

Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara

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Abstract

The development of Indonesia's new capital, Ibu Kota Nusantara (IKN) or the Nusantara Capital City, involves land acquisition, potentially impacting the rights of indigenous peoples. This study evaluates the effectiveness of normative law in protecting these rights during the land acquisition process. Using a normative method, it examines relevant laws, regulations, jurisprudence, and academic literature through qualitative analysis. The findings reveal that while a robust legal framework exists to protect indigenous rights, implementation challenges persist. Key issues include determining fair compensation, land ownership recognition, relocation, and cultural preservation. Addressing these problems requires improved synergy and refinement of laws and regulations. The study highlights the critical need to bridge the gap between normative legal provisions and real-world practices. It emphasizes a holistic approach involving the government, indigenous communities, and stakeholders to achieve equitable and sustainable development. By offering operational legal solutions, the research underscores the importance of consistent legal application to respect indigenous rights. The findings call for multidisciplinary studies to tackle the complexities of protecting indigenous peoples in large-scale development projects. Strengthening legal mechanisms and fostering inclusive collaboration are essential for ensuring development aligns with the rights and needs of indigenous communities.

1. Introduction

The Indonesian government has decided to relocate the country's capital from Jakarta to East Kalimantan, driven by several strategic objectives and expected benefits. The main reasons for this decision include addressing environmental and population density issues in Jakarta, promoting equitable development and economic growth in the eastern region of Indonesia, and fostering better governance.¹ The relocation is expected to alleviate Jakarta's burdens, improve the population's quality of life, attract investment, create new job opportunities, and reduce the risk of natural disasters.²

In the process of relocating the capital city, land acquisition plays a crucial role. Without effective land acquisition, the development of infrastructure and facilities in the new capital cannot proceed. The construction of the new capital city requires a vast area of land for various infrastructures, such as government buildings, roads, and public facilities. Therefore, fast and efficient land acquisition is essential to ensure the project stays on schedule.³ Additionally, the land acquisition process must be conducted fairly and transparently to prevent social conflicts and dissatisfaction among local populations. Experience from other countries shows that unfair land acquisition can lead to social tensions and hinder development.⁴

The area designated for the new National Capital City (IKN) is home to a significant and diverse population of indigenous groups. Demographic data pertaining to indigenous peoples in the IKN location, which spans North Penajam Paser Regency and parts of

¹ Syifa Izdihar Firdausa Asfianur et al., "Discourse on Moving the New Capital City in East Kalimantan Province a Political Economy Perspective," *Masyarakat, Kebudayaan Dan Politik* 36, no. 3 (September 8, 2023): 379–93, <https://doi.org/10.20473/mkp.V36I32023.379-393>; Farida Farida, "Indonesia's Capital City Relocation: A Perspective of Regional Planning," *Jurnal Perspektif Pembiayaan Dan Pembangunan Daerah* 9, no. 3 (August 31, 2021): 221–34, <https://doi.org/10.22437/ppd.v9i3.12013>; Dian Herdiana, "Pemindahan Ibukota Negara: Upaya Pemerataan Pembangunan Ataupun Mewujudkan Tata Pemerintahan Yang Baik," *Jurnal Transformative* 8, no. 1 (March 30, 2022): 1–30, <https://doi.org/10.21776/ub.transformative.2022.008.01.1>.

² Farida, "Indonesia's Capital City Relocation"; Herdiana, "Pemindahan Ibukota Negara."

³ Ashish Gupta and Piyush Tiwari, "An Analysis of Land and Property Development Models, and Stakeholders: A Case of National Capital Region, India," *Land Use Policy* 117 (June 2022): 106110, <https://doi.org/10.1016/j.landusepol.2022.106110>.

⁴ Marcello De Maria, Elizabeth J.Z. Robinson, and Giacomo Zanella, "Fair Compensation in Large-Scale Land Acquisitions: Fair or Fail?," *World Development* 170 (October 2023): 106338, <https://doi.org/10.1016/j.worlddev.2023.106338>; Jyoti Shukla, "Compulsory yet Fair Acquisition of Land: Assessing Procedural Fairness of Compulsory Acquisition Process in India: Analysing Fairness in the Process of Land Acquisition in India," *Journal of Property Research* 38, no. 3 (July 3, 2021): 238–61, <https://doi.org/10.1080/09599916.2021.1892802>.

Kutai Kartanegara Regency, indicates considerable diversity in both population size and cultural heritage.⁵ The indigenous population in the IKN area is estimated to range from 20,000 to 200,000 individuals, encompassing approximately 19 indigenous communities in North Penajam Paser and two in Kutai Kartanegara. These communities include at least 21 distinct groups, among them various Dayak subtribes, such as Dayak Paser and Dayak Apokayan, as well as the Bajao tribe, a coastal group with strong maritime traditions.⁶

The presence of indigenous peoples in the IKN area brings attention to their rights concerning land and natural resources. In Indonesia, the rights of indigenous peoples related to land and natural resources encompass the right to customary land, the right to manage and utilize natural resources, and the right to preserve their culture and traditions. A landmark decision by the Indonesian Constitutional Court in May 2013, reviewing Law No. 41/1999 on Forestry,⁷ marked a significant advancement in the recognition of indigenous peoples' rights to forests. In this ruling, customary forests were no longer classified as state forests, and the rights to these forests were to be granted to the indigenous communities that inhabit them, contingent on proof of their customary status. Furthermore, indigenous peoples retain the right to manage and utilize natural resources within their customary territories, in accordance with ancestral norms, beliefs, and traditional knowledge.⁸

To govern the land acquisition process for the development of the IKN, the Indonesian government has enacted several laws and regulations. The development of the

⁵ A Rostiyati et al., "Cultural Significance of the Nondoï Ritual in Shaping the Identity of East Kalimantan, Indonesia's New Capital City," *Trames. Journal of the Humanities and Social Sciences* 28, no. 1 (2024): 65, <https://doi.org/10.3176/tr.2024.1.05>; Mirza Satria Buana et al., "The Nusantara Capital City Project: Why Development and Human Rights Do Not Always Mix," *Law and Development Review* 16, no. 1 (February 23, 2023): 185–223, <https://doi.org/10.1515/ldr-2022-0063>.

⁶ Rostiyati et al., "Cultural Significance of the Nondoï Ritual in Shaping the Identity of East Kalimantan, Indonesia's New Capital City"; Iwan Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region," *Journal of Law and Legal Reform* 5, no. 2 (2024): 705–48.

⁷ Lego Karjoko et al., "The Consequence of the Decision Of the Constitutional Court in Forestry on the Recognition of Traditional Forests in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021): 1–8.

⁸ Hunggul Y. S. H. Nugroho, Andrew Skidmore, and Yousif A. Hussin, "Verifying Indigenous Based-Claims to Forest Rights Using Image Interpretation and Spatial Analysis: A Case Study in Gunung Lumut Protection Forest, East Kalimantan, Indonesia," *GeoJournal* 87, no. 1 (February 2022): 403–21, <https://doi.org/10.1007/s10708-020-10260-x>.

Nusantara Capital City (IKN) is regulated by a series of legal instruments that address land acquisition. Law Number 3 of 2022 serves as the primary legislation governing IKN, covering various aspects, including land status and its management.⁹ The revision of this law, Law Number 21 of 2023, highlights the criteria for the release of Land Management Rights (HPL) and Building Rights (HGB) over HPL.¹⁰ Presidential Regulation Number 75 of 2024, the most recent regulation, outlines the procedures for land acquisition in IKN, with a particular focus on resolving land tenure issues within local communities, including the process of valuing land to be acquired.¹¹

However, in practice, the land acquisition process for the development of the IKN continues to face several significant legal challenges. These challenges include a number of critical issues. First, the regulations governing land acquisition in the IKN area are often criticized for not fully safeguarding the human rights of local communities.¹² Second, the process has the potential to trigger agrarian conflicts, underscoring the need for effective prevention mechanisms through transparent communication and fair compensation to ensure justice and social harmony post-acquisition.¹³ Additionally, uncertified land remains a serious issue, as the absence of official documentation weakens legal certainty and the protection of land rights.¹⁴

Legal problems in land acquisition for the development of a new National Capital City (IKN) in Indonesia can cause various significant negative impacts. Conflicts of interest

⁹ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

¹⁰ Aji Cakti, "ATR: Status lahan IKN ada di revisi UU IKN, tinggal penentuan kriteria," Antara News, June 7, 2024, <https://www.antaranews.com/berita/4142250/atr-status-lahan-ikn-ada-di-revisi-uu-ikn-tinggal-penentuan-kriteria>.

¹¹ Herdi Alif Al Hikam, "Aturan Baru Pembebasan Lahan di IKN: Ganti Uang atau Relokasi hingga Pengadilan," detikfinance, accessed December 14, 2024, <https://finance.detik.com/infrastruktur/d-7435316/aturan-baru-pembebasan-lahan-di-ikn-ganti-uang-atau-relokasi-hingga-pengadilan>.

¹² Miftah Hayatun Suci Wulandari and Rollys Suriani, "The Legal Paradigm of Land Acquisition for The Development of The Capital of The Nusantara," *Mahadi: Indonesia Journal of Law* 1, no. 2 (August 30, 2022): 282–93, <https://doi.org/10.32734/mah.v1i2.9429>.

¹³ Aprillia Wahyuningsih, "Pencegahan Konflik Agraria Dalam Proses Pembangunan Ibu Kota Negara: Pengadaan Tanah Berkeadilan," *Jurnal Lex Renaissance* 7, no. 4 (October 1, 2022): 675–90, <https://doi.org/10.20885/JLR.vol7.iss4.art1>.

¹⁴ Laura Notess et al., "Community Land Formalization and Company Land Acquisition Procedures: A Review of 33 Procedures in 15 Countries," *Land Use Policy* 110 (November 2021): 104461, <https://doi.org/10.1016/j.landusepol.2020.104461>; Willem Van Der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia," *Citizenship Studies* 22, no. 2 (February 17, 2018): 160–74, <https://doi.org/10.1080/13621025.2018.1445495>.

between landowners and the government in land acquisition often trigger agrarian conflicts that have the potential to disrupt social harmony.¹⁵ Land ownership shifts in suburban areas have the potential to trigger complex social unrest and can lead to violence.¹⁶ In addition, existing regulations have not fully protected the human rights of affected local communities.¹⁷

Several previous studies have examined legal issues and protection of indigenous peoples' rights in the context of IKN development. Previous studies shows that regulations governing land acquisition in the IKN area have not fully accommodated the protection of the human rights of local communities.¹⁸ Soelistyowati (2024) emphasizes the importance of legal protection needed by indigenous peoples, such as the enforcement of indigenous rights and unique norms of life in the capital city community.¹⁹ Rostiyati found that the implementation of customary law in IKN has provided a strong legal basis for indigenous peoples to protect their forests from illegal activities and adverse environmental changes.²⁰

Although previous studies have provided important insights into the legal issues and rights of indigenous peoples in the context of IKN development, there is still a research gap related to the effectiveness of normative laws and national regulations in protecting the rights of indigenous peoples during the land acquisition process. This study aims to evaluate the extent to which existing laws and regulations are able to ensure the effective protection of indigenous peoples' rights in the context of land acquisition for IKN development.

¹⁵ Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *LAW REFORM* 19, no. 1 (August 9, 2023): 128–47, <https://doi.org/10.14710/lr.v19i1.48393>.

¹⁶ Hashem Dadashpoor and Somayeh Ahani, "Land Tenure-Related Conflicts in Peri-Urban Areas: A Review," *Land Use Policy* 85 (June 2019): 218–29, <https://doi.org/10.1016/j.landusepol.2019.03.051>.

¹⁷ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

¹⁸ Rostiyati et al., "Cultural Significance of the Nondoï Ritual in Shaping the Identity of East Kalimantan, Indonesia's New Capital City."

¹⁹ Soelistyowati Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle," *Jambe Law Journal* 7, no. 1 (August 3, 2024): 149–67, <https://doi.org/10.22437/home.v7i1.347>.

²⁰ Rostiyati et al., "Cultural Significance of the Nondoï Ritual in Shaping the Identity of East Kalimantan, Indonesia's New Capital City."

The results of this study are expected to provide important implications for the improvement of legal and regulatory frameworks related to the protection of indigenous peoples' rights in the national development process. This research has implications for the need to improve laws and regulations that are more comprehensive and fair in protecting the rights of indigenous peoples during the national development process such as the development of the National Capital. The findings of this study are expected to provide input for policymakers in formulating and implementing a more effective legal framework to ensure social justice and the welfare of indigenous peoples in the midst of the dynamics of national development.

2. Problem Statement

This study seeks to evaluate the effectiveness of normative law in safeguarding the rights of indigenous peoples during the land acquisition process for the development of the National Capital City (IKN), focusing on how well existing legal frameworks address issues related to land ownership, cultural preservation, and social justice, and their ability to mitigate conflicts and ensure equitable outcomes for affected communities.

3. Methods

This study employs a normative research method to evaluate and analyze the legal framework that regulate the protection of indigenous peoples' rights during the land acquisition process for the development of the Nusantara Capital City (IKN). The research draws on primary legal sources, including Law Number 5 of 1960 on Basic Agrarian Principles, Law Number 2 of 2012 on Land Acquisition, and relevant implementing regulations. This approach enables a thorough examination of whether existing normative provisions effectively safeguard indigenous peoples' rights in the context of national development. The study focuses on analyzing principles of justice and legal protection embedded within the regulations, as well as assessing their implementation and limitations. By comparing the provisions of written law with field practices, the research identifies gaps between legal norms and practical realities, offering recommendations for regulatory improvements. The normative method also involves a review of jurisprudence, academic literature, and case studies addressing the challenges indigenous peoples face in the land acquisition process. Through this

approach, the research evaluates the extent to which the current legal framework ensures social justice, protects indigenous peoples' rights, and mitigates potential social conflicts arising during development.

4. The Effectiveness of Normative Law in Protecting Indigenous Peoples' Rights in the Land Acquisition Process in IKN

4.1. Legal Basis for Protecting Indigenous Peoples' Rights in Land Acquisition

Law Number 5 of 1960 on Basic Agrarian Regulations (UUPA) serves as a strong legal foundation for protecting the rights of indigenous peoples in land acquisition. Article 3 recognizes the customary rights of indigenous communities, provided these rights align with national and state interests.²¹ Article 5 affirms that customary law applies to agrarian matters, as long as it does not contradict national interests, unity, or higher legal norms. Article 11, paragraph 2, emphasizes the protection of economically vulnerable groups, including indigenous peoples. Moreover, Article 18 allows for the revocation of land rights for public purposes but mandates appropriate compensation.²² In the context of the development of the National Capital City (IKN), the UUPA requires a balance between safeguarding indigenous rights and advancing national interests, ensuring that any land acquisition respects local customary law and is accompanied by fair compensation.

Law Number 2 of 2012 on Land Acquisition for Public Interest Development also offers protection for the rights of indigenous peoples in the land acquisition process for the development of IKN. Article 40 states that "Compensation for customary land shall be provided in the form of replacement land, resettlement, or other forms agreed upon by

²¹ H. Zainal Arifin Haji Munir, "Exchanging Maslahah Between Landowners and Land Tenants: The Practice of Sandak-Tanggep in Pringgasela District," *JURISDICTIONE* 13, no. 1 (July 27, 2022): 24–39, <https://doi.org/10.18860/j.v13i1.15027>; Yenny Eta Widyanti, "Human Rights and Indonesian Legal Protection of Traditional Cultural Expressions: A Comparative Study in Kenya and South Africa," *Jurisdictie: Jurnal Hukum Dan Syariah* 14, no. 2 (January 10, 2024): 315–34, <https://doi.org/10.18860/j.v14i2.24318>.

²² Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Constitutionality of Simultaneous Extension and Renewal of Land Rights," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 27, 2024): 159–76, <https://doi.org/10.29303/ius.v12i1.1360>; Sudirman Sudirman et al., "Dysfunction of Muslim's Public Resource: A Study of Waqf Land Disorganization in Indonesia," *De Jure: Jurnal Hukum Dan Syariah* 14, no. 1 (June 29, 2022): 92–110, <https://doi.org/10.18860/j-fsh.v14i1.16240>; Maryam Naway and Nurul Fazri Elfikri, "Untangling the Causes of Land Ownership Disputes," *Estudiante Law Journal* 4, no. 2 (June 14, 2022): 590–99, <https://doi.org/10.33756/eslaj.v4i2.18183>.

the affected customary law community." The explanation of Article 40, letter e, specifically acknowledges customary law communities as entitled to compensation. This means that indigenous peoples are entitled to appropriate compensation for their customary land impacted by IKN development, whether in the form of replacement land, resettlement, or other mutually agreed-upon options. This provision highlights the commitment to safeguarding the rights and well-being of indigenous peoples throughout the land acquisition process for public purposes.²³

Law Number 3 of 2022 on the State Capital specifically addresses the protection of indigenous peoples' rights in the context of IKN development. Article 21 of this law underscores that land management in the development of IKN must prioritize the protection of both individual and communal rights of indigenous peoples, as well as the cultural values rooted in local wisdom. This provision establishes a robust legal foundation to ensure that the development of IKN does not disregard or infringe upon the rights of indigenous peoples to land, territories, and natural resources they have traditionally owned or controlled. Additionally, it safeguards the cultural values and local wisdom of indigenous communities in the IKN area.²⁴ Article 21 mandates that the IKN development process respect, consider, and accommodate these rights and values.²⁵ While this provision still requires more detailed implementing regulations, it

²³ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region"; Anindya Bidasari and Maria Paulina Petrisia Tuto, "Tinjauan Yuridis Sertifikat Hak Guna Bangunan Atas Tanah Berdasarkan Klaim Hak Milik Menurut Eigendom Verponding (Studi Putusan Nomor 227/Pdt.G/2020/Pn Mks)," *JURNAL LEGALITAS* 17, no. 2 (October 30, 2024): 177–91, <https://doi.org/10.33756/jelta.v17i2.27543>; Nadya Asriyani Sjahrain, "Legal Challenges in Facing Land Ownership Disputes Due to Gentrification in Indonesia," *Estudiante Law Journal* 6, no. 2 (2024): 351–73, <https://doi.org/10.33756/eslaj.v6i2.27858>.

²⁴ Suhadi Suhadi and Aprilia Niravita, "Urban Agrarian Reform: Opportunities and Challenges for Land Rights Among Low-Income Communities," *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (September 8, 2024): 348–73, <https://doi.org/10.22219/ljih.v32i2.35842>; Revie Kurnia Katjong et al., "Legal Protection of Customary Law Communities Over Ulayat Land Forests," *JURNAL LEGALITAS* 16, no. 1 (February 17, 2023): 30–44, <https://doi.org/10.33756/jelta.v16i1.18582>; Victor Juzuf Sedubun and Vica Jillyan Edsti Saija, "Penguatan Terhadap Implikasi Hukum Penetapan Hutan Adat Bagi Peningkatan Perekonomian Masyarakat Hukum Adat," *DAS SEIN: Jurnal Pengabdian Hukum Dan Humaniora* 4, no. 1 (February 3, 2024): 82–91, <https://doi.org/10.33756/jds.v4i1.21423>.

²⁵ Hariyanto Hariyanto, Idamatussilmi Idamatussilmi, and Daud Rismana, "The Government's Role in Legal Protection of Land Ownership: Urutsewu Case," *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (August 6, 2024): 277–91, <https://doi.org/10.22219/ljih.v32i2.34254>; Rahman Hasima et al., "Eksplorasi Pengetahuan Hukum Masyarakat Desa Tapulaga Kabupaten Konawe Terhadap Kepemilikan Tanah," *DAS SEIN: Jurnal Pengabdian Hukum Dan Humaniora* 4, no. 2 (2024): 163–79.

already offers a strong normative framework for the protection of indigenous peoples' rights in the development of IKN.

Presidential Regulation Number 75 of 2024 concerning the Acceleration of the Development of the National Capital provides further regulations regarding the protection of indigenous peoples' rights in the land acquisition process. Article 8 paragraph (1) states that the Government handles the problem of land ownership of Assets in the Control of the Nusantara Capital Authority (ADP) by the community. The ownership of ADP land by the community in question includes the control and utilization of land derived from the release of forest areas that have been carried out physically for a period of at least 10 years continuously, as well as the control and utilization in good faith as evidenced by the historical possession and utilization in accordance with laws and regulations regarding land (Article 8 paragraph 2). Inventory and identification of ADP land ownership by the community is carried out by an integrated team formed and chaired by the Head of Authority (Article 8 paragraph 3). The amount of compensation for land tenure is calculated based on the assessment by the Public Assessor by taking into account various components (Article 8 paragraph 5) and can be given in various forms (Article 8 paragraph 6). This Presidential Regulation provides more operational provisions to protect and handle the rights of the community, including indigenous peoples, whose land is affected by the development of the IKN.²⁶

Based on the analysis of the four laws and regulations above, it can be concluded that there is a strong legal basis for the protection of indigenous peoples' rights in the process of land acquisition for the development of the Nusantara Capital City (IKN). Law No. 5/1960 (UUPA) recognizes customary rights and customary law, and requires the provision of appropriate compensation for the revocation of land rights. Law No. 2/2012 explicitly states that customary law communities are parties entitled to compensation in land acquisition for the public interest. Law No. 3/2022 on IKN emphasizes the importance of paying attention to and protecting the rights and cultural values of indigenous peoples in land management in IKN. Finally, Presidential

²⁶ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

Regulation No. 75/2024 provides more detailed regulations regarding the handling of ADP land tenure by the community, including the mechanism for inventory, assessment, and the form of replacement that can be given. Although there is still a need for more technical implementing regulations, these four regulations have normatively established a comprehensive legal framework to protect the rights of indigenous peoples in the context of IKN development.

4.2. Land Acquisition Problems at IKN Development Sites

Determining the compensation value for land acquisition in the development of the Nusantara Capital City (IKN) is fraught with complexities. A key issue is the convoluted valuation process, which employs methods like the Tax Object Selling Value (NJOB) and assessments by independent teams.²⁷ However, differing interpretations of what landowners should be compensated can lead to dissatisfaction within the community. Additionally, the accuracy of the data used by the assessment teams is critical, yet it sometimes fails to reflect current market conditions.²⁸

Another significant challenge is the delay in compensation payments, often taking months after an agreement is reached, disrupting the financial stability of landowners. These delays are typically caused by cumbersome and time-consuming administrative procedures.²⁹ Moreover, the uncertainty surrounding the legal status of land poses a further problem. If the land rights are not officially documented when the location permit is issued, landowners may fear receiving compensation that is lower than what they are entitled to.³⁰

Another important factor to consider is how compensation is categorized, with physical compensation (land, buildings, plants) and non-physical compensation (loss of rights or transaction costs). Determining the value of non-physical compensation is

²⁷ Nguyen Tran Tuan and Gábor Hegedús, "Land Compensation and Policy Enforcement in Vietnam: A Case Study in Danang," *Real Estate Management and Valuation* 30, no. 2 (June 1, 2022): 34–46, <https://doi.org/10.2478/remav-2022-0012>.

²⁸ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

²⁹ M. Nizwar et al., "Legal Study of Alternative Models of Land Procurement for Public Interest Development Viewed from Human Rights Perspective," *Revista de Gestão Social e Ambiental* 18, no. 7 (April 4, 2024): e05343, <https://doi.org/10.24857/rgsa.v18n7-017>.

³⁰ Sukmo Pinuji et al., "Is Obliterated Land Still Land? Tenure Security and Climate Change in Indonesia," *Land* 12, no. 2 (February 15, 2023): 478, <https://doi.org/10.3390/land12020478>.

often more challenging and less transparent, leading to frustration among landowners.³¹ Moreover, the lack of clear communication about the land acquisition process and compensation calculation creates significant hurdles. Without proper information, people may feel confused or misinformed about their rights and the procedures they need to follow.³²

Given the complexity of these issues, determining fair compensation for land acquisition in the IKN involves both legal and social dimensions. To address these challenges, it's crucial to improve transparency, expedite the payment process, and enhance public outreach to ensure a fairer and more effective land acquisition process. The government must also improve coordination across relevant agencies and encourage greater community involvement throughout the process.

In addition to issues surrounding compensation, unclear and overlapping land ownership in the Nusantara IKN area presents a complex problem with the potential to ignite conflicts. According to data from the Agrarian Reform Consortium (KPA), land tenure overlaps are widespread in East Kalimantan, especially in Kutai Kartanegara and North Penajam Paser Districts, affecting 46% and 67% of the total land area in each district, respectively.³³ These overlaps stem from discrepancies between land licensing, land rights, the Regional Spatial Plan (RTRW), and the status of forest areas, leading to conflicting interests. This situation deepens the legal uncertainty faced by local communities, particularly indigenous peoples, as they navigate the IKN development.³⁴

Indigenous peoples are the most vulnerable in land ownership conflicts related to the IKN. Many lack formal land ownership documentation due to past government policies that disregarded their rights during the New Order era. The Alliance of Indigenous Peoples of the Archipelago (AMAN) has reported that approximately 30,000 hectares

³¹ Nizwar et al., "Legal Study of Alternative Models of Land Procurement for Public Interest Development Viewed from Human Rights Perspective."

³² Pinuji et al., "Is Obliterated Land Still Land?"

³³ Konsorsium Pembaruan Agraria, "KPA: Banyak Tumpang Tindih Kekuasaan Di Tanah IKN - Konsorsium Pembaruan Agraria - KPA," March 20, 2023, <https://www.kpa.or.id/2023/03/20/kpa-banyak-tumpang-tindih-kekuasaan-di-tanah-ikn/>.

³⁴ SUCIPTO, "Diduga Benda Cagar Budaya, Arkeolog Temukan Tungku Peleburan Besi Tua di Sekitar Calon Ibu Kota Baru," *kompas.id*, May 27, 2021, <https://www.kompas.id/baca/dikbud/2021/05/27/diduga-benda-cagar-budaya-arkeolog-temukan-tungku-peleburan-besi-tua-di-sekitar-calon-ibu-kota-baru>.

of customary land overlap with corporate concession permits. As a result, the boundaries of indigenous territories have been undermined by corporate activities such as logging and plantations. Without a clear and just resolution, the potential for conflict will continue to escalate as the IKN development moves forward.

To resolve the issue of land overlaps, the government, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), is working to ensure that the land designated for IKN development is free from disputes. Several measures have been implemented, including the suspension of land transactions in the IKN area until the IKN Authority Agency is fully functional.³⁵ However, challenges persist, particularly with the numerous ownership claims from indigenous communities and other stakeholders.³⁶ To address these concerns, the government needs to conduct comprehensive studies and involve local communities in the decision-making process to avoid negative repercussions from this large-scale project.³⁷ Resolving land overlaps should be prioritized before relocating the capital to prevent potential conflicts in the future.

The community relocation process for the IKN development in East Kalimantan has had a significant social impact, particularly on local communities like the Balik and Paser tribes. Many residents have lost access to vital sources of income, such as agricultural land or local businesses, with no guarantee of new job opportunities.³⁸ For example, residents of Bumi Harapan Village reported not receiving adequate compensation for their land, making it difficult to afford new plots, especially as land prices around the IKN area have soared.

The social effects of the relocation are also evident in the rushed and often opaque process, which has fractured community ties. Many individuals feel alienated, and

³⁵ Alifian Asmaaysi, "Jokowi Terbitkan Perpres Baru, Atur Soal Ganti Rugi Lahan IKN," July 12, 2024, <https://ekonomi.bisnis.com/read/20240712/45/1781676/jokowi-terbitkan-perpres-baru-atu-soal-ganti-rugi-lahan-ikn>.

³⁶ Tempo.co, "Kenapa Pembebasan Lahan Di IKN Berjalan Alot?," June 6, 2024, <https://www.tempo.co/ekonomi/kenapa-pembebasan-lahan-di-ikn-berjalan-alot--51791>.

³⁷ SUCIPTO, "Diduga Benda Cagar Budaya, Arkeolog Temukan Tungku Peleburan Besi Tua di Sekitar Calon Ibu Kota Baru."

³⁸ Lumbanrau, Raja Eben, "IKN: Hak atas tanah di Ibu Kota Nusantara nyaris dua abad, 'masyarakat adat akan jadi gelandangan'," BBC News Indonesia, October 5, 2023, <https://www.bbc.com/indonesia/articles/c0j914wpdkvo>.

family relationships have been disrupted due to uneven displacement.³⁹ This sudden relocation has caused psychological trauma and a deep sense of loss for many people involved.

The complexity of the social impacts of relocation requires the government and relevant authorities to carefully consider the needs and expectations of local communities at every stage of the IKN development process. Relocation is not just about physically moving people; it involves the loss of livelihoods, changes in social structures, and significant psychological impacts. By prioritizing social and environmental considerations, the development of IKN can proceed more harmoniously and sustainably.⁴⁰

The issue of concession land owned by corporations at the IKN construction site in East Kalimantan is also complex, involving environmental, social, and legal dimensions. According to data from Forest Watch Indonesia (FWI), approximately 51% of the land in the IKN area is under corporate control, including by forestry, plantation, and mining sectors.⁴¹ This highlights that much of the land designated for IKN development is not vacant but already subject to various concession permits. For instance, 16 plantation business licenses control around 55,075 hectares of land, with companies such as PT Sagita Agro Kencana and PT Palma Asia Lestari Mandiri being the largest concession holders.⁴²

The existence of concession land also significantly impacts the environment, particularly in terms of deforestation. Between 2018 and 2021, deforestation in the IKN area reached 18,000 hectares, with the majority occurring in production forests. This raises concerns about the loss of natural habitats and the negative effects on ecosystems. The development of IKN has the potential to exacerbate deforestation,

³⁹ Lumbanrau, Raja Eben.

⁴⁰ Arnelli Darwita, "The Existence of Land Bank Institution in Supporting Land Procurement for National Development in Perspective of Indonesian Agrarian Law," *Journal of Law, Policy and Globalization* 112 (August 2021), <https://doi.org/10.7176/JLPG/112-18>.

⁴¹ Van Der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia."

⁴² Alfath Satria Negara Syaban and Seth Appiah-Opoku, "Unveiling the Complexities of Land Use Transition in Indonesia's New Capital City IKN Nusantara: A Multidimensional Conflict Analysis," *Land* 13, no. 5 (April 30, 2024): 606, <https://doi.org/10.3390/land13050606>.

especially since much of the land is already controlled by large companies with permits to exploit forest resources.⁴³

The issue of concession land is closely tied to legal concerns as well. The granting of concession permits in the IKN area often violates existing agrarian laws. For example, the Right to Use Business (HGU) is issued for periods much longer than the maximum 190 years allowed under the Basic Agrarian Law. The land acquisition process is often carried out behind closed doors, without sufficient public participation, leading to suspicions that the development primarily benefits select groups and corporations rather than local communities.⁴⁴

The social impact of land tenure by corporations is strongly felt by indigenous peoples and local communities, who have lost access to their ancestral lands and essential natural resources due to land grabbing. There are 21 indigenous communities living within the National Capital Area, with the majority residing in development priority zones. This highlights the social complexity that must be addressed during the development process.⁴⁵

The various issues surrounding concession land highlight the need for a more transparent and participatory approach to natural resource management. This approach should ensure that the development of IKN benefits not just a select few but also supports the welfare of the broader community and environmental sustainability. The government and relevant stakeholders must collaborate to find fair and sustainable solutions, ensuring that IKN development progresses smoothly without sacrificing community or environmental interests.

The presence of cultural heritage sites in the Nusantara IKN development area also demands attention. The large-scale development poses risks to the historical and

⁴³ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

⁴⁴ Rusman Nurjaman and Tatang Rusata, "Exclusion and Resistance: The Potential of Agrarian Conflicts Overshadowing the New Capital City," in *Assembling Nusantara*, ed. Henny Warsilah, Lilis Mulyani, and Ivan Kurniawan Nasution, *Advances in 21st Century Human Settlements* (Singapore: Springer Nature Singapore, 2023), 137–49, https://doi.org/10.1007/978-981-99-3533-8_10.

⁴⁵ Rostiyati et al., "Cultural Significance of the Nondoï Ritual in Shaping the Identity of East Kalimantan, Indonesia's New Capital City."

cultural heritage of the region. Balitbangda Kaltim is conducting research to identify and assess the status of cultural objects, such as royal caves, ancient graves, and colonial-era cannons.⁴⁶ This research is vital for preserving cultural heritage amid the infrastructure projects.

In addition to ongoing research, there are registered cultural heritage sites near the IKN area, like the Sadurengas Museum in Paser Regency, which holds historical objects from the Paser Sultanate. This museum reflects the region's cultural richness and underscores the importance of preserving heritage sustainably.⁴⁷ The government must ensure that IKN development prioritizes modern infrastructure while integrating local historical and cultural values.

To overcome the problem of cultural heritage preservation, synergy is needed between various parties, including the government, academics, and local communities.⁴⁸ The results of research from the East Kalimantan Research and Development Agency are expected to be the basis for decision-making related to the preservation of cultural heritage sites and objects. The government needs to develop comprehensive policies to protect and preserve cultural heritage, as well as harmonize it with the development of IKN. The involvement of local communities is also very important in conservation efforts, as they are the closest parties to the cultural heritage.

With a holistic and collaborative approach, it is hoped that the development of the IKN can run well without sacrificing the historical and cultural richness of the region. The preservation of cultural heritage sites and objects is not only important to maintain the nation's identity and identity, but can also be a potential tourism that supports local

⁴⁶ Nyaman Bagus Purwaniawan, "Hak Warga Terdampak Pembangunan IKN Dijamin Peraturan Presiden," 2024-08-05, accessed December 16, 2024, <https://kaltim.antaranews.com/berita/217499/hak-warga-terdampak-pembangunan-ikn-dijamin-peraturan-presiden>.

⁴⁷ Apriyanto, "Menelusuri Museum Sadurengas, Cagar Budaya Sekitar IKN Nusantara - Regional Liputan6.Com," Liputan6.com, July 22, 2022, <https://www.liputan6.com/regional/read/5022752/menelusuri-museum-sadurengas-cagar-budaya-sekitar-ikn-nusantara>.

⁴⁸ Aji Cakti, "Rp90 Miliar Untuk Ganti Rugi Warga Terdampak Pembangunan IKN - ANTARA News Kalimantan Utara," Antara News Kaltara, August 3, 2024, <https://kaltara.antaranews.com/berita/509467/rp90-miliar-untuk-ganti-rugi-warga-terdampak-pembangunan-ikn>.

economic growth. Thus, the development of IKN can be an example of how modern development can run in harmony with the preservation of cultural heritage.

In conclusion, the development of the Nusantara Capital City is a very complex project and involves various aspects, ranging from determining the value of compensation, overlapping land ownership, community relocation, concession land, to the preservation of cultural heritage. Each of these aspects has its own challenges and problems that must be handled carefully and comprehensively.

4.3. Legal Limitations in Addressing the Problem of IKN Land Acquisition

Determining the value of compensation for land acquisition in the development of the Nusantara Capital City involves several complex issues that current laws and regulations have not fully addressed. While existing regulations, such as Law No. 2 of 2012 on Land Acquisition for Public Interest Development and Presidential Regulation No. 75 of 2024 on Accelerating the Development of Nusantara, provide a legal framework, there are still significant gaps in their implementation.

The process of determining compensation often relies on methods like NJOP and independent appraisals, which can result in values that are subjective and may not accurately reflect market conditions.⁴⁹ Although Article 6 of Law No. 2 of 2012 sets out principles of fairness and feasibility for compensation, it does not provide detailed procedures for assessments, leaving room for inconsistent interpretations.

Although Article 35 of Law No. 2 of 2012 requires compensation to be paid before any physical work begins, delays are common due to long and complicated administrative processes. This not only harms landowners but also creates financial instability for those affected. The unclear legal status of land often complicates the fair determination of compensation. Without valid land titles, landowners may not receive the compensation they deserve. Despite the strong legal foundation provided by Law No. 5 of 1960 on Agrarian Principles, there are still gaps in verifying and validating land rights, which can impact the compensation process.

⁴⁹ Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region."

Another challenge is the lack of clarity in compensating non-physical losses, such as loss of rights or transaction costs. Existing regulations fail to adequately address the transparency and evaluation of these non-physical damages, which often leads to dissatisfaction among affected communities. Additionally, the socialization of the land acquisition process and compensation determination has been insufficient, causing confusion and misunderstanding. While Presidential Regulation No. 75 of 2024 calls for strengthening governance in the IKN, including improvements in public services, actual implementation still needs to focus more on transparency and public education.

In terms of regulation, there is a need for more detailed revisions to existing laws to address these issues effectively. Key areas for improvement include standardizing the assessment process, speeding up administrative procedures, and strengthening mechanisms for verifying land rights. Furthermore, increased socialization and public participation are essential to ensure a fairer and more transparent process for all parties involved.

4.4. Legal Solution to the IKN Land Acquisition Problems

Addressing the complexity of determining compensation values requires the establishment of more detailed and transparent assessment procedures to reduce discrepancies in interpretation among appraisers. While Article 6 of Law No. 2 of 2012 mandates that the compensation process be fair and feasible, its implementation needs further refinement. Presidential Regulation No. 75 of 2024 can serve as a foundation for developing specific technical guidelines for assessment methods that are objective and aligned with actual market conditions. A monitoring and evaluation mechanism should also be put in place, involving stakeholders, including the community, to ensure that the assessment process is conducted fairly and transparently, as outlined in Article 12 of Law No. 2 of 2012, which emphasizes community participation in the land acquisition process.

Streamlining administrative procedures and strengthening coordination among relevant agencies is essential to expedite the compensation payment process. Despite Article 35 of Law No. 2 of 2012 stating that compensation payments should occur before physical work begins, delays are still common in practice. Law No. 3 of 2022

concerning the Nusantara Capital City can provide the framework for developing a more efficient mechanism for compensation payments in the IKN area, such as establishing a dedicated task force to ensure the process runs smoothly. Additionally, strict penalties should be imposed on those who delay compensation payments, as outlined in Article 40 of Law No. 2 of 2012, which includes criminal provisions for non-compliance.

Addressing the uncertainty surrounding the legal status of land requires the expedited implementation of the comprehensive and systematic land registration program (PTSL) in the IKN area, as mandated by Law No. 21 of 2023 concerning the Implementation of the Special Regional Government of the Nusantara Capital City. PTSL enables quicker and more accurate verification and validation of community land rights, thus reducing potential disputes during the land acquisition process. Law No. 5 of 1960 on Basic Agrarian Principles provides a solid legal foundation for land regulation, necessitating consistent and synergistic application on the ground. Additionally, an effective and accessible land dispute resolution mechanism, as outlined in Article 37 of Law No. 2 of 2012 concerning land acquisition disputes, is crucial for the community.

Enhancing transparency and fairness in determining non-physical damages requires establishing clearer, more measurable parameters for assessment. Presidential Regulation No. 75 of 2024 can guide the development of comprehensive guidelines for non-physical compensation, considering factors such as loss of livelihood, relocation costs, and psychological impacts on affected communities. While Article 33 of Law No. 2 of 2012 addresses non-physical compensation, further elaboration in its implementing regulations is necessary. Moreover, a more robust public consultation process must be implemented to ensure community aspirations and needs regarding non-physical compensation are met, as stipulated in Article 16 of Law No. 2 of 2012.

Strengthening community understanding and involvement in the land acquisition process requires more effective and inclusive socialization and public participation efforts. While Law No. 2 of 2012, Article 16, mandates public consultation in land acquisition, its implementation still needs strengthening. Law No. 3 of 2022,

concerning the Capital City of the Archipelago, also emphasizes the importance of community participation in planning and developing the IKN. Therefore, innovative socialization methods, such as utilizing information technology and social media, along with the active engagement of community leaders and civil society organizations, are essential. Additionally, establishing a complaint and feedback mechanism, easily accessible to the public, will ensure their concerns and needs are addressed in the land acquisition process, as outlined in Article 34 of Law No. 2 of 2012.

Ensuring the protection of indigenous peoples' rights and cultural heritage during land acquisition requires synergy between Law No. 5 of 1960, concerning Basic Agrarian Principles, and Law No. 11 of 2010, concerning Cultural Heritage. Article 3 of Law No. 5 of 1960 acknowledges customary rights within customary law communities, requiring a clear mechanism for identifying, verifying, and protecting these rights in the land acquisition process. Law No. 11 of 2010 provides the legal framework for safeguarding cultural heritage in the IKN area. Presidential Regulation No. 75 of 2024 serves as a guide for integrating indigenous peoples' protection and cultural heritage preservation in IKN development. Additionally, close collaboration between the government, academics, and indigenous communities is crucial for studying and documenting cultural values and local wisdom that must be preserved.

Addressing potential conflicts and disputes in the land acquisition process demands an effective, fair, and inclusive resolution mechanism. While Article 37 of Law No. 2 of 2012 governs dispute resolution, institutional strengthening and capacity-building are necessary for its successful implementation. Law No. 3 of 2022 provides the foundation for creating a specialized institution responsible for handling land acquisition-related conflicts and disputes in the IKN area, involving various stakeholders, including the government, community, and civil society organizations. Moreover, adopting a more persuasive, dialogical approach in conflict resolution, prioritizing deliberation and consensus as outlined in Article 36 of Law No. 2 of 2012, is vital.

Ensuring transparency, accountability, and adherence to laws and regulations in the land acquisition process requires establishing a comprehensive monitoring and evaluation mechanism. While Article 48 of Law No. 2 of 2012 governs supervision and

monitoring, institutional strengthening and capacity-building are necessary for its effective execution. Law No. 3 of 2022 lays the groundwork for forming an independent institution to oversee and evaluate the land acquisition process in the IKN area, involving stakeholders such as the government, community, civil society, and academics. Additionally, implementing an effective reporting and follow-up mechanism ensures that monitoring and evaluation findings and recommendations are properly addressed.

With comprehensive legal solutions and synergies among related laws and regulations, the land acquisition process for the development of the Nusantara Capital City can be carried out in a fairer, more transparent, and sustainable manner, while respecting community rights, preserving the environment, and protecting cultural heritage. This approach aligns with the goals of Law No. 3 of 2022, which envisions the Nusantara Capital City as a smart, green, beautiful, and sustainable city, built on good governance and in the best interests of the people.

5. Conclusion

This study examines the effectiveness of normative law in safeguarding the rights of indigenous peoples during the land acquisition process for the development of the Nusantara Capital City (IKN). The analysis reveals that, while there is a comprehensive legal framework in place to protect these rights, its implementation faces significant challenges, particularly in areas such as compensation valuation, land ownership, relocation, and cultural preservation. These findings highlight the pressing need to strengthen regulations and mechanisms for protecting indigenous peoples' rights within the context of national development. Although this research focuses specifically on IKN and emphasizes normative legal aspects, its findings can serve as a reference for similar development projects in the future and stimulate further interdisciplinary studies. Future research could broaden its geographical scope, explore additional perspectives, and conduct comparative studies with other countries to offer a more in-depth understanding. Ultimately, this study makes a crucial contribution by revealing the gap between normative law and its practical application, while proposing more actionable legal solutions. Strengthening the legal framework and ensuring its consistent enforcement will be essential in achieving fair and sustainable national

development that respects the rights of indigenous peoples.

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