Capital City of the Archipelago (IKN).

The nature of the research conducted is descriptive analytical. Descriptive analytical research is a study that describes, examines, explains, and analyses a legal regulation. The source of legal material used is Secondary Data, namely data obtained from pre-existing sources (library) by collecting data contained in laws and regulations, books, and papers or articles related to the problem under study.

C. Analysis and Discussion

1. Land Issues of Indigenous Peoples in IKN Sites

Indigenous peoples are the custodians of local wisdom and priceless cultural heritage. Therefore, in every step of development, their existence and rights must be recognised and respected. This process must be done in a civilised and respectful manner. Do not let development aimed at progress be carried out in an uncivilised manner, ignoring the rights, and existence of indigenous peoples who have inhabited the area for centuries. The state must learn from past experiences, such as what happened in Rempang Island, Batam, Riau Islands, where development was carried out without regard for the rights and existence of local communities. The construction of the National Strategic Project on Rempang Island forced the community to leave the ancestral land that they have occupied for decades. In this case, the *magical-religious* values attached to customary law communities were ignored. The same thing should not happen again in IKN. The state must ensure that the development of IKN does not only prioritise physical and economic aspects, but also considers social and cultural aspects.

The issue of indigenous peoples' land in the IKN area needs to be anticipated by the government considering that the problem has arisen before the existence of IKN. The regulation of customary land is important because there are concerns that indigenous

peoples in IKN will be displaced by development. Until now, not all indigenous peoples' lands have been recognised by the state through government regulations. Even though *de facto*, there are indigenous people living in the area[9]. The lack of recognition means that indigenous peoples cannot manage customary forests independently and do not have land titles despite having lived for generations in locations that will be used as IKN[10].

Based on the findings of the Initial Social Aspects Study, there are generally three types of evidence of land ownership in the IKN area as can be seen in the following table[11]:

Category Type	Description	Legality
Land Certificate	-	Clear enough
Seal/Girik/Land Certificate.	Issued by the village, but often not accompanied by field measurements and checks.	Village Party
Planting Cultivation/ Ulayat.	Referring to the customary law of the indigenous people, which is based on the party who first managed the land.	Land management by indigenous peoples is protected by the Regional Regulation on the Recognition and Protection of Indigenous Peoples (East Kalimantan Regional Regulation No.1/2015, or Penajam Paser Utara District Regional Regulation No.2/2017).

Source:

Table 1. Types of Land Ownership Categories in the IKN Region

Meanwhile, related to land tenure in the IKN area sourced from IP4T (Inventory of Land Tenure, Ownership, Use and Utilisation) data, only 31% of the 75,968 land blocks in

[9] Iqbal Basyari, "*Anticipating Indigenous People's Land Issues in IKN," Kompas.com*, September 22, 2024, https://www.kompas.id/baca/polhuk/2022/05/06/antisipasi-persoalan-tanah-masyarakat-adat-di-ikn..
[10] Sucipto, "*Indigenous People's in IKN Need Socialisation and Protection," Kompas.com*, September 24, 2024, https://www.kompas.id/baca/nusantara/2022/06/21/masyarakat-adat-di-ikn-butuh-sosialisasi-dan-perlindungan-khusus.

the IKN area are owned by the community with proof of ownership certificates. As many as 66% of them are controlled by the community without proof of ownership. While the remaining 3% is owned by legal entities, the government, and without land tenure[11].

The government needs to resolve the problem of overlapping land. Certainty about the land is closely related to economic issues, especially for indigenous peoples. The Balik tribe in Sepaku is finding it increasingly difficult to find rattan to make knitting bags because the forests around them have been turned into settlements and plantations. In addition, they also live on the move because their land is used for plantations or industrial plantations. Meanwhile, the Paser tribe only has a patch of land because they do not have a customary forest recognised by the government[12].

The certainty of land rights is important in line with the increase in population in the IKN area. IKN Nusantara, like Jakarta Province, will have a strong attraction for people to migrate. By 2025, the population in IKN is estimated at 2 million people[13].

2. **Protection of Indigenous Peoples' Rights in the Capital City of the Archipelago**

Indonesia as a country with thousands of tribes that have different characteristics and customs, recognises and respects the unity of customary law communities and their traditional rights. This is in accordance with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "The State recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law". Furthermore, Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia also states that "the cultural identity and rights of traditional communities shall be respected in line with the development of the times and civilisation". This article provides a constitutional basis for indigenous peoples in their relationship with the state so that the presence of indigenous people's is part of a factual history that cannot be avoided or even denied by any party.

[11] *Ibid*, pp. 152.
[12] Sucipto, "The Lirih Voice of Indigenous People's on the Edge of IKN," *Kompas.com,* September 22, 2022, https://www.kompas.id/baca/nusantara/2022/06/05/suara-lirih-masyarakat-adat-di-tepian-ikn.
[13] Pramono Dwi Susetyo, "Ecological Burden of IKN", *Kompas.com,* September 22, 2024, https://www.kompas.id/baca/artikel-opini/2022/03/13/beban-ekologis-ikn.

With this spirit, the implementation of the constitutional mandate is further regulated and included in the government structure with various forms of regulations relating to indigenous peoples, especially those directly related to the capital region of the archipelago (IKN).

For people who own land or land that will be used for public purposes, relinquishing their land rights to the government certainly has both economic and social consequences, especially if the land is their only plot of land as well as their source of livelihood. Therefore, the acquisition of land for public purposes must be carried out based on humanitarian principles and must not harm the rights of the landowner. Therefore, to regulate this matter, a legal regulation is needed that can provide legal protection to land rights holders. A more specific legal regulation relating to land acquisition for the public interest is the issuance of Law No. 2/2012 on Land Acquisition for Development in the Public Interest.

The rights of indigenous peoples must be protected in development, including customary land rights, as recognised internationally through The United Nations Declaration on the Rights of Indigenous People. However, until now, the protection of indigenous people's land rights still faces several challenges, such as the lack of law enforcement in protecting indigenous people's land rights, the exploitation of minerals and resources, and the lack of access of indigenous people's to protection from rights violations[14].

Indigenous peoples have a set of rights that must be protected and respected, ranging from civil and political rights to economic, social, and cultural rights. One of the most fundamental rights for indigenous peoples is the traditional right to manage customary lands and forests.

Indigenous peoples have a complex relationship with land and its areas. Land is not only a source of economy, but also a variety of customary rituals as well as a source of

[14] Titis Fitriani, "Sustainability Claims in the Development of IKN and the Eviction of Indigenous People's," April 8, 2024, https://greennetwork.id/kabar/klaim-keberlanjutan-dalam-pembanguKlaim%20Keberlanjutan%20dalam%20Pembangunan%20IKN%20dan%20Penggusuran%20Masyarakat%20Adatn-penggusuran-masyarakat-adat/.

traditional knowledge. To anticipate land issues related to indigenous peoples in IKN during the IKN development process, there are several things that need to be done:

a. Recognise and protect indigenous peoples through identification, verification and validation, as well as the establishment of indigenous peoples;
b. Improve rules or regulations related to indigenous peoples;
c. Mitigate the impact of loss of livelihoods of indigenous peoples' communities and prepare alternative livelihoods.

Development should focus on the welfare of the people and provide opportunities for the people to contribute as much as possible. Key priorities in this regard include protecting the rights of indigenous peoples. Development goals will be achieved if people are empowered through their full participation and contribution. Indigenous peoples as one of the categories of vulnerable groups should be given first attention. If there are problems with access to customary land, then indigenous peoples will be at risk of becoming very vulnerable. Efforts should be made to protect indigenous people's land (including forests, ranches, and other common property resources) on which they depend for food.

Indigenous communities in the IKN area have been carrying out economic, social, and cultural activities for generations. It will experience disruption if they cannot carry out their long-standing activities. Based on Article 2 of Presidential Regulation Number 65 of 2022 concerning Land Acquisition and Land Management in the Archipelago Capital, land acquisition in IKN is only regulated through 2 (two) mechanisms, namely the release of forest areas and/or land acquisition. Forest area release is carried out by paying attention to and providing protection for community land tenure, individual rights, or community communal rights. Meanwhile, land acquisition is carried out through the mechanism of land acquisition for development or public interest and direct land acquisition by paying attention to community land rights and customary community land rights.

According to Safitri, there are several prerequisites for recognising the rights of indigenous peoples, as follows[15]:

a. Recognising a community's right to its territory is an indigenous right;

[15] Yumantoko, ”Kajian Kebijakan dalam Merekognisi Masyarakat Adat,” Journal Belantara 3, no. 1 (2020): 48-58, https://doi.org/10.29303/jbl.v3i1.423.

b. The rights of indigenous peoples must be in accordance with human rights, not rights granted by the State;
c. Indigenous peoples are dynamic societies so it is the indigenous peoples themselves who determine whether they still exist or not (self-identification).

These prerequisites emphasise that recognising territorial rights is an indigenous right that must be fulfilled. Then, human rights must be prioritised in granting rights to indigenous people's. Also, indigenous people's must be considered as independent subjects who can determine their own existence.

Agrarian conflicts due to overlapping forest concessions with customary land have been a classic problem for a long time. The neglect of rights to customary territories will create inequality in the control of resources and inequality in the means of production. The root of the problem lies in the absence of protection of customary land and guarantees of indigenous people's constitutional rights to communal land. The source of conflict is generally related to people's rights to land. These must be fulfilled in order for the development process to gain the support of citizens.

The IKN development process should not marginalise indigenous people's and should be inclusive. The state must ensure that these issues do not disadvantage indigenous people's by making regulations comprehensive, specific and targeted, by facilitating and supporting representatives of indigenous people's and other civil society coalitions to draft indigenous people's laws.

Equally important is whether in the form of laws or government regulations, which ensure that the development of IKN does not come at the expense of marginalised communities, including indigenous people's. The importance of policymakers understanding of human values and human rights in drafting regulations.

D. Conclusion

The implementation of IKN development must not conflict with the constitutional rights of indigenous people's in the area. The rights of indigenous people's must be protected despite major developments in their territories. Land issues of indigenous peoples have existed before IKN. Indigenous People's are currently not fully recognised as equal legal subjects.

In the development of IKN development, several Indigenous People's territories have been installed with construction stakes, while the community or leaders of Indigenous People's have not been consulted on this matter. Thus, there is a concern that the development of IKN will displace Indigenous People's communities who have lived in the area for generations. Therefore, appropriate measures are needed to protect the interests of Masyarakat Hukum Adat in accordance with the laws and regulations.

The anticipatory efforts to overcome the land problems of indigenous people's in IKN can be done, among others, by:

1. Completion of the Indigenous People's Bill

   Problems that have arisen in the passage of the Indigenous People's Bill include a lack of political will and concerns that the passage of the bill will hamper investment in areas where there are indigenous peoples, especially in the plantation, forestry, and mining sectors;
2. Establishment of an Association Legal Entity for Indigenous People's

   So far, the legal position of indigenous peoples has been quite weak. With the establishment of this legal entity, indigenous people's can have a basis to fight for their rights. One of the efforts that must be made is to accelerate the identification of indigenous peoples in the IKN area and legal recognition of the assets of indigenous people's;
3. Recognition of Indigenous People's through Regional Regulations.

   In the IKN development process, indigenous people's in the IKN area need to be recognised by the government. If there is no recognition as a customary law community, it will have implications for the uncertainty of their legal status according to the law. This may result in the absence of customary boundaries and security of customary territories;
4. Providing Alternative Livelihoods for Indigenous Communities whose Land is used for IKN, for example by opening up opportunities in the tourism sector or providing job-ready training;
5. Construction of Facilities for Indigenous People's

   The facilities provided can be in the form of house construction, construction of health and education facilities, road repairs, and good sanitation;
6. Settlement of Overlapping IKN Land and Customary Land.

   The IKN infrastructure development process in the first phase requires certainty of land rights and various other natural resources. The government needs to immediately resolve

overlapping land rights, for example by reviewing land rights that overlap with the territory of indigenous people's;

7. Relocation of Indigenous People's at the Centre of IKN.

   The government through the IKN Authority can provide a proper place or land for indigenous people's in the IKN area to be able to carry out their activities without abandoning their traditional customs. This provision should also be done by involving representatives from each indigenous community that has been identified as occupying the IKN area. Involvement of IKN communities should use self-mobilisation and connectedness type participation, where indigenous communities can express their aspirations independently. With these various efforts, it is hoped that indigenous land issues in IKN at this stage of development can be minimised.

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