



## Social Justice for the Indigenous People of Penajam Paser Utara in the Era of IKN Development: Legal Analysis and Its Impact on Collective Rights

Zuni Khusniyah<sup>1),a),\*</sup>, Nabila<sup>2),b)</sup>

<sup>1)</sup>Gadjah Mada University

<sup>2)</sup>Law Office Nabila, S.H.,M.H & Associates

<sup>a)</sup>zunikhusniyah@mail.ugm.ac.id, <sup>b)</sup>Niyohobil@gmail.com

\*Correspondence: [zunikhusniyah@mail.ugm.ac.id](mailto:zunikhusniyah@mail.ugm.ac.id)

### ABSTRACT

*This study aims to explore the application of the principle of social justice in the development of the new capital city IKN towards the collective rights of indigenous peoples, as well as the legal challenges they face in defending their rights during the development process. The research employs by the qualitative approach, with the data collected from literature studies. The data include books, articles journal scientific, news, studies academic, official website government, and others reference relevant. In the process of writing and discussing in this academic is used descriptive analytical method. The findings of this research is development of the National Capital City (IKN) in North Penajam Paser can bother rights collective public customs in the environment. These impact include the loss of customary land, neglect of culture local, and social injustice consequence from the lack of involvement public custom in the planning and development process. Research results This can used as base for maker policy For to design regulation inclusive and equitable development social. The result of this study is about the push involvement active public custom in the planning process development, as well as strengthening protection law to right customs and culture threatened local. The novelty from this study lies in focus integrated analytical focus in the social justiceperspective to phenomenon of the dispossession of the public collective right in the Balik indigeneous community. This research fills in emptiness studies in previous that have not thoroughly examined the social justice in dimension of the context of IKN development and the impact on the existence of local indigeneous communities.*

**Keywords:** IKN; Indigenous Peoples; Collective Rights; Social Justice; Society

### ABSTRAK

Penelitian ini bertujuan untuk mengkaji penerapan prinsip keadilan sosial dalam pembangunan Kota Ibu Kota Baru (IKN) terhadap hak-hak kolektif masyarakat adat, serta tantangan hukum yang dihadapi mereka dalam memperjuangkan hak-hak tersebut selama proses pembangunan. Penelitian ini menggunakan pendekatan kualitatif, dengan data yang dikumpulkan dari studi literatur. Data tersebut meliputi buku, artikel jurnal ilmiah, berita, studi akademik, situs web resmi pemerintah, dan referensi relevan lainnya. Dalam proses penulisan dan pembahasan dalam penelitian ini digunakan metode deskriptif analitis. Temuan penelitian ini menunjukkan bahwa pembangunan Kota Ibu Kota Nasional (IKN) di Penajam Paser Utara dapat mengganggu hak-hak kolektif masyarakat adat di lingkungan tersebut. Dampak ini meliputi kehilangan tanah adat, pengabaian budaya lokal, dan ketidakadilan sosial akibat kurangnya keterlibatan masyarakat adat dalam proses perencanaan dan pembangunan. Hasil penelitian ini dapat digunakan sebagai dasar bagi pembuat kebijakan untuk merancang regulasi yang inklusif dan adil dalam pengembangan sosial. Hasil penelitian ini berkaitan dengan peran aktif masyarakat dalam proses perencanaan pembangunan, serta penguatan perlindungan hukum terhadap hak-hak adat dan budaya yang terancam di tingkat lokal. Keunikan dari penelitian ini terletak pada fokus analisis terpadu dalam perspektif keadilan sosial terhadap fenomena pengambilalihan hak kolektif masyarakat di komunitas asli Balik. Penelitian ini mengisi kekosongan dalam studi sebelumnya yang belum secara mendalam mengkaji aspek keadilan sosial dalam konteks pengembangan IKN dan dampaknya terhadap keberadaan komunitas asli lokal

**Kata Kunci:** IKN; Masyarakat Adat; Hak Kolektif; Keadilan Sosial; Masyarakat

This is an open access article under the [CC - BY](https://creativecommons.org/licenses/by/4.0/) license.





## INTRODUCTION

The land is one of the basic needs for humans being. Currently, the availability of the land is becoming increasingly limited while the demand for land for various development purposes continues to grow up. Basically, the use of land has two main purposes (Santoso, 2008) First, land is used for economic activities, such as plantations, agriculture, and others. Second, the land is used for development, for example to build houses, buildings, roads, public facilities, and various other infrastructures (Harsono, 2015). The relocation of the nation's capital from Jakarta to the East Borneo region, especially in North Penajam Paser and Kutai Kartanegara, has brought various consequences for the local communities (Nugroho, 2022) The one of very important aspect is the legal status of customary land, which has been an important part of the lives of indigenous peoples for generations (Sudiyat, 1981). Customary land is not only an asset or source of livelihood for indigenous peoples, but also a marker of social and cultural identity inherited from ancestors (Hadikusuma, 1992). This study aims to explore the application of the principle of social justice in the development of the IKN to the collective rights of these indigenous peoples, as well as the legal challenges they face in defending those rights during throughout the development process.

In the legal, the customary land rights in Indonesia are protected by statutory regulations, namely is Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) (Pemerintah Republik Indonesia, 2004). These provisions clearly demonstrate that the Indonesian government recognizes the existence of customary land and customary law. Legal recognition of customary land include the obligation registration, but in the practice right custom public custom often not enough protected, especially in development areas project transfer Mother city state. This situation threatens existence of customary land and has the potential cause conflict law related utilization land and rights public custom.

The principle of social justice is one of the foundations pillar of development that focuses on equal opportunities and fair treatment for all groups in society, including indigenous peoples. Although the development of the IKN is intended to promote national progress, it must also consider the longstanding rights of indigenous peoples. Indonesian law, especially through the 1945 Constitution and Law No. 6 of 2014 concerning Villages, recognizes the rights of indigenous peoples and provides a legal basis for protecting their rights to customary land and culture. However, in practice, large developments, such as the IKN, often ignore the existence of indigenous peoples and their rights. In this case, the principle of social justice plays a critical role in ensuring that all stakeholders, especially indigenous communities, are fairly included and their rights protected in the development process (R. Hidayat, 2020).

One of the significant challenges facing by indigenous peoples is the legal recognition of their customary lands. For the indigenous communities customary lands is not just a source merely a source of livelihood, but also an integral part of their cultural identity and heritage that has evolved over generations. The development of the IKN wich involves the use of land previously inhabited by indigenous peoples can created conflicts between development needs and the rights of indigenous peoples. Law No. 41 of 1999 concerning Forestry and Law No. 11 of 2020 concerning Job Creation are some of the legal bases that regulate land transfer and land use, but often these policies do not provide sufficient protection for the collective rights of indigenous peoples (Anang Husni, 2015).

Indigenous peoples often do not have the opportunity to voice their rejection of the IKN development plan, wich includes their customary areas. In the fact, indigenous communities express confused, because suddenly their gardens and houses are included in the IKN development area without ever having their consent (Firnaherera, 2022). Although the relocation of the national capital is considered as step effective step tp reduce economic disparity, this initiative also has the potential to create new problems in the designated area. One of the most crucial aspects things to be noticed in policy formulation is the effort to protection and respect customary land rights, particulary for indigeneus law communities, in addition to evaluating the potential benefits that may arise. In the process, the People's Representative Council of the Republic of Indonesia (DPR RI) has to validate Law (UU) Number 3 of 2022 concerning the National Capital (IKN) on January 18, 2022. This law become the legal foundation for transferring the capital city from from DKI Jakarta Province in the island of Java to East Borneo Province. In his 2019 state address the President of the Republic of Indonesia Joko Widodo announced the plan for the relocation of the capital city before the People's Consultative Assembly (MPR) of the Republic of Indonesia. North Penajam Paser (PPU) and Kutai Kartanegara ( Kukar ) in East Borne was determined as the area for the new IKN . However, the law about the capital city of this country cause unrest in society, especially among affected population development of the IKN. At the location development of the IKN, has installed boundary markers in customary areas, although representative public



law custom state that they had never been invited to negotiate with the government regarding this matter (Nurdiansah, 2023).

In addition, the regulation of the development IKN must carefully balance between economic progress with the preservation of the rights of indigenous peoples. From the perspective of social justice theory, as articulated by John Rawls in his book *A Theory of Justice* (1971), justice is not only about fair distribution but also about respect for the rights of individuals and groups, especially the most vulnerable. Rawls stated that the principle of social justice requires fair treatment of all individuals, including marginalized groups such as indigenous peoples, by giving them equal rights to enjoy the results of development (Damanhuri Fattah, 2013). The application of the principle of social justice in the development of the IKN must include planning that involves indigenous peoples in the decision making process, as well as ensuring that they receive fair benefits from the development.

The development of the IKN presents a significant opportunity for Indonesia to improve the country's governance and infrastructure systems. However, if not properly regulated, this project could result in serious injustices for indigenous peoples. Therefore, it is important to understand the legal challenges faced by indigenous peoples, as well as how the protection of their rights can be accommodated in existing development policies. In this case, the principle of social justice is expected to be the basis for the policies that are more inclusive and fair for all parties. The legal implications of IKN development on the collective rights of indigenous peoples also needs to be a major concern. The development of the IKN has the potential to threaten the rights to customary land and the sustainability of indigenous peoples' culture, especially if development policies do not adequately consider their rights. According to Sihombing (2019), development that does not involve indigenous peoples in planning and decision-making can cause damage to their social and cultural systems. Therefore, it is necessary regulations that are able to provide protection for the collective rights of indigenous peoples, including land and cultural rights, in IKN development policies.

This research examines more deeply the related implementation of the principle of social justice in the IKN development policy, especially in the collective rights of the indigenous people of North Penajam Paser. This study also aims to provide an understanding related to implementation of the principle of social justice in the development of the IKN and its impact on the collective rights of indigenous peoples. This study also focuses on how the law can provide better protection for indigenous peoples amidst the rapid development that is taking place. Based on these findings, it is hoped that more just and inclusive policy recommendations can be found for the development of the IKN that respects the rights of indigenous peoples.

## LITERATURE REVIEW

A literature review is the activity reviewing or re evaluating various references source that have been published by previous researchers or academics related being investigated (Mahanum, 2021). In the research written by Muhamad Andre Nurdiansah in 2023, related ownership land customs in the IKN show that Protection to public law custom specifically in matter ownership land custom Still need role active and continuous efforts from government. In a similar study written by Nadya Dwi Cahyani in 2024 (Cahyani & Susilowati, 2023) regarding the ownership of customary land in the IKN area, but this constitution still in the form of a bill or design Constitution public law custom in discussion process stage harmonization DPR RI 2020-2024 National Legislation Program which has not yet been finished. But at least with existence regulation Paser Regency area Number 4 of 2019 concerning recognition and protection public of law custom, this doesn't render it legally void or without normative grounding (Cahyani & Susilowati, 2023). The research gap between previous studies and the current research lies in the focus of this study the researcher aims to examine the phenomenon of indigenous communities in North Penajam Paser, who are currently affected by the development of the IKN, using the theory of social justice and analyzing the impact of IKN development on their collective rights.

### Theory of Social Justice in Development

The principle of social justice is a fundamental foundation of development that must prioritize equal opportunities and fair treatment for all levels of society. John Rawls (1971) in his work *A Theory of Justice* argues that social justice is not only concerned with the fair distribution of resources, but also with respect for the rights of individuals and groups, especially the most vulnerable. Rawls proposed two principles of justice: first, that everyone has an equal right to basic liberties, and second, social and economic inequalities should benefit those who are most



disadvantaged. In the development of the IKN, the application of this principle of social justice is important to ensure that indigenous peoples also benefit from development without losing their long-standing rights (Damanhuri Fattah, 2013).

According to John Rawls, justice in the basic structure of society can be achieved through the rearrangement or reorganization of the social order. To achieve this, each individual must be in a condition original position. This position describes a situation where humans are placed back in their natural state, namely self-interested, egocentric, and have moral awareness. From this starting point, individuals will be able to reach a common agreement on the principles of justice. In order for someone to truly be in this original position, Rawls introduces the concept of the veil of ignorance, namely a state in which individuals do not know their social status, abilities, or position in society (Damanhuri Fattah, 2013).

Research by Hidayat shows that social justice in infrastructure development must include aspects of fair distribution, access to resources, and respect for the cultural rights of indigenous peoples (R. A. Hidayat, 2016). In the development of the IKN, the biggest challenge is implementing these principles. Considering the frequent conflicts between development needs and the established rights of indigenous peoples. Hidayat emphasized that non-inclusive development can lead to increased inequality and further marginalization of indigenous communities.

### **Collective Rights of Indigenous Peoples**

Indigenous peoples possess collective rights that are essential in preserving their identity and culture. These rights include the right to customary land, the right to practice their social and cultural life, and the right to be involved in decision-making processes that affect their lives. The 1945 Constitution and Law No. 6 of 2014 concerning Villages provide a legal basis for the recognition of indigenous peoples' rights in Indonesia. However, despite this legal foundation, in practice, the collective rights of indigenous peoples are often neglected in development policies that fail to actively involve them in the decision-making process (Sihombing, 2021). The Center for Legal Studies (2018) emphasized that the collective rights of indigenous peoples encompass not only land ownership, but also the preservation of their culture and environment. Development that excludes indigenous participation or disregards the sustainability of their collective rights can result in the erosion of their cultural identity.

The recognition of collective land rights by indigenous communities originates from local institutions within the Indonesian land law system. These rights are rooted in customary traditions that govern how such rights are maintained and upheld within the community. In this context, Parsons argues that the foundation of cultural legitimacy goes beyond direct interests, influence, or group solidarity, as it is grounded in a commitment to shared societal values. Unlike loyalty to a specific group, commitment to values reflects a broader sense of responsibility that transcends considerations of personal gain or external social and environmental pressures (Anang Husni, 2015).

### **Impact of IKN Development on Indigenous Communities**

The development of the IKN, which involves the use of customary land in Penajam Paser Utara, has the potential to negatively impact indigenous communities (Juliansyah, 2024). One of the most significant issues is the takeover of customary land for development purposes without proper recognition or respect for indigenous rights. Past experiences with large-scale development projects in Indonesia such as land clearing for plantations or infrastructure have shown that indigenous communities are often evicted without adequate compensation or involvement in the decision-making process (Kurniawan, 2025).

### **Legal Protection for Indigenous Communities in the Development of the IKN**

In the development of the IKN, legal protection for indigenous peoples is essential to ensure that their rights are upheld. Law No. 41 of 1999 on Forestry and Law No. 11 of 2020 on Job Creation serve as the legal foundations for regulating land use and natural resources. However, these policies often fail to provide adequate protection for the rights of indigenous peoples. Yuan Sihombing argues that the law must be more specific in safeguarding customary land rights to prevent the marginalization of indigenous communities during the ongoing development process (Sihombing, 2021). One example of legal protection that can be applied is the implementation of special regional regulations recognizing the rights of indigenous peoples. Such regulations have already been adopted in several regions of Indonesia, providing legal acknowledgment of customary rights, including rights to land and cultural preservation. With the adoption of similar regulations, it is hoped that IKN development can also accommodate and respect the rights of indigenous peoples (Ayunda, 2024).



Research conducted by (Sihombing, 2021) shows that development policies that exclude indigenous peoples from the planning process can lead to social inequality and injustice. Inclusive development, which actively involves indigenous communities in decision-making, has greater potential to promote sustainable social and economic well being. In addition, research by Hidayat (2020) which examines the implementation of the principle of social justice in infrastructure development, highlights the importance of applying this principle to ensure a fair distribution of development outcomes. In the context of IKN development, this means ensuring that indigenous peoples receive equal benefits from the project without losing their rights to land and cultural identity.

Although several studies have examined the impact of development on indigenous communities, many of them lack an in depth analysis of the application of the principle of social justice in the development of the IKN. Most of these studies focus primarily on the environmental and economic impacts of development, but do not adequately address how social justice is implemented in development policies particularly in relation to the collective rights of indigenous communities. Therefore, this study aims to fill that gap by analyzing how the principle of social justice is applied in the development of the IKN and its impact on the collective rights of the indigenous people of North Penajam Paser.

## METHOD

This study use a qualitative approach, with the sourced data collection from bibliographic studies. Data sources include books, articles journal scientific, news reports, academic studies, official government website, and various others relevant reference. In the process of drafting and discussing this scientific work, a descriptive analytical method is employed. The information obtained from various literature is analyzed and sistematically described in the discussion section, so that produce findings that become the basis of this (Sugiyono, 2014). This research aiming to analyze the implementation principle justice social in development of the National Capital City (IKN) infrastructure towards rights collective public customs in North Penajam Paser, East Kalimantan, as well as law impact from the development of IKN towards development on those rights.

The study will use secondary data sources in the form of literature reviews and relevant regulations to this discussion. The primary legal sources utilized in this study, such as the 1945 Constitution, Law Number 6 of 2014 concerning Villages, Law No. 41 of 1999 concerning Forestry, and Law No. 11 of 2020 concerning Job Creation, Law (UU) Number 5 of 1960 concerning Basic Agrarian Principles

## RESULTS

The development of the National Capital City (IKN) in North Penajam Paser, East Borneo, has had a significant impact on indigenous communities in the region. Based on research conducted, several important findings illustrate how the development of the IKN threatens the collective rights of indigenous communities, including the appropriation of customary land, the neglect of cultural rights, and the experience of social injustice by indigenous peoples (Juliansyah, 2024). The IKN development has led to the eviction of customary lands that were traditionally managed by indigenous communities in Penajam Paser Utara. As stated in an AMAN article (2025), this development carries a high risk of indigenous peoples losing access to their ancestral lands, which serve as both a source of livelihood and a key part of their cultural identity. Several cultural and sacred sites such as Batu Tukar Nondo, Batu Badok, and Bakau Lemit which hold historical and spiritual significance for the local indigenous population, have already been displaced or are under threat due to the ongoing development. These sites are central to the social and cultural life of the Balik Tribe in Sepaku, who regard them as sacred locations for traditional rituals. The loss of these sites not only erodes their cultural heritage but also causes profound psychological distress among indigenous communities (Pambudhi, 2024).

In the Penajam Paser area, there are a number of customs. One of them is the land custom of the Balik Tribe. Currently, the population of the Balik Tribe is increasingly decreasing. Various events that have occurred have caused a significant decrease in the number of the Balik Tribe Indigenous Community in general. Before the development of the National Capital City (IKN), the confiscation of the customary territory of the Balik Tribe had already occurred, especially with the entry of the wood company PT Weyerhaeuser, which is well known by the indigenous community as PT The Long. After that, in 1968, the company PT ITCI Hutani Manunggal (PT IHM) started operating in the area, followed by a transmigration program between 1975 and 1977. In addition, in 2000, the palm oil company PT Agro Indomas and PT Palma (in 2012) also entered the customary territory of the Balik Tribe. The Balik Indigenous



Community in Sepaku, Balik Pempalan, and Paser Maridan has become increasingly marginalized with the development of the IKN, which threatens the sustainability of their customary lands.

Indigenous peoples often do not have the opportunity to voice their rejection of the IKN development plan, which includes their customary areas. In fact, the Pempalan Indigenous Community feels confused because suddenly their gardens and houses are included in the IKN development area without any prior agreement from them. The entry of large companies and transmigration programs has caused the Balik Tribe to lose their living space, making them marginalized and struggling to carry out traditions such as mountain rice farming, due to the lack of available land. Moreover, the traditional rituals of the Balik Tribe also face discrimination, as they are considered idolatrous and outdated by some outsiders. In addition, the experience of Baniah reflects the uncertainty and anxiety surrounding land takeovers without consent. Baniah saw a drone flying over her garden but ignored it, assuming it was only monitoring the area. However, without her knowledge, the land of her garden had already been marked. When Baniah asked the RT (neighborhood leader) about the possibility of eviction, she received no clear answer only that eviction had not yet occurred at that moment. That response only added to her concern, because although eviction had not happened yet, it still remained a possibility in the future. This has caused Baniah to experience ongoing anxiety and difficulty sleeping due to a deep fear of sudden eviction and uncertainty about where she would go if eviction were to happen (Ayunda, 2024).

Indigenous communities in North Penajam Paser face legal uncertainty regarding their customary land rights. Although there is legal recognition of indigenous peoples' rights in the 1945 Constitution, Law No. 6 of 2014 concerning Villages, and other regulations, the implementation of these regulations often does not align with the reality on the ground. Many indigenous peoples do not possess valid legal proof of ownership of their customary lands, which makes them vulnerable to marginalization in the development process. The AMAN (2025) article also notes that, although there have been some efforts to provide compensation to affected indigenous peoples, the process of evicting and relocating them from their customary lands was carried out unilaterally, without proper consultation with customary authorities (Saraswati & Adi, 2022).

One of the major impacts of the IKN development is the threat to the social and economic sustainability of indigenous communities. As noted in the AMAN report, indigenous communities in North Penajam Paser rely heavily on shifting cultivation and forest management for their livelihoods. Their customary lands are not only a source of income but also an integral part of their social structure. Development that limits their access to customary lands threatens the sustainability of these livelihoods. In addition, indigenous women, who play a major role in land and forest management, feel especially threatened by these evictions because they are losing access to the natural resources they have long managed for the survival of their families and communities (Siti et al., 2023).

The results of the study also show that indigenous peoples in North Penajam Paser feel excluded from the planning and decision-making processes related to IKN development. The Head of the Balik Sepaku Tribe, Sibukdin, stated that they had never been involved in any discussions regarding the development that would drastically change their lives. The development process has been carried out without consultation or even proper notification, creating a sense of injustice among indigenous peoples. This contradicts the principle of social justice, which states that all parties affected by a policy or development project have the right to be involved in the decision-making process (Faturahman et al., 2024).

The position of land ownership rights has long been recognized in society. The ideological foundation of these ownership rights is reflected in Pancasila and the 1945 Constitution. Therefore, from a legal perspective, individual rights are acknowledged and exist within the state system (Sudika, 2020). This is evidenced by the Basic Agrarian Principles contained in Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA). In the past, ownership rights under Western law were absolute, in line with the individualism it embraced, where interests in one's property could not be contested.

Customary law communities that are united under one clan have rights to land known as "clan rights." These rights refer to customary land owned by the customary community. The management and utilization of these rights are carried out collectively, either by individuals or groups, under regulations established by the clan head. Generally, customary clan rights are not accompanied by written documentation and often cover large areas. Even though unwritten, these rights are still recognized by customary law communities and by society in general (Harsono, 2020).



As a consequence of these provisions, the government is not permitted to take actions against privately owned property, even for public interest purposes. Property rights can be understood as rights that are inheritable and continuous across generations, without the need to reapply for the rights if there is a transfer of ownership. In the current context, land ownership rights are regulated in Article 20 paragraph (1) of the UUPA, which states: "Ownership rights are hereditary, the strongest, and the fullest rights that a person can have over land," with due regard to the provisions in Article 6. From this explanation, ownership rights include several elements, namely strongest, indicating that the duration of these rights is not limited or time-bound; fullest, describing broad authority in utilizing the land without encumbrances; hereditary, meaning the rights can be passed down or transferred from one generation to the next (Pemerintah Republik Indonesia, 2004).

As part of their struggle to defend their rights, indigenous peoples in North Penajam Paser firmly reject the relocation and eviction of their customary territories. According to AMAN's report, during a joint meeting, customary leaders expressed their rejection of relocation to other areas and the handover of their land for the IKN project. They also demanded formal recognition of their customary rights in regional regulations and requested that their ancestral sites not be disturbed. This rejection is a form of resistance to the marginalization they have experienced throughout the development process.

## DISCUSSION

The principle of social justice demands a fair distribution of resources and development benefits, ensuring that no party is disadvantaged or marginalized. As explained by John Rawls (1971), social justice requires equal treatment of every individual and group, along with respect for their rights, especially those of the most vulnerable. In the development of the IKN, indigenous peoples must be given the opportunity to voice their concerns and be actively involved in planning processes that affect their customary lands and culture. Development that is not inclusive and fails to consider the collective rights of indigenous peoples can lead to prolonged social injustice. However, this study finds that the development of the IKN in North Penajam Paser has primarily focused on economic and infrastructure aspects, while the collective rights of indigenous peoples have been largely neglected. This stands in stark contrast to the principle of social justice, which should serve as the foundation of any development process. Indigenous peoples should be involved in every stage of planning and implementation, yet in reality, they are often treated merely as passive subjects of decisions made without their participation.

Legally, indigenous peoples have received protection at the constitutional level. However, in practice, their rights are often disregarded in the name of development. Therefore, the treatment of indigenous peoples must not be arbitrary. Respect for their existence is essential as an effort to reaffirm the constitutional values based on the principles of protection, humanity, justice, harmony, and the balance between law and government policy. This is crucial to ensure that the development of the National Capital City (IKN) does not negatively impact any community group in Indonesia. The IKN authorities must ensure that the fulfillment of the rights of indigenous peoples is in accordance with the applicable laws and regulations, without impeding the overall progress of IKN development (Risti Aulia et al., 2023).

### Impact of Law on Collective Rights of Indigenous Peoples

In terms of legislation, although Law No. 6 of 2014 concerning Villages and Law No. 41 of 1999 concerning Forestry recognize the rights of indigenous peoples, the implementation of these regulations is still very weak in practice. This study shows that many indigenous peoples in Penajam Paser Utara do not have valid documents regarding their customary land. This makes them vulnerable to land acquisition without adequate compensation or involvement in decision-making (Retno mulyaningrum, 2023). Their recognition and protection are often not enforced due to the lack of clarity in administrative processes and the absence of mechanisms to ensure that indigenous peoples' rights are respected. In the development of the IKN, this means that even though there are policies stating the protection of customary land rights, indigenous peoples remain marginalized and lose their rights because development policies do not pay attention to their needs (Firnaherera, 2022).

Given the number of indigenous peoples affected by the National Capital City (IKN) development project, the direction of the development should also take into account the existence and sustainability of these communities. However, in reality, the IKN development process has drawn criticism, especially regarding violations of the dignity and rights to life of indigenous peoples living in the development area. From the beginning, the drafting of the IKN Law



was carried out without the involvement or legitimate consent of indigenous peoples (Juliansyah, 2024). In fact, they are a group that is very vulnerable to the impact of relocating the capital city from Jakarta to the Penajam Paser Utara and Kutai Kartanegara areas. This relocation is closely related to the potential loss of living space for indigenous peoples, including the eviction of land where they live and work. Although indigenous peoples have a customary legal system that regulates collective land rights, this law is often not considered applicable when it conflicts with national interests. As a result, indigenous peoples are often forced to give up their land for development, even though the compensation given is often not commensurate with the material or cultural value of the land (Devinta & Addiansyah, 2024).

There are four main criticisms concerning the process of formulating and ratifying policies related to the development of the National Capital City (IKN) with respect to the existence of indigenous peoples. First, indigenous peoples are not granted the right to express their opinions. Second, the aspirations and proposals submitted by indigenous peoples are disregarded in the policy-making process. Third, they are not entitled to receive responses or clarifications regarding the inputs they have provided. Fourth, indigenous peoples lack certainty about whether the IKN development will impact their living spaces. These criticisms arise from the minimal active participation of indigenous peoples in the policy formulation process. The stages from drafting to ratification of the law were perceived as rushed, resulting in procedural deficiencies (Risti Aulia et al., 2023). Indeed, in a democratic state, citizen involvement including that of indigenous peoples should be prioritized in the public decision-making process. Criticism of the policy formulation stage also raises concerns about a domino effect in the subsequent development process, where the initial goal of the IKN to promote equitable development may inadvertently lead to the marginalization of indigenous communities (Nugroho, 2022).

Indigenous communities have deep and complex attachments to the areas where they live. For them, the land is not only economically valuable but also holds spiritual significance and serves as a place for preserving knowledge and cultural traditions. In the context of developing the National Capital City (IKN), it is important to formulate an appropriate legal strategy to address customary land issues (Kurniawan, 2025). Steps that can be taken include: (a) recognition and protection of indigenous peoples through processes of identification, ratification, and formal determination; (b) optimization of the implementation of regulations governing indigenous legal communities; and (c) mitigation of the impact of livelihood loss by providing alternative livelihoods. Based on the Basic Agrarian Law Number 5 of 1960, the state, as the representation of the collective power of the people, holds full authority over the management and ownership of all land. However, in accordance with government regulations, the state may delegate some of this authority to autonomous regional governments and indigenous peoples, provided that such delegation does not conflict with national interests (Nurhidayat & Rahman, 2023).

### **Legal Challenges Facing Indigenous Communities**

One of the major challenges faced by indigenous communities in North Penajam Paser is their lack of involvement in the decision-making process and the unclear legal status of their customary land. This study found that, although indigenous communities have managed their land for years, they lack sufficient legal evidence to prove their rights. Indigenous communities in North Penajam Paser are often excluded from development planning and decisions concerning their land, resulting in feelings of marginalization. Their inability to access equal legal justice is a primary factor hindering their capacity to defend their rights. Without clear recognition and adequate legal protection mechanisms, they will continue to be marginalized throughout the development process.

The legal basis for recognizing indigenous customs and their land is firmly established in Article 18B and Article 28I paragraph (3) of the 1945 Constitution, which mandate recognition and respect for indigenous customary law and rights in line with contemporary development (Guntur, 2023). This provision is reinforced by Law Number 3 of 2022, which explicitly confirms in Article 21 that indigenous customary rights, including local cultural values, must be guaranteed and protected by the state, both individually and communally. Furthermore, Article 30 of the same law states that land within the National Capital Region (IKN) is categorized as State Property (BMN), under the authority of the IKN administration. However, Article 16 affirms that communal land rights, including indigenous customary law rights, must continue to be accommodated and respected. Customary law communities possess several important rights, including management rights that cover forest utilization, garden management, and coastal area management based on recognized management rights. Therefore, it is crucial for the IKN authorities to ensure that all indigenous



customary rights are genuinely acknowledged and fulfilled in every development policy implemented (Islami et al., 2024).

## CONCLUSION

The development of the new capital city in North Penajam Paser has had a significant impact on indigenous communities, particularly in social, economic, and legal aspects. These communities are facing threats to their collective rights, including the right to customary land and the sustainability of their culture. Although there are several regulations that recognize the rights of indigenous communities, their implementation is still very weak. The development processes that are not inclusive and fail to involve indigenous communities in decision-making causes deep social injustice. Therefore, this study recommends that the government pay more attention to the principle of social justice and involve indigenous communities in every stage of planning and implementation of the development of the capital city. Legal protections for their customary land and cultural rights must be enforced more firmly, so that indigenous communities are not marginalized in the development process that should benefit all parties.

Every study has its necessary limitations that must be noted. From the identifying these limitations the functioning for give better understanding about the findings and offers direction for future research. This research is also not except, and there is a number of aspects that have not been fully covered in studies this. Below are some of the limitations of this research, along with suggestions for future studies that could complement and expand its scope. The research is fully depends on the study literature and analysis existing regulations, so that findings produced more nature theoretical and normative. Although has done analysis deep to various governing literature and regulations rights public custom as well as justice social in development, but this study can not involves primary data obtained from interview direct or observation field that can give perspective direct from public customs involved. Therefore, the result study may not fully reflect reality that occurs in the field. This research especially focuses on the legal and social aspects from impact development of the IKN towards public customs. However, in the economy aspect, environmental and welfare public aspect of custom communities are not discussed in depth. In the fact, sosio economic sustainability and environmental conservation are very important factors for the success equitable development.

## REFERENCES

- Anang Husni. (2015). Hak-Hak Kolektif dalam Sistem Hukum Pertanahan (Suatu Analisis Mengenai Fungsi Hukum dalam Konflik Pertanahan). *Journal Unram*, 3(1), 420.
- Ayunda, I. (2024). *Masyarakat Adat di Penajam Paser Utara Tergusur Oleh Pembangunan IKN*. Aliansi Masyarakat Adat Indonesia.
- Cahyani, N. D., & Susilowati, I. F. (2023). Kajian Yuridis Pengakuan Masyarakat Hukum Adat Di Wilayah IKN Dalam Upaya Memberikan Perlindungan Hak Atas Tanah Masyarakat Hukum Adat. *Novum*, 4, 37–50.
- Damanhuri Fattah. (2013). Teori Keadilan Menurut John Rawl. *Jurnal TAPiS*, 9(2), hlm 35.
- Devinta, L., & Addiansyah, M. N. R. (2024). *Politik Peminggiran Masyarakat Adat Dibalik Pembangunan Ibu Kota Nusantara*. 50(2), 301–316. <https://doi.org/10.55981/jmi.2024.8845>
- Faturahman, A. A., Mubarak, A. M. S., Marta, I., Fauzi, R., & Septian, M. A. (2024). Dampak Positif dan Negatif Pemindahan Ibu Kota Negara (IKN). *Jurnal Perencanaan Wilayah Dan Pembangunan*, 2(1), 17–29.
- Firnaherera, V. A. (2022). Pembangunan Ibu Kota Nusantara: Antisipasi Persoalan Pertanahan Masyarakat Hukum Adat Development of the Nusantara Capital City: Anticipating the Issues of the Indigenous Peoples' Land. *Jurnal Studi Kebijakan Publik*, 1(1), 71–84.
- Guntur, I. G. N. (2023). Ragam pengakuan formal terhadap penguasaan tanah adat di Indonesia Various formal recognitions of customary land tenure in Indonesia. *Tunas Agraria*, 6(2), 109.
- Hadikusuma, H. (1992). *Pengantar Ilmu Hukum Adat Indonesia*. Mandar Maju.
- Harsono, B. (n.d.). *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*. Djambatan.
- Harsono, B. (2015). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Asas dan*



- pelaksanaannya. Universitas Tri Sakti.
- Hidayat, R. (2020). Keadilan Sosial dalam Perlindungan Hak Masyarakat Adat atas Tanah Ulayat di Indonesia. *Rumah Jurnal*, 2(4).
- Hidayat, R. A. (2016). Analisis Yuridis Pembatalan Sertifikat Hak Atas Tanah Pada Kawasan Hutan. *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.4 No.2.
- Islami, N. T., Melwani, K., & Zainuddin, Z. (2024). Kepemilikan Individu dalam Kepemilikan Kolektif: Studi tentang Penguasaan Tanah Ulayat di Nagari Limo Kaum Kabupaten Tanah Datar. *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)*, 4(2), 495–504. <https://doi.org/10.36908/jimpa.v4i2.421>
- Juliansyah, M. (2024). *IKN dan Ketidakpastian Hak Masyarakat Adat*.
- Kurniawan, F. (2025). *Konflik Agraria Dalam Pembangunan Ibu Kota Negara : Analisis Hak Guna Usaha Dan Perlindungan Hak*. 4307(February), 1029–1036.
- Mahanum, M. (2021). Tinjauan Kepustakaan. *ALACRITY: Journal of Education*, 1(2), 1–12. <https://doi.org/10.52121/alacrity.v1i2.20>
- 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>
- Nurdiansah, M. A. (2023). Quo Vadis Kepemilikan Tanah Adat di Wilayah Pembangunan Ibu Kota Nusantara. *Jurnal Al Azhar Indonesia Seri Ilmu Sosial*, 4(3), 121. <https://doi.org/10.36722/jaiss.v4i3.2028>
- Nurhidayat, & Rahman, A. (2023). Masyarakat Adat Kabupaten Penajam Paser Utara Dan Kutai Kartanegara Kalimantan Timur Di Tengah Pembangunan Ibu Kota Negara: Sebuah Kajian Antropologi Ekologi. *PINISI Journal of Art, Humanity & Socila Study*, 3(5), 43–52.
- Pambudhi, N. A. (2024). Analisis Pembangunan Ibukota Negara Baru dan Dampaknya Terhadap Anggaran Pertahanan. *Jurnal Kewarganegaraan*, 8(1), 70–79.
- Pemerintah Republik Indonesia. (2004). Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *Undang-Undang No.5 Tahun 1960*, 1, 1–5.
- Retno mulyaningrum. (2023). Tinjauan Hukum Pembangunan Berkelanjutan Proyek IKN dalam Mempertahankan Keseimbangan Ekosistem Lingkungan. *Perspektif Hukum*, 3(12), 82–105. <https://doi.org/10.30649/ph.v23i1.201>
- Risti Aulia, D., Putro, H., & Dwi Mufidah, L. (2023). Masalah Perlindungan Hak Masyarakat Adat Terhadap Pembangunan IKN. *INNOVATIVE: Journal Of Social Science Research*, 3, 2299–3010.
- Santoso, U. (2008). *Hukum Agraria Dan Hak-Hak Atas Tanah*. Kencana.
- Saraswati, M. K., & Adi, E. A. W. (2022). Pemindahan Ibu Kota Negara Ke Provinsi Kalimantan Timur Berdasarkan Analisis SWOT. *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 6(2), 4042–4052. <https://doi.org/10.58258/jisip.v6i2.3086>
- Sihombing, Y. (2021). Analisis Resolusi Konflik Tanah Adat (Studi Kasus: Sengketa Lahan Oleh Warga Desa Sigapiton Terhadap Program Badan Pelaksana Otorita Danau Toba). In *Skripsi* (pp. 1–62).
- Siti, A., Aditya, A. N., Ahmad, S., & Farida, R. (2023). Analisis Dampak Dan Resira Terhadap Ekonomi Di Indonesia. *Jurnal Ekonomi*, 2(1), 10–18.
- Sudika, D. G. (2020). *Pengantar Ilmu Hukum*. Penerbit Lekeisha.
- Sudiyat, I. (1981). *Hukum Adat : Sketsa Asas*. Liberty.
- Sugiyono. (2014). *Metode Penelitian Kuantitatif Kualitatif Dan R&D*. Alfabeta.