



PROBLEMATICS OF DEVELOPING THE INDONESIAN CAPITAL CITY ON TRADITIONAL LAND: BETWEEN STATE INTERESTS AND PROTECTION OF INDIGENOUS COMMUNITIES

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Nusantara Capital City,, Development Problems; Indigenous Peoples The relocation of Indonesia's capital city to East Kalimantan is expected to serve as a solution to reduce regional disparities, promote equitable economic growth, and accelerate infrastructure development. However, in practice, there remains considerable uncertainty regarding the legitimacy and legal protection of the rights of Indigenous Peoples directly affected by the development of the new capital, Nusantara (IKN). The lack of meaningful involvement of Indigenous communities in the planning and decision-making processes poses a threat to the continuity of their culture, traditions, and living spaces—resources that have been sustainably managed across generations. This study aims to analyze the problems of developing the new capital city (IKN) on customary land. This study uses a normative juridical approach, emphasizing the study of relevant laws and legal documents. The results indicate that the development of the new capital city raises serious problems related to the survival of the Balik indigenous community. Indigenous communities are threatened with the loss of their customary territories, which they have traditionally controlled and utilized. Concerns about the loss of livelihoods, limited clean water, ecosystem damage, and the threat of criminalization continue to threaten indigenous communities. This situation reflects the denial of indigenous peoples' rights and reinforces their position as a marginalized group.

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A. Introduction

The challenges of developing a new national capital (Nusantara Capital City) are a topic that requires further discussion and study. This is because the development of the Indonesian capital city impacts not only one aspect but also others. The government often makes hasty decisions and ignores the social aspects of the community. In the context of the development of the Indonesian capital city, local indigenous communities expressed

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disappointment with the government's decisions. This is not without reason; in practice, the government failed to consider the opinions and circumstances of indigenous communities.

At the end of his presidency, the 7th President of the Republic of Indonesia announced the idea of moving the national capital to East Kalimantan as a manifestation of the aspirations of previous leaders. The location of the new capital city is specifically located in the North Penajam Paser and Kutai Kartanegara regions (Hadi, 2020). The relocation of the capital city to East Kalimantan is expected to reduce regional disparities, provide opportunities for equitable economic growth, and encourage investment and adequate infrastructure development in the region (Syaban, 2024).

The Nusantara Capital City (IKN) is part of a major government program under the leadership of the President of the Republic of Indonesia. It is not only the largest project in Indonesia but also one of the 10 largest megaprojects globally. This project is targeted for completion by 2045. Based on the accumulated IKN development budget from 2022 to 2024, total development expenditure has reached IDR 75.8 trillion. Several stages are being implemented to realize the new capital city. First, the initial relocation to the IKN area, which began in 2020-2024. Second, establishing the IKN as a resilient core area from 2025-2035. Third, developing infrastructure and ecosystems in three cities to accelerate development in East Kalimantan from 2035-2045. Fourth, strengthening the reputation as a "World City for All" by 2045.

Furthermore, the total area of the IKN, as stipulated in Law Number 3 of 2022 concerning the National Capital City, is 324,331 hectares. This area is reduced by 1,902 hectares in Law Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the National Capital. The reduced area of the IKN results in a land area of 252,660 hectares and a water area of 69,769 hectares. Despite this reduction, the land area of the Nusantara Capital City is still larger than that of Jakarta. This is because the Nusantara Capital City Region (K-IKN) adopts the concept of a city within a forest area, which is designed to have a minimum of 50% green open space.

On the other hand, despite the support from various parties in realizing this dream, the conditions of indigenous communities surrounding the new capital city (IKN) development site are increasingly marginalized. This is because the state has not provided any guarantees of definitive regulations to protect their rights. As a member of the international community, Indonesia participated in the ratification of the United Nations Declaration on The Rights of Indigenous People (UNDRIP). However, many indigenous peoples' rights remain unprotected by the state. Legal protection regarding the legitimacy of the identity and continuity of indigenous communities in East Kalimantan is currently limited to inter-regency/city levels. This is stipulated in East Kalimantan Provincial Regulation Number 1 of 2015 concerning Guidelines for the Recognition and Protection of Indigenous Communities in East Kalimantan.

The Customary Territory Registration Agency (BRWA) recorded that approximately 105,000 hectares of customary land in the new capital area remain legally unrecognized by the state. AMAN (Indigenous Peoples Alliance of Nusantara) records in 2022 indicate that at least 51 indigenous communities have been identified as impacted by the development of the new capital city, located in various areas of North Penajam Paser and Kutai Kartanegara. Identification revealed that eight indigenous communities have their territories occupied by the new capital city project. The Balik tribe in Sepaku and Pemaluan sub-districts is the most impacted indigenous community.

Table 1 Indigenous territories affected IKN

Indigenous Territory	Area (Ha)
Adat Sepaku	40.702
Adat Paser Balik Pemaluan	28.875
Adat Maridan	5.532
Adat Mentawir	35.668

Source: Data processed from CNN Indonesia, 2024

The government has made various efforts to offer compensation options and relocation schemes to indigenous communities affected by development. However, not all indigenous communities have accepted the government's offers, as for them, the land serves as both a living space and a primary source of livelihood. Indigenous communities have felt the tangible impacts on their lives due to development policies. Instead of gardening or farming, they are now forced to switch to professions whose work methods are completely unfamiliar to them.

Fears of forced eviction and the threat of criminalization continue to loom large for indigenous communities. The risk of cultural extinction and depopulation also poses a serious threat. Furthermore, the loss of access to clean water, natural resources, and even ancestral graves and ritual sites demonstrates that the New Capital City (IKN) development project disregards the existence of the surrounding indigenous communities. Layered destruction has occurred around indigenous communities since ancient times. Even before the IKN development, indigenous communities were already in conflict with various companies encroaching on their living space.

Uncertainty about protection and recognition leads to the unfulfilled rights of indigenous peoples. The erosion of cultural values, traditions, and long-standing social relationships has the potential to eliminate the existence of indigenous communities. This threat will persist if the government ignores the existence of indigenous communities and could result in their extinction in Indonesia.

Against this backdrop, the author seeks to discuss the problems that arise in the development of the new capital on customary land and the government's efforts to

guarantee the rights of indigenous communities affected by the new capital's development.

B. Method

In conducting this research, the type of research used is normative law, where the data collection process is carried out through a review of secondary legal materials, in order to gain a conceptual understanding of the issues studied (Susanti, 2022). By using normative juridical legal research, the author attempts to analyze the problems that arise in the development of the IKN on customary land, which are related to state interests and the protection of indigenous communities. The approaches used in this research are a statute approach and a case approach. The statute approach is a method carried out by examining and interpreting various regulations related to the legal issues discussed (Santoso et al., 2022). The case approach is a research method that focuses on the problem of the gap or ambiguity of norms in their application by judges (Diantha, 2017).

This research is based on primary legal materials, namely Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA); Law Number 41 of 1999 concerning Forestry; Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest; Law Number 3 of 2022 concerning the National Capital; Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest; Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Communities; and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. This research also draws on secondary legal materials, including law books, scientific journals discussing legal principles, opinions of legal experts (doctrines), research reports in the legal field, and other references such as legal dictionaries and encyclopedias.

Data collection was conducted through library research, which involved examining various written legal information available in published sources and relevant for analysis within the context of normative legal research. Data analysis employed a descriptive analysis method, systematically presenting and interpreting facts for easier understanding and drawing conclusions. In this approach, each conclusion is clearly based on facts obtained in the field, ensuring that all analysis results directly reference the available data (Bachtiar, 2021).

C. Result & Discussion

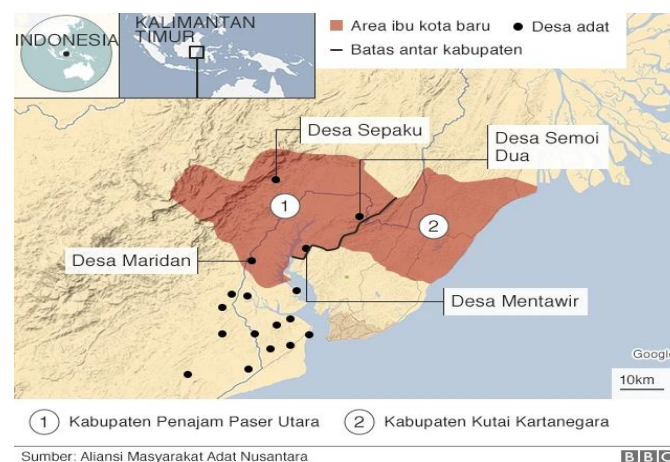
Before the IKN construction began, the Balik Tribe Indigenous Community had faced numerous conflicts with companies and the government due to their customary

territories being included in concessions by several companies. The presence of the IKN has undoubtedly raised concerns and insecurity for the Balik Tribe Indigenous Community, given their ongoing land conflicts (Yani, 2025).

Within the Balik Tribe's customary territory, land grabbing has occurred by several companies, including the timber company PT Weyerhaeuser. This was followed by the entry of the forestry company PT IHM (Itci Hindutani Manunggal) in 1968, and the implementation of the transmigration program between 1975 and 1977. Not limited to the forestry sector, in 2000, this customary territory also became the location for the expansion of oil palm plantation companies, namely PT Agro Indomas and PT Palma.

The presence of these corporations, along with the transmigration program, has significantly reduced the living space of the Balik indigenous community. As a result, this community has experienced social and cultural marginalization and faced difficulties in maintaining and carrying out traditional practices and local cultural heritage that have been continuously maintained by the community across generations. Furthermore, the transmigration program has exacerbated this situation by creating unclear boundaries for customary territories, ultimately triggering various land disputes due to land clearing by transmigrants without regard for prevailing customary norms.

Figure 1 Comparison of customary areas and IKN



In the context of the development of the new capital city (IKN), the indigenous communities of Balik Sepaku, Balik Pemaluan, and Paser Maridan are experiencing increasingly significant marginalization. They are threatened with the loss of their customary territories, which they have traditionally controlled and utilized. Indigenous communities are generally denied the opportunity to voice objections or reject development plans within their customary territories. In particular, the Pemaluan Sepaku Indigenous Community expressed confusion over the IKN development process, in which their gardens and homes were unilaterally declared to be included in the development area without prior consultation or approval from those directly affected.

To support infrastructure in the IKN, the government is implementing several basic projects, one of which is the provision of raw water through the Sepaku Semoi Dam

and the Sepaku River Intake. This project requires extensive land, which automatically results in the eviction of homes and buildings located along the banks of the Sepaku River in Sepaku Village. The Sepaku Semoi Dam project was not originally designed specifically for the new capital city, but rather to meet the raw water needs of Balikpapan City. However, after the IKN Law was approved by the DPR, this dam project was included as part of the supporting infrastructure.

The availability of clean water is one of the important requirements for a region to be worthy of being the nation's capital, because water is a vital human need (Widiyanto in Amru, 2025). Water functions as an important element in the ecological system in supporting human survival. As a basic need, water is needed for various daily activities, including consumption, food processing, and sanitation needs such as bathing, washing, and defecating (MCK). Santosa and Adji (in Amru et al., 2025) explain that the fulfillment of clean water needs can come from various water resources, both from surface water sources such as rivers, reservoirs, lakes, ponds, and swamps, as well as from groundwater, including springs. Therefore, the government then built water sources that will flow to the IKN, such as the Sepaku Intake and the Sepaku Semoi Dam. These water sources will function as resources that support the water needs of life in the IKN.

Figure 2 Sepaku semoi dam



Source: RRI, 2024

The Balik Sepaku Indigenous Community is facing increasing pressure and is in a situation that could potentially lead to cultural extinction. The development of the new capital city (IKN) has significantly reduced their living space, particularly in terms of opportunities to manage natural resources that play a crucial role in maintaining their balance. The community's settlements are now squeezed by physical structures, such as the Sepaku Intake Dam, which directly restricts their mobility and activity space. In this situation, the indigenous community's right to a decent life is being neglected. During the rainy season, they experience flooding, while during the dry season, they face drought. Access to clean water is also increasingly difficult, with wells drying up, forcing the community to purchase water for household needs. The development of the new capital city has triggered recurring flooding in the village area. Furthermore, the Balik Suku

Indigenous Community is also impacted by declining air quality due to the spread of dust and the smell of waste polluting their living environment.

Clearing forests by converting land through deforestation or permanent destruction will result in environmental damage (deforestation). Land clearing by burning also negatively impacts the sustainability of forest ecosystems and communities. Kalimantan, known as the lungs of the world, harbors biodiversity that needs to be protected, as well as the food chain within the forest, which is feared to be neglected due to the development of the nation's capital.

Based on a spatial analysis conducted by Forest Watch Indonesia (FWI) in 2022, land ownership in the new capital city (IKN) is closely linked to large corporations holding permits in the form of forest use rights covering 9,300 hectares; industrial tree plantations covering 35,000 hectares; oil palm plantations covering 55,000 hectares; and mining areas covering 67,000 hectares. Deforestation in the new capital region was recorded at 18,000 hectares between 2018 and 2021, equivalent to three times the size of the new capital's core area.

The head of WALHI East Kalimantan, Yohana Tiko, explained that in addition to the indigenous people of North Penajam Paser, the existence of the Balik Tribe and coastal fishermen of Kutai Kartanegara will also be threatened by the development of the IKN. Endemic animals that live in the coastal area of the IKN, such as the pekatan, the dolphin, and the dugong, are also at risk of extinction. The development of this IKN will threaten the existence of 2,603.14 hectares of mangroves in Balikpapan Bay. The planned development of this IKN has the potential to worsen the water resource crisis and damage protected and conservation areas in Balikpapan Bay. In addition, the IKN area is located between conservation forests, the Bukit Soeharto Grand Forest Park, the Sungai Wain Protected Forest, and the Manggar Protected Forest. Several areas threatened by the water resource crisis include Balikpapan City, North Penajam Paser, Kutai Kartanegara, and Samarinda City.

Problems related to water availability in the New Capital City (IKN) area have been apparent since the start of the Sepaku Semoi Dam Project. Although this project was designed to meet the clean water needs of the IKN residents, its existence actually limits local community access to water sources from the upstream Sepaku River, which has been used for irrigation, including during the dry season. Furthermore, the government needs to pay attention to the management of other water sources within the watershed (DAS) in North Penajam Paser Regency, given that indications of pollution originating from domestic waste and copper metal content have been found. To ensure adequate water quality, the government should provide a mechanism for managing domestic waste and installations for adequate and sustainable drinking water treatment. In North Penajam Paser Regency, there are thousands of abandoned mining pits that have the potential to exacerbate water pollution in the surrounding area. Furthermore, the development of the New Capital City is expected to give rise to various new infrastructure projects that risk increasing the burden of environmental pollution in the region.

Figure 3 Residents take water from the pond in Sepaku



Source: Tempo, 2024

In addition to the residents of the new capital city, local communities in the surrounding areas, particularly Balikpapan City, have also faced drought challenges over the past two decades. Balikpapan City is categorized as highly vulnerable to drought. As the new capital city develops, demand for clean water is projected to increase substantially. Therefore, long-term policy adjustments are needed to ensure fair and equitable water distribution. The government has a responsibility to optimally manage water resources to provide equitable benefits to the people of Penajam Paser Utara Regency and Balikpapan City, who are currently vulnerable to water crises. The availability of clean water is a fundamental right for every citizen, guaranteed by various national and international laws.

Simultaneously, the government has promised to ensure that indigenous communities affected by the development of the new capital city will receive their rights. According to a statement by the Minister of National Development Planning, Suharso Monoarfa, residents who have lived in their customary areas for many years will not be relocated. They will become citizens of the archipelago. That's why the new capital city, originally designed for around 5,600 hectares, has been expanded to 6,700 hectares. Sidik Pramono, Head of the National Capital Communications Team, emphasized that land acquisition in the archipelago prioritizes the protection of legal land rights held by citizens and indigenous groups.

According to the KPA (Consortium for Agrarian Reform), the agrarian conflict on the IKN land was caused by the government's own policies. This problem began before Kutai Kartanegara Regency and Penajam Paser Utara Regency were designated as the location for the IKN. At that time, the government unilaterally designated and designated the territories and lands of indigenous communities as state forest areas. As a result, much land was removed from the forest area to be used as HGU for oil palm plantations and others. Now, the government plans to build a new capital city. However, because the land is already controlled by forestry and plantation companies, the government is forced to purchase or provide compensation to these companies. Referring to the provisions of Law No. 41 of 1999 concerning Forestry, Article 4 paragraph (3) states that:

"State control of forests still takes into account the rights of customary law communities, as long as they still exist and their existence is recognized, and do not conflict with national interests"

Article 67 paragraph (1) and Article 68 of Law No. 41 of 1999 both emphasize the importance of recognizing and protecting the rights of communities, particularly indigenous communities, in managing forest resources. Article 67 paragraph (1) guarantees the rights of indigenous communities whose existence is still real and has been officially recognized, including the right to collect forest products to meet daily living needs, manage forests based on customary law provisions as long as they do not conflict with statutory provisions, and receive empowerment to improve their welfare. On the other hand, Article 68 provides space for the general public to obtain benefits from the environmental functions of forests, utilize forest products in accordance with applicable provisions, access information regarding forestry management, express opinions or input, and participate in monitoring the implementation of forestry development. In addition, this provision also guarantees the right to compensation for communities who lose access to forests or rights to their land due to the designation of forest areas.

These two articles reflect legal principles that prioritize social justice, environmental sustainability, and community involvement in forest resource management. However, in practice, various issues persist, particularly regarding the formal recognition of indigenous communities and the implementation of compensation, which does not reflect justice for the losses they have suffered. Therefore, these provisions are not only normatively valuable but also play a strategic role in strengthening the position of indigenous communities, particularly in facing national-scale development agendas such as the New Capital City (IKN) project.

Based on the aforementioned articles, these regulations are essentially enacted to create balance and equality between the interests of the state and the rights of indigenous communities regarding the use of state forests. For this reason, the government should not arbitrarily grant state forest use rights to companies in any form.

From a socio-economic perspective, the denial of indigenous peoples' rights can reinforce their position as a marginalized group. Indigenous groups, particularly those in vulnerable categories such as women and the elderly, are often the most disadvantaged by land grabbing and environmental exploitation. This situation widens social disparities and exacerbates community economic instability. Losing land not only means losing space for farming but also cutting off access to primary sources of livelihood, places for cultural practices, and the fulfillment of basic needs. As a result, poverty levels increase significantly. Large-scale development projects that disregard the existence and rights of indigenous peoples also have negative impacts on the environment. These impacts include the loss of sacred sites with high cultural and spiritual value, as well as pollution of local ecosystems. This environmental damage is not only physical but also results in the extinction of traditional ecological knowledge that has been maintained and

preserved through family and community traditions on an ongoing basis. This inequality has an impact on weakening the food security of indigenous communities due to limited access to productive land and natural resources which have been the main support for their sustainable agricultural practices (Putra et al., 2025).

The UUPA regulates various forms of land rights, including HGU, which are generally transferred to business entities for a specific period. Companies receiving HGU often claim legal ownership of the land based on state permits, without considering the existence and traditional rights of indigenous communities who have long controlled the area. Meanwhile, Article 18B paragraph (2) of the 1945 Constitution constitutionally recognizes the existence of indigenous legal communities, but the implementation of this recognition remains weak, particularly in relation to customary land.

Legal certainty regarding indigenous peoples is enshrined in the UNDRIP. Although Indonesia has not yet ratified it into law, the country has expressed its support for the UNDRIP and recognized the declaration, as well as using it as a reference in efforts to protect the rights of indigenous peoples in Indonesia. Articles 26 to 28 of the UNDRIP affirm that indigenous peoples have rights to the lands, territories, and natural resources they have historically controlled or utilized. Article 26 regulates ownership and management rights over indigenous territories, while Article 27 requires the state to provide a fair dispute resolution mechanism that respects customary law. Article 28 emphasizes the right to redress, either in the form of restitution or adequate compensation, if indigenous peoples lose their land or resources without prior consent. These three articles reflect comprehensive protection of indigenous peoples' rights and are relevant to the context of the development of the new capital city (IKN), ensuring that customary land rights are not neglected and that indigenous peoples receive fair protection and redress.

A participatory approach requires the government to open up space for the comprehensive involvement of indigenous communities, from the design stage to the decision-making process regarding land use. This approach aims to capture and integrate the traditional spatial knowledge of indigenous communities as a crucial component of more inclusive and equitable development planning. Their involvement must also be guaranteed in an open and transparent urban planning process, ensuring that development does not marginalize indigenous communities, either socially or economically.

D. Conclusion

The development of the new capital in East Kalimantan presents significant challenges, particularly in ensuring the strengthening of indigenous peoples' rights to traditional lands historically inherited from previous generations. Indigenous communities such as the Balik Tribe and the indigenous peoples in the Pemaluan area of Sepaku District are among the most impacted. Furthermore, the Balik Sepaku Indigenous

Community faces increasing pressure and is on the verge of cultural extinction. Large-scale development projects that disregard the existence and rights of indigenous peoples have negatively impacted the environment. These impacts include the loss of sacred sites of high cultural and spiritual value, as well as the pollution of local ecosystems. This environmental damage is not only physical, but also results in the extinction of traditional ecological knowledge that has been protected and preserved. This damage has weakened the food security of indigenous communities due to limited access to productive land and natural resources that have been the mainstay of their sustainable agricultural practices. This situation widens social disparities and exacerbates economic instability in communities. As a result, poverty rates have increased significantly. Furthermore, many of them lack certificates or formal legal documents recognized by the state as proof of land ownership. In practice, they have used customary legal mechanisms such as "land seals" to secure control and protect their territories. Unfortunately, these legal practices have not yet been legitimized within the national legal framework, weakening the legal position of indigenous communities amidst the country's aggressive development agenda. This imbalance reflects the conflict between national development interests and the fulfillment of indigenous peoples' constitutional rights.

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