The Kalimantan Social Studies Journal, Vol. 6, (2), April 2025: 132-149
ISSN: 2723-1127 (p); 2716-2346 (e)
DOI: https://doi.org/10.20527/kss
Available at online at website: https://ppjp.ulm.ac.id/journals/index.php/kss

Legal Protection for The Customary Law Communities of East Kalimantan Related to Land Control for The National Capital

Fikri Naufal Uyun
fikriuyun@gmail.com
Master of Notary Studies, Faculty of Law, Padjadjaran University
Bambang Daru Nugroho
bambang.d.nugroho@unpad.ac.id
Faculty of Law, Padjadjaran University
Sari Wahjuni
notaris.sariwahjuni@gmail.com
Faculty of Law, Padjadjaran University

Article History
Received: 13/12/24 Review: 18/12/24 Revision: 18/02/25 Available Online: 01/04/25

Abstrak

Presiden Republik Indonesia mengumumkan pemindahan ibu kota ke Kalimantan Timur, yang berpotensi berdampak pada masyarakat adat dengan mengancam hak atas tanah, hutan, identitas budaya, dan hak tradisional mereka. Tujuan penelitian ini adalah untuk mendapatkan pemahaman mengenai implementasi pengadaan tanah di Ibu Kota Negara terhadap penguasaan tanah yang dikuasai oleh masyarakat adat dan untuk mendapatkan pemahaman mengenai perlindungan hukum bagi masyarakat adat yang tanahnya digunakan untuk pembangunan Ibu Kota Negara. Metode penelitian yang digunakan adalah yuridis normatif dengan menggunakan spesifikasi penelitian deskriptif analisis. Tahap penelitian yang digunakan yaitu penelitian kepustakaan, teknik pengumpulan data menggunakan studi dokumen dengan pengumpulan data dan mengkaji data sekunder yang berkaitan dengan masalah yang diteliti, penelitian kepustakaan ini dilakukan untuk memperoleh bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Metode analisis data yang digunakan yaitu yuridis kualitatif. Hasil dari pembahasan penelitian ini yaitu pengadaan tanah untuk ibu kota baru menghadapi tantangan besar dalam menghormati hak masyarakat adat, meskipun diakui secara hukum. Praktiknya, pengadaan tanah belum memenuhi aspek sosial, kompensasi yang adil, dan perlindungan hukum. Partisipasi masyarakat adat, seperti Suku Balik Paser, tidak efektif, dan kompensasi pasca-sengketa sering terlambat dan tidak mencukupi. Kekosongan hukum terkait kompensasi tanah adat memperburuk ketidakpastian hukum, yang berpotensi melanggar hak masyarakat adat. Mekanisme yang lebih inklusif, transparan, dan adil diperlukan untuk melindungi hak mereka.

Kata Kunci: Perlindungan Hukum, IKN, Masyarakat Hukum Adat.

Abstract

The President of the Republic Indonesia announced the capital's relocation to East Kalimantan, potentially impacting indigenous communities by threatening their land rights, forests, cultural identity, and traditional rights. This article seeks to analyze the implementation of land acquisition in the new capital city concerning indigenous land ownership and to analyze the legal protection provided for indigenous communities whose land is used for the capital city's development. The research method used is normative juridical, employing a descriptive-analytical approach. The research stages involve library research, with data collection conducted through document studies and the review of secondary data relevant to the issues studied. This library research was undertaken to gather primary, secondary, and tertiary legal materials. The data analysis method employed is qualitative juridical analysis. The findings of this study indicate, Land acquisition for the new capital city faces significant challenges in respecting the rights of indigenous communities, despite being legally recognized. In practice, it has not met social aspects, fair compensation, and legal protection. The participation of indigenous communities, such as the Balik Paser Tribe, has been ineffective, and post-dispute compensation is often delayed and insufficient. The legal void regarding compensation for customary land worsens legal uncertainty, potentially violating indigenous rights. A more inclusive, transparent, and fair mechanism is needed to protect their rights.

This is an open access article under the CC BY-SA 4.0
Copyright © 2025, The Kalimantan Social Studies Journal

Keywords: legal protection, IKN, customary law communities

Preliminary

Humans as social beings are always experiencing changes in their lives. Both changes that have a small impact to have a wide impact in the community (Rahmawati, 2024). Indonesia is one of the countries with the largest number of wetlands in Asia after China (Mulyani et al., 2024). Land holds a crucial position in the life of indigenous communities as it is a significant source of wealth with economic value. Beyond that, it carries magical-religious values (a belief system centered on sacred aspects), which unite and closely relate to human life and their community, both physically and non-physically. Land serves as a primary source of livelihood for humans and their communities. In indigenous societies, communal lands are governed by their customary laws (Pratama et al., 2024).

Indigenous communities are traditional groups descended from native inhabitants of an island or region. Members of these communities have a strong spiritual bond and distinct cultural, social, and economic differentiation from the majority population in their area (Wiersma, 2005). The fundamental aspect of indigenous peoples is that they have inhabited a territory before it became part of a formal state or during colonialism (Zain & Siddiq, 2015).

Indigenous communities are viewed as legal entities with genealogical connections, territorial awareness, natural resources, leadership systems, and shared social identity based on norms and values (Thontowi, 2008).

Land ownership in customary law communities typically includes both individual property rights and communal ownership, commonly referred to as "ulayat rights." Ulayat lands may include agricultural fields, plantations, grazing areas, burial grounds, ponds, rivers, and forests (Lestari & Sukisno, 2021).

The President of the Republic of Indonesia, in the State Address on August 16, 2019, officially announced East Kalimantan as the new capital city (IKN), located in two districts: Kutai Kartanegara (Kukar) and Penajam Paser Utama (PPU) (Kementerian Sekretariat Negara, 2019). The area designated for IKN covers 252,600 hectares (ha), divided into the Core Government Area (CGA) of approximately 56,190 ha and the IKN Development Area of approximately 199,962 ha (Finaka, 2022).

The relocation of the capital city from Jakarta to East Kalimantan is a National Strategic Project aimed at reducing Jakarta's burden, promoting equitable development, and creating a sustainable modern government center (Belva & Raspati, 2024). The development of IKN must

Copyright © 2025, The Kalimantan Social Studies Journal

carefully consider the traditional rights of indigenous communities residing within, especially concerning the ownership and management of customary land and/or forests (Nugroho, 2022).

Various development projects often intersect with the interests of indigenous communities. One such conflict is evident in the construction of KIPP IKN. According to the Indigenous Territory Registration Agency (BRWA), approximately 105,000 ha of customary land lies within IKN. The Deputy Secretary-General of the Indigenous Peoples Alliance of the Archipelago (AMAN) for Advocacy and Politics stated that eight indigenous communities are located in CGA IKN, particularly in PPU District, Pemaluan Village, including the Balik Paser Tribe, whose customary lands, covering 50,000 ha, fall entirely within CGA IKN (Hasyim, 2024).

The Balik Paser Tribe considers the lands in IKN as ancestral property with customary land status. Around 1970, the government acquired their customary land for transmigration purposes. In the 1980s, more customary land was taken and allocated to companies under Business Use Rights. Over time, the tribe's customary lands have continued to diminish due to government actions (Simarmata, 2023).

In March 2024, the IKN Authority asked residents in Pemaluan Village to relocate because their settlements and customary areas did not align with the IKN Spatial Plan. The Balik Paser Tribe firmly rejected agreements made in their name without involving the community and opposed relocation from their ancestral lands (Wicaksono, 2023).

Based on the issues above, this research article seeks to analyze the implementation of land acquisition in the new capital city concerning indigenous land ownership and to analyze the legal protection provided for indigenous communities whose land is used for the capital city’s development.

Method

This research employs a normative juridical approach, analyzing literature and secondary data as the basis for examining regulations related to the topic (Soekanto, Soerjono; Mamudji, 2006). The research uses descriptive-analytical specifications to describe the subject under study through collected data or samples, providing new insights or reinforcing existing understandings (Sugiyono, 2009). The study involves library research and document analysis, methodically collecting and linking challenges encountered with applicable laws and regulations. The data is analyzed using qualitative juridical methods (Marzuki, 2009).

Results and Discussion

Copyright © 2025, The Kalimantan Social Studies Journal

The President of Indonesia, in the State Address on August 16, 2019, officially announced East Kalimantan as the new capital city, located in Kukar and PPU districts (Kementerian Sekretariat Negara, 2019). The area designated for IKN covers 252,600 ha, divided into the CGA of approximately 56,190 ha and the IKN Development Area of approximately 199,962 ha (Finaka, 2022).

The relocation of the capital city from Jakarta to East Kalimantan is a National Strategic Project aimed at reducing Jakarta's burden, promoting equitable development, and creating a sustainable modern government center (Belva & Raspati, 2024). The development of IKN must carefully consider the traditional rights of indigenous communities residing within, especially concerning the ownership and management of customary land and/or forests (Nugroho, 2022).

The House of Representatives of Indonesia passed Law No. 3 of 2022 on the National Capital (UU IKN) on January 18, 2022. The law provides the legal framework for developing IKN in East Kalimantan, including land acquisition and management for public purposes. Article 16(1) of the UU IKN stipulates that land acquisition for IKN will be conducted through forest area release and land acquisition mechanisms. Article 16(2) UU IKN refers to the mechanism under Law No. 2 of 2012 on Land Acquisition for Public Interest (UU Pengadaan Tanah) and Presidential Regulation No. 65 of 2022 on Land Acquisition and Management in the National Capital (Perpres Pertanahan IKN). Article 17 of the UU IKN grants priority to the IKN Authority in direct land acquisition through purchase, donation, voluntary release, land swap, or other agreed methods. Approval from the IKN Authority is required for any transfer of land rights within IKN, as reinforced by Article 16(2) of East Kalimantan Governor Regulation No. 6 of 2020 (Pergub IKN).

The IKN Authority holds priority rights in direct land acquisition through purchase, donation, voluntary release, land swaps, or other mutually agreed methods in IKN, as stipulated in Article 17 of the UU IKN. This is reinforced by Article 16 paragraph (2) of the Pergub IKN, which states that any transfer of land rights within the IKN area must receive approval from the IKN Authority. The land acquisition mechanism is regulated through the Regent Regulation of Penajam Paser Utara Regency Number 22 of 2019 on Monitoring and Controlling Land Sale and Purchase Transactions and Transfer of Land Rights in the IKN Location (Perbup Pengasawasn IKN) by instructing sub-district heads and village heads to monitor and control activities by conducting oversight, public outreach, and reporting on the progress of land sale and purchase transactions in their respective areas. Additionally, it is mandated that land rights transactions must have the approval of the regent.

Copyright © 2025, The Kalimantan Social Studies Journal

The land acquisition mechanism, as referred to in the Land Acquisition Law, must adhere to the principles outlined in Article 2 of the UU Pengadaan Tanah, including the principles of humanity, justice, utility, certainty, transparency, agreement, participation, welfare, sustainability, and equality. Article 40 of the UU Pengadaan Tanah also states that indigenous law communities are among the parties entitled to compensation. Compensation for ulayat (communal) rights may take the form of substitute land, resettlement, or other arrangements agreed upon by the indigenous law community. However, neither the UU Pengadaan Tanah nor its derivative regulations specifically address the mechanism for land acquisition involving ulayat land.

There are stages in land acquisition as stipulated in Article 13 of the UU Pengadaan Tanah, including planning, preparation, implementation, and delivery of results, with compensation provided to entitled parties and the relinquishment of rights being completed. In cases where there is no agreement on the form and/or amount of compensation, the entitled party may file an objection with the local district court within a maximum of 14 working days after the deliberation on the determination of compensation (Noor, 2024).

The relocation of the IKN is closely related to legal aspects and the rights of indigenous communities. In addition to calculating the potential benefits of relocating the capital, efforts to protect and fulfill human rights, particularly those of indigenous peoples, are critical considerations in the policymaking process. Several factors contribute to legal uncertainty regarding the rights of indigenous law communities in the development of IKN, including unclear regulations.

The existence of indigenous law communities is affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) as amended in the second amendment, which states that the state recognizes and respects the units of indigenous law communities along with their traditional rights as long as they remain viable, align with societal development, and adhere to the principles of the unitary state of the Republic of Indonesia, as regulated by law.

The regulation of ulayat (communal) rights of indigenous law communities is further addressed in Articles 3 and 5 of the Basic Agrarian Law (UUPA), which state that the exercise of ulayat rights and similar rights of indigenous law communities, as long as they are still recognized in practice, must be conducted in a manner consistent with national and state interests, based on national unity, and must not contradict higher laws and regulations.

Copyright © 2025, The Kalimantan Social Studies Journal

To gain recognition from the state, ulayat rights must first be regulated through relevant regional regulations. The rights and obligations of indigenous law communities are outlined in Article 5 of East Kalimantan Regional Regulation Number 1 of 2015 on Guidelines for the Recognition and Protection of Indigenous Law Communities in East Kalimantan Province (PERDA Kaltim). This regulation states that indigenous law communities have established procedures for their ulayat land, customary territories, and natural resources, which they have owned or occupied for generations through mechanisms deemed legitimate under local customary law.

Both regional and central governments have taken concrete actions to implement Perbup Pengawasan IKN, Pergub IKN, and Circular Letter Number 3/SE-40O.HR.O2/II/2022 from the Directorate General of Land Rights Regulation and Registration of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency on Restrictions on Issuance and Transfer of Land Rights in the National Capital Area (SE Restrictions). These regulations aim to control land ownership and transfers. The provincial government has communicated prohibitions on processing land transfers to village heads, sub-district heads, and other officials. Specifically, village heads/sub-district heads are prohibited from signing land release documents, sub-district heads and Land Deed Officials are barred from drafting Sale and Purchase Deeds (AJB), and notaries are prohibited from drafting Sale and Purchase Agreement Deeds (PPAJB).

The Directorate General of Environmental and Forestry Law Enforcement and the Ministry of Environment and Forestry have undertaken measures to secure land assets for the IKN project, covering 6,671.6 hectares, by installing markers or stakes at 50 points to delineate the boundaries of CGA IKN. Although the Head of the Land Office in PPU Regency explained that the markers and stakes do not signify ownership but merely delineate the outer boundaries of CGA, landowners remain worried and confused. They perceive the installation of stakes as contradicting President Joko Widodo's statement that the IKN development would not seize community lands. Residents who control the land fear that the installation of stakes and markers may convert their lands into state property, even outside forestry areas.

One resident of Sepaku Sub-district stated that control measures, such as limiting or even freezing land transfer and registration services, have not been fully effective. Information obtained from several residents in Sukaraja Village revealed that transactions continue in practice through unofficial deeds, beginning with sale receipts. Land certificates are handed over to buyers once payment is fully completed (Simarmata, 2023).

Copyright © 2025, The Kalimantan Social Studies Journal

The cancellation of PTSL operations for 6,100 land parcels in several villages within Sepaku Sub-district, including 1,600 parcels in Sepaku Village itself, is one of the actions frequently cited by the community as a freeze on land registration services by the Land Office (Kantah). All of these lands are located in residential and agricultural areas. Some indigenous residents of Sepaku Sub-district have also experienced such freezes. Despite years of applying for land registration at the Penajam Land Office, they have yet to receive their certificates. They demonstrate their land ownership using proof in the form of sealed letters (Sucipto, 2022). Although the control measures by limiting or even freezing land registration and transition services have not been fully effective.

In the author's opinion, land acquisition in the IKN shows a mismatch between the legal procedures outlined in Article 13 of the UU Pengadaan Tanah and the practices on the ground, particularly in the context of IKN development. The stages in land acquisition, such as planning, preparation, implementation, and delivery of results with compensation, should be carried out transparently and fairly, including the mechanism for objections to the district court if there is a disagreement regarding compensation. However, in practice, the installation of signs and stakes at 50 points to mark the boundaries of the IKN CGA has caused confusion and concern among landowners, despite the government's explanation that the stakes are not a sign of ownership. This reflects a lack of socialization and good communication between the government and the affected communities, leading to the perception that their land will be taken without adequate compensation, even though the President has stated that the development of IKN will not seize people's land.

The cancellation of the Land Registration program (PTSL) in several villages in Sepaku District has also added confusion and legal uncertainty for the community. People who have long been waiting for land ownership certificates through the Land Office feel that their registration process has been delayed without adequate explanation. They are concerned that this action will result in their land being claimed as state-owned without following the proper land acquisition procedures, especially since they have controlled and managed the land for generations with informal proof of ownership such as seal letters. This uncertainty shows that although there is a clear legal mechanism, in practice, its implementation does not pay sufficient attention to transparency, fairness, and legal certainty for the community, particularly for indigenous people and landowners affected by the IKN development. The objection mechanism to the court and effective socialization need to be strengthened to ensure that the rights of the community are well protected in accordance with the prevailing law.

Copyright © 2025, The Kalimantan Social Studies Journal

On January 31, 2022, President Joko Widodo held a discussion with figures from the Paser Sultanate and Kertanegara Sultanate in Balikpapan regarding culture and the improvement of human resources for the people of East Kalimantan in the plan to move the national capital. However, the sultanates were not considered to truly represent the indigenous people, as former procedures, heirs, sultanates, and ex-principalities were seen as entities with diametrically different concepts from those of indigenous communities (Nugroho, 2022). In June 2023, Dahlia and her family in her village signed a land compensation agreement, but after four months, they still had not received the compensation money. The compensation amount set by the government, which was Rp. 150 million, was not enough for them to buy land around the PPU Regency because land prices had already soared (Lumbanrau, 2023).

Efforts to prevent conflicts that can be made by the government and Indigenous Legal Communities include organizing several community forums that actively discuss the handling of social conflicts. However, according to the indigenous people of PPU Regency, they were never invited or informed about forums regarding the IKN. The government often visits East Kalimantan to inspect the IKN site, but they have never been invited to dialogue as the indigenous legal community whose land will be used for the IKN area. This proves that the recognition and respect for indigenous communities as regulated in Article 18B paragraph (2) of the UUD 1945 has not yet been implemented, and as a result, the Indigenous Legal Communities have not gained tangible benefits from this regulation.

On the other hand, there are often overlapping land claims between indigenous communities and external parties. The government has granted development concessions for the IKN area on land that has actually been controlled by indigenous communities for generations. As a result, conflicts and uncertainties about land status arise. Although the UUD 1945, the UUPA, PERDA KALTIM, and Constitutional Court rulings recognize the customary land rights of indigenous communities, this formal recognition has not been followed by adequate implementation. The government is considered to be ineffective in registering, ensuring, and protecting the land rights of indigenous communities. These practices contribute to the marginalization of indigenous communities.

In the author's opinion, the installation of stakes at 50 points to mark the boundaries of the IKN CGA without the knowledge of the residents who control the land where the stakes are placed is, according to the author, inconsistent with the principles of agreement, participation, and justice. In the land acquisition process, the affected communities have the right to receive information about the project and its impact, compensation policies,

Copyright © 2025, The Kalimantan Social Studies Journal

construction schedules, resettlement plans, replacement locations, and their right to express objections. There must be an agreement between the land requisitioning party, in this case, the state, and the landowners, and physical construction activities can only proceed once an agreement has been reached.

The Head of the PPU Land Office mentioned that there are two reasons why regulations regarding orders/prohibitions for the IKN area are ineffective. First, there are no clear criteria for land acquisition categorized as speculative. Second, initially, the Provincial Government did not communicate with the ATR/BPN Regional Office and the Ministry of ATR/BPN at the central level. After a meeting between the Provincial Government, the ATR/BPN Regional Office, and the Ministry of ATR/BPN, the Ministry of ATR/BPN took two concrete steps: issuing a circular SE Restrictions and reorganizing the system. The system will automatically send notifications whenever there is a request for land rights transfer for land located in the delineated IKN area. The Land Office or Regional Office will immediately halt land registration services upon receiving this notification. This system is widely known as freezing (Simarmata, 2023).

It is important to ensure that Indigenous Legal Communities have adequate access to participate in decision-making processes related to the development of the new capital city. This participation must be carried out transparently and inclusively to ensure that the interests of conservative communities are considered.

The existence of Indigenous Legal Communities, recognized in Article 18B paragraph (2) of the 1945 Constitution, Articles 3 and 5 of the UUPA, and Article 5 of the PERDA KALTIM, demonstrates that the state acknowledges their traditional rights, including customary land rights. According to the author, although this legal basis is clear, in practice, Indigenous Legal Communities often lose their land, particularly in land acquisition for public interest or development projects, due to inadequate socialization.

This phenomenon reflects a gap between legal recognition and implementation on the ground. The ideal land acquisition process should involve participatory stages, including socialization and deliberation with the Indigenous Legal Communities whose land will be taken. However, in reality, many of them are not provided with sufficient information, and are not involved in decision-making processes that affect their customary land. This contradicts the principles of participation and transparency regulated in the Land Acquisition Law and violates the recognition and respect for their traditional rights as mandated by the 1945 UUD 1945.

Copyright © 2025, The Kalimantan Social Studies Journal

The lack of socialization creates injustice for indigenous communities, who lose access to land resources that they have managed for generations. Furthermore, this poses a threat to the survival of indigenous communities, both economically, socially, and culturally, as customary land holds deep significance, not only as an economic asset but also as part of their identity and cultural heritage.

Overall, in author's opinion despite constitutional recognition and legislation, violations of the rights of Indigenous Legal Communities in the land acquisition process still occur, requiring improvements in the mechanisms for socialization, dialogue, and legal implementation to better protect their rights in practice. The government's plan to provide land compensation or relocation is a policy that is not sufficiently accommodating to indigenous communities, as they have a special relationship with their customary land or forests. For indigenous people, land is more than just a livelihood source; it is also a medium for spirituality.

Legal protection, according to Muchsin, is an activity to protect individuals by harmonizing the relationship of values or principles that manifest in attitudes and actions to create order in human interactions (Muchsin, 2023). According to Christine S. T. Kansil, legal protection is a variety of legal efforts provided by law enforcement officers to ensure safety, both mentally and physically, from disturbances and various threats from any party (Kansil, 1989).

Legal protection is a reflection of the functioning of the legal system to achieve legal objectives, namely justice, benefit, and legal certainty. Legal protection is a protection provided to legal subjects in accordance with legal rules, whether preventive or repressive in nature.

Preventive legal protection aims to prevent disputes before a government decision is made. In this context, indigenous communities are given the opportunity to raise objections or express their opinions before a definitive decision is made. This is important to ensure that the rights of indigenous communities are respected and protected from potential negative impacts arising from development, and it should be accompanied by clear regulations regarding the utilization of customary land and compensation, as well as providing indigenous communities with information about their rights and the legal processes available to protect their interests. In this regard, the government has already established the UU IKN, the Perpres Pertanahan IKN, the Pergub IKN, and the Perbup Pengawasan IKN on to regulate the land acquisition mechanism for IKN.

Repressive legal protection functions as a last resort when disputes have occurred. This includes the imposition of sanctions on parties who violate the rights of indigenous

Copyright © 2025, The Kalimantan Social Studies Journal

communities. If violations occur, communities can seek legal recourse, either in the General Court or the Administrative Court, because indigenous communities must have easy access to the judicial system to resolve disputes arising from development. This protection is also related to the recognition and protection of human rights, where the state has a responsibility to protect the rights of its citizens, including indigenous communities.

In fact, one of the indigenous communities of the Balik Paser Tribe, living in Pemaluan Village, PPU Regency, stated that they were never invited or informed about forums concerning IKN. They were never invited to dialogue as the indigenous legal community whose land will be used for the IKN area. They felt as though they were not considered citizens of Indonesia (Nugroho, 2022). According to Erasmus Cahyadi, Deputy Secretary-General of AMAN, he mentioned that the discussion of the IKN draft law did not involve the full participation of Indigenous Legal Communities. Even though there were discussions and negotiations regarding land acquisition for IKN, the government only involved companies that had permits for the location. Meanwhile, Indigenous Legal Communities, whose land ownership has been passed down through generations, are at risk of having their existence unrecognized (Thea, 2022).

In 2022, Dahlia, a member of the Balik Paser Indigenous community, filed a lawsuit against the IKN Law at the Constitutional Court, although the judges rejected her petition. In June 2023, Dahlia and her family in her village signed a land compensation agreement, but after four months, she had not yet received the compensation. The compensation amount set by the government was Rp. 150 million, which was not enough for them to purchase land around the PPU Regency, as land prices had skyrocketed (Lumbanrau, 2023).

Legal protection for indigenous peoples whose land is used for the development of the IKN, in author's opinion reflects the challenges in ensuring their rights amidst large-scale national development projects. As explained, preventive legal protection should provide space for indigenous peoples to voice their objections or opinions before a final decision is made. However, in the case of IKN, indigenous communities like the Balik Paser tribe feel excluded from the dialogue and negotiation process, which should be part of this legal protection mechanism. This shows a gap in the application of full participation for indigenous communities, despite the government having established regulations such as the UU IKN and other supporting regulations.

On the other hand, repressive legal protection functions as a last resort when disputes have already occurred. It involves the imposition of sanctions on parties that violate the rights

Copyright © 2025, The Kalimantan Social Studies Journal

of indigenous communities. Although this option exists, its implementation has proven ineffective, as seen in the case of Dahlia from the Balik Paser tribe, who filed a lawsuit against the UU IKN at the Constitutional Court and experienced delays in receiving the agreed compensation. This shows that the existing compensation mechanisms are inadequate, both in terms of amount and timeliness, which ultimately has the potential to harm indigenous peoples whose land must be relinquished. Is providing fair and adequate compensation enough to restore the situation for the disadvantaged parties, considering that in the future, their land will be used for profit-seeking by private entities. The land acquisition process should ensure the continued welfare of the affected communities (Rahman et al., 2024).

In the author's opinion, the land acquisition for IKN must be viewed within the framework of the principles of land acquisition law and the stages of land acquisition as regulated in Articles 2 and 13 of the UU Pengadaan Tanah. The legal principles of land acquisition, such as justice, welfare, openness, and participation, emphasize the importance of involving communities in every stage of land acquisition. However, in the case of the Balik Paser indigenous community, there appears to be a violation of these principles, particularly regarding participation and transparency. Indigenous communities feel they were never invited to engage in dialogue or involved in decision-making, which contradicts the principles of openness and participation, where indigenous communities should be given the opportunity to voice their objections or opinions before a final decision is made.

The stages of land acquisition in Article 13 of the UU Pengadaan Tanah include planning, preparation, implementation, and delivery of results. In this context, at the preparation stage, the government is obligated to involve indigenous communities to ensure their rights are respected. However, the reality on the ground shows that discussions and negotiations only involved companies with permits, while the indigenous communities who have owned the land for generations are not recognized. This indicates that the preparation stage of land acquisition for IKN does not comply with legal provisions, which emphasize the importance of deliberation and dialogue with relevant stakeholders.

The issue of compensation also remains a key concern. At the implementation stage, compensation should be paid quickly, accurately, and fairly. However, in the case of Dahlia from the Balik Paser tribe, the delay in compensation payment for four months after the agreement was signed demonstrates a violation of the principles of justice and welfare in land acquisition. The compensation amount of Rp. 150 million is also insufficient to purchase new

Copyright © 2025, The Kalimantan Social Studies Journal

land in the PPU Regency due to skyrocketing land prices, showing that the compensation mechanism does not account for the actual economic value faced by the community.

In Appendix II of the UU IKN, provisions related to compensation in the land acquisition process for the relocation of the national capital only address the subjects and objects involved. The UU IKN does not regulate the specifics of compensation for land acquisition in the relocation of the capital, particularly for indigenous land, leaving a legal gap. Given that Article 1, number 2 of the UU Pengadaan Tanah emphasizes that compensation must be provided fairly, the process of providing compensation for indigenous communities' communal rights is more complicated than for non-communal individual land acquisition, requiring more specific regulation.

The provisions regarding the form of compensation for land acquisition have been outlined in Article 36 of the UU Pengadaan Tanah, which states that compensation may take the form of money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties. In analyzing this article, it is important to evaluate how its implementation interacts with the three dimensions of customary law, including the tapsila, krama, and pati/gama dimensions, which are the foundation for land management by indigenous communities.

In the tapsila dimension, land has value beyond just an economic asset; it is a source of identity, ancestral heritage, and spiritual connection to nature. Therefore, compensation forms like money or shares are often inadequate for indigenous communities, as they do not replace the philosophical value of the land. Land acquisition that does not consider this dimension can lead to the loss of local culture and traditions.

From the krama dimension, compensation involving resettlement or replacement land must consider the sustainability of the indigenous community. Replacement land or resettlement must ensure that indigenous communities can continue their traditional social, cultural, and economic practices. Relocation to a site that does not align with their traditional lifestyle can lead to social disintegration and the loss of local wisdom.

From the pati/gama dimension, land acquisition must be aligned with the recognition of indigenous land rights as regulated in Articles 3 and 5 of the UUPA and related regulations, including the PERDA KALTIM. The compensation mechanism must also comply with the principle of justice, meaning it must be mutually agreed upon by both parties, so as not to violate the legal rights of indigenous communities.

Copyright © 2025, The Kalimantan Social Studies Journal

The government must genuinely guarantee fair and adequate compensation for the affected indigenous communities. Furthermore, the government should establish policies or regulations that require investors to prioritize local human resources as workers, provide broad opportunities for the community in supporting economic activities such as micro, small, and medium enterprises, and enforce corporate social responsibility programs for the surrounding environment. Thus, even though the land acquisition may be seen as conflicting with the social function in the UUPA, leading to injustice, such policies can still provide opportunities for the community to experience and benefit from the land acquisition process.

Indigenous communities tend to be skeptical about the idea that the relocation of the national capital will bring benefits and welfare. Mitigation efforts undertaken by the government to guarantee protection for indigenous communities must be accompanied by practical mechanisms that respect the locality and specificity of indigenous communities. The inclusion of indigenous communities in the planning and relocation process of IKN must address substantial needs, not just symbolic or procedural inclusion.

Overall, legal protection for indigenous communities whose land is used for the development of IKN has not fully adhered to the principles of land acquisition law and the stages outlined in the Land Acquisition Law. Although there are regulations intended to protect indigenous communities, the implementation of legal protection in the IKN development process is far from ideal. The lack of indigenous community involvement in discussions and the delay in compensation payments create injustice and threaten their rights to land that they have held for generations.

Conclusion

Legal protection for the indigenous peoples of East Kalimantan regarding land ownership for the development of the IKN faces various challenges. Although the rights of indigenous peoples are recognized in the 1945 Constitution and the UUPA, the implementation of land acquisition for IKN has not fully respected their rights. Preventive legal protection, which should involve indigenous communities in decision-making related to their customary land, has not been effective. The case of the Balik Paser indigenous community shows that they were not included in dialogues or negotiations, even though their land was used for the IKN project. Furthermore, repressive legal protection regarding compensation after disputes is also ineffective, as seen in the delays in inadequate compensation payments. The legal vacuum regarding the regulation of compensation for indigenous land in the UU IKN adds to the complexity. Without more just and inclusive mechanisms, the development of IKN has the

Copyright © 2025, The Kalimantan Social Studies Journal

potential to violate the rights of indigenous peoples and create legal uncertainty. 2. It is suggested that the House of Representatives and the President, as the lawmakers, ensure that the ideal form of compensation for indigenous communities respects and incorporates traditional values such as Tapsila and Adat Krama, while also adhering to the principles of justice upheld in Adat Pati/Gama. To achieve this, it is advisable to provide compensation through a combination of elements, including replacement land that aligns with customary territories and financial compensation in the form of monetary payment.

Bibliography

Belva, C. D. Q., & Raspati, B. (2024). Pengembangan Teknologi Dalam Memanfaatkan Eenergi Terbarukan Di Ibu Kota Nusantara Dengan Program Smart City. *Journal of Law, Administration, and Social Science*, *4*(5), 906–919. https://doi.org/10.54957/jolas.v4i5.904

Finaka, A. W. (2022). Berapa Luas Wilayah Ibu Kota Negara Baru? *Indonesia Baik.Id*.

Hasyim, I. (2024). Terdapat 105 Ribu Hektare Wilayah Adat di IKN, BRWA : Belum Ada Pengakuan Negara. *TEMPO*.

Kansil, C. S. T. (1989). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Balai Pustaka.

Kementerian Sekretariat Negara, R. I. (2019). Presiden Jokowi Tegaskan Rencana Pemindahan Ibu Kota di Hadapan Anggota Dewan. *Kementerian Sekretariat Negara Republik Indonesia*.

Lestari, R., & Sukisno, D. (2021). Kajian Hak Ulayat Di Kabupaten Kampar Dalam Perspektif Peraturan Perundang-Undangan Dan Hukum Adat. *Jurnal Hukum Ius Quia Iustum*, *28*(1), 94–114. https://doi.org/10.20885/iustum.vol28.iss1.art5

Lumbanrau, R. E. (2023). Hak Atas Tanah Di IKN Nyaris Dua Abad "Masyarakat Adat Akan Jadi Gelandangan Di Masa Depan." *BBC*.

Marzuki, P. M. (2009). *Penelitian Hukum*. Kencana.

Muchsin. (2023). *Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia*. Universitas Sebelas Maret.

Mulyani, P., Syaharuddin, S., Rusmaniah, R., Ilhami, M. R., & Sari, R. (2024). Duck Farming Business in Increasing the Income of the People of Anjir Serapat Muara 1 Village. *The Kalimantan Social Studies Journal*, *5*(2), 190. https://doi.org/10.20527/kss.v5i2.11568

Noor, M. A. R. (2024). Possibility Analysis of Indonesia Clear of Identity Politics. *The Kalimantan Social Studies Journal*, *5*(2), 146–154. https://ppjp.ulm.ac.id/journals/index.php/kss/article/view/9616

Nugroho, B. E. (2022). Perlindungan Hak Masyarakat Adat Dalam Pemindahan Ibukota Negara. *JISIP UNJA (Jurnal Ilmu Sosial Ilmu Politik Universitas Jambi)*, *6*(1), 83–97. https://doi.org/10.22437/jisipunja.v6i1.17417

Pratama, D., Rahmayani, N., Adriaman, M., & Barat, M. S. (2024). *ANALISIS STATUS KEPEMILIKAN TANAH ADAT*. *11*(1), 313–322.

Rahman, T., Subiyakto, B., Jumriani, J., Ilhami, M. R., & Rusmaniah, R. (2024). Exploration of Social Studies Learning Resources Based on Religious Activities. *The Kalimantan*

Copyright © 2025, The Kalimantan Social Studies Journal

Social Studies Journal, *5*(2), 196–208. https://ppjp.ulm.ac.id/journals/index.php/kss/article/view/10704

Rahmawati, M. (2024). *Collaborative Social Studies Learning Through Exploration: The Use of Google Maps as a STEAM-Based Learning Media*. *6*(October), 36–50.

Simarmata, R. (2023). Tumpang Tindih Penguasaan Tanah Di Wilayah Ibu Kota Negara "Nusantara." *Veritas et Justitia*, *9*(1), 1–33. https://doi.org/10.25123/vej.v9i1.6504

Soekanto, Soerjono; Mamudji, S. (2006). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Grafindo Persada.

Sugiyono. (2009). *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. Alfabeta.

Thea, A. (2022). AMAN : Pasal Masyarakat Adat Dalam UU IKN Hanya "Hiasan" dan Tidak Operasional. *Hukumonline.Com*.

Thontowi, J. (2008). No Title. *Penelitian Antropologi Budaya Tentang Pengembangan Perbatasan Di Kecamatan Saajingan Besar, Kabupaten Sambas*.

Wicaksono, A. (2023). Delapan Tuntutan Warga Adat Balik Yang Menolak Digusur Proyek IKN. *CNN*.

Zain, M. A., & Siddiq, A. (2015). Pengakuan Atas Kedudukan dan Keberadaan Masyarakat Hukum Adat (MHA) Pasca Dibentuknya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa. *Jurnal Penelitian Hukum*, *2*(2), 63–76.

Copyright © 2025, The Kalimantan Social Studies Journal