



RECEIVED 6 January 2026
ACCEPTED 30 March 2026
PUBLISHED 30 April 2026

CITATION

Isman, Setyowati Y, Widodo PA, (2026). Protection of Customary Land Rights in Indonesia's New Capital: A Sociolegal and Regulatory Impact Assessment. *Ijomata International Journal of Social Science*. 7 (2), 699-706. doi: 10.61194/ijss.v7i2.1642

TYPE Original Research

PUBLISHED 30 April 2026

DOI 10.61194/ijss.v7i2.1642

VOL 7 Issue 2 April 2026

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Protection of Customary Land Rights in Indonesia's New Capital: A Sociolegal and Regulatory Impact Assessment

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Abstract

The objective of this study is to evaluate the effectiveness of existing protection measures in safeguarding indigenous land rights in Sepaku and Samboja, East Kalimantan, within the context of the capital city of Indonesia. This study employs a comprehensive methodology, including a literature review, legal analysis, and field investigations. It examines the legal framework, institutional coordination, and impact of land use policies on indigenous communities. The data were collected via interviews and document analysis. This study reveals a pressing need to strengthen regulatory design and law enforcement to protect indigenous land tenure rights. This text highlights the challenges faced by indigenous peoples due to deforestation, land disputes, and the transformation of land for urban development. The research underscores the necessity of improved cross-sectoral authority and coordination within the Ministry of Environment and Forestry. This study provides valuable insights into the complex issues surrounding land tenure rights and indigenous communities in the context of the capital city of Nusantara. The text contributes to the ongoing discourse on environmental protection, indigenous rights, and the sustainability of land use policies in Indonesia. The findings provide practical recommendations for enhancing legal protection and mitigating deforestation in high-demand land areas, ultimately benefiting both the environment and local communities.

KEYWORDS

Indigenous Land Rights, Deforestation and Land Use Policies, Regulatory Framework and Enforcement.

Introduction

The Indonesia has reported progress in reducing deforestation and forest degradation. Government data indicate that deforestation rates decreased significantly during the 2019–2020 period, by approximately 75% or 115,459 hectares (Arumingtyas, 2021). Indonesia has designated around 120.5 million hectares, approximately 64% of its land area, as forest zones intended to support environmental sustainability (Indriastuti, 2022). Despite these commitments, deforestation continues due to policies that prioritise industrial land use, particularly mining and the expansion of palm oil plantations. These activities contribute significantly to forest degradation and create serious ecological impacts. They also threaten the livelihoods of indigenous communities, as land previously used for agriculture is frequently converted into mining areas. As a result, many indigenous people lose access to their traditional livelihoods and face limited employment opportunities. (Afrizal & Berenschot, 2020)

In East Kalimantan, land tenure conflict management has largely focused on reactive solutions that address immediate disputes rather than the structural causes of the conflicts. Existing mechanisms often concentrate on resolving localised disputes between companies, farmers, and indigenous communities without producing broader policy reforms. Most conflicts remain centred on disputes over land ownership and boundary delineation, involving both individual and communal customary lands. (Kalalinggi et al., 2023)

Tenurial conflicts contribute not only to environmental degradation but also to increasing social inequality. Therefore, evaluating the effectiveness of legal protection for indigenous land rights is crucial (Saputra & Dewata, 2019). Previous studies highlight institutional fragmentation as a major obstacle in forest governance. Coordination among agencies within the Ministry of Environment and Forestry (KLHK)—including the Directorate General of Forest Production Development, the Directorate General of Forest and Land Rehabilitation, the Forest Management Unit (BPH), the Forest Financing Agency (BPKH), and the River Basin Management Agency (BPDAS)—remains limited. This fragmented institutional structure often leads to complex bureaucracy and reduces the effectiveness of policy implementation (Nuhidayah et al., 2020).

In addition, weak interagency coordination complicates the protection of indigenous land tenure rights. One major issue is the lack of an integrated land registry that consistently records ownership when land-use conflicts arise in forest areas (Tahar et al., 2020). Conflicts between industrial actors and indigenous communities are further intensified by overlapping jurisdictional authorities and regulatory inconsistencies (Erbaugh & Nurrochmat, 2019).

The designation of Penajam Paser Utara and Kutai Kartanegara in East Kalimantan as the locations of Indonesia's new capital city (IKN) has intensified land-use changes from forested areas to urban infrastructure. Studies using the Weather Research and Forecasting (WRF) model show that urban expansion in these areas has increased temperatures by approximately 1.17-1.77 °C. These environmental changes highlight the importance of integrating indigenous perspectives into land-use planning to ensure sustainable development (Denryanto & Virgianto, 2021).

The designation of Penajam Paser Utara and Kutai Kartanegara in East Kalimantan as the two locations for Indonesia's New Capital City (IKN) has resulted in a transformation of land cover from vegetated areas to urban landscapes, with consequential impacts on temperature patterns. An examination utilizing the Weather Research and Forecasting (WRF) model revealed that the expansion of urban spaces contributed to increases in temperature of 1.17 and 1.77 °C, respectively. Consequently, urban planning needs to accommodate the local concerns embraced by indigenous communities to ensure sustainable development. (Nurfatriani et al., 2015). This study aims to evaluate the effectiveness of customary land rights protection in the IKN area by reviewing regulatory aspects, institutional coordination, and its impact on indigenous peoples in East Kalimantan (Ashshofa, 2001).

Methods

This study employs a sociolegal approach to examine the legal protection of customary land rights in Indonesia's new capital region. The sociolegal approach allows the study of law not only as a set of formal rules but also as a social institution that interacts with community practices and power relations. In this context, legal norms are analysed alongside the social realities experienced by indigenous communities regarding land tenure and forest management (Soekanto, 2001)

The research design follows a qualitative case study approach focusing on land tenure issues involving indigenous communities in East Kalimantan. This approach enables the analysis of how regulatory frameworks operate in practice and how indigenous communities interpret and respond to policies affecting their customary land rights (Nuriman, 2022).

The data used in this research are drawn from primary and secondary sources. Primary data include legal documents, regulatory provisions, and interview data collected from selected informants. Secondary data consist of supporting materials such as scholarly publications, reports, and documentation of customary practices related to forest management, including traditional ceremonies and symbolic traditions that reflect ecological wisdom within indigenous communities (Nuriman, 2022). Finally, the study evaluates the effectiveness of regulations and institutional coordination in addressing land tenure conflicts. Based on this evaluation, the research formulates policy recommendations to strengthen legal protection of indigenous land rights and improve governance mechanisms in the IKN development area (Risyan et al., 2022).

Result and Discussion

Theoretical and practical review of forest law enhancement

The protection of indigenous land tenure rights can be understood through a sociolegal perspective that views law as both a regulatory framework and a social institution shaped by social, economic, and political dynamics. In this context, legal protection is not determined solely by formal legal provisions but also by the effectiveness of institutions, governance coordination, and the social recognition of customary law within local communities (Dimiyati et al., 2021). The recognition of indigenous land tenure in Indonesia is constitutionally supported by Article 18B, paragraph (2), of the 1945 Constitution, which acknowledges the existence of customary law communities and their traditional rights, provided they remain consistent with societal development and the principles of the unitary state. (Shahpari & Hojjat, 2021). However, implementing this constitutional recognition often encounters challenges due to regulatory fragmentation, overlapping authorities, and competing land-use interests (Levitt, 2021). From a sociolegal perspective, customary law functions as a social regulatory mechanism that organises social behaviour, preserves social order, and provides mechanisms for conflict resolution within indigenous communities. These functions are closely linked to the ecological wisdom embedded in customary practices, which reflects long-standing interactions between communities and forest ecosystems. Such ecological knowledge plays an important role in sustaining forest resources and shaping local governance systems for land management (Sarna, 2022). However, the effectiveness of legal protection for indigenous land rights is influenced by broader social and institutional factors. Sociological jurisprudence emphasises that law operates within social contexts and, therefore, its effectiveness depends on the interaction between legal norms, social structures, and economic interests (Tumonis, 2012).

In Indonesia, competing interests among conservation objectives, industrial development, and indigenous livelihoods create complex tenure conflicts. In addition to sociolegal considerations, the effectiveness of law enforcement can also be examined from institutional and economic perspectives. (Tumonis, 2012). Limited enforcement capacity and high monitoring costs often lead to selective enforcement practices, particularly in large forest areas where monitoring resources are constrained (Becker, 1968). Based on these theoretical perspectives, this study derives several key analytical variables to evaluate the effectiveness of protecting indigenous land tenure rights. These variables include: (1) the clarity and consistency of regulatory frameworks governing indigenous land rights, (2) the level of institutional coordination among government agencies responsible for forest and land governance, (3) the role and recognition of indigenous

communities in forest management, and (4) patterns of land tenure conflicts arising from competing land-use interests. (Robinson et al., 2010). These variables form the basis for analysing how legal protection mechanisms operate in practice within the IKN development area. By examining the interactions among regulatory frameworks, institutional governance, and social dynamics, this study assesses whether existing legal mechanisms effectively safeguard indigenous land tenure rights while supporting sustainable forest management. (Fenestra, 2023).

Tenurial Conflicts and the Role of Indigenous Peoples

The traditional practice of shifting cultivation carried out by the Dayak community, as an integral part of their cultural heritage and livelihood, can help maintain ecological balance in the forest. However, when state regulations fail to acknowledge and safeguard these customary rights, conflicts increase, and traditional forest management practices decline. This failure has a detrimental impact on the increasing rate of deforestation and severe ecosystem degradation (LEO et al., 2022).

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The ecological wisdom within the Dayak Paser and Dayak Balik communities is characterised by a communal spirit, as evidenced in the traditional practice of “Paser Bekerai,” which involves community participation in building traditional houses and in collective activities (Hidayat et al., 2022). This communal essence is reflected in forest governance grounded in the traditional knowledge of the Dayak community, which contributes to carbon sequestration valued at more than US\$52 million per year. This communal essence signifies that local knowledge and Dayak Iban customary law have proven effective in reducing carbon emissions, highlighting the importance of recognising them to address deforestation (Wahyono et al., 2020).

The cosmic essence is a distinctive characteristic of the Dayak Kalimantan indigenous community, where ritual systems and traditional knowledge of agriculture and medicine are passed down through generations, all of which are integrated into the spirit of sustainable utilisation of forest resources. In the context of rituals, the Dayak Kalimantan community practices the “tipong tawar” mantra as a farming ritual that reflects their spiritual connection to the forest and their belief that it is a place endowed with protective spirits, fertility, and ecological balance. (Rahayu, 2025) The protection of land tenure rights is inseparable from traditional knowledge. (Leo et al., 2022).

The application of shifting cultivation, knowledge of natural soil cycles, and norms of forest sustainability are traditional knowledge commonly found in Dayak communities in Kalimantan. Shifting cultivation practices help maintain soil fertility and prevent overexploitation of forests. Knowledge of natural soil cycles accelerates the recovery of agricultural land into primary forests. Forest sustainability norms prevent excessive exploitation. This knowledge system demonstrates that Dayak communities’ reliance is not solely based on economic considerations but is rooted in a cosmic unity (Ahmad, 2020).

In addition to shifting cultivation, the Dayak communities in Kalimantan also practice a tradition called simpukung, or forest gardening, which involves the economically managed cultivation of secondary forests planted with fruits, rattan,

bamboo, timber, and other medicinal plants. Typically, these forests are managed collectively, although some may be privately managed and passed through generations. The customary rules governing these forests are stringent and intricate for preventing the overexploitation of forest resources. However, such practices are increasingly challenging to find in the IKN area (New Capital City of Indonesia in Sepaku and Samboja) (Kristanti, 2019).

The indigenous communities of Paser and Balik, which reside in the IKN (Sepaku and Samboja) area, have a range of cosmologically oriented traditions, as depicted in the “Besoyong” tradition. This ritualistic incantation or chant serves as a means of communication with ancestral spirits and the divine entity known as Sangiyang. It is typically performed during the traditional Belian Paser Nondoi festival (Widaty et al., 2021). Protective mantras are intricately linked to the forest as ritual media (Hidayat et al., 2022). Within the Balian tradition, a strong and ancestral cosmic dimension is preserved, highlighting the belief that the forest possesses profound healing powers (Widaty et al., 2021).

The conservation of forests through the protection of indigenous land tenure rights among Dayak communities contributes significantly to the preservation of traditional knowledge held by the Dayak Meratus and Dayak Balik regarding approximately 240 plant species with diverse uses. Among these species, 2 are endemic, and 14 are rare (Hidayat et al., 2022). Ethnopharmacological research has shown that the traditional medicinal knowledge of the Dayak Paser and Dayak Balik encompasses 46 medicinal plant species and 12 herbal formulations, with potential for the discovery of new drugs (Fahrianoor et al., 2018).

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The traditional knowledge of the Dayak Paser and Dayak Balik communities regarding forest plants as a source of natural antioxidants, as mentioned above, can be utilised to reduce the dependence on synthetic antioxidants. Therefore, biodiversity wealth represents an ecologically valuable asset that needs to be protected (Dorough & Wiessner, 2020).

Effectiveness of Regulation in Protecting Customary Land Rights

This subtopic focuses on the protection of tenurial rights of the indigenous Dayak community, encompassing an analysis of the disparity between regulations and their implementation, as well as a range of challenges and opportunities. This empirical review aims to provide a deeper understanding of the protection of tenurial rights among the indigenous Dayak community, specifically the Paser and Balik subethnic groups residing in the development area of the new capital city. The first empirical review presents official data on the enforcement of environmental law in East Kalimantan, as depicted in the following Figure 1:

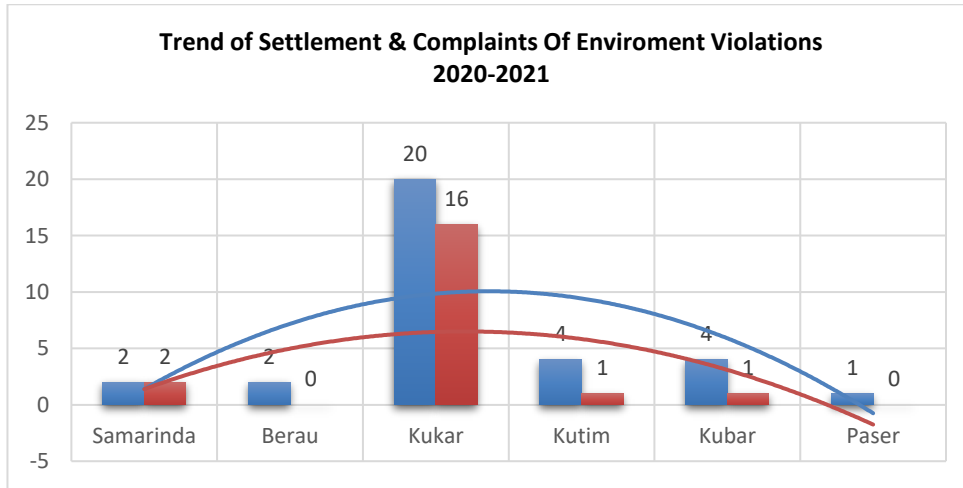


Figure 1. Graph of the Trend of Settlement & Complaints of Enviroment Violations 2020-2021

Reference: East Kalimantan Department of Environment (Badan Pusat Statistik RI, 2020)

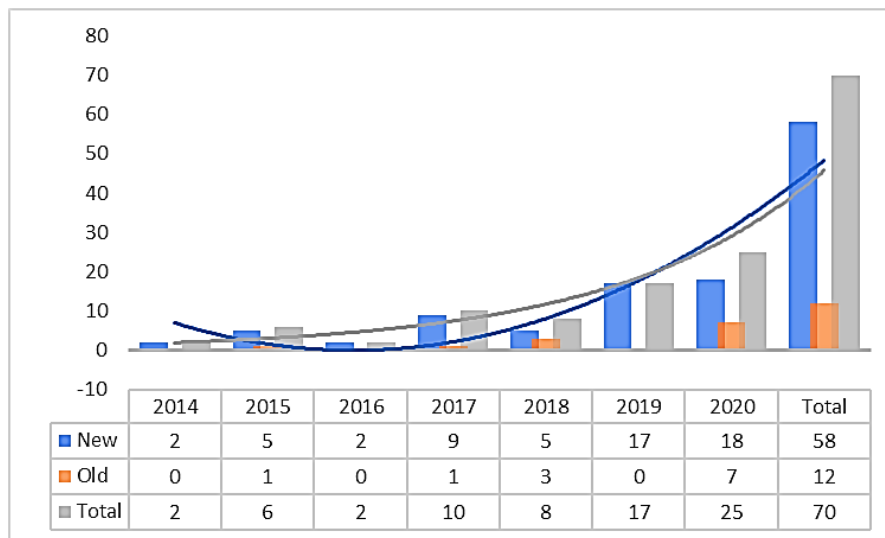


Figure 2. Kaltim Climate Village realization graphic, 2020

Reference: East Kalimantan Department of Environment

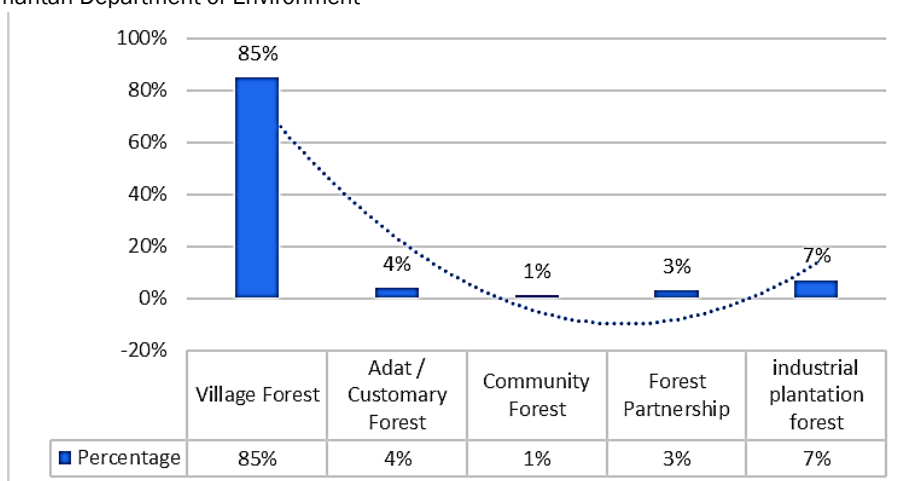


Figure 3. Types of Forest Graphs

Reference: (Badan Pusat Statistik RI, 2020)

On the basis of the aforementioned data, the enforcement of environmental and forestry laws still needs to be improved, particularly in terms of taking action against law violations.

Despite the majority of complaints being resolved, cases that were redirected to other agencies indicate the need for cross-sector collaboration in handling more complex cases. This is

evidenced by a quantitative descriptive analysis. First, the complaint resolution statistics show a rate of approximately 61%, indicating that most complaints have been successfully resolved. Second, an average of approximately 39% of patients were referred to other agencies, suggesting that a number of complaints were redirected, making it difficult to track their completion. Third, the law enforcement rate represents a mere 3% of the total complaints, indicating a significantly low level of enforcement against environmental preservation violations.

Community participation in forest and environmental conservation, which is based on empirical data from the East Kalimantan Environmental and Forestry Agency, is facilitated through climate-friendly village initiatives. The specific data are presented in the following [Figure 2](#).

The data indicate that over a four-year period (2017–2020), the annual increase in climate-friendly villages was only approximately 20.67%. The actual progress reached 70 villages by 2020, highlighting a significant gap between the actual achievements and the set target. This demonstrates that community participation in forest conservation is hindered by a lack of cross-sector authority and institutional coordination within the Ministry of Environment and Forestry. Forest Watch Indonesia's data, released in March 2023, suggest a dominant causality between the low participation index and the indigenous community's access to IKN relocation policies, leading to tenurial rights violations. The data from the East Kalimantan Environmental Agency also reveal the extent of customary forest areas (see [figure 3](#)).

Approximately 193 thousand hectares of land have been built. In detail, Village Forest covers 165 thousand hectares with 34 permits, Community Forest encompasses 2.2 thousand hectares with 13 permits, People's Plantation reaches 12,941 hectares with 15 permits, customary forest amounts to 7.7 thousand hectares with 2 permits, and Partnership spans 5,427 hectares with 11 permits. These data provide an overview of the effectiveness of legal protection for the tenurial rights of indigenous communities in realizing the actualization of their land ownership.

The development of Indonesia's new capital city (IKN) in East Kalimantan has exacerbated pressure on land use and contributed to ongoing land tenure conflicts involving indigenous communities. Although national data in [Table 1](#) show a downward trend in deforestation from 108,682 hectares in 2014–2015 to 10,660.5 hectares in 2019–2020, the pattern remains fluctuating and inconsistent. Furthermore, the decline in deforestation has not been accompanied by a significant increase in forest restoration, indicating that forest governance challenges persist.

Tenurial conflicts in the IKN region are often associated with competing claims over forest resources between indigenous communities and forestry or extractive industries. Industrial actors are frequently identified as major contributors to violations of customary land rights, particularly when development activities overlook local wisdom and customary governance systems. The lack of recognition of customary law within local regulations often leads to multiple interpretations of land ownership and weakens legal protection for indigenous communities.

The persistence of tenurial conflicts can be understood through several structural issues related to access,

ownership, and governance of forest resources. Previous studies highlight three key dimensions that shape indigenous access to forests: inclusivity versus exclusivity in resource governance, the distinction between communal and individual land ownership, and the dynamics of resistance, negotiation, and accommodation between indigenous communities and external actors (R. Kurniawan et al., 2022).

In the IKN context, these dynamics are reflected in the ongoing contestation between forest industry actors and indigenous communities over land use and resource control. Spatial injustice in forest utilisation further intensifies these conflicts, as economic development priorities often outweigh community-based forest management systems (Syaban, 2024).

To address these tensions, the government has introduced several community-based environmental programs, including the Kampung Pro Iklim initiative. This program aims to strengthen local participation in environmental conservation and climate adaptation efforts. From a sociolegal perspective, the program reflects an attempt to integrate indigenous communities into environmental governance frameworks (Permadi, 2025).

However, the program's implementation has yielded inconsistent results. Participation levels among indigenous communities remain limited, and the program's achievements often do not align with its objectives of strengthening community-based forest management (Batubara, 2025). The fluctuating trend of the Kampung Pro Iklim program suggests that institutional coordination and community engagement mechanisms remain insufficient (R. Kurniawan et al., 2022).

These limitations also reflect broader governance challenges within the Ministry of Environment and Forestry, particularly in relation to cross-sectoral coordination and the integration of indigenous perspectives into environmental programs (Swara, 2025).

Legal and regulatory frameworks also play a critical role in shaping tenurial conflicts in the IKN region. Although the Indonesian Constitution recognises customary law communities, its implementation remains inconsistent. The revision of forestry regulations under the Job Creation Law has further complicated the legal landscape, creating uncertainties regarding the protection of customary land rights (Wuryandari et al., 2022).

In addition, the governments of Kutai Kartanegara and Penajam Paser Utara two regions designated as the new capital city's location have not yet established comprehensive legal frameworks to recognise indigenous customary territories ("Analysis of Household Food Security in Indonesia New Capital City (Kutai Kartanegara and North Penajam Paser)," 2021). This regulatory gap indicates that customary land rights

Table 1. Deforestation rate

Period	Deforestation Rate	Forest Area
2014	16,610.8 ha	38,339.4 ha
2015	108,682.0 ha	36,403.9 ha
2016	94,981.8 ha	57,104.9 ha
2017	65,194.2 ha	20,913.1 ha
2018	43,031.6 ha	26,808.0 ha
2019	69,584.6 ha	43,031.6 ha
2020	10,660.5 ha	2,792.7 ha

Reference Central Bureau of Statistics 2020 ([Badan Pusat Statistik RI, 2020](#))

have not been prioritised within local governance structures (Penasihat et al., 2019).

Economic interests and development pressures represent another major driver of tenurial conflicts. High demand for land for infrastructure development, mining, and other economic activities often leads to overlapping land-use claims. In many cases, short-term economic gains are prioritised over long-term forest conservation and the protection of indigenous land rights (Wuryandari et al., 2022).

Spatial inequality in forest utilisation further exacerbates these tensions. Investment policies and regulatory frameworks sometimes fail to address the social and environmental consequences of industrial activities adequately (Marzuki, 2024). As a result, indigenous communities frequently bear the negative impacts of land-use changes without receiving equitable benefits from development (Penasihat et al., 2019).

Weak law enforcement also contributes to the persistence of tenurial conflicts. Data on environmental and forestry law enforcement indicate that only around 3% of violations are effectively addressed, demonstrating a significant gap between regulatory provisions and their implementation (Saripudin, 2017).

This low enforcement rate reflects broader institutional challenges, including limited resources, insufficient interagency coordination, and overlapping jurisdiction among government institutions. In some cases, local governments have issued mining permits within protected forest areas despite existing regulations prohibiting such activities, further complicating efforts to protect indigenous land rights (Absori et al., 2022).

Despite these challenges, indigenous communities continue to play a crucial role in forest conservation and land governance. For many indigenous groups, including the Dayak communities in East Kalimantan, forests are not only an economic resource but also a fundamental component of cultural identity and social organisation.

However, demographic changes and administrative barriers increasingly affect the ability of indigenous communities to assert their land rights. The transformation of traditional villages in Sepaku and Samboja into transmigration areas has altered local social structures and made it more difficult for indigenous communities to navigate complex bureaucratic procedures related to land recognition.

Nevertheless, customary law and traditional practices remain important mechanisms for managing land and resolving conflicts within indigenous communities (Ammar, 2026). These practices continue to operate alongside formal legal systems, demonstrating the need for more inclusive governance approaches that integrate customary institutions into official land management frameworks (Wardiono et al., 2022)

Impact of IKN Development on the Lives of Indigenous Peoples.

The development of Indonesia's new capital city (IKN) in East Kalimantan has generated significant social, environmental, and institutional impacts on indigenous communities. Although national policies emphasise sustainable development and environmental protection, their implementation has created complex challenges for

indigenous peoples whose livelihoods depend on forest resources and customary land tenure systems.

The environmental dimension of IKN development is closely linked to land-use changes and forest governance. Although national data indicate a declining trend in deforestation, fluctuations in deforestation rates suggest that challenges persist in enforcing environmental regulations. Overlapping policies and inconsistencies in spatial planning have created spatial injustices in forest utilisation. These conditions complicate efforts to protect indigenous land tenure rights, particularly when economic development interests compete with conservation objectives.

Furthermore, the limited participation of indigenous communities in environmental initiatives, such as the Kampung Pro Iklim program, reflects inadequate institutional coordination and insufficient cross-sectoral collaboration within the Ministry of Environment and Forestry. Weak coordination and limited infrastructure may reduce the effectiveness of community-based forest management initiatives and hinder indigenous participation in conservation programs.

IKN development has also generated socio-cultural challenges for indigenous communities. Conflicts between industrial actors and indigenous groups often arise when customary land rights are inadequately recognised in development planning. These conflicts reflect a broader cultural divide between state-led development models and traditional land governance systems practised by indigenous communities.

Resistance or contestation surrounding programs such as Kampung Pro Iklim indicates difficulties in promoting behavioural change and encouraging active participation among indigenous communities. Without meaningful engagement and recognition of local knowledge systems, development initiatives may fail to address the cultural and social realities of indigenous societies.

Economic interests play a significant role in shaping land-use decisions in the IKN development area. High economic demand for land and natural resources often prioritises infrastructure development and industrial expansion over the long-term protection of forests and customary land rights. As a result, resources allocated to protecting indigenous tenure rights are often limited and primarily focused on administrative procedures rather than substantive legal protection.

This imbalance between economic priorities and environmental governance may undermine the effectiveness of policies intended to safeguard indigenous communities and their traditional livelihoods. Legal and institutional factors also influence the protection of indigenous land rights in the IKN region. Regulatory changes, including amendments to the Forestry Law under the Job Creation Law, have created uncertainty regarding the legal status of customary land. Such regulatory shifts may weaken the consistency and stability of legal protection mechanisms.

Although the Indonesian Constitution recognises customary law communities, the absence of clear operational frameworks at both the national and regional levels continues to hinder the effective implementation of this recognition. This regulatory gap contributes to ongoing land tenure conflicts and complicates efforts to ensure the consistent protection of indigenous land rights.

Demographic changes resulting from urban expansion and migration into the IKN area also affect indigenous communities. The transformation of traditional villages into more heterogeneous settlements, including transmigration sites, alters local social structures and land governance systems.

These demographic shifts may reduce indigenous communities' ability to maintain traditional land management practices. In addition, complex administrative procedures for land recognition often disadvantage indigenous communities, limiting their ability to assert customary land rights within formal legal systems.

Conclusion

The development of Indonesia's new capital (IKN) in East Kalimantan has intensified pressures on indigenous land tenure systems, particularly in Sepaku and Samboja. This study finds that overlapping land-use policies, weak institutional coordination, and insufficient recognition of customary land rights drive tenure conflicts. Although Indonesia has introduced policies aimed at forest conservation and community participation, their implementation remains inconsistent. Industrial expansion, spatial inequality in forest use, and limited enforcement capacity continue to undermine the protection of indigenous land rights and contribute to environmental degradation. To improve the effectiveness of customary land rights protection in the IKN area, several policy measures are necessary. First, regulatory frameworks should be strengthened to clarify the recognition of indigenous tenure rights, particularly within the

Job Creation Law and related forestry regulations. Second, stronger coordination among ministries and local governments is required to address land conflicts and ensure consistent forest governance. Third, indigenous communities should be empowered through participatory mechanisms such as social forestry programs and community-based forest management initiatives. This study has several limitations, including its reliance on qualitative sociolegal analysis and limited empirical data from specific communities in East Kalimantan. Future research should incorporate broader empirical data and comparative studies to examine further the long-term impacts of IKN development on indigenous land tenure and forest governance.

Acknowledgements

We express our deep appreciation to all those who have made invaluable contributions to the completion of this study. We would like to extend special thanks to the Universitas Muhammadiyah Surakarta for their financial assistance in providing essential resources. We acknowledge the valuable guidance of our advisors, whose expertise has greatly influenced the direction and outcomes of this study. The manuscript's precision and coherence have been enhanced by diligent proofreaders and typists. We are grateful to the suppliers for providing us with essential materials, equipment, and data. The contributions of these methods are crucial in obtaining precise results. We extend our heartfelt thanks to all the individuals and organizations who unwaveringly supported us throughout this research expedition.

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