

Legal protection of the collective rights of the Dayak indigenous people in the context of the development of the capital city on the archipelago

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Article Info

Article history:

Received : 29, Dec, 2024

Revised : 04, Jan, 2025

Accepted : 19, Jan, 2025

Keywords:

Dayak Tribe;
Development;
Nusantara Capital City;
Population Density;
Relocation.

ABSTRACT

The Indonesian government's plan to move the country's capital from Jakarta to the island of Borneo has attracted significant attention. Discussions regarding moving the capital have been ongoing since the New Order era, but were revived in 2017 under the leadership of President Joko Widodo. The decision to undertake development in the Nusantara Capital City was driven by key issues such as overcrowding, traffic congestion, risk of natural disasters, and over-concentration of development on the island of Java. However, it is important to ensure that the Dayak people, the indigenous population of Kalimantan, are involved in the decision-making process. Dayak communities often lack the resources, education and access to information needed to participate effectively in these complex development processes. They face challenges in protecting and managing their customary lands due to a lack of legal support. For the relocation process to work properly and fairly, it is crucial to involve and support indigenous communities through this study.

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1. INTRODUCTION

Indonesia is a state of law, where every policy for the welfare of society has a clear legal basis. The goals of the state as stated in the Preamble of the 1945 Constitution Alinea IV include protection for the entire nation, promoting general welfare, and educating the nation's life. The relocation of the national capital is part of the effort to realize these goals, especially in improving equitable development and creating new growth centers as a symbol of change towards a more advanced Indonesia (Grehenson, 2023).

The main objectives of moving the IKN to the archipelago include equalizing development outside Java, reducing disaster risks, and encouraging investment in the central and eastern regions of Indonesia. So far, development and economic growth have been too centralized in Jakarta and Java, so this move is expected to reduce the gap between developed and underdeveloped regions (Bappenas, 2019). The name Nusantara itself was chosen with a historical concept that refers to the greatness of Majapahit, which covered a larger area than Indonesia today (Grehenson, 2023).

According to Law No. 3 of 2022, IKN has a vision to become a sustainable world city that represents the diversity of the Indonesian nation based on Pancasila and the 1945 Constitution. However, the implementation of this vision requires attention to various social aspects, including the protection of the rights of indigenous peoples. The development of IKN often triggers tenurial conflicts related to changes in the status and use of land that has been managed by indigenous peoples for generations (Larson, 2013).

The issue of recognizing indigenous territories is also a challenge. The lengthy recognition process and limited legal protection often mean that indigenous peoples' rights are ignored. This has significant impacts, especially for indigenous communities in East Kalimantan whose lives depend on land and natural resources (Murad, 1991). Cross-sector collaboration is needed to ensure that the development of IKN remains equitable and sustainable. Exploitation of natural resources is another issue that arises in the development of IKN. Development strategies must pay attention to ecological aspects and local culture so as not to damage the environment and local community values. Local governments have a major role in environmental management through decentralization, but there are still many obstacles in its implementation (Theresia et al., 2020).

In addition, the development of IKN carries the risk of significant socio-cultural changes for indigenous Dayak communities. This transformation may threaten their cultural identity and traditional values. It is important to maintain a balance between modernization and preservation of tradition in the face of globalization and social change (Giddens, 2013). Finally, weaknesses in law enforcement hamper the protection of indigenous Dayak rights. Conflicts over land ownership and resource exploitation often occur due to a lack of legal recognition. Strong law enforcement is needed to ensure that indigenous peoples can contribute equitably to the development of IKN and environmental sustainability (Budianta, 2018).

2. METHOD

In this thesis, the research conducted is normative juridical legal research that examines written law from various aspects, namely aspects of theory, history, comparative philosophy, structure and composition, material scope and consistency. According to Peter Mahmud Marzuki, normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. (Soekanto & Mamuji, 2013) Furthermore, the type of research conducted in this study was researched using literature studies (secondary materials) or library legal research which is broadly aimed at research on legal principles, research on legal systematics, research on legal synchronization, research on legal history, and research on legal comparisons. (Ediwarman, 2011). Library research, is a research method carried out by collecting, analyzing, and reviewing literature or written sources relevant to the research topic. This process aims to understand existing theories, explore the results of previous research, and identify shortcomings or opportunities for further research in a particular field. Literature studies are often used as a basis for formulating hypotheses, determining theoretical frameworks, and providing a deeper understanding of the problems under study. By relying on written sources such as books, scientific journals, articles, and research reports, literature studies help researchers to build a strong scientific foundation in a study (Sugiyono, 2017).

3. RESULTS AND DISCUSSION

3.1. Legal Regulations Regarding the Collective Rights of the Dayak Indigenous Community

Juridically, the formation or merging of regions as well as the selection of the location of a new capital city must follow procedures regulated by laws and regulations. In the provincial context, decisions regarding the location of the new capital city require joint approval between the governor and the provincial DPRD, while at the district level, this requires an agreement between the district head and the district DPRD (Kristanti, 2020). This mechanism aims to ensure that changes in regional administration, including the relocation of the capital city, are carried out democratically and involve the people's representative institutions as part of the decision-making process. In addition, the involvement of local governments at every level allows the aspirations of local communities to be accommodated, so that the process of establishing or moving a new capital city can be more inclusive

and transparent. This procedure also reflects the principle of regional autonomy that respects the authority of local governments in managing their territories.

Furthermore, the political aspects in the area planned as the location of the new capital city also need to be carefully analyzed by the government. An analysis of the political power in the area, including the stability and structure of local politics, is very important. This is closely related to the ability of the local government to provide adequate public services, especially for indigenous communities such as the Dayak tribe, who live in the region. The government also needs to ensure that the existing political structure is able to support the implementation of development without overriding the rights and needs of local communities. Thus, the relocation of the capital city is not only a physical development project, but also reflects sustainable socio-political equity and inclusion efforts. (Riana & Junaidi, 2018).

In the indigenous view, it is difficult to assert a pressing need to regulate the various interests of individuals. For indigenous peoples, order is inherent in the universe and cosmos. This order is reflected in the harmonious relationship between all elements. Attempts to fulfill individual interests are regarded as part of the movement integrated in that cosmic calm. Everyone lives the cosmic life line automatically. If the line is not followed, which is reflected in customary norms, then both the life of the community and the personal life of the individual will be affected, because they are outside the path of cosmic order. (Soepomo, 1977).

The statutory approach in legal research needs to be based on several theories that provide a philosophical and methodological foundation. In this research, the author chose a legal concept approach to conduct legal logic reasoning. Justice is possible when each party has an equal position. Equality can only be achieved in the process of seeking justice by not looking at or taking into account social status, class, wealth, asset distribution, as well as privileges on certain parties such as natural abilities, intelligence, strength or power. Rawls assumes that each party does not know or ignore their conception of the good or their particular psychological tendencies (Rawls, 1971). The statutory approach is an important method in legal research because it allows researchers to analyze and understand regulations and laws that are relevant to the issue being studied. This approach focuses on the study of written legal norms and aims to find legal rules that can answer existing legal problems. In this context, researchers need to understand the hierarchy of laws and regulations and the underlying principles.

In terms of justice, it is important to ensure that all parties have equal opportunities to engage in the legal process without discrimination. This is in line with the principle of distributive justice which emphasizes that resources and opportunities should be distributed fairly among all individuals. Rawls proposed the theory of the "curtain of ignorance," where individuals make decisions about justice without knowing their social position in society (Rawls, 1971). In this way, decisions made will be more objective and fair, as they will not be influenced by personal interests or social status. Justice is not only concerned with the end result of a legal process but also with the procedures used to achieve it. The process of seeking justice should involve dialogue and negotiation between all parties involved. This creates space for each individual to voice their views and contribute to collective problem solving (Rawls, 1971). In this context, a restorative approach can also be applied, where the focus is on restoring relationships between the perpetrator, victim and community.

Meanwhile, it is also important to consider external factors that may affect equality in the pursuit of justice. For example, the existence of economic inequality or access to legal resources may create barriers for certain individuals to justice. Therefore, efforts are needed to overcome these inequalities so that all individuals, in this case indigenous peoples within the scope of IKN, can actively participate in the legal process. In normative juridical legal research, researchers identify and analyze various aspects of the law relevant to the issue at hand (Ibrahim, 2019). This includes a study of legal doctrines as well as the basic principles underlying laws and regulations. This research aims to provide solutions to legal problems by referring to the norms that apply in the development of IKN. According to Soedarto (1977), juridical research is the application of an approach that only pays attention to logical relationships, or in other ways structured in a whole series of norms. Therefore, the law is not only analyzed in relation to the set of norms alone, but also primarily seen from the significance of its social background.

3.2. Legal Determination and Relevance of Dayak Customary law in Conflict Resolution

Indigenous peoples have the right to determine and develop priorities and strategies regarding the development or use of their lands and territories, and other resources. Furthermore, the state must engage in genuine negotiations and cooperation with indigenous peoples through their representative institutions, in order to reach free, prior and informed consent before approving projects that affect their lands, territories and resources. This is particularly important for projects related to the development, utilization or exploitation of mineral, water and other resources (United Nations Declaration, 2007). This statement means that states are obliged to provide effective mechanisms to provide fair and just compensation for any activities undertaken, and to take appropriate measures to minimize negative impacts on the environmental, economic, social, cultural, or spiritual aspects of indigenous peoples.

Indigenous peoples have the right to access and obtain prompt decisions through fair and mutually agreed procedures, regarding the resolution of conflicts and disputes with the state and other parties. They are also entitled to effective remedies for all violations of their individual and collective rights. Such decisions must take into account the customs, traditions, rules and legal systems of the indigenous peoples concerned, and take into account international human rights (United Nations Declaration, 2007). Since the implementation of autonomization on 1 January 2001, its impact has been felt in various aspects of people's lives. Autonomy implemented in several regions in Indonesia seems to provide new hope for the lives of local communities. In the economic sector, local governments now have the authority to carry out economic activities and explore natural resources in their areas.

Article 7 paragraph (1) of Law No. 22/1999 on regional government states that "Regional authority covers all areas of government, except in the fields of foreign policy, defense and security, judiciary, monetary and fiscal affairs, religion, and foreign policy." Thus, areas of justice that are still managed by the central government can be more flexible in the face of the autonomization process. Uniformity is not the best solution to achieve justice in society (Tamarasari, 2002). This can be seen in the crisis of public confidence in the application of national law, which has led to anarchist actions in some parts of Indonesian society. The crisis of confidence in national law in Indonesia is a complex phenomenon influenced by various factors, one of which is the uniformity or centralization of the rule of law and the monopolization of law enforcement officials. This phenomenon creates dissatisfaction among the public, especially in indigenous communities, who feel that the laws applied do not reflect their diversity and local needs (Tamarasari, 2002). Legal uniformity often ignores the different cultures and traditions that exist in each community, so that indigenous peoples feel marginalized and their rights are not recognized.

A centralized legal system tends to ignore legal pluralism, which should be an integral part of the legal system in Indonesia. Legal pluralism recognizes that there are various sources of law that apply in society, including customary law, religion, and local customs. However, in practice, law enforcement is often controlled by central apparatus who do not understand or appreciate local values. This has led to a denial of the existence of legal differences within each indigenous community, which is exacerbated by the attitudes and actions of central authorities who often undermine the value and dignity of indigenous peoples (Tamarasari, 2002). As a result, the crisis of confidence intensified and triggered radical reactions among indigenous peoples and regions.

The implementation of development must be supported by the rule of law as a guide and tool to achieve the Pancasila society that we envision, in accordance with the 1945 Constitution of the Republic of Indonesia. It is expected that the law can act as a tool to renew society and protect the interests of society, as well as appear as a guide in shaping the desired society. Therefore, it is necessary to organize a comprehensive and integrated legal system with recognition and respect for religious law and customary law, as well as updating laws and regulations in accordance with the needs of reform through legislation programs (Rochaeti & Sutanti, 2018).

One method of dispute resolution in the customary context is through mediation and arbitration. Arbitration is generally more often applied in the settlement of civil cases. On the other hand, mediation is an attempt to resolve conflicts between disputing parties by reaching a mutual agreement through a neutral mediator. The mediator does not make decisions or conclusions for the parties, but serves as a facilitator to encourage dialogue between them in an open, honest, and mutual exchange of opinions, so as to reach consensus (Emirzon, 2001). In other words, the negotiation process to solve problems involves an impartial and neutral outsider, who works with the disputing parties to help them reach a satisfactory agreement. (Soekanto, 1982)

Conflict resolution with this approach is in line with the principle of restorative justice, where restoration or repair becomes an alternative to bridge the relationship between offenders, victims, and society. In the process, restorative justice involves dialogue and negotiation (Soekanto, 1982). In this context, criminal behavior is still considered a violation of the law, but it is also seen as a violation of societal norms, which causes damage to the relationship between the offender, the victim, and the community. Restorative justice has attracted attention because it views crime as an act that can cause harm and argues that justice should focus on restoring that harm and repairing relationships between all parties involved (Zulfa, 2009). To achieve this goal, individuals must be willing to take responsibility for their actions and accept the consequences to compensate for the harm caused.

The main characteristics of customary law include its traditional, flexible, dynamic and communal justice-oriented nature. The traditionality of customary law is seen in its attachment to past values that are passed down from generation to generation. However, its flexible nature allows customary law to adapt to changing times without changing its basic principles. In addition, customary law is dynamic, evolving with social and cultural changes in society, and prioritizes conflict resolution through deliberation in order to maintain communal harmony. In the context of restorative justice, customary law prioritizes restoring relationships between offenders and victims, rather than simply imposing punishment (Rochaeti & Sutanti, 2018). The sanctions applied are often educative in nature, aiming to educate offenders so that they do not repeat their mistakes and repair the harm caused.

Dispute resolution mechanisms in customary law usually involve community leaders or respected customary institutions through a process of deliberation to reach consensus. This approach is in line with the principle of restorative justice, which emphasizes dialogue and joint solutions to achieve peace and harmony. However, there are challenges to the application of customary law in the modern era, such as conflicts with national laws and the lack of official recognition of customary courts in some areas. Modernization and globalization also affect the sustainability of customary law as traditional values are often eroded by social change. However, according to Marc Levin, traditional approaches such as restorative justice are now considered progressive because they offer community-based solutions that are more humane than modern retributive approaches (Zulfa, 2009). Therefore, efforts to reactualize customary justice are important to ensure the relevance of customary law in responding to the challenges of the times while maintaining the sustainability of local values. The government needs to support the integration of local values into the national legal system without ignoring the principles of universal justice. Thus, customary law can continue to contribute in creating a just and harmonious society amidst the dynamics of social change.

This compensation involves the participation of the victim and the community, both of which have roles and responsibilities in the restorative justice process. A timely restorative approach can provide intervention in restoration as well as produce satisfactory consequences for all parties, thus demonstrating that justice has functioned well in restoring the balance of society disrupted by crime (Soekanto, 1982). Based on the views of local indigenous communities, forests are a living and evolving cultural space that has contributed to shaping their civilization. Forests are also a source of inspiration for creating beautiful works of art and various forms of local wisdom. Indigenous peoples have had unique ways of protecting and utilizing these natural resources for centuries. Forest utilization often leads to conflicts over the use of land belonging to others. These issues include the use of forests beyond private land boundaries, theft of forest products such as durian and tengkawang fruit, collection of timber that does not belong to them, and seizure of land by other individuals, including the installation of boundary stakes without mutual agreement (Suryadin, 1993).

A land conflict or land rights dispute is the emergence of a legal dispute that starts with a complaint by one party, either an individual or an entity, who raises objections and demands related to land rights. This includes issues such as land status, priority, and ownership, with the hope of reaching an administrative settlement in accordance with applicable regulations (Murad, 1991). In the context of complex community life, the role of customary institutions is crucial in supporting the smooth running of the village administration, which aims to maintain order and create a safe and peaceful atmosphere in the local community.

Currently, in the dynamics of protection and recognition of indigenous peoples' rights, customary institutions are one of the elements that need to be strengthened in the implementation of the protection of indigenous peoples, both in the bureaucratic and administrative aspects related to the rights and obligations of the indigenous peoples themselves. Customary institutions function as a communication bridge in managing conflicts that occur. Currently, there are still many customary problems or customary disputes that have not been resolved properly, which can even harm indigenous peoples in the results of policies implemented, especially related to customary land disputes. Therefore, an active role is needed from customary institutions as an element of implementing good governance in achieving government balance, in accordance with one of the tasks listed in the mandate of the Dayak Customary Council (DAD).

The role of customary institutions serves as an important source of information for decision-makers, and community participation can reduce the possibility of resistance to decisions taken. The use of customary law can be seen in the way local communities traditionally manage natural resources (Hardjasoemantri, 2000). They view nature as an entity that is closely related to their survival, and value nature as something sacred that needs to be preserved and maintained properly to achieve a balance between nature and humans in the area. Customary institutions in Indonesia have significant recognition in the criminal justice system, where a judge is required to explore, follow and understand the legal values and sense of justice that live in the community. This shows that the existence of customary law is not just a formality, but an integral part of efforts to achieve broader justice. In this context, customs that apply in indigenous communities are considered valid and applicable laws because they are the result of the acceptance and approval of the community as a whole. This reflects that justice cannot be understood as a single concept; rather, it is a complex and multidimensional concept (Rochaeti & Sutanti, 2018). In the view of indigenous peoples, justice can not only be provided by formal courts regulated by the state, but can also be achieved through other forums such as customary justice. Thus, customary justice institutions function as an alternative in resolving disputes and violations of the law, providing space for people to resolve their problems in accordance with the norms and values that apply in their community.

4. CONCLUSION

The government has indeed stated its commitment to develop IKN with the principles of sustainability and respect for the rights of local communities. Law No. 3 of 2022 on the National Capital City (IKN Law) emphasizes the importance of community participation in development planning and implementation. However, the implementation of this principle on the ground is often not as expected. Reports show that indigenous peoples are often not adequately involved in decision-making processes. Even when they are involved, their bargaining position is often weak compared to the government and investors. This creates an imbalance of power that leads to decisions that are detrimental to indigenous peoples. There is social anxiety that the smart city concept implemented in IKN is not fully compatible with the traditional lives of indigenous peoples. This high-tech development risks overriding the needs and aspirations of local communities who prioritize harmonious relationships with nature. Despite the government's promises of modern amenities and better access to public services, many indigenous communities feel that this modernization is undermining their time-tested way of life. They fear that urban progress will only benefit certain groups, while they are increasingly marginalized.

Amidst these dynamics, various parties have called for a more inclusive and dialogical approach to the development of IKN. The government must ensure that the rights of indigenous peoples are respected in accordance with the constitution and international regulations. The land acquisition process should be conducted transparently, fairly, and involve indigenous peoples as equal partners. In addition, training and empowerment programs must be prepared to help indigenous communities adapt to changes without losing their cultural identity. Addressing environmental impacts should also be a top priority, prioritizing forest restoration and biodiversity preservation. Ultimately, the development of IKN must reflect the spirit of social justice that is part of Indonesia's vision as a sovereign and inclusive nation. This massive project must not come at the expense of indigenous peoples and ecosystems that are an integral part of the nation's wealth. With a more equitable and sustainable approach, IKN can become a symbol of progress without forgetting its cultural roots and environmental responsibility. However, to realize this, a strong commitment is

needed from the government, the business world, and the wider community to ensure that the development of IKN truly benefits all parties, including the Dayak Tribe and future generations.

It is expected that there is a clear mechanism in the process of relocating the capital city, so that all parties can understand each stage that is passed. In addition, the government needs to review Law No. 3 of 2022 and Presidential Regulation No. 65 of 2022 (This regulation regulates land acquisition and land management in the archipelago's capital city, which can be obtained through the mechanism of releasing forest areas and/or land acquisition), or develop new regulations that explain in detail the control, management and utilization of land. Such regulations must be able to accommodate customary or ulayat land interests, while providing legal guarantees to local residents whose lives depend on these areas so that they are not marginalized, displaced, or discriminated against.

The author suggests that the central government needs to have a special bureau or team in resolving land conflicts by prioritizing the principle of social justice for the community. This special team needs to involve various relevant parties, including representatives from indigenous peoples and other local communities, to ensure that their rights are not ignored. Building an IKN without being able to improve the dignity of the surrounding population will be a step that lacks practical meaning.

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