

## Protection of Customary Land Rights: Meta-Analysis and Regulatory Impact Assessment in Indonesia's New Capital

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### Abstract

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

**Keywords:** Deforestation mitigation, indigenous land rights, institutional coordination, land use policies, regulatory design.

### INTRODUCTION

The Indonesian government purports that the curtailment of deforestation and forest degradation during the 2019–2020 period achieved a notable increase of 75%, denoting an extensive increase of 115,459 hectares [1]. Nonetheless, preserving this achievement is by no means a facile endeavor, given the mounting population pressures witnessed in Indonesia, surpassing the staggering 270 million inhabitants. A vast expanse of approximately 120.5 million hectares, amounting to approximately 64% of Indonesia's landmass, has been conscientiously designated for the purpose of afforestation.[3]

Nevertheless, policy schemes imbued with an industrial inclination, notably the exploitation of forests for mining and the establishment of palm oil plantations, stand as the primary instigators of deforestation, precipitating far-reaching ecological calamities. Furthermore, these ventures pose a threat to the sustenance of indigenous communities

because the shift from agrarian pursuits to mining undertakings has stripped them of viable means of livelihood. This dire circumstance ensues from the conversion of arable lands to mining sites, thereby engendering a dearth of employment prospects for the erstwhile agricultural workforce. [4]

The management of tenure conflicts in East Kalimantan exhibits a prevailing inclination towards reactive measures, wherein attention is disproportionately allocated to symptom mitigation rather than tackling the underlying causes. Regrettably, the existing conflict resolution mechanisms have thus far failed to engender substantial policy transformations that extend beyond the confines of localized disputes involving farmers and indigenous communities. At its core, the discord surrounding indigenous land tenure remains confined to contentions concerning the delineation of ownership rights and boundaries, encompassing both individual and communal landholdings. [5]

Tenurial conflicts not only contribute significantly to the process of deforestation but also exacerbate social inequalities, thereby necessitating a comprehensive evaluation of the effectiveness of legal safeguards [6]. Critical insights derived from previous scholarly examinations highlight a range of pivotal factors, with a notable emphasis on the dearth of integrated cross-sectoral authority within the Ministry of Environment and Forestry (KLHK). This fragmentation is evident in the disjointed coordination between key entities such as the Directorate General of Forest Production Development, the Directorate General of Forest and Land Rehabilitation, the Forest Management Unit (BPH), the Forest Financing Agency (BPKH), and the River Basin Management Agency (BPDAS). As a consequence, this dispersed and fragmented authority structure engenders prolonged bureaucratic processes and undermines the overall efficacy of governance mechanisms [7].

Second, interagency coordination represents a significant impediment to the effective legal protection of indigenous land tenure rights, as evidenced by the absence of a unified land registry that consistently records land ownership when conflicts over land use arise within the forestry sector [4]. In addition to ownership contestations between industrial actors and indigenous communities, procedural barriers persist in relation to indigenous land tenure due to diverse jurisdictional frameworks [8].

A systematic literature review systematically identified and extracted studies and data from previous research, revealing that the paradigm shift in forest policy in Indonesia has resulted in a leaning towards reforestation. However, the substantive aspects of this shift allow for a degree of flexibility that can be interpreted ambiguously, thereby enabling the ongoing loss of forest cover [9].

The designation of Penajam Paser Utara and Kutai Kartanegara in East Kalimantan as the two locations for Indonesia's New Capital City (IKN) has resulted in a transformation of land cover from vegetated areas to urban landscapes, with consequential impacts on temperature patterns. An examination utilizing the Weather Research and Forecasting (WRF) model revealed that the expansion of urban spaces contributed to increases in temperature of 1.17 and 1.77 °C, respectively. Consequently, urban planning needs to accommodate the local concerns embraced by indigenous communities to ensure sustainable development. [10]

The primary objective of this article is to make a substantive contribution to the enhancement of regulatory design and the enforcement of laws pertaining to indigenous land tenure rights. Within the context of Indonesia, a developing nation driven by a pressing need for land and forest resources to fuel its economic advancement, the

precarious state of indigenous land tenure rights becomes apparent. This vulnerability stems from the prevailing inclination of legal access and institutional frameworks towards an industry-centric approach. The alarming rate of deforestation observed in Indonesia is directly correlated with the erosion of indigenous land tenure rights. Furthermore, the constrained access that indigenous communities have to forests has profound implications for the fundamental principles of forest conservation and capacity-building endeavors aimed at empowering indigenous communities to effectively manage their ancestral lands. [11]

## **METHOD**

This study employs a sociolegal approach, more specifically, a nondoctrinal and interactional/microbased approach. The qualitative analysis is grounded in the understanding of law as a manifestation of symbolic meanings attributed by social actors, as evident in the interactions between community leaders and customary or indigenous land rights. The research design utilized is normative-empirical, specifically an applied law research methodology that employs a case study approach, drawing upon normative legal principles to analyse specific legal events (in concrete terms). [12]

The research is centred around the collection of information and insights obtained from verbal and nonverbal communication employed by designated informants concerning the perspectives of indigenous communities regarding the acknowledgement and safeguarding of customary land rights. Additionally, it explores the pertinent symbolic interpretations associated with ecological wisdom. [13]. The research data consist of primary sources, which encompass legal texts such as regulations and legislative provisions, informant interviews, and secondary sources comprising nonwritten customary documents and symbolic traditions. These secondary sources include relevant traditional ceremonies that are associated with forest management. [14]

## **RESULTS AND DISCUSSION**

### **Theoretical and practical review of forest law enhancement**

Tenurial rights are a complex social phenomenon, as the available literature is not comprehensive enough to provide a theoretical framework for further analysis of the research subject. From a macro perspective, the protection of indigenous land tenure can be understood through the lens of structural functionalism, which posits that the protection of indigenous communities as social entities holds significance in determining the stability of society and mitigating social stratification. Tenurial rights are a consequence of recognizing the existence of customary law. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia highlights the prominent role of structural functionalism, as it emphasizes the existence of a customary law community that is dynamic and aligned with societal development, the principle of the unitary state of Indonesia, and the rule of law [15].

The nuances of structural functionalism regarding customary law within the framework of modern constitutionalism in Indonesia, as discussed by Satjipto Rahardjo, are understood through four aspects. First, it regulates social behavior, as customary law is recognized as a normative source that governs social behavior by establishing norms, rules, and standards that guide individual and group actions [16]. Second, it preserves social order, as customary law is capable of preventing deviant behavior and other criminogenic factors. Third, it serves as an instrument for conflict resolution and a source of norms for settling disputes. Finally, it serves as an instrument of social

engineering, as customary law provides a means for individuals and groups to advocate for changes within society. [17]

Building upon the aforementioned discussion, the ecological wisdom that constitutes an integral part of customary law emerges from the harmonious interaction between human beings and their environment. Structural functionalism views ecological wisdom as knowledge that arises from collective-evolutionary experiences, knowledge that is selected on the basis of the principle of survival without disregarding ecological balance [18]. Ecological wisdom serves as an analytical lens for understanding phenomena of inequality and injustice, as well as how legal infrastructure addresses them. The conclusions drawn from this section will guide researchers in examining the types of relationships that emerge, whether they are convergent, divergent, or singular. [18]

To examine the influence of social factors, including culture, economy, politics, and social structure, on the efficacy of legal safeguards for indigenous land tenure rights, this study adopts the perspective of sociological jurisprudence. This theoretical framework operates on the premise that law does not exist in isolation but is intricately shaped by social dynamics and cultural norms. By employing this analytical lens, this research aims to uncover insights and draw conclusions about the social contexts that either reinforce or undermine the values and power dynamics within particular communities. Ultimately, this examination sheds light on the implications for the protection of indigenous land tenure rights in the context of forest conservation. [19]

The fundamental concept underlying the utilization of sociological jurisprudence is to examine the notion that law transcends an abstract set of rules and instead operates as a multifaceted social institution within specific social and historical contexts. A comprehensive understanding of its dynamics necessitates an exploration into how law tackles social issues and holds the potential for social transformation [19].

In accordance with Tumonis, this theory employs fundamental concepts to grasp the ecological wisdom inherent in indigenous communities as variables in legal research. It acknowledges that this wisdom is an organic byproduct of distinct social communities, serving as a mechanism for social regulation. Consequently, the propositions encompass personality models, social environments, economic circumstances, business interests, prevailing perspectives, and general sentiments [20].

Moreover, the formulation of interrelationships, establishing connections among geographical, physical, and social phenomena, adopts a legal perspective as a means to enact change (with law as a tool of social engineering). The practical application of this theory transforms the propositions developed at the mid-range theory level into actionable indicators, which serve as tangible measures of law's capacity for societal transformation, encompassing functions of integration, solidification, reduction, motivation, and education [21]

Becker [22] utilized an economic framework to comprehend the efficacy of law enforcement, categorizing degrees of legal transgressions on the basis of the consequential material ramifications. Becker's economic approach is rooted in the underlying assumption that individuals act in a rational manner, meticulously weighing the costs and benefits prior to engaging in illicit conduct. According to Becker, such behavior can be construed as an economic endeavor, wherein individuals deliberate the advantages and disadvantages of their actions. He posits that factors such as

unemployment, income levels, and the implementation of law enforcement policies influence the pervasiveness of criminal behavior within a society [22].

Thus, Becker's economic approach to understanding law breaking emphasizes the importance of weighing costs and benefits in individuals' decision-making. This approach views law breaking as a rational act influenced by economic factors and provides a basis for more effective law enforcement policies.[22]

The scholarly literature on effective law enforcement can be comprehended by examining the objective function of law enforcement institutions. This function entails a conceptual framework that defines effective law enforcement as one that takes into consideration the values and requirements of local communities, particularly in developing nations, in their access to forest resources. The effectiveness of law enforcement is gauged by the degree to which its objective function aligns with the objectives of conservation and the well-being of indigenous communities.[23]

The fundamental aim of law enforcement is to administer lenient penalties while maintaining high detection rates. Conversely, the imposition of severe sanctions may create opportunities for heightened corruption. Proportional sanctions involve careful consideration of the societal costs associated with violations and the capacity of individuals to comply with the penalties. This implies that more serious offenses warrant more stringent sanctions than minor transgressions. This perspective facilitates the evaluation of law enforcement effectiveness in directly safeguarding the legal rights of indigenous communities [23].

To measure the effectiveness of law enforcement in the field of deforestation, two concepts in the current literature review need to be considered. These are full and incomplete enforcement. Full enforcement is concluded to be optimal law enforcement if law enforcement officials can provide full sanctions to all violators without exception, including minor violations, as assumed by Becker and Posner. Incomplete enforcement is concluded to be effective if law enforcement officials are able to address violations with the most severe impact while tolerating minor violations. This concept was proposed by A. Mitchell Polinsky and Steven Shavell [24].

The fundamental assumption underpinning both concepts is that rational offenders carefully consider the benefits and costs before deciding to commit violations. The basic premise of full enforcement is that the penalties imposed on offenders exceed the benefits they stand to gain, thus serving as a deterrent against violations [23]. Conversely, within the context of incomplete enforcement, the underlying framework posits that even with high enforcement costs, eradicating all violations is not feasible [24].

Given the extensive coverage of forested regions in Indonesia and the decentralized distribution of budgetary allocations among diverse sectors, coupled with their limited efficacy, the hypothesis suggests that law enforcement pertaining to the safeguarding of indigenous communities' lawful entitlements to forests adopts a strategy of incomplete enforcement, with a specific focus on the forestry sector.

As a response, the literature review provides a prioritized approach to law enforcement through a geospatial pattern of illegal activities [25]. As a response, the literature review provides a prioritized approach to law enforcement through a geospatial pattern of illegal activities [26]. Gaveau et al. [25], as well as the implications of poverty and livelihood needs. Various propositions considered to analyse the



effectiveness of protecting indigenous land tenure rights are summarized within the conceptual framework presented in the following diagram [26].

### 1.1. Dayak-Paser Customary Law and Its Implications for Forest Management

The Dayak indigenous community faces challenges in forest management due to ambiguous constraints within forestry regulations. This has resulted in increased potential for forest law violations and diminished support for the traditional practices of the Dayak forest community. Forest management practices based on industrial economic approaches have led to escalating conflicts and high deforestation rates in Indonesia. Consequently, the traditional forest management practices that hold ecological wisdom relevant to the Dayak community have been declining [27].

The traditional practice of shifting cultivation carried out by the Dayak community, as an integral part of their cultural heritage and livelihood, has the capacity to maintain ecological balance within the forest. However, when state regulations fail to acknowledge and safeguard these customary rights, conflicts increase, and traditional forest management practices decline. This has a detrimental impact on the increasing rate of deforestation and severe ecosystem degradation [28].

The ecological wisdom within the Dayak Paser and Dayak Balik communities is characterized by a communal spirit, as evident in the traditional practice of "Paser Bekerai," which involves community participation in building traditional houses and engaging in collective activities. This communal essence is reflected in forest governance based on the traditional knowledge of the Dayak community, which contributes to a carbon sequestration value exceeding US\$52 million per year. This signifies that local knowledge and Dayak Iban customary law have proven effective in reducing carbon emissions, highlighting the importance of recognizing them to address deforestation [29].

The cosmic essence is a distinctive characteristic of the Dayak Kalimantan indigenous community, where ritual systems and traditional knowledge of agriculture and medicine are passed through generations, all of which are integrated into the spirit of sustainable forest resource utilization. In the context of rituals, the Dayak Kalimantan community embraces the "tipong tawar" mantra as a farming ritual that reflects their spiritual connection with the forest and their belief in the forest as a place endowed with protective spirits, fertility, and ecological balance. The protection of land tenure rights is inseparable from traditional knowledge [27].

The application of shifting cultivation, knowledge of natural soil cycles, and norms of forest sustainability are traditional knowledge commonly found in Dayak communities in Kalimantan. Shifting cultivation practices help maintain soil fertility and prevent overexploitation of forests. Knowledge of natural soil cycles accelerates the recovery of agricultural land into primary forests. The norms of forest sustainability prevent excessive exploitation. This knowledge system demonstrates that Dayak communities' reliance is not solely based on economic considerations but is rooted in a cosmic unity [30].

In addition to shifting cultivation, the Dayak communities in Kalimantan also have a tradition called simpukung or forest garden, which refers to economically managed secondary forests planted with fruits, rattan, bamboo, timber, and other medicinal plants. Typically, these forests are managed collectively, although some may be privately managed and passed through generations. The customary rules governing

these forests are stringent and intricate for preventing the overexploitation of forest resources. However, such practices are increasingly challenging to find in the IKN area (New Capital City of Indonesia in Sepaku and Samboja) [31].

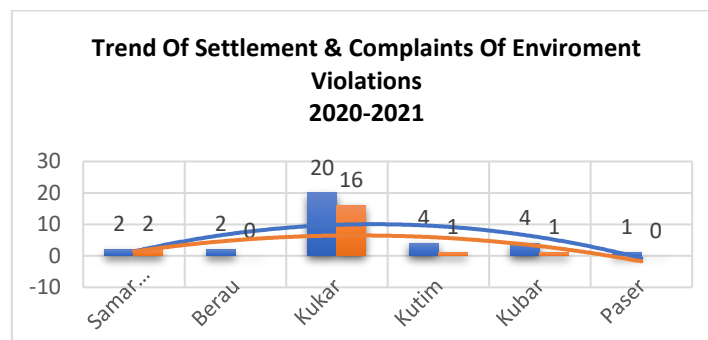
The indigenous communities of Paser and Balik, which reside in the IKN (Sepaku and Samboja) area, have a range of cosmically oriented traditions that are depicted in the "Besoyong" tradition. This form of ritualistic incantation or chantation serves as a means of communication with ancestral spirits and the divine entity known as Sangiyang and is typically performed during the traditional Belian Paser Nondoi festival [32]. Protective mantras are intricately linked to the forest as ritual media [33]. Within the Balian tradition, a strong and ancestral cosmic dimension is preserved, highlighting the belief that the forest possesses profound healing powers [34].

The conservation of forests through the protection of indigenous land tenure rights among Dayak communities contributes significantly to the preservation of traditional knowledge held by Dayak Meratus and Dayak Balik regarding approximately 240 plant species with diverse usage characteristics. Among these species, there are 2 endemic species and 14 rare species. Ethnopharmacological research has shown that the traditional medicinal knowledge of Dayak Paser and Dayak Balik encompasses 46 medicinal plant species and 12 herbal formulations, which holds potential for the discovery of new drugs [35]. The wealth of biodiversity continues to expand with the discovery of 20 medicinal plants that support medical treatments. However, this knowledge system faces increasing threats from the expansion of palm oil plantations and mining activities, putting it at risk [36].

The traditional knowledge of the Dayak Paser and Dayak Balik communities regarding forest plants as a source of natural antioxidants, as mentioned above, can be utilized to reduce the dependence on synthetic antioxidants. Therefore, biodiversity wealth represents an ecologically valuable asset that needs to be protected [37].

### **IKN and the Effectiveness of Protecting Tenurial Rights in the Dayak Paser-Balik Community**

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

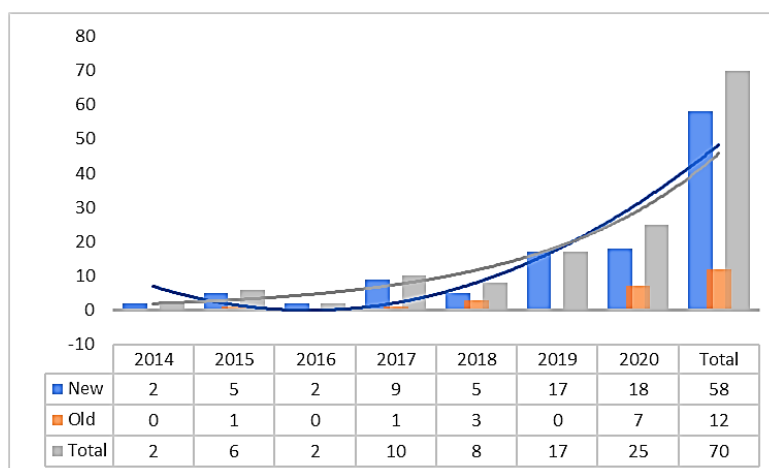


**Figure 1. Graph of the Trend of Settlement & Complaints of Environment Violations 2020-2021**

Source. East Kalimantan Department of Environment

On the basis of the aforementioned data, the enforcement of environmental and forestry laws still needs to be improved, particularly in terms of taking action against law violations. Despite the majority of complaints being resolved, cases that were redirected to other agencies indicate the need for cross-sector collaboration in handling more complex cases. This is evidenced by a quantitative descriptive analysis. First, the complaint resolution statistics show a rate of approximately 61%, indicating that most complaints have been successfully resolved. Second, an average of approximately 39% of patients were referred to other agencies, suggesting that a number of complaints were redirected, making it difficult to track their completion. Third, the law enforcement rate represents a mere 3% of the total complaints, indicating a significantly low level of enforcement against environmental preservation violations.

Community participation in forest and environmental conservation, which is based on empirical data from the East Kalimantan Environmental and Forestry Agency, is facilitated through climate-friendly village initiatives. The specific data are presented in the following graph:

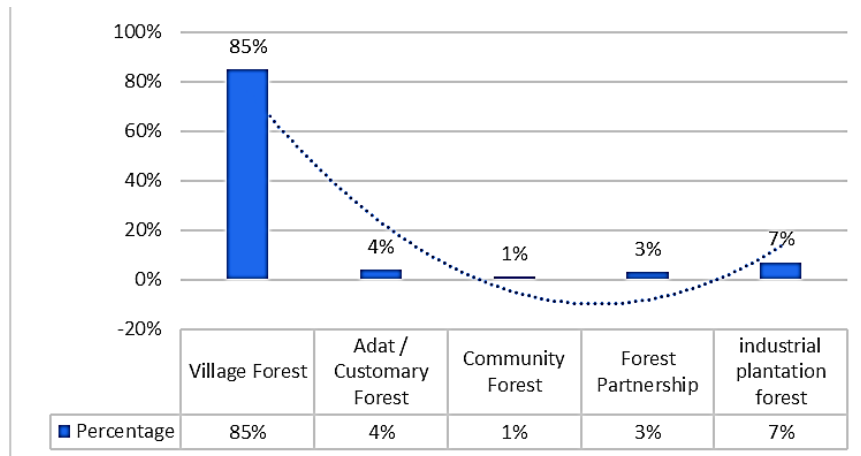


**Figure 2. Kaltim Climate Village realization graphic, 2020**

Source. East Kalimantan Department of Environment

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





**Figure 3. Types of Forest Graphs**

Source. East Kalimantan Department of Environment

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

**Table 1. Deforestation rate**

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

Source. Central Bureau of Statistics 2020 (Badan Pusat Statistik R.I 2020)

The data above indicate a decreasing trend in the total area of deforestation from 2014--2015 (108,682.0 ha) to 2019--2020 (10,660.5 ha). However, this decline exhibited fluctuating patterns, as there were decreases in 2016--2017 and 2017--2018, followed by an increase in 2018--2019, resulting in an inconsistent trend. Moreover, the decrease in the total area of deforestation was not accompanied by an increase in the total forest area.

The actors responsible for violations of indigenous customary land rights are typically the forestry industry [38]. Furthermore, the disregard of local wisdom values within customary law as the foundation of local regulations often leads to multiple interpretations, resulting in the failure of local regulations to accommodate them as perspectives for forest conservation. The protection of tenurial rights can be achieved

through the recognition of customary law, addressing deforestation issues, and implementing sustainable land management practices.[38]

This signifies that there are several pivotal subjects within the realm of examining the efficacy of safeguarding the customary land rights of indigenous communities, encompassing the quandary of inclusivity and exclusivity; the dichotomy between communal and individual land ownership; and the dynamics of resistance, negotiation, and accommodation. These three factors play crucial roles in determining whether the ability of indigenous communities to secure equitable access to forests is effective or ineffective.[39]

On the basis of the aforementioned data, to mitigate resistance or contestation arising from the inclusion dilemma between forest industry actors and the exclusion of indigenous customary land rights, the "kampung pro iklim" program was implemented. Departing from the perspective of sociological jurisprudence, it is evident that the chosen approach in this program is the recognition and accommodation of indigenous communities, thus rendering its effectiveness highly contingent upon the active participation of indigenous communities. However, the trend observed in the "kampung pro iklim" program displays an inconsistent pattern, thereby impeding a comprehensive evaluation of its efficacy in safeguarding indigenous customary land rights. Furthermore, this trend stands in contrast to the available data, which indicates that the rate of deforestation surpasses the restoration of forest areas.[40]

The data on law enforcement depicted in the aforementioned graph reveal a notable deficiency in the efficacy of safeguarding the customary land rights of the Dayak indigenous community, underscoring the imperative for enhancement, particularly with regard to enforcing legal infringements. The augmented engagement of indigenous communities through the "kampung pro iklim" initiative continues to face impediments arising from the dearth of intersectoral jurisdiction and institutional harmonization within the Ministry of Environment and Forestry. A disparity arises between the realized accomplishments and the program's objectives, revealing deficiencies in negotiating and accommodating the participation of indigenous communities in the program.

The realization of indigenous customary forests has demonstrated efforts in safeguarding the land rights of indigenous communities, yet fair advocacy is still needed, as cultural heritage constitutes a crucial component of their cultural identity and serves as a vital prerequisite for their physical sustenance, particularly since forests are considered the lifeline for Dayak indigenous communities. The effectiveness of protecting indigenous customary land rights can also be analysed in depth on the basis of the normative characteristics of the Omnibus Law (Law Number: 11 of 2020 on Job Creation), specifically the norms that, from a structural functionalism perspective, contribute to the perpetuation of disparities in the distribution of forest benefits.

The fluctuating trend of programs aimed at protecting and conserving forests on the basis of indigenous customary land rights indicates several influencing factors. First, inconsistent policies and regulations play a significant role. The revision of the Forestry Law through the Job Creation Law has demonstrated how policy changes can affect the continuity and consistency of legal protection for indigenous communities. [41]

Second, the effectiveness of legal protection is still heavily influenced by the availability of adequate resources, including funding, manpower, infrastructure, and technology. The limited allocation of resources for safeguarding indigenous customary

land rights is predominantly directed towards administrative aspects, resulting in insufficient support for outreach and education. This leads to inconsistent progress in achieving the set targets [41]

Third, despite the solid constitutional recognition of customary law, its derivative regulations have yet to receive prioritization from both the central and local governments. In fact, the governments of Kutai Kertanegara Regency and Penajam Paser Utara, the two locations for the new capital city, have not yet established legal frameworks for recognizing customary law. This clear evidence indicates that the issuance of regulations and procedures for protecting indigenous customary land rights has not been a priority. It is understandable that the achievement of legal protection targets through the recognition of indigenous customary rights remains inconsistent [42].

Fourth, conflicting interests and economic demands play a significant role. The presence of conflicting interests among various stakeholders and high economic demands can influence the upwards trajectory of forest conservation targets. If economic interests dominate and communities or involved parties prioritize short-term gains over forest preservation, the implementation of forest conservation measures may exhibit inconsistency.[42]

Fifth, spatial injustice in forest utilization is another determinant that diminishes the effectiveness of protecting indigenous customary land rights. Contestation between forest industry actors and indigenous communities continues to persist in Indonesia. In fact, research by Wuryandari [43] demonstrates that the current investment laws in Indonesia exhibit a significant bias towards environmental preservation, particularly in terms of the conceptualization and implementation of sanctions. This is evident when examining the social and environmental consequences resulting from the actions of foreign investors who fail to fulfil their obligations towards the environment.[43]

Understanding the inconsistency in achieving targets for forest conservation requires careful attention to the aforementioned factors and appropriate actions. This involves policy stability, the allocation of adequate resources, political consistency, the resolution of conflicting interests, and the empowerment of communities to ensure the fair and sustainable distribution of benefits.[42]

The comprehensive explanation provided above indicates that the effectiveness of protecting indigenous customary land rights is driven by the lack of commitment and understanding among stakeholders within the government regarding the importance of recognizing the land rights of indigenous communities. The second factor is the poor quality of cross-sectoral coordination due to misconceptions about regional autonomy norms. This is evidenced by the issuance of mining permits within protected forest areas by local governments, despite being in conflict with the Minister of Forestry Regulation No. P.43/Menhut-II/2008, which prohibits mining in protected forest areas. [44]

The limited capacity of indigenous peoples when faced with complex bureaucratic procedures, coupled with the changing demographic structure of Sepaku and Samboja from traditional villages to transmigration sites, has hindered the effective dissemination of mechanisms for asserting indigenous land rights. However, the demographic and social structural changes from traditional villages to transmigrant villages in Sepaku and Samboja do not automatically eliminate or eradicate customary practices and indigenous law as a whole. Customary law is still practiced and applied, both in situations of

conflict and coexistence, thus rendering legal unification effective only within a limited scope. [45]

The data on the enforcement of environmental and forestry laws highlight a significant gap between regulations and their implementation within the regulatory framework. The low rate of law enforcement (3%) implies a deficiency in converting legal provisions into effective protection. This gap may be a consequence of regulatory inadequacies, which pose challenges for implementing laws that protect tenurial rights.

The data emphasize a low level of law enforcement, suggesting a significant lack of protection for customary land rights. The involvement of law enforcement agencies responsible for upholding and implementing legal safeguards undoubtedly encounters difficulties. Insufficient resources, coordination problems within institutions, and a lack of intersectoral jurisdiction impede the effective implementation of legislation safeguarding the tenurial rights of indigenous people.

Infrastructure and Coordination within Institutions. The limited participation rate in eco-friendly village projects implies a deficit in cross-sectoral authorization and institutional coordination within the Ministry of Environment and Forestry. Inadequate infrastructure and coordination may hinder community involvement in forest conservation, undermining the overall effectiveness of legal protection for tenurial rights.

In terms of the environmental context, the fluctuating trend in deforestation rates—although showing an overall decrease—suggests that challenges still exist in the application of laws. Conflicting policies and regulations, alongside spatial injustice in forest usage, result in a lack of consistency in achieving conservation objectives. The effective protection of indigenous tenurial rights in the current environmental context is additionally complicated by economic demands and diverging interests.

Cultural and legal obstacles are reflected in the resistance or contestation encountered in executing the "kampung pro iklim" program. The conflict between forest industry actors and the noninclusion of indigenous customary land rights highlights a cultural divide. Fluctuations in the program indicate challenges in promoting shifts in mindset and encouraging the active engagement of indigenous communities, therefore impeding the efficacy of legal protection initiatives.

Resource allocation and economic interests are also at play. The scarce resources allocated to defend customary land rights of indigenous people, which are mostly directed toward administrative aspects, raise an issue. Divergent economic interests and high demands consistently hamper the attainment of legal protection goals. Economic priorities might override the long-term objective of preserving forests, ultimately affecting the effectiveness of legal measures.

Maintaining stable policies and adhering to political coherence are requisites for reliable outcomes.

Inconsistent policy and regulatory alterations, exemplified by the amendment of the Forestry Law in accordance with the Job Creation Law, have a detrimental effect on the stability and consistency of legal protection. Political incoherence exacerbates the difficulty of upholding effective legal measures for the rights of indigenous tenured individuals.

The acknowledgement of customary law is imperative. [16]. Despite constitutional recognition, the absence of prioritization and legal frameworks at both the central and

local government levels impedes the effective recognition of customary law. This indicates a regulatory gap that affects the consistent safeguarding of indigenous tenurial rights

Demographic changes. Demographic changes, specifically the shift from traditional villages to transmigration sites, present difficulties in the successful dissemination of methods for asserting indigenous land rights. While traditional practices may continue, the evolving demographic landscape inhibits the ability of indigenous peoples to manoeuvre intricate administrative processes, thereby diminishing the efficacy of legal safeguards.

## **CONCLUSION**

This research emphasizes the imperative necessity of safeguarding the land ownership rights of aboriginal communities in Sepaku and Samboja, East Kalimantan, because of the formation of the capital city of Nusantara. The alteration of forests into mining and palm oil estates, instigated via industrial policies, has resulted in massive deforestation and ecological calamities, placing the survival of indigenous populations at risk. Disputes surrounding land tenure, stemming from divergences in private and communal land ownership, exacerbate deforestation and sustain social inequality in the region. Regrettably, the efficacy of the Ministry of Environment and Forestry in securing land tenure rights is reduced by their lack of coordination and cross-sectorial influence. While there has been a visible shift towards forest policies in Indonesia promoting reforestation, the pervasive ambiguity surrounding these policies may still add to the persistent loss of forests. Additionally, the conversion of Penajam Paser Utara and Kutai Kartanegara into Indonesia's new capital cities worsened the change in land cover from greenery to urban zones, thus impacting temperature fluctuations. Improving land tenure in Indonesia, particularly in the context of increasing demand for land and forests to support economic growth, necessitates a robust reinforcement of regulatory frameworks and a strict application of legislation that safeguards indigenous land tenure. Ensuring secure land tenure rights goes hand in hand with tackling deforestation in the country.

The legal protection of the indigenous tenure rights of the Dayak Paser-Balik community faces several challenges. Regulatory gaps, highlighted by notable disparities between laws and enforcement, impede the conversion of legal provisions into effective protections. The insufficiency of law enforcement agencies' resources, lack of institutional coordination, and limited intersectoral jurisdiction further exacerbate these issues. Inadequate infrastructure and poor coordination within the Ministry of Environment and Forestry hinder community involvement in climate-friendly projects, highlighting difficulties within the institutional framework. The environmental context, characterized by conflicting policies, spatial inequality, and economic demands, leads to erratic conservation results. Cultural and legal clashes of mindset, as witnessed in the "kampung pro iklim" program, highlight the challenges of shifting perspectives to ensure adequate protection. Inadequate allocation of resources, economic priorities, and unstable policies pose further obstacles to consistently upholding the rights of indigenous tenure. The absence of prioritization and legal frameworks for acknowledging customary law, together with demographic changes, creates further impediments. Resolution of these challenges entails adopting a comprehensive approach



involving regulatory reforms, improved coordination, cultural recognition, and enduring policies for upholding the long-term safeguarding of indigenous tenurial rights.

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