

Land Rights and Their Environmental Implications for Indigenous Communities in Nusantara Capital City

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Abstract

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Article 16A of the IKN Law addresses the extension of land rights periods for business entities. Given the existence of many unrecognized customary law communities in East Kalimantan Province, it is crucial to assess the impact of such extensions on these communities within the IKN (Capital City of Nusantara). This study aims to examine the implications of granting land rights under Law No. 21 of 2023 concerning IKN on the living environment of indigenous peoples in the region. The research employs a normative juridical approach, utilizing both statutory and conceptual frameworks. The findings reveal that Article 16A of the IKN Law, along with its implementing regulations concerning the extension of land rights for business entities, has the potential to adversely affect indigenous communities by exacerbating environmental issues. Specifically, the prolonged extension of land rights diminishes state control over land, accelerates deforestation to the detriment of indigenous communities who rely on forests, increases the risk of water scarcity, and potentially triggers agrarian conflicts and disputes. The study recommends aligning the land rights duration in the IKN Law with that of the Basic Agrarian Law, expediting the local government's data collection on indigenous communities, involving these communities in decision-making processes, and advocating for the legalization of the Indigenous Peoples Bill.

1. Introduction

The relocation of the national capital was carried out because Special Capital Region of Jakarta (DKI Jakarta) as the previous capital city had various problems. Jakarta's problems are the same as metropolitan cities in the world, which are closely related to environmental and social problems. Environmental problems in DKI Jakarta, such as flooding, water pollution, air pollution, and waste handling issues, land subsidence, and various other environmental problems. In addition, there are social problems such as poverty, social inequality, urbanization, population density, etc. in DKI Jakarta.¹ The relocation of Nusantara Capital City (hereinafter referred to as IKN) is expected to be a solution to the problems that occur in DKI Jakarta. Because the relocation of IKN will provide space for Jakarta to make improvements while still being the central business city in Indonesia.

Penajam Paser Utara Regency is the area chosen as IKN. Penajam Paser Utara is one of the districts in East Kalimantan that borders Kutai Kartanegara Regency. This area was chosen because it is considered to have minimal natural disasters, there is a large area of government-owned land, and has accessibility to developed cities. In addition, this area was chosen because it is located on the island of Kalimantan. The selection of areas on the island of Kalimantan is

¹ Ariesy Tri Mauleny et al., *Ibu Kota Nusantara: Strategi Menuju Indonesia Baru?* (Jakarta: Publica Indonesia Utama, 2022).

expected to eliminate the "Java-centric" stigma, which is the assumption that the government only carries out development on the island of Java and ignores other islands.²

The relocation of IKN of course requires enormous funding. However, in its implementation, the development of IKN is constrained by funding. According to Indonesia Corruption Watch (ICW), based on data from IKN.go.id, it is known that the investment that has entered until the beginning of June 2024 is around IDR 52 trillion. The majority of these investors are domestic investors, which shows that there is a mismatch with the IKN development budget planning and causes the state finances to be burdened.³ Investors who are willing to invest their funds in the development of IKN are still lacking. This has led the government to issue policies that are expected to attract investors, especially foreign investors. One of them is the issuance of Presidential Regulation Number 75 of 2024 concerning the Acceleration of the Development of the Nusantara Capital City (hereinafter PR No. 75/2024)

One of the efforts to attract investors is the amendment to the IKN Law through Law No. 21 of 2023 which extends the period of land rights to business actors. Article 16A of Law Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the Nusantara Capital City (hereinafter referred to as the IKN Law) stipulates that the IKN Authority guarantees the certainty of the term of land rights with the first cycle and can be given a second cycle to business actors, where this will be included in the agreement. The period of 1 cycle for Cultivation Rights (HGU) is a maximum of 95 years, HGB is a maximum of 80 years, and the right of use is a maximum of 80 years. The extension of land rights in IKN has caused pros and cons. One of them is from Member of Commission II DPR Mardani Ali Sera, who stated that the policy allows Cultivation Rights to be granted for up to 190 years, as if IKN was sold to investors and worse than the granting of Cultivation Rights during the Dutch colonial era.⁴

According to Dewi Kartika, Secretary General of the Consortium for Agrarian Reform, the extension of land rights in IKN violates the fundamental agrarian principles of the Indonesian nation. In addition, it also does not consider social and ecological risk mitigation.⁵ The granting of land rights, especially Cultivation Rights for a long period of time, has the potential to abuse land rights, which will then cause conflicts with communities around the location. In addition, the ease of granting Cultivation Rights and granting it for a long time has the potential for environmental degradation and damage, as well as damage to the

² Dhia Al Uyun et al., *Menggugat Ibu Kota Negara* (Malang: Media Nusa Creative (MNC Publishing), 2023).

³ ICW, "Membongkar Masalah Pembangunan Ibu Kota Negara," June 5, 2024, <https://antikorupsi.org/id/membongkar-masalah-pembangunan-ibu-kota-negara>.

⁴ Fika Nurul Ulya and Ardito Ramadhan T, "Jokowi Sebut Cultivation Rights (HGU) IKN Sampai 190 Tahun Untuk Tarik Investasi Sebesar-Besarnya," *Kompas*, July 16, 2024, <https://nasional.kompas.com/read/2024/07/16/12034161/jokowi-sebut-hgu-ikn-sampai-190-tahun-untuk-tarik-investasi-sebesar-besarnya>.

⁵ Ady Thea DA, "UU IKN Terbaru Dinilai Obral Tanah Melalui Cultivation Rights (HGU) Sampai 190 Tahun," *Hukum Online*, October 11, 2023, <https://www.hukumonline.com/berita/a/uu-ikn-terbaru-dinilai-obral-tanah-melalui-hgu-sampai-190-tahun-lt65265117a1d2a/?page=1>.

ecosystem. This can occur due to the development and management of land and natural forests by business actors who are granted Cultivation Rights for a very long time.⁶

The state has an obligation to protect and respect indigenous peoples because it has been formulated in the Article 18B paragraph 2 of 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) "The state recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia, which are regulated by law". Which means that the state does have an obligation because it has become the right of indigenous peoples as Indonesian citizens. In addition, indigenous peoples are communities that have existed before the formation of the state, so the rights of origin inherent in indigenous peoples must be protected⁷ With this, indigenous peoples need special protection as a group of people who are autonomous from the state. Not only that, indigenous peoples need to be protected by the state because they live traditionally with inadequate formal education, limited language skills, and difficulties in using modern technology. This makes them vulnerable to discrimination and human rights violations, especially in controlling their natural resources.

Around IKN or in East Kalimantan Province, there are actually 185 customary law communities. However, only 6 indigenous communities are recognized by the local government, while 25 indigenous communities are still in the process of obtaining recognition.⁸ They are the communities that are most affected when environmental damage occurs due to policies that do not pay attention to environmental protection and sustainability. Because they depend on forest products for their livelihoods. The occurrence of environmental damage will make indigenous peoples lose their homes, cannot access clean water and pollution-free air, have difficulty growing crops, and lose places to find food that is usually obtained from the forest.⁹

There are several studies that are in line with this research. Among them, research conducted by Batara L Simbolon and Emilda Firdaus with the title "Judicial Analysis of Government Regulation Number 12 of 2023 concerning the Granting of Business Licensing, Ease of Business, and Investment Facilities for Business Actors in the Archipelago Capital Perspective of Law Number 5 of 1960 concerning Po Basic Regulations" is the difference between this research and the author's research, where the research with the title above discusses overlapping interests in Government Regulation Number 12 of 2023 (hereinafter to

⁶ Izak Indra Zakaria, "Cultivation Rights (HGU) 190 Tahun IKN Dan Dampak Negatifnya," *Pro Kalimantan*, November 22, 2023, <https://www.prokal.co/kalimantan-timur/1773961514/hgu-190-tahun-ikn-dan-dampak-negatifnya?page=2>.

⁷ M Misbahul Mujib, "Memahami Pluralisme Hukum Di Tengah Tradisi Unifikasi Hukum: Studi Atas Mekanisme Perceraian Adat," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (2014).

⁸ Ainur Rofiah, "Baru Enam Masyarakat Hukum Adat Diakui Pemerintah Daerah, Dua Di Paser Dan Sisanya Di Kubar," *Koran Kaltim*, May 24, 2024, <https://korankaltim.com/read/samarinda/71292/baru-enam-masyarakat-hukum-adat-diakui-pemerintah-daerah-dua-di-paser-dan-sisanya-di-kubar>.

⁹ Alfin Febrian Basundoro and Arrizal Anugerah Jaknanihan, "Hambatan Implementasi Keamanan Lingkungan Bagi Masyarakat Adat: Analisis Penyebab Pencemaran Lingkungan Dan Ekspansi Lahan Industri Kelapa Sawit Terhadap Masyarakat Dayak," in *Pertemuan Nasional Mahasiswa Hubungan Internasional Indonesia XXXI* (Yogyakarta, 2019).

as GR No.12/2023) which is the implementing regulation of the IKN Law with Law No.5/1960.¹⁰

The next research discussing IKN is research written by Akhmad Safik and Mira Ewinda, with the title "Land Management in the National Capital City of IKN." The difference is that the research discusses the implementation of land rights management in IKN based on the IKN Law and the regulations under it.¹¹ And research conducted by Aditya Khrisna Murti, Nawang Wulan, and Andre Bagus Saputra, with the title "Problematics of Conflict over Norms for Implementing the Term of Land Rights Based on Government Regulation Number 12 of 2023 Concerning the Granting of Business Licensing, Ease of Doing Business, and Investment Facilities for Actors Business in the Capital City of the Archipelago," the difference in this research lies in the results of the discussion under the research discussing the need for harmonization between PP No. 12 of 2023 with Law No. 5/1960. The research resulted in discussion that there had been disharmonization and conflict of norms which had the potential to harm people's constitutional rights due to the monopoly of land rights.¹²

Based on the above problems and also the absence of research that discusses the problems studied in this paper, the researcher wants to conduct research on the regulation of granting land rights to business actors in IKN based on the IKN Law and its impact on the environment inhabited by indigenous peoples. thus, the formulation of this research problem, namely: what are the implications of granting land rights based on IKN Law on the environment of indigenous peoples in IKN? By conducting this research, it is hoped that researchers can find out more about the implications of granting land rights based on IKN Law on the environment of indigenous peoples in IKN and can also provide recommendations on the issues discussed.

2. Methods

This research is included in the type of normative legal research. Based on this type of research, the research approach used is a regulatory approach to legislation and also a conceptual approach. The legal materials used in this research are divided into primary and secondary legal materials. Primary legal materials in this case refer to various laws and regulations used such as the state the law number, like the revised example above and other laws and regulations used in this research. Meanwhile, secondary legal materials used are supporting literature such as books, journals, theses, and online articles used in this research. Legal materials in this research were collected using bibliography study technique with

¹⁰ Batara L Simbolon and Emilda Firdaus, "Analisis Yuridis Peraturan Pemerintah Nomor 12 Tahun 2023 Tentang Pemberian Perizinan Berusaha, Kemudahan Berusaha, Dan Fasilitas Penanaman Modal Bagi Pelaku Usaha Di Ibukota Nusantara Perspektif Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Po," *Jurnal Ilmiah Kajian Multidisipliner* 8, no. 5 (2024).

¹¹ Akhmad Safik and Mira Ewinda, "Pengelolaan Tanah Di Ibu Kota Negara IKN," *Jurnal Magister Ilmu Hukum* 8, no. 2 (2023): 50-64.

¹² Aditya Khrisna Murti, Nawang Wulan, and Andre Bagus Saputra, "Problematisa Konflik Norma Penerapan Jangka Waktu Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2023 Tentang Pemberian Perizinan Berusaha, Kemudahan Berusaha, Dan Fasilitas Penanaman Modal Bagi Pelaku Usaha Di Ibu Kota Nusantara," in *Problematisa Kemudahan Proyek Strategi Nasional: Konflik Norma Dan Tantangan Kesejahteraan*, 2023, 33-46.

analysis of legal materials using qualitative analysis. The analysis is carried out by interpreting the legal materials that have been processed previously.¹³

3. Results and Discussion

3.1. Arrangements for granting land rights based on IKN Law

The granting of land rights in IKN Law has special rules where the granting of land rights in the form of business use rights (Cultivation Rights (HGU)), building use rights (HGB), and Hak pakai is extended for a period of time. Based on article 16 paragraph 7 of the IKN Law, it can be seen that the IKN Authority has the authority to make agreements with individuals or legal entities for land rights agreements at IKN. Holdings owned by the IKN Authority are obtained from the release of forest areas and land acquisition mechanisms in accordance with statutory provisions. The reason why the IKN Law extends the term for land is to improve the regulatory formulation regarding the term of HGU/HGB/use rights in PP No. 12 of 2023 so as not to violate the decision of the Constitutional Court. These efforts should be formulated in a ministerial regulation. The effort to grant extension and renewal of land rights at the same time as contained in the decree is an administrative simplification and not a conceptual deviation.

Based on Article 16A of the IKN Law, it can be seen that the IKN Authority provides a guarantee of legal certainty over the duration of the granting of land rights by including the possibility of re-granting 1 (one) second cycle to Business Actors, after the first cycle of the agreement ends. The cycle refers to the length of time for granting land rights. The duration of the granting of the rights, namely:

Table 1. Time period for granting land rights in IKN

No.	Types of Land Rights	First Cycle Timeframe	Extension Period (Second Cycle)
1.	Cultivation Rights	95 years	95 years
2.	Building Rights Title	80 years	80 years
3.	Right to Use	80 years	80 years

The granting of land rights through the first cycle is carried out by the Ministry of Agrarian Affairs and Spatial Planning of the Republic of Indonesia based on an application from the IKN Authority. Based on article 16A paragraph 5 of the IKN Law, it can be seen that the extension or to obtain the second cycle will be evaluated, where this evaluation is carried out 2 (two) years before the end of each stage. The evaluation criteria include:

- a. The land is still being cultivated and utilized properly in accordance with the circumstances, nature, and purpose of the grant of rights;
- b. the right holder still qualifies as a right holder;
- c. the conditions for granting the right are properly fulfilled by the right holder;
- d. Land utilization is still in accordance with the spatial plan; and
- e. The land is not indicated as abandoned.

From the regulations regarding the period of granting land rights in IKN, it can be seen that the period of granting is different from that stipulated in Law No. 5/1960. The difference in the rules regarding the period of granting land rights in the Law No. 5/1960 is different from that stipulated in the IKN Law. This is because the IKN Law is a special law that can

¹³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

deviate from the general rules. In this case, the principle of *lex specialis derogat legi generali* applies, which means that special laws can override general laws.¹⁴

In contrast to what is regulated in the IKN Law, in the Law No. 5/1960 Cultivation Rights (HGU) is given to individuals for a maximum of 25 years, for companies that need a longer time it is given a maximum of 35 years and can be extended for a maximum of 25 years, and renewed for a maximum of 35 years. Meanwhile, for HGB, the maximum is 30 years and can be extended for a maximum of 20 years, and can be renewed for a maximum of 30 years. Furthermore, for the right of use, on state land and land management rights can be given with a maximum period of 30 years, can be extended for a maximum of 20 years and renewed for a maximum of 30 years.

The limitation on the period of granting land rights in the Law No. 5/1960 it self is made for the protection of the people and the environment. The essence of limiting the granting of land rights is to provide different treatment to equalize the position of marginalized and weak groups. This is done by the government protecting people with a weak economy. In addition, it is also done by distributing land to the weak economy as a counterweight based on the principles of equality and fair competition.¹⁵ More fully, the restrictions on the granting of land rights in the Law No. 5/1960 are formed to organize the land structure in an equitable manner by structuring assets and access for the welfare of the people. This is done by the government so that there are no imbalances in the control, utilization, and use of land, no land disputes and also agrarian conflicts, social inequality, and poverty. In addition, on the environmental side, it is also intended to prevent massive land conversion and a decrease in environmental quality, or even environmental damage.¹⁶ By extending the granting of land rights to business actors as in the IKN Law, it can be said that the purpose of agrarian reform in the Law No. 5/1960 has not been achieved.

3.2. Implications of Granting Land Rights Based on Law Number 21 of 2023 concerning IKN on the Environment of Indigenous Law Communities in IKN

Indigenous Law Community (hereinafter referred to as Indigenous Peoples) based on the Indigenous Peoples Bill, refers to "a group of people who live for generations in a certain geographical area, have ancestral origins and/or common residence, cultural identity, customary law, strong relationships with land and the environment, and a value system that determines economic, political, social, cultural and legal institutions. Indigenous peoples have traditional rights, which include the right to control, manage land and natural resources within the indigenous community. Then, the right to organize their community based on customary law, the right to carry out customary management. In addition, they also have the right to their identity, belief system, culture, traditional wisdom, and language.¹⁷

¹⁴ Muhamad Nafi Uz Zaman, "Perubahan Status Pengelolaan Keuangan Otorita Ibu Kota Nusantara," *Journal of Studia Legalia* 5, no. 01 (2024).

¹⁵ Nurhasan Ismail, "Arah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 33-51.

¹⁶ Rosmidah, M Hosen, and Sasmiar Sasmiar, "Penataan Struktur Hukum Hak Atas Tanah Dalam Rangka Keadilan Dan Investasi," *Recital Review* 5, no. 2 (2023): 209-44.

¹⁷ Muh Afif Mahfud and M H SH, *Perlindungan Masyarakat Hukum Adat Dan Masyarakat Tradisional (Telaah Keadilan Amartya K. Sen)* (Yogyakarta: Penerbit LeutikaPrio, 2020).

Based on research conducted by IPBES globally, it is explained about the role of indigenous peoples in environmental conservation. In the study, it is known that indigenous peoples play a role in biodiversity conservation where 35% of formally protected areas and 35% of the total area that is still sustainable or that has not been affected by human intervention is traditionally managed, owned, occupied, and used by indigenous peoples.¹⁸ Indigenous peoples always preserve nature because they realize that humans are part of nature. They also realize that if humans destroy nature, then humans themselves will lose. According to Sherina Redjo, indigenous peoples play a role in environmental conservation because they use natural resources traditionally and do not overexploit them. In addition, indigenous peoples also have knowledge in conducting environmental management from generation to generation through oral traditions, customary practices, and rituals.

Indigenous peoples play an important role in efforts to preserve the environment, but indigenous peoples also often experience problems related to the environment they live in. The problems that are often experienced by indigenous peoples are:

- a. Vulnerable to land grabbing or exploitation of their resources.¹⁹ Where there is a legal loophole because there is no legal determination that indigenous peoples have the right to manage customary forests. This makes indigenous peoples even vulnerable to criminalization when experiencing conflicts with private and government parties that exploit their natural resources
- b. The issue of land rights recognition, where indigenous peoples who apply unwritten law, often do not have land titles which could potentially lead to the transfer of land rights in violation of their rights.²⁰
- c. There are development policies that violate the rights of indigenous peoples. Indigenous peoples have little space to participate in the formulation of development policies. This has led to development policies that have the potential to violate the rights of indigenous peoples. The most common are the right to a good and healthy environment and the right to a job, as many development policies cause environmental damage that impacts indigenous peoples and also eliminates the jobs of indigenous peoples who work traditionally.

One policy that has the potential to cause problems for indigenous peoples is the regulation of granting land rights based on IKN Law as explained above. According to President Joko Widodo, the policy is carried out to attract more investment, both domestic and foreign investment. This investment is needed because the state budget is planned to be used to build the core government area. Meanwhile, the development of other facilities and infrastructure in IKN uses funds obtained from investment.²¹

¹⁸ Steve Nitah, "Indigenous Peoples Proven to Sustain Biodiversity and Address Climate Change: Now It's Time to Recognize and Support This Leadership," *One Earth* 4, no. 7 (2021): 907-9, <https://doi.org/10.1016/j.oneear.2021.06.015>.

¹⁹ Muhammad Irfan Hilmy, "Prospek Tanah Adat Dalam Menghadapi Pembangunan Nasional," *Waskita: Jurnal Pendidikan Nilai Dan Pembangunan Karakter* 4, no. 1 (2020): 41-56.

²⁰ Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Atas Tanah Masyarakat Hukum Adat," *Sasi* 22, no. 2 (2016): 52-66.

²¹ Dian Erika Nugraheny and Dani Prabowo, "Jokowi: Kawasan Inti IKN Memang Dibangun Dari APBN, Tapi Selebihnya Investasi," *Kompas*, August 16, 2022,

As stated in the preamble of Law Number 32 of 2009 concerning the Environmental Protection and Management (hereinafter referred to as Law. 32/2009), national economic development must be carried out based on the principles of sustainable and environmentally sound development. Policies formed by the government must be in accordance with the principles of environmental protection and management as contained in Article 2 of the Law. 32/2009 . However, the regulation of granting land rights in the IKN Law has the potential to cause damage to the environment of indigenous peoples in IKN. The implications of granting land rights based on the IKN Law on the environment of indigenous peoples in IKN include:

1. Environmental degradation of indigenous peoples as the state loses control over land over a long period of time

Granting land rights through Cultivation Rights (HGU), HGB, and use rights for too long as in the IKN Law will make the state lose control of its land for a long time, such as the granting of Cultivation Rights (HGU) which in one cycle only ends after 95 years and can be extended for a second cycle for another 95 years, this rule will make the state lose control of its own land for up to 190 years.²² In this case, one cycle takes a long time to evaluate. Therefore, supervision is needed by the government or by technical officials/agencies responsible for environmental protection and management. In the event that the government does not supervise properly, this will harm indigenous peoples. where the ease of licensing as a consequence of the current Job Creation Law²³, coupled with the rules for extending the time for granting land rights in the IKN Law, makes the possibility of violations of environmental licensing in the IKN area even higher. This environmental damage will certainly harm indigenous peoples whose lives depend on nature.

2. Deforestation that harms indigenous peoples

Not all indigenous peoples in East Kalimantan Province have been recognized as indigenous law communities by the local government. Although there are actually 185 customary law communities in East Kalimantan Province, only 6 of them have been recognized. This has led to the recognition of customary forests as a place to live and a source of livelihood for these communities.²⁴ Meanwhile, the ease of business licensing and the extension of the period for granting land rights in the IKN has led to easy control and utilization of land obtained from the release of state forest areas. in this case it also does not rule out the possibility of land control originating from customary forests because there are still many indigenous peoples who have not been recognized by the government. Indigenous

<https://nasional.kompas.com/read/2022/08/16/11355861/jokowi-kawasan-inti-ikn-memang-dibangun-dari-apbn-tapi-selebihnya-investasi>.

²² HumasBRIN, "Periset BRIN Menyoroti Persoalan Lingkungan Yang Terdampak Dari Revisi Undang - Undang IKN," *BRIN*, November 1, 2023, <https://www.brin.go.id/news/116295/periset-brin-menyoroti-persoalan-lingkungan-yang-terdampak-dari-revisi-undang-undang-ikn>.

²³ Cut Zulfahnur Syafitri, Budiman Rusli, and Nandang Alamsah Deliarnoor, "The Threat To Democracy From The Environmental Law After The Election of The President And Vice President For The Period 2024-2029: A Review of Critical Theory," *Journal of Law, Politic and Humanities* 4, no. 5 (2024): 1173-83.

²⁴ Sucipto, "Sebagai Calon Lokasi IKN, Pengakuan Masyarakat Hukum Adat Dan Hutan Adat Di Kaltim Masih Minim," *Kompas*, December 22, 2020, <https://www.kompas.id/baca/nusantara/2020/12/22/sebagai-calon-lokasi-ikn-pengakuan-masyarakat-hukum-adat-dan-hutan-adat-di-kaltim-masih-minim>.

peoples are highly dependent on forests. Meanwhile, land conversion from forest to non-forest areas such as plantations, industry, mining, and settlements will occur more easily.²⁵ This condition will directly or indirectly harm indigenous peoples. The community will suffer from the loss of customary land because they see the forest as home. In addition, indigenous peoples will lose their source of livelihood because deforestation makes them no longer able to depend on the forest for gathering, hunting and farming. Not only that, indigenous peoples will eventually lose their cultural heritage such as spiritual practices and traditions.²⁶

3. Water Pollution in IKN and surrounding areas

One of the considerations for moving the capital city is the poor water quality in Jakarta. However, the IKN region and its surrounding areas also have the potential to experience similar problems to Jakarta. This can happen because in IKN the majority of the soil is peat soil and also has many extractive industries. The clean water crisis will also have an impact on the area around IKN, because the area used as IKN is an area that supports the water needs of the 5 surrounding areas. Thus, indigenous communities in the area will experience a clean water crisis that adversely affects their quality of life, even though they are the least responsible group for environmental damage.

4. Agrarian Conflicts and Disputes

In the event that there has been environmental damage, deforestation, and also the seizure of customary land, agrarian conflicts and disputes will occur. Indigenous people who claim their customary land will dispute with companies holding land rights granted by the government. The dispute will certainly harm both parties, both indigenous peoples and business actors holding land rights.²⁷ Another potential conflict is due to forced relocation. Conflict due to forced relocation itself is happening in the IKN development process where the indigenous people of Suka Balik, Sepaku Lama village, North Paser Regency refuse to be forcibly relocated because of the historical sites of their ancestors.²⁸ Basically, communities have the right not to be forcibly relocated from their customary territories, and relocation of them can only be carried out after obtaining approval that is notified in advance to the indigenous community and has been given fair compensation, and returned to their customary territories if possible²⁹

Based on the implications of granting land rights based on the IKN Law on the environment of indigenous peoples in IKN, it can be seen that the extension of land rights is detrimental to indigenous peoples because of the potential for higher environmental damage.

²⁵ Oksana, Mokhammad Irfan, and Uiyal Huda, "Pengaruh Alih Fungsi Lahan Hutan Menjadi Perkebunan Kelapa Sawit Terhadap Sifat Kimia Tanah," *Jurnal Agroteknologi* 3, no. 1 (2012): 29-34.

²⁶ Jodie Phillips, "The Impact of Deforestation on Indigenous Peoples and Their Communities," October 27, 2023, <https://www.environmentalconsortium.org/the-impact-of-deforestation-on-indigenous-peoples-and-their-communities/>.

²⁷ Zakaria, "Cultivation Rights (HGU) 190 Tahun IKN Dan Dampak Negatifnya."

²⁸ CNNIndonesia, "Warga Adat Suku Balik Tolak Relokasi Dari Proyek Pembangunan IKN," March 15, 2023, <https://www.cnnindonesia.com/nasional/20230315053702-20-925153/warga-adat-suku-balik-tolak-relokasi-dari-proyek-pembangunan-ikn>.

²⁹ Felishella Earlene and Tundjung Herning Sitabuana, "Tanggung Jawab Negara Terhadap Hak Masyarakat Hukum Adat Di Pulau Rempang Dalam Perspektif HAM," *Tunas Agraria* 7, no. 2 (2024): 144-61.

Based on these problems, the recommendations given by researchers to solve the problems include:

1. Reducing the period for granting land rights

It is necessary to reduce the period of granting land rights in the IKN Law, especially the regulation on Cultivation Rights (HGU) which can even be up to 190 years. The granting of land rights can be given within the period as stipulated in the Law No. 5/1960. This is because the limitation period stipulated in the Law No. 5/1960 has considered environmental sustainability and equitable access to land for the community.

2. Accelerate the recognition of indigenous peoples in accordance with laws and regulations.

Accelerating the recognition of indigenous peoples is necessary because currently only 6 indigenous peoples are recognized in East Kalimantan Province, while the process of recognizing 25 indigenous peoples is still slow. Not to mention that there are still many indigenous peoples who have not been recorded by the local government. This has an impact on the recognition of customary land owned by indigenous peoples.

3. Include indigenous peoples in decision-making on granting land rights

Basically, the explanation of Article 16 paragraph 1 of the IKN Law states that the land acquisition mechanism is carried out by taking into account the community, including indigenous peoples, as well as the granting of management rights which must include indigenous peoples. This rule must be implemented in making decisions to grant land rights to business actors. This can be done by ensuring that a meaningful consultation with indigenous peoples has been established, where the implementation must consider the privileges of indigenous peoples.

4. The necessity for the ratification of the Indigenous Peoples Bill

Currently, regulations that guarantee the rights of indigenous peoples are still sectoral and not detailed. Therefore, to further guarantee the various rights of indigenous peoples, including in the recognition of customary land and customary forests, it is necessary to ratify the Indigenous Peoples Bill, which until now has not been finalized by the legislature, even though it is necessary to protect indigenous peoples and their traditional rights as mandated in Article 18B paragraph 2 of the UUD NRI 1945.

By carrying out some of these recommendations, it is hoped that it can prevent environmental damage that can violate the rights of indigenous peoples.

4. Conclusions

In the IKN Law, there is an extension of the period of granting land rights compared to that stipulated in the Law No. 5/1960 because the IKN Law is *lex specialis*. Based on Article 16A of the IKN Law, it can be seen that Cultivation Rights (HGU) can be granted in the first cycle period for 95 years and can be extended for the second cycle for 95 years, for HGB the first cycle period is 80 years and can be extended for the second cycle for 80 years. Then, the first cycle is 80 years and can be extended for a second cycle of 80 years. The extended time period for granting land rights in the IKN Law has an adverse impact on the environment of indigenous peoples, which, among others, causes environmental damage because the state loses control over land for a long time, forest deforestation that harms indigenous peoples, water pollution, and also has the potential to cause agrarian conflicts and disputes between indigenous peoples and business actors. Based on these problems, the government should

reduce the period for granting land rights in the IKN Law, accelerate the recognition of indigenous peoples, involve indigenous peoples in decision-making on granting land rights, and also pass a bill on indigenous peoples.

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6. Reference

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