

Legal Protection of Indigenous Peoples' Rights in the Capital City of the Archipelago, East Kalimantan

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ABSTRACT

The purpose of this study is to analyze: 1) What is the Position of Customary Law Peoples in the Capital Region of the Archipelago? What is the legal protection of the Rights of Customary Law Peoples in the Capital Region of the Archipelago? The research method used is normative juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) The existence of indigenous peoples in the IKN area was highlighted because of their lack of participation in the transfer of IKN. President Jokowi did invite several indigenous leaders but their existence was met with resistance because they were considered not representative of indigenous peoples as a whole. 2) Protection that can be done by the government related to land issues of customary law communities is to provide a legal basis or formulate regulations for customary law communities as a strengthening intention from a legal perspective. However, until now the Indigenous Peoples Bill has not been passed by the government. Even though this bill can be the legal basis for drafting social engineering in the IKN Project. In addition, to support the achievement of the program, it is necessary to simplify the land registration mechanism. This aims to prevent miscommunication with indigenous peoples which can later lead to disputes. Village officials, up to the sub-district level, must open the door to the widest possible deliberation for communities potentially affected by development.

Keywords: Protection, Law, Rights, People, Custom, Capital of the Archipelago, East Kalimantan

INTRODUCTION

Background

Land is very important for Indonesian society, especially customary law communities, because land is a place of residence, a place of life and life, where the "spirits" of their ancestors are buried and buried by members of the customary law community concerned, thus it can be said that between land and legal communities have a very close relationship. Such a relationship will also give birth to a right from customary law communities to lands within the boundaries of their territory.

In Indonesian society, the need and position of land is considered very important, Land as a gift of God Almighty to the Indonesian nation is a scarce natural resource and basic human needs, especially for the availability of shelter and food. Because of its strategic nature, the state is authorized by the Indonesian nation to make policies, regulate, manage, manage, and supervise related to the use, ownership, and maintenance of the earth, including land, water and natural resources contained therein; the legal relationship between the State and the earth, water and natural resources contained therein; and the legal relationship between people and legal acts related to the earth, water and natural resources contained therein.

The authority of the state to control it is aimed at achieving the greatest prosperity of the people. People's rights are truly respected, determining the benefits of natural resources, including land, is carried out by involving the participation of the people so that the benefits can be felt equally by the people. as in the 1945 Constitution (hereinafter referred to as the 1945 Constitution) as the State constitution affirms that everyone must maintain, manage and utilize land properly which is a basic need, this is as mandated by Article 33 paragraph (3) of the 1945 Constitution abbreviated as the 1945 Constitution that: "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The state in this case does not have absolute power over the existing land, but only limited to being given the power to regulate and control the management of agrarian resources (land) in order to realize the prosperity of the people.¹

¹ Arvita Hastarini & Gusti Fadhil Fithrian Luthfan, The Legal Position of Indigenous Peoples in Obtaining Land Rights in Indonesia, SASANA LAW JOURNAL | Volume 8 Number 2, December 2022, 247.

The plan to move the capital of Indonesia to Kalimantan is not without reason, but with various considerations from an ecological and economic perspective. Jakarta is considered unable to solve ecological problems such as floods, pollution, and traffic congestion, which has an impact on government productivity.² Then viewed from the economic aspect, efforts to relocate the national capital also aim to narrow the existence of economic inequality which is only concentrated on the island of Java. With the relocation of the national capital, economic growth outside Java is expected to increase.

Although the plan to relocate the national capital is seen as an effective effort to reduce the gap in economic growth, it is possible that it can cause new problems in the new national capital region. Efforts to protect and respect the human rights of local communities, especially indigenous peoples, are also aspects that need to be considered in terms of policy formulation, in addition to considering their potential and benefits. This is because there is no law-level regulation that recognizes and protects the rights of indigenous peoples. However, in the IKN development area, boundary pegs have been installed in several customary areas, even though representatives of indigenous peoples feel that they have never negotiated with the government.³

The IKN area covers four sub-districts and two regencies. Sepaku District is within the administrative scope of North Penajam Paser Regency, while Samboja District, Muara Jawa District, and Loa Kulu District are within the administrative scope of Kutai Kartanegara Regency. With an area of approximately 262,814 hectares of IKN⁴, there are 26 villages or *kelurahan* that are part of the IKN area and 20,000 people are estimated to occupy the IKN area.⁵

This huge project has alarmed indigenous peoples, because there are no regulations that guarantee their rights at the legal level. The ongoing construction of the IKN did not attract the attention of the government to accelerate the Law Plan

² Bakhti Eko Nugroho, "Protection of Indigenous Peoples' Rights in the Transfer of the National Capital", *Journal of Social and Political Sciences*, University of Jambi, 2021, 5(1), 83-97

³ Firnaherera, V. A., & Lazuardi, A. (2022). Development of the Capital City of the Archipelago: Anticipating Land Issues of Customary Law Peoples. *JSKP: Journal of Public Policy Studies*, 1(1), 71–84.

⁴ Bakhti Eko Nugroho, "Protection of Indigenous Peoples' Rights in the Transfer of the National Capital", *Journal of Social and Political Sciences*, University of Jambi, 2021, 5(1), 83-97, p. 64

⁵ Vitorio Mantalean, "IKN Megaproject, 2000 indigenous peoples eliminated and alleged Erase the Sins of Corporation", *Kompas.com*, <https://nasional.kompas.com/read/2022/01/21/08204891/megaproyek-ikn-20000-masyarakat-adat-tersingkir-dan-dugaan-hapus-dosa?page=all>,

aimed at protecting their rights. The IKN area is basically a Forestry Cultivation Area, laying boundaries without consulting with local indigenous peoples.⁶ The problem arises when 31% of the 75,968 land blocks in IKN are owned by the community. This means that only 31% of people have proof of official certificates. While the other 66% is controlled by the community but does not have ownership rights.

Problem Statement

Based on the background described above, the problem is formulated as follows:

1. What is the Position of Customary Law Peoples in the Capital Region of the Archipelago?
2. What is the legal protection of the rights of indigenous peoples in the Capital Region of the Archipelago?

Theoretical Framework

1. Theory of Legal Protection

Legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. With regard to consumers, it means that the law provides protection for customer rights from something that results in the non-fulfillment of these rights.⁷ Legal protection when described consists of two syllables, namely "protection" and "law", which means to provide protection according to applicable law or legislation. The amended 1945 Constitution, in Article 1 paragraph (3) states that "The State of Indonesia is a State of Law". That is, state administration in all fields must be based on fair and definite legal rules so that they are not based on political power alone.⁸

Research Methodology

⁶ Dea Risti Aulia, et al, The Issue of Protecting Indigenous Peoples' Rights to IKN Development, NNOVATIVE: Journal Of Social Science Research Volume 3 Number 2 Year 2023

⁷ Philipus M. Hadjon, Legal Protection for the People of Indonesia, Bina Ilmu, 1987, p. 25.

⁸ Iswi Hariyani, Delete Books and Remove Bad Credit Bills for MSME Debtors at State-Owned Banks, PT. Bina Ilmu, Surabaya 2008, p. 13

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is normative legal *research*, which is a study conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.⁹

RESEARCH RESULTS

Position of Customary Law Peoples in the Capital Region of the Archipelago

After the independence of the Republic of Indonesia, these land issues were made a unification of land law, better known as the Basic Agrarian Law (Law No. 5 of 1960 concerning Basic Regulations of Agrarian Principles), which came into force on September 24, 1960. In order to realize the unification (unity) of law, the Customary Law on land is used as the basis for the formation of national Agrarian Law. Customary law is used as a basis because the law is adopted by most Indonesians, so that customary law on land has a special position in the formation of national agrarian law.

Meanwhile, in Law No. 41 of 1999 concerning Forestry, it is stated that customary law communities are recognized for their existence, if in reality they meet the elements including:

1. The community is still in the form of a community
2. There is an institution in the form of a device of its customary rulers
3. There is a clear customary jurisdiction
4. There are legal institutions and instruments, especially customary courts, that are still adhered to
5. Still collecting forest products in the surrounding forest area to meet the needs of daily life

The communities that house Indigenous Peoples generally do not have legal entities, so there are often difficulties when these communities fight for their rights. Customary Law Peoples do not have the power of legal subjects who are considered equal to their opponents when there is a dispute or land struggle. Therefore, one of the legal steps that can be taken is for each Customary Law Community to form an

⁹ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: University of Indonesia Press, 1983, p.51.

association. According to the Regulation of the Minister of Law and Human Rights Number 3 of 2016, an association is an association is a legal entity which is a collection of people established to realize certain common aims and objectives in the social, religious, and humanitarian fields and does not distribute benefits to its members. The characteristics of the legal entity of this association are also in line with Customary Law Peoples who generally have similar interests in the social, religious and humanitarian fields. With the existence of a legal entity that houses Customary Law Peoples, it is hoped that they can have a clear legal standing in the eyes of the law and the state.¹⁰

The customary law referred to here is the original law of the indigenous people, which is a law that lives in an unwritten form will contain original national elements, namely the nature of society and kinship based on balance and covered by a religious atmosphere. The principles / conceptions of customary law taken as the basis for the formation of national land law, are as follows:

1. According to the conception of Customary Law, human relations with natural resources such as land have religious properties, meaning that natural wealth is wealth bestowed by God on customary law people;
2. Within the Customary Law community, customary rights are known. Customary rights are the rights of Customary Law communities which contain the authority and obligation to control, use and maintain natural resources within the customary rights area;
3. In the conception of customary law, besides there are customary law community rights, namely customary rights, there are also individual rights to recognized land;
4. In the Customary Law community there is a principle of gotong royong, every business that concerns the interests of individuals and communities is always carried out through gotong royong;
5. Another principle contained in Customary Law is that there is a difference between community members and foreigners in relation to the control, use of natural resources.

¹⁰ Vice Admira Firnaherera & , Adi Lazuardi, Development of the Indigenous Peoples' Land: Anticipating the Issues of the Indigenous Peoples' Land, JSKP: Journal of Public Policy Studies, 1(1), 71–84

Thus, until now the legal provisions applicable to land are guided by the UUPA in addition to other provisions that existed later as implementing regulations of the UUPA whose contents originate from customary law as the basis for the formation of national land law. This is very appropriate with the thinking of the Founder of this Nation and the Designer of Agrarian Law to make customary law the basis of National Agrarian Law.¹¹ However, in the framework of IKN development, there are problems related to the rights of indigenous peoples.

IKN Nusantara is planned to cover an area of approximately 256,142 hectares which is divided into the IKN Development Area which has an area of around 199,962 hectares, the IKN area (KIKN) has an area of 56,180 hectares, and the Central Government Core Area (KIPP) as part of the KIKN covering an area of 6,671 hectares. Based on the IKN Law, the implementation of the development of IKN Nusantara is designed into 5 stages. The first phase will be carried out in 2022-2024, the second phase in 2025-2029, the third phase in 2030-2034, the fourth phase in 2035-2039, and the fifth phase in 2040-2045. The first to third phases are targeted to include solving overlapping land tenure problems, building public facilities, as well as strengthening the involvement of indigenous and local leaders and peoples in various aspects of development and economic opportunities. Indigenous peoples in IKN are concentrated in two districts, namely North Penajam Paser Regency (PPU) and Kutai Kartanegara Regency. According to data from the Alliance of Indigenous Peoples of the Archipelago (AMAN), there are around 20,000 indigenous peoples spread across 19 indigenous groups in North Paser Penajam Regency and 2 in Kutai Kartanegara Regency.¹²

The existence of indigenous peoples in the IKN area is in the spotlight because of their lack of participation in the transfer of IKN. President Jokowi did invite several indigenous leaders but their existence was met with resistance because they were considered not representative of indigenous peoples as a whole. These figures are considered too elitist. In other words, indigenous people feel unheard. They seem to be considered not here and there is no coordination with traditional chiefs or figures

¹¹ Arvita Hastarini & Gusti Fadhil Fithrian Luthfan, The Legal Position of Indigenous Peoples in Obtaining Land Rights in Indonesia, SASANA LAW JOURNAL | Volume 8 Number 2, December 2022, 249.

¹² Vice Admira Firnaherera & , Adi Lazuardi, Development of the Indigenous Peoples' Land: Anticipating the Issues of the Indigenous Peoples' Land, JSKP: Journal of Public Policy Studies, 1(1), 71–84

who are here. For example, problems with land clarity, they do not get clear information. No wonder they ask for clarity on the lands of indigenous and indigenous people here. How their lands are not affected by the imposed IKN. For example, it is found that the installation of signposts that occur is considered a unilateral taking.¹³

Legal Protection of the Rights of Customary Law Peoples in the Development Area of the Capital City of the Archipelago

Basically, development should focus on the welfare of the people and involve the contribution of the community as widely as possible. Thus, when it comes to the development of IKN, the top priority in terms of this involvement is to provide protection of the traditional rights of indigenous peoples. As is known, the goals of national development can be achieved if the community can be empowered and contribute fully. Indigenous peoples as one of the groups that are very worried about their existence have become a necessity to get top priority. Given that customary law communities have lived for generations in the IKN area, it will be a nuisance for them if they cannot carry out activities that have been carried out for a long time, so efforts to protect customary law communities over land need to be carried out immediately to ensure food fulfillment.¹⁴

Based on Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH) states that to establish policies regarding procedures for recognizing the existence of Customary Law Peoples (MHA), local wisdom, and the rights of Customary Law Peoples related to environmental protection and management at the provincial level is the authority of the provincial government (Article 63 paragraph (2) point letter (n)). Meanwhile, the authority at the district / city level is mentioned in article 63 paragraph (3) letter (k). Customary rights according to the Regulation of the Minister of Agrarian State Number 5 of 1999 states that,

"Customary rights are the authority that according to customary law is vested by certain customary law peoples over certain areas that constitute the environment of their citizens to benefit from natural resources, including land

¹³ Rakhmat Hidayat, Agrarian Conflicts of Indigenous Peoples in the Relocation of the National Capital, National Conference of Sociology IX APSSI 2022 Balikpapan, 1-3 June 2022, 144.

¹⁴ Aushofi Zuhrotul Ulya, et al, Legal consequences of the enactment of the National Capital Law on Customary Rights in East Kalimantan, Notaire, 5 (3) 2022: 329-350

in those areas for their survival and livelihood, arising from the hereditary and unbroken external and inward relationship between the customary law community and the territory concerned."

There are several conditions to be able to recognize the rights of Indigenous Peoples, namely:¹⁵

1. Recognizing people's rights to their living areas is a genuine right;
2. The rights of Indigenous Peoples must be in accordance with human rights, not the rights given by the State

Land registration is a series of activities carried out by the State / Government continuously and regularly, in the form of collecting certain information or data about certain lands in certain areas, processing, storing, and presenting them for the benefit of the people, in order to provide guarantees of legal certainty in the land sector, including the issuance of evidence and its maintenance.¹⁶ In agrarian law, legality is very important because, Article 9 of the UUPA explains that:

1. Only Indonesian citizens have a full relationship with earth, water and space, within the limits of Articles 1 and 2.
2. Every Indonesian citizen, both men and women have the same opportunity to obtain a right to land and to benefit from the results, both for themselves and their families.

Article 20 paragraph (1) of the UUPA, contains legal provisions regarding the definition of property rights, namely as the hereditary, strongest, and fullest rights that people can have over land, keeping in mind the provisions of Article 6. Customary land has actually been used by customary law communities for various social and economic purposes, including housing, public and social facilities, rice fields and plantations. While the rest is in the form of wilderness.¹⁷

The Indigenous Peoples Bill (RUU) is one of a number of bills that put forward provisions intended to protect the rights of indigenous peoples and legal recognition of indigenous peoples. In essence, customary law is the crystallization of values that

¹⁵ Yumantoko. Policy Studies in Reorganizing Indigenous Peoples. Journal of the Wilderness, Vol. 3, No. 1, 2020

¹⁶ Boedi Harsono, Indonesian Agrarian Law History of the Formation of the Basic Agrarian Law, Its Content, and Implementation, Jakarta, 2003, p. 72

¹⁷ Sindy Ar'tri Oktaviyani, et al, Protection of Customary Land Rights of Paser Tribe in the New State Capital Region in East Kalimantan Based on Regional Regulation No. 4 of 2019, Journal of Legal Sciences Wijaya Putra Vol. 1 No. 2, September 2023, 166.

live in a society whose recognition is legitimized by the constitution.¹⁸ In the Constitution of the Republic of Indonesia Year 1945, Article 18B paragraph (2) states that:

"The State recognizes and respects the unity of society according to customary law and its traditional rights as long as it is alive and in accordance with the times, the community and the principles of the United States of the Republic of Indonesia according to law".

The regulation of recognition and protection of the rights of indigenous peoples aims to protect the rights of Indigenous Peoples in order to live safely, grow, and develop as a community group in accordance with their human dignity and dignity and be protected from acts of discrimination. This arrangement also provides legal certainty for customary law communities in exercising their rights such as the fulfillment of customary land rights. Article 18B paragraph (2) has shown the importance of teaching all young Indonesians to recognize and respect Indigenous Peoples and their customary rights. With the Constitutional Court Decision Number 35/PUUX/2012 which stated that the government's management of customary forests was contrary to the 1945 Constitution, there was a fundamental change in the community governed by customary law. The Constitutional Court places customary forests into forests located in the territory of an Indigenous People, as an integral part of an indigenous territory.¹⁹

Although juridically Indigenous Peoples have received protection from the constitutional level, in practice it turns out that the rights of indigenous peoples have been sidelined several times for the sake of smooth development. Therefore, the rights of Customary Law Peoples in the IKN location need to be considered, for the sake of upholding the constitution and the principles of protection, humanity, justice, equality of position in law and government, order and legal certainty, as well as balance,

¹⁸ Fikri Hadi and Farina Gandryani, Regional Ombudsman in the Framework of Bureaucratic Reform in the Regions: Institutional Study of DIY Ombudsman Institute, Indonesian Law Symposium, Vol. 1, No. 1, 2019, p. 628.

¹⁹ Indah Anggraini Novitasari, Farina Gandryani, Fikri Hadi, The Legality of Communal Rights to the Preservation of Customary Forests in the Capital Region of the Archipelago, Mimbar Justice, Vol. 16, No. 1, 2023, p. 89.

harmony, and harmony which are the spirit of the IKN Law. Based on various laws, Indigenous Peoples have the following rights:²⁰

- a. Forest Management and Utilization Rights
- b. Management Rights over Fields or Plantations
- c. Environmental Protection and Management
- d. Coastal Area Management.

Because the rights of Indigenous Peoples have been protected by laws and regulations, the IKN Authority needs to ensure that these rights are fulfilled, without complicating the IKN development process itself.

Based on Article 2 of Presidential Regulation Number 65 of 2022 concerning Land Acquisition and Land Management in the Capital City of the Archipelago, land acquisition in IKN is only regulated through two mechanisms, namely the release of forest control and or land acquisition. The release of forest areas 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 land acquisition mechanisms for development or public interest and land acquisition directly by taking into account community land rights and indigenous peoples' land rights.²¹

Then, the policy of limiting the transfer of land rights (*Land freezing*) in the context of IKN development means that the restriction is not intended to eliminate the civil rights of land owners, but the policy is a control mechanism to avoid parties whose purpose is to seek profit from the development of IKN so that the government makes restrictions. It should also be underlined that the concept of control policy in the form of restrictions on the transfer of land rights (*land freezing*) is carried out until the entire territory of the Capital City of the Archipelago becomes the Right of Use and / or Management Rights of the Nusantara Capital Authority. This means that this policy is a transitional policy while the process of granting use rights and / or Management Rights in the Capital City of the Nusantara is complete, but the granting of Right to

²⁰ Thontowi, J. (2015). Regulation of Indigenous Peoples and Implementation of Protection of Their Traditional Rights. *Pandecta: Research Law Journal*, 10(1), 1–13

²¹ Vice Admira Firnaherera & , Adi Lazuardi, Development of the Indigenous Peoples' Land: Anticipating the Issues of the Indigenous Peoples' Land, *JSKP: Journal of Public Policy Studies*, 1(1), 71–84

Use and / or HPL still pays attention to the existence of community Land Rights and customary land of customary law communities.

Furthermore, if there is a need for a development plan in the IKN Area at the location of lands on which there are already community rights, the government will use a Land Acquisition scheme that prioritizes consensus and there is a compensation mechanism for parties whose land will be used for development. Even to calculate the value of objects, land acquisition activities for development in the public interest are carried out by independent and professional public appraisers and licensed appraisal practices.²²

The issue of customary law community land in the IKN area needs to be anticipated by the government considering that the problem has arisen before the existence of IKN. The arrangement of customary land is important because of concerns that customary law communities in IKN will be displaced by development. Until now, not all indigenous peoples' lands have been recognized by the state through government regulations. Even though de facto, there are indigenous people living in the area.²³ The absence of this recognition makes indigenous people unable to manage customary forests independently and do not have land certificates even though they have lived for generations in the location to be used as IKN.²⁴

Meanwhile, regarding land tenure in the IKN area sourced from IP4T (Inventory of Land Control, Ownership, Use and Utilization) data, only 31% of the 75,968 land blocks in the IKN area are owned by the community with proof of certificate ownership. 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 (National Development Planning Agency of the Republic of Indonesia, 2020).

Recognition and protection of indigenous peoples referring to Article 4 of the Regulation of the Minister of Home Affairs No. 52 of 2014 is carried out with the stages of identification, verification and validation, as well as the determination of customary

²² Aditya Nurahmani and Putrida Sihombing, Policy Study on Restrictions on Transfer of Land Rights in the Capital City of the Archipelago, National Law Magazine Volume 52 Number 1 of 2022, 37.

²³ Basyari, I. (2022). Anticipating Indigenous Peoples' Land Issues in IKN. <https://www.kompas.id/baca/Polhuk/2022/05/06/Anticipation-Problem-Land-People-Adat-di-ikn>

²⁴ Sucipto. (n.d.). Slow Identification, Indigenous Peoples in IKN Have Not Been Recognized by the Government. Retrieved September 5, 2022, from <https://www.kompas.id/baca/nusantara/2022/06/06/identifikasi-lambat-masyarakat-adat-di-ikn-belum-diakui-pemer>

law communities. In East Kalimantan alone there are only three communities recognized by the government as legal societies, namely the Hemaq Beniung community in West Kutai, Mului and Paring Chopsticks in Paser Regency. Meanwhile, in North Penajam Paser Regency, there are no indigenous peoples recognized by the government. The North Penajam Paser Regency Government is still in the process of issuing a Regent Regulation on the identification of customary law communities.

Certainty of land rights is important in line with population growth in the IKN area. IKN Nusantara, like Jakarta Province will have a strong attraction for residents to migrate. By 2025, the population in IKN is estimated at 2 million.²⁵ Meanwhile, when compared to the population in North Paser Penajam Regency in 2020, there were 178,681 people with a population growth rate of 2.18 percent (BPS North Pasir Penajam Regency, 2021). Meanwhile, the projected population in Kutai Kartanegara Regency in 2020 is 729,382 people.

Then, Law Number 3 of 2022 has also guaranteed the protection of indigenous peoples' rights, both individual and communal rights. In addition, cultural values that reflect local wisdom must also be protected, based on Article 21 of the law. Such protection must be applied in the aspects of spatial planning, land and transfer of land rights, the environment, disaster management, and defense and security. In terms of land and transfer of land rights, the explanation of Article 16 of Law No. 3 of 2022 has mandated that the Land acquisition mechanism be carried out by taking into account the Land Rights (HAT) of the community and the HAT of indigenous peoples. In addition, the granting of management rights to the Nusantara Capital City Authority must also be carried out by taking into account the HAT of the community and the HAT of indigenous peoples. Then, Article 30 of Law No. 3 of 2022 also stipulates that land in IKN is designated as State Property (BMN) and/or assets under the control of the IKN Authority. However, this determination must be done with due regard to the HAT of indigenous peoples.²⁶

Basically, the protection that can be done by the government related to the issue of customary law people's land is to provide a legal basis or formulate regulations

²⁵ Susetyo, P. D. (2022). The Ecological Burden of IKN. <https://www.kompas.id/baca/artikel-opini/2022/03/13/beban-ekologis-ik>

²⁶ Bhakti Eko Nugroho, Protection of Indigenous Peoples' Rights in Relocating the National Capital, Journal of Social and Political Science, University of Jambi (JISIP-UNJA) Volume 6 Number 1 (2022) 64 - 78

for customary law communities as a strengthening purpose from a legal perspective. However, until now the Indigenous Peoples Bill has not been passed by the government. Even though this bill can be the legal basis for drafting social engineering in the IKN Project. Then, to create good social engineering, the participation of indigenous peoples is needed to be heard for their aspirations. So, the policy to be made is not top-down. According to Safitri, the requirements to be able to recognize the rights of indigenous peoples include:

1. Recognition of community rights to their living areas as native rights;
2. The granting of customary law peoples' rights does not conflict with human rights;
3. The existence of customary law communities is determined by the community itself.²⁷

There are six types of community participation which include passive, consultative, transactional, functional, interactive, and mobilization and connectedness. Based on this type of community participation, as customary law communities whose rights are constitutionally protected, it needs to be facilitated with the type of mobilization and connectedness participation. Through this participation, indigenous peoples with the government represented by the IKN Authority have an equal position so that existing interests can be fought equally. In addition, this type of participation is suitable because culturally indigenous peoples have inhabited the territory for generations and have authority over their fate. In line with the recognition of customary law communities in the 1945 NRI Constitution, the government should grant independence or autonomy to indigenous peoples by being limited by laws and regulations. Thus, indigenous peoples make their own choices without having to worry about losing the rights they deserve.²⁸

Basically, providing legal certainty over land parcels is a state obligation. This legal certainty is realized by registering land. One of the fastest methods is to use the Complete Systematic Land Registration Program (PTSL). In fact, land that has complete legality, in this case the existence of a certificate, can provide assurance for

²⁷ Yumantoko. Policy Studies in Reorganizing Indigenous Peoples. *Journal of the Wilderness*, Vol. 3, No. 1, 2020

²⁸ Muhamad Andre Nurdiansah, Quo Vadis Customary Land Tenure in the Development Area of the Capital of the Archipelago, *Al Azhar Indonesia Journal of Social Sciences Series*, Vol. 4, Number 3, October 2023, 125

customary law communities that their land cannot be arbitrarily annexed. So far, the government has mapped land parcels and conducted PTSL programs in the area. However, the quota is still unable to cover all existing land parcels. In 2021, the Ministry of ATR/BPN succeeded in organizing land registration of 7500 plots. However, only 40% of the land has certificates out of the total area of 3,333 square kilometers. For this reason, an additional PTSL quota for the IKN area is needed to be able to accommodate land that has not been registered.

In addition, to support the achievement of the program, it is necessary to simplify the land registration mechanism. Call it in the management of the Certificate of Physical Mastery. The majority of land in the IKN area does not have any rights at all because these lands are managed communally and for generations. A certificate of physical possession is indispensable for the legitimacy of the control of a piece of land. In practice, the community began to aggressively take care of the letter to the nearest kelurahan, but the kelurahan tended not to dare to make decisions because they thought the land was a state asset. For this reason, the National Land Agency must take part in directly examining the land in order to provide solutions to the procedural problems. No less important is the approach of the National Land Agency to communicate to the community about the development of IKN and its implications for them. This aims to prevent miscommunication with indigenous peoples which can later lead to disputes. Village officials, up to the sub-district level, must open the door to the widest possible deliberation for communities potentially affected by development.²⁹

CONCLUSION

The results showed that;

- a. The existence of indigenous peoples in the IKN area is in the spotlight because of their lack of participation in the transfer of IKN. President Jokowi did invite

²⁹ Nabil Abduh Aqil, et al, The Urgency of Protecting Indigenous Peoples' Land Tenure Rights in the National Capital Region of the Archipelago, *Recht Studiosum Law Review* Volume 1(1) 2022, 23-24.

several indigenous leaders but their existence received resistance because they were considered not representative of indigenous peoples as a whole

- b. Protection that can be done by the government related to land issues of indigenous peoples is to provide a legal basis or formulate regulations for indigenous peoples as a strengthening purpose from a legal perspective. However, until now the Indigenous Peoples Bill has not been passed by the government. Even though this bill can be the legal basis for drafting social engineering in the IKN Project. In addition, to support the achievement of the program, it is necessary to simplify the land registration mechanism. This aims to prevent miscommunication with indigenous peoples which can later lead to disputes. Village officials, up to the sub-district level, must open the door to the widest possible deliberation for communities potentially affected by development.

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