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Protection of the Land Rights of the Paser Indigenous Tribe in the National Capital Region Nusantara

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Abstract: The regulation regarding the relocation of the new capital city has sparked pros and cons within the community across various categories; one pertains to the land occupied, maintained, and nurtured by the indigenous Paser tribe residing in the area. Their land has provided sustenance for their survival and that of their descendants. The relocation of the capital city to their territory raises questions concerning the land they have cared for all this time. Article 18B, paragraph 2 of the 1945 Constitution, acknowledges the importance of customary law in developing national law.
Purpose: This paper will explain the protection to Paser Indigenous Tribe regarding the Land Rights after the relocation of the capital city.
Design/Methodology/Approach: The type of research is normative law. The approaches used are the statute approach and the conceptual approach.
Findings: The main results or discoveries of the research are presented briefly. Present the article's findings based on the analysis and discussion done in the paper.
Originality/value: The background of the object being studied is the same Indigenous communities affected by national-scale strategic projects. The difference in this context is that it focuses on the indigenous communities affected by the development project of the National Capital in Nusantara.

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Introduction

In 2020, President Joko Widodo declared the Sepaku District of Penajam Paser Utara Regency and the Samboja District of Kutai Kartanegara Regency in East Kalimantan Province as part of the territory of the future National Capital (IKN) of the Republic of Indonesia (Hadi and Ristawati 2020). In that region, the majority of livelihoods of both the indigenous tribes and the surrounding communities in the IKN area consist of farming, cultivating crops, gathering forest products, and fishing. The natural environment serves as their source for meeting their living needs, and the place they shelter has also become a heritage from their ancestors that they still preserve (Nugroho 2022).

The mastery and ownership of land in customary law communities generally, besides the existence of individual ownership of land, also recognizes the existence of communal land, commonly referred to as layout rights over land. In legislation, the term ulayat rights is widely used, as mentioned in Article 1 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Resolution of Ulayat Rights Issues of Customary Law Communities. These layout rights over land consist of agricultural land, plantations, pastures, cemeteries, ponds, rivers, and forests, along with their surroundings (Lestari and Sukisno 2021).

The Paser Dayak tribe is an ethnic group whose ancestral land is located along the southeastern part of the island of Kalimantan or Borneo, specifically in the southern region of East Kalimantan province, Indonesia. The Paser tribe is involved in disputes with companies and the government. The land they use for farming and settlement has been seized by the government and

allocated to large plantation companies, both private and state-owned, for plantation development. The local community carried out a series of small-scale acts of rejection or resistance at that time; however, they had to concede and accept the reality that their land and sources of livelihood had been lost. Nevertheless, this grand plan raises concerns for the Indigenous Peoples in the area that the new capital city will occupy (Firnaherera and Lazuardi 2022).

Unfortunately, in this modern era, customary law is increasingly marginalized. The positive law that applies in society is often formulated without considering the customary law in the community. The government should provide attention and legal certainty to the Indigenous Communities in the IKN area (Abduh aqil et al. 2022). Because Indigenous legal communities are recognized by the Indonesian government constitutionally, regulations are needed to guarantee the rights of Indigenous Peoples, one of which is the Paser tribe, so that development in the IKN area does not disturb and damage the existence of Indigenous Peoples who have long resided in the IKN area, as well as to provide justice, benefits, and legal certainty to Indigenous Peoples who will be affected by the development of the new National Capital to be built in Kalimantan. Based on the underlying thought regarding the strong interest in protecting workers' rights regarding minimum wage. This writing is based on two questions: 1) How is the legal regulation of customary land rights in the area of the relocation of the new capital city in East Kalimantan? and 2) How is the legal protection of the customary land of the Paser Dayak tribe with the existence of the new capital city based on the North Paser Regency Regional Regulation Number 4 of 2019?

Other research similar to the study in this article includes the article by Rika Lestari and Djoko Sukisno titled "Study of Customary Rights in Kampar Regency from the Perspective of Legislation and Customary Law" in the Journal of Law Ius Quia Iustum. This study examines the legal concept of customary rights

in the Kampar region. The difference with this article lies in the subject of research and the situational conditions, where this article examines the land rights of indigenous communities whose areas are now designated as part of the territory of the Capital City of Indonesia. Another research is the work of Nabil Abduh Aqil et al., titled The Urgency of Protecting Indigenous Land Ownership Rights in the Capital City of Nusantara" in the Recht Studiosum Law Review. The difference with this article is that this article is more specifically focused on examining the protection of the Paser Indigenous community. Another article that supports the study in this research is the article by "Arif Budi Darmawan and Muhammad Arief Virgy titled 'The Urgency of the Ratification of the MHA Bill through the Framework of Indigenous Environmental Justice: A Case Study of Cement Factory Development in Kendeng' in the Journal of Sociological Thought."(Darmawan and Virgy 2023) The background of the object being studied is the same Indigenous communities affected by national-scale strategic projects. The difference in this context is that it focuses on the indigenous communities affected by the development project of the National Capital in Nusantara.

Methods

The type of research is normative law, which is a process of discovering legal rules, principles, and doctrines to address legal issues. Normative research utilizes library materials as data sources (Library research), a method used to collect data from various literature. The approaches used are the statute approach and the conceptual approach. The statute approach refers to the Regional Regulation of North Paper No. 4 of 2019 and legal protection for Indigenous Communities.

Discussion and Findings

Rights of Land Control of Indigenous Law Communities

The legal status of land rights of Indigenous Peoples in Indonesia remains a debated issue in legal studies and practices.

The relationship between Indigenous Peoples and their land is not solely about economic matters but also encompasses social and spiritual connections (Siallagan 2024). Professor Robert A. Williams describes Indigenous Peoples' relationships with their land, emphasizing that their unique relationship with their ancestral traditional territories maintains their cultural identity's spiritual and material foundations (Williams 1990).

There are several elements in the Indigenous Community in their relationship with the land, namely:

a. There is a very close relationship between Indigenous Peoples and their land, territory, and resources;
b. That this relationship has various dimensions and social, cultural, spiritual, economic, and political responsibilities;
c. This relationship has a significant collective dimension, and its intergenerational aspects are crucial for Indigenous Peoples' identity, survival, and culture.(Bosko 2006)

There are two land rights: communal land rights, commonly referred to as layout rights, and individual land rights. The communal rights over land, widely known as the customary rights of indigenous legal communities, are a series of authorities and obligations of a customary legal community related to the land located within its territorial environment for the interests of the legal community itself and its members, or for the interests of individuals outside the customary legal community (foreigners/migrants), with the permission of the legal community upon payment of recognition (Supriyadi 2013).

The legal recognition of the state regarding customary land rights is subsequently followed up not with Government Regulations but only through the regulations of the Minister of Agrarian Affairs, namely PMA/KBPN Number 5 of 1999 concerning Guidelines for the Resolution of Issues Related to the Customary Law Community's Land Rights. This ministerial regulation provides an elaboration on the customary land rights

that have already been regulated in the UUPA, and this elaboration is stated in Article 2, which mentions:

1. The relevant customary law community still implements customary land rights through local customary law provisions.
2. The rights of customary law communities are considered to exist still if:
    a) There exists a group of people who still feel bound by their customary legal order as members of a particular legal community, which acknowledges and applies the provisions of that community in their daily lives,
    b) There is a certain customary land that serves as the living environment for the residents of the legal community and where they fulfill their daily needs and
    c) A customary legal order regarding the management, control, and use of communal land exists that is applicable and adhered to by the legal community members.

Based on the provisions of the article, it can be seen that paragraph (1) explains the existence of Indigenous Communities, which is certainly in line with what is regulated in Article 3 of the UUPA. The Ministerial Regulation also emphasizes the authority of the district local government in managing land issues, referring to Law Number 22 of 1999 concerning Regional Government, which was subsequently replaced by Law Number 32 of 2004. On the other hand, the Ministerial Regulation limits the recognition of customary land rights, as stated in Article 3, which declares that the exercise of customary rights by Indigenous legal communities can no longer be carried out on land parcels that:

a) It has been owned by individuals or legal entities that hold land control rights based on the UUPA and

b) owned or handed over by a government agency, legal entity, or individual that refers to and complies with existing laws and regulations (Komnas HAM 2013).

The Customary Law Society (MHA) has various types of land tenure and natural resource management. It encompasses private rights, collective rights, and communal rights. These three characteristics of land ownership are recognized within the customary law community. In this context, the "customary rights" by the UUPA (i.e., public communal rights) are only the customary rights of the village. In contrast, the rights at the lower level are customary ownership rights, both communal and private (Safitri and Moeliono 2010).

The registration of land rights, referred to as a "Land Certificate," is very important because the issued registration will serve as valid proof of ownership of the land that has been granted legal certainty and protection, thus ensuring its existence is maintained. Land registration can be carried out through systematic and sporadic registration (Sibuea 2011).

While the foundational frameworks of the UUPA and Ministerial Regulation No. 5 of 1999 formally acknowledge the existence of indigenous law communities, a critical examination reveals significant gaps, contradictions, and inherent inequalities in their implementation that often undermine their protective intent, particularly in the high-stakes context of the Nusantara IKN development.

The primary contradiction lies in the legal duality perpetuated by the UUPA itself. On one hand, Article 3 recognizes customary law as a source of national agrarian law. However, the entire law is built upon the principle of state control over land and natural resources as mandated by Article 33 of the 1945 Constitution and elaborated in Article 2 of the UUPA. This creates a fundamental tension: the state acts as both the recognizer and the supreme allocator of land rights. In practice, this means that

the recognition of *ulayat* (customary) rights is not an inherent right but a concession granted by the state. This hierarchical relationship places the burden of proof entirely on the indigenous community, forcing them to navigate complex bureaucratic processes to "prove" their existence and territorial boundaries to a state apparatus that often prioritizes developmentalist agendas (Nurcahyo et al. 2022).

Furthermore, Ministerial Regulation No. 5/1999, while providing a procedural mechanism for recognition, is critically inadequate. Its implementation is fraught with inequalities. The regulation operates at the ministerial level and can be easily overridden by higher-level laws, such as the Job Creation Law (*Undang-Undang Cipta Kerja*) and its derivative regulations, which strongly emphasize investment facilitation and land acquisition for national strategic projects. In the context of IKN Nusantara, this inequality is stark. The state's power to designate areas for the public interest can be, and often is, used to extinguish customary claims, reframing ancestral domains as "vacant" or "state land" ready for development. Consequently, rather than offering robust protection, this regulatory framework can, in fact, act as a mechanism of restriction.

Regulation of the Rights of Indigenous Legal Communities in the National Capital City

Based on Law Number 32 of 2009 concerning the Protection and Management of the Environment (PPLH), it is stated that the authority to establish policies regarding the procedures for recognizing the existence of Indigenous Law Communities (MHA), local wisdom, and the rights of Indigenous Law Communities related to the protection and management of the environment at the provincial level is the responsibility 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).

The customary rights, according to the Regulation of the Minister of State for Agrarian Affairs Number 5 of 1999 state that, "Customary rights are the authority that, according to customary law, is possessed by a certain customary law community over a specific area that constitutes the living environment of its members to derive benefits from natural resources, including land within that area for the continuity of their lives and livelihoods, which arise from a physical and spiritual relationship that is hereditary and uninterrupted between the customary law community and the relevant area."

There are several requirements to recognize the rights of Indigenous Peoples, namely:

1. Acknowledging the community's rights over its living area is an inherent right;
2. The rights of Indigenous communities must align with human rights, not be privileges granted by the state;
3. The Indigenous community is dynamic. Thus, it is the community itself that determines whether it still exists or not.

Land must be registered to provide protection. Land registration is a series of activities carried out by the State/Government continuously and systematically, including collecting specific information or data regarding certain lands in particular areas, processing, storing, and presenting it for the benefit of the people to provide legal certainty in the field of land, including the issuance of proof and its maintenance (Harsono 2013).

The existence of customary land rights in an area will be indicated on the basic map of land registration. Suppose the boundaries can be determined according to the land registration procedures. In that case, the land boundaries will be depicted on the basic land registration map, and the land will be recorded in the land registry. Although it is stated in the basic registration

map, no certificate is issued for customary land, as the subject of customary rights is a specific Indigenous community, not individuals and not the head of the customary association. The process of land registration in the UUPA does not explain the registration of customary land. It explains the registration of land rights such as ownership rights, business use rights, etc.

In agrarian law, legality is a very important matter because, in Article 9 of the UUPA, it is explained that:

1. Only Indonesian citizens have a complete relationship with the earth, water, and outer space, within the limits of the provisions of Articles 1 and 2.
2. Every citizen of Indonesia, both male and female, has the same opportunity to acquire land rights and benefit from its results for themselves and their families.

Therefore, only Indonesian citizens are permitted to own land. Article 20, paragraph (1) of the UUPA contains legal provisions regarding the definition of ownership as the hereditary, strongest, and fullest right that a person can have over land, taking into account the provisions of Article 6. The customary land has indeed been utilized by the indigenous legal community for various social and economic purposes, including housing, public and social facilities, rice fields, and plantations. Meanwhile, the remainder exists in the form of wilderness. In conditions on the ground, as found in society, related to the business sector of utilizing customary land, its use has developed more for economic activities in the primary agricultural sector, including the livestock sub-sector. Only a small portion utilizes customary land for the mining or excavation sector. The status of customary land in legal terms can indeed be converted into individual ownership, provided that the status of the customary land has become state land.

Legal Protection of Indigenous Land of the Dayak Paser Tribe Based on Regional Regulation of North Paser Regency No. 4 of 2019

The emergence of the new region IKN Nusantara has altered the boundaries of East Kalimantan. Furthermore, the status of IKN Nusantara is equivalent to that of a province (Hadi and Gandryani 2022). The amendments to several laws mark the changes in the boundaries of this region, namely Article 1, number 3 of Law No. 25 of 1956 concerning the Establishment of Autonomous Regions of West Kalimantan, South Kalimantan, and East Kalimantan, Articles 5 and 6 of Law No. 47 of 1999 concerning the Establishment of Nunukan Regency, Malinau Regency, West Kutai Regency, East Kutai Regency, and Bontang City, and Articles 3 and 5 of Law No. 7 of 2002 concerning the Establishment of North Penajam Paser Regency in East Kalimantan Province. The boundaries of the IKN Nusantara are to the south bordered by the Penajam District of Penajam Paser Utara Regency, Balikpapan Bay, West Balikpapan District, North Balikpapan District, and East Balikpapan District of Balikpapan City; to the west bordered by Loa Kulu District of Kutai Kartanegara Regency and Sepaku District of Penajam Paser Utara Regency; to the north bordered by Loa Kulu District, Loa Janan District, and Sanga-Sanga District of Kutai Kartanegara Regency; and to the east bordered by the Makassar Strait. Development should focus on the welfare of the people and provide opportunities for the widest possible contribution to the populace. Its main priorities in this regard include protecting the rights of Indigenous Peoples.

The enactment of Law No. 3 of 2022 concerning the National Capital City (IKN) has created a profound normative conflict with the foundational principles of the UUPA. This conflict is not merely theoretical but has direct and detrimental consequences for the ownership and control of customary land in East Kalimantan, fundamentally tilting the legal balance in favor of state-led

development at the expense of indigenous rights (Oktaviany, Hadi, and Gandryani 2023).

At the heart of this conflict is the clash between the UUPA's recognition of customary land rights and Law No. 3 of 2022's overarching imperative to facilitate the IKN's development. The UUPA, through Article 3, obliges the state to protect the rights of indigenous law communities. While state control is a key principle in the UUPA, its philosophical spirit is to use that control for the prosperity of the people, including indigenous peoples. In contrast, Law No. 3 of 2022 operationalizes state control in a highly centralized and expedient manner. It designates the IKN area as a National Strategic Project and establishes a powerful IKN Authority endowed with broad licensing, planning, and land acquisition powers. This creates a legal hierarchy where the specific, development-oriented mandate of the IKN Law effectively supersedes the protective, rights-based mandate of the UUPA within the IKN territory.

This normative tension directly impacts the ownership of customary land by transforming its legal status. Under the UUPA regime, the goal is for *ulayat* land to be formally recognized and registered, granting it legal certainty against third parties. However, the IKN Law creates a framework where vast swathes of land, including areas subject to customary claims, are pre-emptively designated for the "public interest" of the capital city. This has the effect of legally "freezing" or suspending these claims. The state, via the IKN Authority, can now argue that the land is required for a national development priority, thereby halting the process of customary land registration and effectively extinguishing de facto ownership prospects for communities like the Paser.

Furthermore, the conflict leads to a severe erosion of indigenous control. The UUPA and Ministerial Regulation No. 5/1999 envision a process where communities have a voice in

determining the boundaries and management of their territory. Law No. 3 of 2022, however, centralizes control in the hands of the IKN Authority. The mechanisms for Free, Prior, and Informed Consent (FPIC)—a cornerstone of genuine protection—are absent, replaced by top-down consultation and compensation frameworks. Indigenous communities do not have the legal power under the IKN Law to refuse a project; they can only negotiate the terms of their displacement and the amount of compensation. This shifts their role from rights-holding owners to stakeholders being compensated for losses.

The normative conflict between the UUPA and Law No. 3 of 2022 is not a balanced legal debate. In the context of East Kalimantan, the IKN Law acts as a legal trump card. It re-engineers the legal landscape to prioritize land acquisition and development speed, thereby systematically dismantling the pathways to secure ownership and eroding the autonomy and control that the UUPA, however imperfectly, sought to guarantee for Indonesia's indigenous peoples. Therefore, Therefore, there should be legal protection that regulates indigenous communities in IKN.

Legal protection safeguards dignity and honor and recognizes the human rights possessed by legal subjects based on legal provisions against arbitrariness or as a collection of regulations or rules that can protect one matter from another. Regarding consumers, it means that the law protects customers' rights from anything that results in the non-fulfillment of those rights (Hadjon 2007).

Legal protection, when elaborated, consists of two syllables, namely "protection" and "law," which means providing a form of protection according to the applicable laws or regulations. The 1945 Constitution, as amended in Article 1 paragraph (3), states that "The Republic of Indonesia is a State of Law." The meaning is that state organizers in all fields must be based on fair and certain

legal rules so they are not solely based on political power (Hadi 2022).

The concept of recognition and protection of human rights (HAM) that has existed and developed since the 19th century has given rise to several legal protection theories (Caudwell and McGee 2018). Similarly, recognizing and defending human rights leads to standards for the fair limitation and regulation of rights and obligations for society and the government. The concept of human rights is designed to limit government power (Korstanje 2014). When it comes to the topic of customary land rights that are disputed between Indigenous communities and other parties with interests in their customary land, the development project of the New Capital City has the potential to be both supported and opposed in the eyes of the community. The government must take mitigation measures to ensure that the rights of Indigenous Peoples are not violated and are not marginalized in the targeted areas.

The Draft Law on Indigenous Legal Communities (RUU) is one of several draft laws that prioritize provisions intended to protect the rights of Indigenous legal communities and the legal recognition of Indigenous legal communities. Essentially, customary law is the crystallization of values that exist within society, the recognition of which is legitimized by the Constitution (Bayo 2023). In the Constitution of the Republic of Indonesia of 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 they are alive and by the times, communities, and the principles of the Unitary State of the Republic of Indonesia according to the law".

The arrangement for the recognition and protection of the rights of Indigenous legal communities aims to safeguard the rights of Indigenous Legal Communities so that they can live safely, grow, and develop as a community with their dignity and

humanity, as well as to protect them from discriminatory actions. This arrangement also provides legal certainty for indigenous legal communities in exercising their rights, such as fulfilling customary land rights. Article 18B paragraph (2) has highlighted the importance of teaching the entire younger generation of the Indonesian nation to recognize and respect Indigenous Peoples and their customary rights. With the Constitutional Court Decision Number 35/PUUX/2012 stating that the government's management of customary forests is contrary to the 1945 Constitution, a fundamental change has occurred for communities governed by customary law. The Constitutional Court places customary forests as forests located within the territory of an Indigenous Community as an integral part of a customary area (Tobroni 2016).

The legal protection of the customary land of the Dayak Paser tribe is regulated in the Regional Regulation of North Paser Regency No. 4 of 2019 (Regional Regulation No. 4 of 2019). The Regional Regulation concerning Indigenous Peoples in Paser Regency serves as a very important legal instrument, considering that the existence of Indigenous Peoples in Paser Regency is factually recognized and appreciated. Still, formally, there are no regulations regarding the recognition and protection of customary law communities in Paser Regency. Therefore, this regional regulation aims to provide a legal basis for the efforts of the local government and all related parties in realizing the recognition and protection of Indigenous Law Communities in the Paser Regency.

In Article 1 number 6 of Regional Regulation No. 4 of 2019, it is stated that Indigenous Law Communities, hereinafter abbreviated as MHA, are communities in Paser Regency that possess distinctive characteristics, live together harmoniously according to their customary laws, have ties to their ancestral origins and/or common places of residence, maintain a strong relationship with the land and the environment, and have a value

system that determines the economic, political, social, cultural, and legal institutions, as well as utilizing a specific area in a hereditary manner.

The transfer of the capital city must consider agrarian aspects, particularly the communal rights held by indigenous communities in the IKN area, including customary forests. As the organizer of agricultural reform, the state can utilize the land for the public interest. However, this authority can also lead to agrarian conflicts within the community. Legal certainty in the form of land ownership legality thus becomes one of the very important aspects. The indigenous legal community residing in the IKN area must be granted legal protection. The legal protection that the local Indigenous community needs includes upholding customary rights or the unique life laws of the IKN community, agreeing to zone regulations that do not undermine local cultural values, and eliminating public interests in the development of IKN, as well as implementing land registration programs for undocumented communities (Novitasari, Gandryani, and Hadi 2023).

The Agrarian Law in Indonesia is based on several principles, including the Principle of Recognition of Customary Rights. Legal principles are not merely concrete legal norms; they serve as the background for concrete legal regulations. Article 2 of Regional Regulation No. 4 of 2019 states that the recognition and protection of MHA are carried out based on the principle:

1. Social justice;
2. Equality and non-discrimination;
3. Environmental sustainability;
4. Transparency;
5. Participation;
6. Public interest;
7. Benefits; and
8. Legal certainty.

The customary law community in the region has the right of origin as stated in Article 5 of Regional Regulation No. 4 of 2019, namely:

a. Rights over Indigenous Territories;
b. Rights of individuals of Indigenous Communities in the Region over land and natural resources;
c. The acquisition of benefit-sharing from genetic resources and traditional knowledge by external parties;
d. The right to enforce customary law and justice; and
e. The right to spirituality and culture.

Those rights include owning, using, developing, and controlling based on mastery and hereditary ownership. Furthermore, in Article 6 of Regional Regulation No. 4 of 2019, the MHA in the region has rights derived from state recognition as follows:

a. Right to development;
b. Right to a healthy environment;
c. The right to obtain special education services;
d. The right to access healthcare services;
e. The right to obtain population administration services; and
f. Other provisions are regulated in the legislation.

In that decision, the Constitutional Court established three requirements for the recognition of the existence of Indigenous communities in Article 18B paragraph (2) of the 1945 Constitution and Article 51 paragraph (1) of the Constitutional Court Law with the following criteria:

1. There are communities whose members have a sense of belonging as a group due to shared values that are collectively nurtured;
2. There is a traditional customary institution that has developed;

3. There are assets and/or customary items;
4. There are customary legal norms that are still in effect, and
5. There are certain customary areas (Ernawati 2019).

With the existence of that foundation, it is appropriate that the legal basis legally guarantees the Paser Indigenous community. However, in practice, the rights of Indigenous peoples have been repeatedly overlooked for the sake of progress or national project interests, as occurred in the Kendeng Mountains during the National Strategic Project.

To prevent violations of rights and the marginalization of Indigenous communities, it is important to reduce development projects in the IKN in areas that may become subjects of disputes between Indigenous communities and the government. Reviewing the literature, Helen Quane concluded that substantive and participatory requirements can be met to protect the rights of indigenous communities even when there are conflicts of interest with the authorities. As the first serious task, we must examine the legitimacy of the policy framework supporting the relocation of the National Capital to the Island of Kalimantan. Secondly, will the local indigenous communities benefit from the relocation of the National Capital there? Thirdly, what measures is the government taking to prevent the suffering of Indigenous communities due to the development of the National Capital? On the fourth day, the government, in its role as the implementer of the IKN developer, must work to mitigate the project's potential adverse impacts on the welfare of Indigenous communities. Participatory requirements must ensure that Indigenous communities are treated as subjects while fulfilling the four substantive conditions (Risti Aulia, Putro, and Dwi Mufidah 2023).

It is imperative to make a clear distinction between recognition and protection. The initial phase in the process of

recognition is the acknowledgement by the state of the existence of an indigenous community and its traditional rights. Instruments such as Perda No. 4/2019 on Masyarakatukum adat and traditional rights in East Kalimantan function primarily at this level. The document delineates the criteria and verification mechanism by which a community may be officially recognised.

Nevertheless, this formal acknowledgement does not necessarily equate to effective protection. The establishment of operational legal instruments is imperative in order to guarantee and defend those rights from interference, including from the development policies of the state itself. It is at this point that a critical gap emerges. The efficacy of a Perda granting recognition can be readily nullified by the implementation of higher sectoral laws, such as the Forestry Law, which categorises indigenous territories as state forests, or the IKN Law, which revokes land rights for national strategic interests. It is therefore evident that, in the absence of robust legal protection on a national level that is applicable to all sectors, recognition at a local level is effectively equivalent to a diploma or paper that is devoid of any protective authority.

The discourse surrounding Article 1, paragraph (3) of the 1945 Constitution, concerning the rule of law, should not be confined to its normative interpretation. The principle of the rule of law (rechtsstaat) is not only concerned with procedural matters (rule by law), but more fundamentally, with substantive justice (rule of law). Substantive justice is predicated on the notion that the law must not only be formally fair, but must also protect vulnerable groups and ensure that the benefits of development are distributed fairly.

In the context of indigenous peoples, this principle signifies that any state action - including the issuance of the IKN Law or the designation of forest areas must be deemed justiciable, founded upon principles of justice, human rights and recognition of

traditional rights. In other words, a substantive rule of law acknowledges the rights of indigenous peoples as being part of the public interest that must be protected, rather than perceiving them merely as an obstacle to development. In the absence of such philosophical deepening, legal analysis risks becoming confined to formal legality, potentially leading to the disregard of social justice principles.

The IKN authority needs to ensure that Indigenous communities' rights are fulfilled. Take the example of New Zealand, which protects its local tribe, the Maori Tribe, by creating new locations for its activities alongside the country's development through the Te Ture Whenua Maori Act issued in 1993 (Wainwright 2002).

The primary implementation for respecting the land rights of the Paser Indigenous community can be taken by the Government through the issuance of comprehensive regulations regarding land and spatial planning, issuing regulations concerning the increase of quotas for the Complete Systematic Land Registration Program or PTSL in the IKN area, which includes Indigenous Communities, simplifying requirements, and conducting intensive communication with Indigenous Communities. It is hoped that with these concrete steps, the rights of the Paser Indigenous people will be better guaranteed following the relocation of the national capital to their region.

Conclusion

The regulation for relocating the Capital City of Indonesia to East Kalimantan, enacted by President Jokowi, marks an important historical milestone for Indonesia. This relocation considers various aspects, including the interests of Indigenous Communities. The construction of the new Capital City in East Kalimantan will commence in 2023, and the protection of Indigenous Communities in the area is still not optimal, leading to both support and opposition. The government's efforts to submit

a material test of the IKN Law to the Constitutional Court may undermine the legitimacy of the capital relocation. In developing the new National Capital city, it is important to consider the rights of Indigenous Peoples, given the ambiguities in the Regional Regulations that result in Indigenous Law Communities not receiving appropriate treatment regarding the projects in their customary areas. The involvement of Indigenous Communities must be substantial, not merely symbolic and procedural. Indigenous communities residing in the IKN area must receive legal protection as part of Indonesian society. Legal protection for them is aimed at preventing potential conflicts or disputes that may arise due to the development of IKN. The legal protection required for them includes upholding customary legal practices or living laws inherent to the IKN community and issuing spatial planning regulations that do not undermine local cultural values.

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