Conflicts over Customary Rights of Indigenous Communities in The National Capital City Development Project

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Abstract

This study examines agrarian conflicts in the development of the Indonesian National Capital (IKN) in East Kalimantan, with a focus on the customary rights of indigenous peoples. Normatively, Article 18B paragraph (2) of the 1945 Constitution and Article 3 of the UUPA have provided recognition to indigenous peoples and their customary rights. However, the implementation of this recognition has not been effective. Dependence on administrative recognition through Regional Regulations (Perda), lengthy mechanisms for proving customary rights, and the paradigm of accelerated development have led to marginalization, loss of living space, and legal uncertainty. This study uses normative legal methods with a statutory, conceptual, and case approach and is analyzed through the Theory of Recognition and the Theory of Development Law. The results indicate that although the national legal framework has regulated customary rights, the practice of IKN development still places these rights as administratively conditional rights. The absence of a Perda recognizing customary communities means that customary land that has not been formally designated is treated as state land. AMAN data from 2025 recorded 110 agrarian conflicts, including the Balik Sepaku, Balik Pemaluan, and Paser Maridan cases, demonstrating the disharmony between legal norms and their implementation. Therefore, a structural and paradigmatic transformation of agrarian law is needed through the ratification of the Customary Law Communities Law, accelerated regional regulation formation, and participatory mapping of customary territories.

Keywords: *Customary rights; customary law communities; regional regulations; national capital and transformation of agrarian law.*

I. INTRODUCTION

The development of the Indonesian National Capital (IKN) in East Kalimantan is a national strategic project that symbolizes a major transformation in Indonesia's development. However, this great ambition also poses various agrarian legal issues, particularly regarding the customary rights of indigenous peoples (MHA) who inhabit the area that is now the IKN development area (Amarta Putra & Azhar, 2024). MHA, who have lived and managed customary land for generations, feel that their traditional rights are threatened by the development process, which is considered not to fully pay attention to the principle of recognition and maintenance of customary rights as protected by the constitution and legal regulations in Indonesia. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) emphasizes that the existence of MHA and their traditional rights receive recognition and respect from the state as long as these rights remain alive and in line with social changes and the principles of the Unitary State of the Republic of Indonesia (Puspa Sari, 2023).In the context of agrarian law, customary rights are considered to be the collective rights of MHA (Cultural Community) related to land, whose existence is legally recognized through Article 3 of Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), as long as these rights clearly demonstrate their existence and do not contradict national objectives or higher regulations (Putri Sari Sunari Wangi et al. 2023).

However, in practice, this recognition often clashes with national-scale development projects, including the IKN. The Balik Sepaku, Balik Pemaluan, and Paser Maridan customary law communities in North Penajam Paser Regency are a clear example of this conflict. A Maridan customary law community leader, Darmawi, expressed his surprise when he saw his customary territory shrinking in his area and the presence of signs stating that the area was part of the IKN development project in customary territory that had been controlled by generations for a long time. The area is not only a place of residence, but also

contains ancient tombs and traditional ritual sites that hold high sacred value for the community (Ayunda, 2025).The existence of this national project further limits the living space of indigenous peoples. Another case highlighting the impact of the development of the new capital city on indigenous peoples is the experience of Yanti Dahlia, a woman from the Balik Sepaku tribe. She recounted how her family suddenly lost their livelihood after customary forests and community land were converted into new capital city buildings. Indigenous peoples, who previously relied on farming and forest products, were forced to seek new jobs they were not qualified for, such as cleaning or trading (Sedayu, 2025).

Furthermore, the construction of dams to meet the water needs of the new capital city buildings triggered flooding in residential areas, eliminating their access to rivers as their primary water source, and worsening environmental conditions. According to data from the Indigenous Peoples' Alliance of the Archipelago (AMAN), as of early 2025, there were 110 conflicts involving indigenous communities due to the development of the new capital city. This indicates that the development process has not fully considered indigenous peoples' rights to customary land and environmental sustainability (Sedayu, 2025). The tension between national goals and indigenous peoples' communal rights has given rise to complex agrarian conflicts, involving legal, social, economic, and political aspects.The government argues that the development of the new capital city (IKN) is a strategic policy designed to promote balanced development and address the burden of urbanization on Java (Simanjuntak et al. 2024). However, from the perspective of indigenous peoples (MHA), this development is seen as neglecting their involvement in planning, consultation, and decision-making processes. Many feel they have lost access to the land and natural resources that are the foundation of their lives and cultural identity.

This situation demonstrates that the transformation of national law has not fully mediated the interests of national development with the guarantee of traditional rights of indigenous peoples.In the era of globalization, digitalization, and democratization, national law must be able to transform into an instrument that is just, inclusive, and adaptive to change. Legal transformation not only means regulatory reform but also a paradigm shift in viewing indigenous peoples as legal subjects with constitutional rights, not merely objects of development (Zakka Arrizal et al. 2023). Therefore, a comprehensive study is needed on how the national agrarian legal system, particularly in the context of the New Capital City project, can accommodate indigenous peoples' customary rights without hindering the national development agenda. This research is relevant because it reflects the real challenges in realizing agrarian justice amidst modernization and massive development (Devinta & Rofiq Addiansyah, 2024).The writing of this journal is directed at answering two main problem formulations, namely: (1) How are the customary rights of indigenous legal communities regulated in the Indonesian national legal system? And (2) How can the transformation of national agrarian law realize fair legal protection amidst the conflict over the development of the IKN?

II. METHODS

This research includes normative legal studies using statute, conceptual, and case approaches (Solikin, 2021). Through this study approach, researchers can gather information from various elements related to the legal issues for which they are seeking solutions and answers. Meanwhile, this research uses legal materials that refer to Peter Mahmud Marzuki's view of secondary legal materials or data, broken down in more detail through various levels (Muhaimin 59), namely primary legal materials, in the form of legal materials in the form of statutory regulations (Citra Ramadhan, 2021).This study uses a number of legal provisions such as Article 18B paragraph (2) of the 1945 Constitution which recognizes indigenous communities, the Basic Agrarian Law which affirms customary rights, and the 2022 IKN Law as the legal basis for the construction of the new capital city. In addition, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency No. 5 of 1999 concerning guidelines for resolving customary rights (Permen ATR/BPN No. 5 of 1999) is also referred to. Secondary legal materials, in the form of sources that are closely related to primary materials and can support the analysis and understanding of these materials, which include a number of things, including books, journals, scientific articles, and the views of legal experts. Tertiary legal materials, are sources that provide guidelines and explanations of primary and secondary materials. These legal materials use a number of things, including the Big Indonesian

Dictionary, legal dictionaries and legal encyclopedias. In the process of collecting legal materials in this study, a technique in the form of a bibliography study was used, namely the collection of necessary sources by tracing primary, secondary, and tertiary legal materials (Citra Ramadhan, 2021).This research uses the main theory, namely: Theory of Recognition of Customary Rights which is rooted in the Recognition Theory which explains how the state through the legal system recognizes the existence of the community, identity, and rights of a social group, including MHA.

Boedi Harsono explains, customary rights are the authority of MHA in regulating, using, and taking the use value of land and the natural resources on it for the common good (Maiyestati, 2023). This recognition becomes the legal basis in the formulation of development policies, including in the context of IKN development, so as not to ignore the traditional rights of existing communities. And the Theory of Development Law which refers to the view of Mochtar Kusumaatmadja, law plays a dual role, namely as a vehicle for order and at the same time as a means of social renewal (Walny Rahayu et al. 2018). Through the theory of development law, law is seen as a tool to direct and regulate social changes that occur in society so that they are in line with national development goals. In the context of the development of the new capital city, this theory explains that the Indonesian legal system must be able to support the acceleration of national development while still ensuring legal certainty and guaranteeing public rights, including the customary rights of indigenous peoples (MHA), which have been recognized in the constitution. Therefore, national legal development must proceed in tandem with physical and social development to create a balance between progress and social justice.This research has novelty compared to previous studies because it not only highlights the normative recognition of MHA customary rights in the 1945 Constitution and UUPA but also critically examines the disharmony between legal norms and IKN development practices that place customary rights as administrative conditional rights and the absence of Regional Regulations (Perda).

III. RESULT AND DISCUSSION

Regulation of Customary Rights of Indigenous Law Communities in the Indonesian National Legal System

The regulation of customary rights of MHA in the Indonesian national legal system is rooted in constitutional provisions, namely Article 18B paragraph (2) of the 1945 Constitution. This article affirms, "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This regulation has the main meaning that state recognition is declarative-constitutive, meaning that the state recognizes the existence of MHA and their collective rights that have existed long before the founding of the state and provides limitations that such recognition is only given if the MHA is still alive, according to the dynamics of the times, so that it does not conflict with the principles of the Unitary State of the Republic of Indonesia (Retno Kus Setyowati, 2023). Thus, the constitution places MHA as a collective legal subject whose rights must be maintained and further regulated by the state to be in harmony with social dynamics and the principles of the Unitary State of the Republic of Indonesia.The legal basis governing customary rights in detail is contained in Article 3 of the UUPA, which states that the state recognizes the existence of customary rights as long as they still exist in reality and their implementation does not conflict with national goals. This provision is the main foundation of the UUPA, positioning customary rights as an element within the national agrarian legal structure that is not abolished, but rather must be maintained through regulatory mechanisms by the government.

Article 3 of the UUPA serves as an important foundation that the state is not the absolute owner of land, but rather the authority that regulates the relationship between MHA and customary land based on the principle of social justice (Saidah & Handayani, 2025).In addition to the UUPA, regulations regarding customary rights and the existence of MHA are also spread across various sectoral laws that emphasize state recognition in relation to space, natural resources (SDA), and governance. First, Law No. 41 of 1999 concerning Forestry in Article 1 number 6, Article 5 paragraphs (1-3), Article 67 paragraph (1) which originally positioned customary forests as elements of state forests was then corrected through Constitutional Court Decision No. 35/PUU-X/2012. Constitutional Court Decision No. 35/PUU-X/2012 provides

confirmation that customary forests are not included in state forests, but forests located in the area and under the control of MHA. The state does not have the right to own customary forests, but only regulates and supervises them as long as the MHA is still alive and legally recognized. This regulation strengthens the position of customary rights in forest areas, while also requiring the government to make formal determinations so that indigenous communities receive legal certainty over their territories.

Second, Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH) as revised through Law No. 6 of 2023 which recognizes the existence of MHA as emphasized through Article 1 paragraph (31) which explains that customary law communities are a group of people who live between generations in a certain geographical area, are bound to their ancestral origins, have a strong relationship with their environment, and have their own value system and institutions. However, the recognition of MHA is not automatic, because Article 63 paragraph (1) letter t, paragraph (2) letter n, and paragraph (3) letter k provide confirmation, the recognition of the existence of customary law communities, local wisdom, and their rights is carried out through government policies in a tiered manner, from central, provincial, to district/city policy makers. This recognition is focused on MHA rights related to environmental maintenance and management, including local wisdom-based natural resource management.Third, Law No. 6 of 2014 concerning Villages regulates the recognition of MHA units through their designation as Traditional Villages as stipulated in Article 96. This designation must meet the requirements as stipulated in Article 97 paragraphs (1)–(4), namely that the customary law community is still alive, there is a customary territory, customary institutions, and it does not conflict with human rights, the provisions of the law, and the principles of the Unitary State of the Republic of Indonesia.

In the process, Article 113 letter l authorizes the government to facilitate and conduct research, while Article 114 letter j assigns the provincial government to assist in determining customary law communities as villages. This provision is an implementation of the mandate of Article 18B paragraph (2) of the 1945 Constitution, which emphasizes the recognition of MHA and their traditional rights by the state.Fourth, Law No. 11 of 2020 in conjunction with Law No. 6 of 2023 on Job Creation, through this law, all land plots in Indonesia, whether state land, land rights, or customary land, must be registered in the National Land Information System. This provision is reinforced in Government Regulation No. 18 of 2021, providing clear legal regulations regarding customary land by defining it as land located in the MHA ownership area and not having any land rights attachments (Article 1 number 13). This Government Regulation provides confirmation that management rights can be sourced from customary land (Article 4) and are applied to MHA as the legal subject (Article 5 paragraph (2)). In addition, if management rights to customary land are revoked, the land is returned to MHA ownership (Article 15 paragraph (3)), thereby strengthening the recognition and legal protection of customary rights in a concrete manner.

Fifth, the IKN Law (Law No. 3 of 2022 in conjunction with Law No. 21 of 2023) regulates that the implementation of spatial planning, land, and transfer of land rights in the IKN area is carried out through attention and providing protection to individual and communal rights of MHA, as well as local values as emphasized in Article 21, which is further emphasized through the Explanation of Article 16 paragraph (1) which explains that the system for procuring land must continue to pay attention to the land rights (HAT) of the community and MHA, and in the Explanation of Article 30 paragraph (1) which confirms that the determination of land rights must also pay attention to the HAT of the community and MHA.The regulation of customary rights of MHA was administratively regulated through the Minister of Agrarian Affairs/BPN Regulation No. 5 of 1999 and the Minister of ATR/BPN Regulation No. 9 of 2015, but currently the valid regulation is the Minister of ATR/BPN Regulation No. 10 of 2016. The Minister of ATR/BPN Regulation No. 10 of 2016 regulates the customary rights of customary law communities to be administered in the form of Communal Rights to Land, namely rights that are collectively owned by the land of a customary law community (Article 1 number 1), which can be confirmed if the MHA in question is still in the form of a customary association, has customary institutions, clarity of its customary territory, and customary legal institutions are upheld until now (Article 2 paragraph (1) in conjunction with Article 4 paragraph (1)).

The rights to the land are granted in the form of Communal Rights (Article 3 paragraph (1)) through a mechanism of application, identification, verification and field inspection by the Land Inventory, Control, Ownership, Use and Utilization Team/IP4T (Articles 5 to 9), and if the existence of the MHA and the land has been determined by the Regent/Mayor or Governor, then the Communal Rights must be registered at the Land Office in order to obtain legal certainty (Article 18 paragraph (1) and paragraph (2) in conjunction with Article 19).The stages of legalization of customary rights are increasingly emphasized through the Regulation of the Minister of ATR/BPN No. 14 of 2024 which confirms that customary rights of customary law communities are recognized, respected, and implemented as long as they still exist in the context of reality (Article 2 paragraph (1)), which is marked by the existence of MHA units, certain customary land areas, and customary legal systems that are still adhered to (Article 2 paragraph (2)); these customary rights are defined as the authority of MHA over their territory to use natural resources, including land, which is born from physical and spiritual relations that have been going on for a long time between generations (Article 1 number 1 in conjunction with number 4), and are then administered through inventory, measurement, mapping, and recording in the Customary Land Register to guarantee legal certainty without eliminating the validity of customary law (Article 4 paragraph (1)–(3) in conjunction with Article 13 and Article 30); Customary land that has been registered can be registered in the form of Management Rights or Ownership Rights as communal land according to the characteristics of MHA (Article 15, Article 16, and Article 17).

Thus, even though the normative framework regarding the existence and protection of MHA customary rights has been built comprehensively starting from constitutional recognition in Article 18B paragraph (2) of the 1945 Constitution, affirmation in Article 3 of the UUPA, to strengthening through various Sectoral Laws, its implementation at the practical level still faces significant obstacles.From the perspective of recognition theory, this situation indicates that the recognition of customary rights cannot be reduced solely to an administrative process, but must be understood as a reciprocal relationship that positions Indigenous Peoples (MHA) as collective legal subjects with dignity, identity, and rights to their living areas. Formal legal recognition without social and political recognition has the potential to perpetuate structural injustice, especially when national development is carried out at the expense of MHA's communal rights. Therefore, the development of the National Capital City (IKN) should be carried out by ensuring the protection of living space, the sustainability of collective identity, and the meaningful involvement of indigenous peoples in all stages of development, in order to prevent agrarian conflicts such as those that occurred in the Balik Sepaku, Paser Maridan, and other MHA communities.

Transformation of National Agrarian Law in Addressing Customary Land Rights Conflicts in the IKN Project

Customary land rights conflicts within the development area of the Indonesian Capital City (IKN) are among the most significant agrarian issues in Indonesia today. Data from the Indigenous Peoples Alliance of the Archipelago (AMAN) in 2025 recorded at least 110 conflicts between indigenous peoples and policymakers and business entities involved in the IKN development. This figure indicates that the project, projected as a symbol of national transformation, has instead given rise to serious problems in protecting indigenous peoples' rights. The cases experienced by the Balik communities in Sepaku and Balik Pemaluan, as well as the Paser Maridan community, demonstrate how inherited customary land claims directly conflict with the interests of strategic national projects.Normatively, the national legal system has established a multi-layered framework for recognizing and protecting customary rights of indigenous peoples (MHA). Various laws on agrarian and land issues, as well as Constitutional Court decisions, consistently affirm the state's obligation to recognize and protect customary rights. However, the ongoing agrarian conflict during the development of the new capital city (IKN) demonstrates a disharmony between legal norms and their implementation, particularly in the context of accelerated development.One of the main weaknesses lies in the reliance of customary rights recognition on administrative determination through regional regulations or regional head decrees.

The absence of regional regulations defining indigenous peoples' customary rights and their customary territories results in land that is actually customary land being treated as state land. This situation places indigenous peoples in a vulnerable position, particularly amidst the acceleration of large-scale development and investment, such as the construction of the new capital city (Hajazi et al., 2025). In practice, the identification and verification processes for indigenous peoples are often not carried out optimally, leading to overlapping claims between indigenous communities, the state, and business actors (Fitriyah & Mawalia, 2024).As a result, various violations of customary rights frequently occur, including unilateral delimitation of territorial boundaries, loss of access to customary forests and water resources, inadequate compensation due to the classification of customary land as state land, and the erosion of indigenous peoples' living space by the construction of government facilities (Fathya, 2025). These problems are exacerbated by the deliberative and time-consuming mechanism for proving customary rights in the UUPA and its implementing regulations, which are not aligned with the paradigm of accelerated development as stipulated in the IKN Law, the Job Creation Law, and Government Regulation No. 18 of 2021.Furthermore, the designation of large parts of the IKN (National Capital) as state forest areas, production forests, former land use rights (Hak Guna Usaha), or strategic development zones despite the fact that they contain customary settlements, customary forests, cultural sites, and traditional management areas further exacerbates agrarian conflicts.

The absence of official documents regarding customary areas and customary boundaries provides administrative legitimacy for the state to classify these areas as state land. The obligation for participatory mapping has also not been optimally implemented, as customary area mapping remains top-down and has not been integrated into the IKN spatial plan. In this context, the transformation of national agrarian law is an urgent need to realize fair legal protection for indigenous peoples (MHA) amidst the development of the IKN. This situation is exacerbated by the fact that to date Indonesia does not have a law specifically regulating MHA, although initiatives to establish one have been repeatedly proposed and have even entered the draft law (RUU) stage. The continued lack of ratification of the Indigenous Peoples Law Bill reflects the stagnation of legal reform at the structural level, leaving recognition and protection of Indigenous Peoples (MHA) dependent on sectoral legal regimes and regional administrative policies. Consequently, the protection of customary rights is inconsistent and vulnerable to being sidelined in national-scale development practices, including the development of the new capital city (IKN), which demands swift and centralized legal certainty.In this situation of stagnant legal reform and the dependence of customary rights recognition on administrative mechanisms, the first necessary transformation is a reconstruction of the paradigm of customary rights recognition, moving from administrative recognition to fact-based recognition.

Customary rights must be positioned as original rights inherent in the MHA, not as rights arising from state decisions. The state no longer plays a role as a legitimator but rather as a party obligated to recognize, protect, and integrate existing rights into the national legal system.In line with the reconstruction of the recognition paradigm, the second transformation relates to the renewal of land administration law, particularly in the mapping and recording of customary land. Participatory maps of customary territories must be recognized as binding legal instruments and serve as the basis for spatial planning, land acquisition, and the granting of development permits. Thus, customary territory mapping serves as a preventive protection instrument against agrarian conflicts, not simply as supporting data for development. Within this framework, the transformation of national agrarian law requires the support of comprehensive and cross-sectoral legal instruments. The presence of the Customary Law Communities Law is crucial to bridge the reconstruction of the recognition paradigm and land administration renewal, while ensuring the integration of customary rights into the spatial planning, land acquisition, and development permit systems. Without a national and binding legal framework, efforts to recognize social facts and participatory mapping have the potential to be reduced again to technical policies that are easily sidelined in strategic development practices such as the National Capital City (IKN).

To explain the direction of these changes, the Theory of Development Law becomes relevant. This theory emphasizes that law must function as a vehicle for societal renewal (law as a tool of social engineering). In relation to the new capital city (IKN), agrarian law should not be positioned merely as an

administrative norm legitimizing accelerated development, but rather as a policy instrument capable of balancing national development goals with safeguarding the sustainability of indigenous peoples (MHA). Customary rights should not be viewed as an obstacle to development, but as a social element that must be integrated through progressive, participatory, and substantive justice-oriented legal policies.

IV. CONCLUSION

Based on the above description, it can be concluded that the regulation of customary rights of indigenous peoples in the Indonesian national legal system has normatively obtained a constitutional basis and is strengthened through various sectoral laws and regulations. However, this recognition is still dominated by administrative and sectoral approaches that place customary rights dependent on formal determination mechanisms, thus failing to provide effective legal protection in the context of national-scale development such as the IKN project. This condition is reflected in the continuing agrarian conflicts that indicate a gap between legal norms and their implementation in the field. Therefore, based on the analysis described, a paradigmatic and structural transformation of national agrarian law is needed, namely through the reconstruction of the state's perspective on the recognition of customary rights based on social facts and the renewal of land administration law that guarantees participatory and binding mapping and recording of customary areas. This transformation requires the presence of a comprehensive and cross-sectoral national legal framework to ensure the integration of customary rights in planning, land acquisition, and development permits, so that national development can proceed in line with the fair and sustainable protection of MHA rights.

V. SUGGESTION

In line with these conclusions, several recommendations can be put forward. First, the state needs to immediately finalize the creation of the Customary Law Communities Law as a comprehensive, cross-sectoral national legal framework to provide legal certainty and unify the regulations on the recognition and protection of customary rights, which are currently scattered across various sectoral regulations. The law's existence is crucial to reducing the reliance of customary rights recognition on regional administrative mechanisms, which are heterogeneous and vulnerable to short-term development interests.Second, in the context of the development of the new capital, the government needs to integrate social fact-based recognition of customary rights into all stages of planning, land acquisition, and development permitting.

Mapping of customary territories, developed in a participatory manner with indigenous communities, must be recognized as a legally binding instrument and incorporated into the new capital's spatial planning system, thus serving as a preventive protection mechanism against agrarian conflict.Third, a paradigm shift is needed in land administration law that positions indigenous peoples as equal collective legal subjects, not merely policy objects. The process of identifying, verifying, and recording customary land must be carried out transparently, accountably, and oriented toward substantive justice, ensuring meaningful involvement of indigenous peoples and respecting the existing customary legal system.Through the implementation of these recommendations, it is hoped that national development, particularly the development of the IKN, can proceed in line with the protection of customary rights of indigenous peoples in a fair, sustainable manner, and in line with the principles of the rule of law and social justice.

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